

6 DCCW2004/0394/M - VARIATION OF CONDITIONS 4, 12, 14, 19, 22, 23, 26 & 27 ON PP REF CW2001/0769/M - FOR THE EXTRACTION OF SAND AND GRAVEL AT PART OF O.S. PARCEL 2980, UPPER LYDE GRAVEL PIT, UPPER LYDE, HEREFORDSHIRE

For: Hussar Minerals per Mrs. G. Pawson, Mill House, East Haddon, Northants, NN6 8DU

Date Received: 11th February, 2004

**Ward: Burghill,
Holmer & Lyde**

Grid Ref: 49264, 44777

Expiry Date: 7th April, 2004

Local Member: Councillor Mrs. S.J. Robertson

1. Site Description and Proposal

1.1 The site is about 2½ kilometres north of Hereford and 1 and a half kilometres southwest of Moreton-on-Lugg, roughly rectangular, about 180 metres x 130 metres on its longest sides. About one quarter of the site has been excavated and part has been infilled with agricultural waste under Permitted Development Rights. It is fairly flat and is part of a large block of farmland enclosed by the A4110, Moreton Road and Bewdley Bank on which about 31 houses are situated. The nearest houses are Windrush, Fayre View and Braemar. The garden boundaries of which would be about 50 metres north of the proposed excavation boundary.

1.2 Planning permission was originally given in 1965 for the extraction of sand and gravel and subsequent infilling of the site. The planning permission was designated Dormant under the terms of the Environment Act 1995 and the permission "modernised" in 2001. Working is restricted to Agricultural Permitted Development Rights until the schemes prescribed under the new conditions have been agreed. The application is to vary some of the conditions on that permission, especially to vary:

- Condition 4 to allow the site to be reclaimed to nature conservation rather than to agricultural land and nature conservation, as currently required;
- Condition 12 iv) to allow soils to be removed from the site, to allow specified habitats to be created;
- Condition 12 vi) to allow excavation below the water table, in order to construct a pond;
- Condition 12 ix) to allow the existing material tipped within the site to be retained and used in the reclamation of the site;
- Condition 14 i) to delete proposals to plant shrubs along the north boundary of the site if local residents require and to create a temporary soil mound instead;
- Condition 14 iii) to revise the timing of the submission of final planting schemes;

- Condition 18 to vary the working programme particularly the direction of working;
- Condition 22 to vary the reclamation of the site from infilling to a level field fit for agricultural use, to the creation of a nature reserve using only materials currently on site;
- Condition 23 to delete a condition requiring the final agricultural surface to be deep ripped.
- Condition 26 to allow excavation below the sand and gravel deposit to provide clay for the construction of the pond.
- Condition 27 changing the time by which an aftercare scheme must be submitted to not later than the completion of extraction.

2. Policies

2.1 Human Rights Act:

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| 2.2 | MPG2 | - | Mineral Planning Applications etc. |
| | MPG5 | - | stability in Surface Mineral Workings and Tips |
| | MPG11 | - | Noise at Mineral Workings |

2.3 Hereford & Worcester Structure Plan:

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| | Policy M4 | - | DC Considerations |
| | Policy CTC12 | - | Creation of Sites for Wildlife |
| | Policy CTC16 | - | Tree Planting |

2.4 Minerals Local Plan:

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| | Policy 9 | - | Restoration by Infill |
| | Policy 11 | - | Reclamation of Sites |
| | Policy 12 | - | Restoration to Agriculture |
| | Policy 14 | - | Restoration to Nature Conservation etc. |
| | Policy 15 | - | Maintenance of Environmental Standards |

2.5 South Herefordshire District Local Plan:

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|--|------------|---|---|
| | Policy GD1 | - | General Development Criteria |
| | Policy C11 | - | Protection of Best Agricultural Land |
| | Policy C13 | - | Protection of Local Nature Conservation Sites |
| | Policy C15 | - | Creation of New Sites of Nature Conservation Importance |
| | Policy C16 | - | Protection of Species |
| | Policy C17 | - | Trees/management |
| | Policy C34 | - | Archaeology |
| | Policy C40 | - | Provision of Services |
| | Policy C46 | - | Water Extraction |
| | Policy C47 | - | Pollution |
| | Policy ED6 | - | Employment in the Countryside |
| | Policy P2 | - | Environmental Improvements |

2.6 Herefordshire Unitary Development Plan (Revised Deposit Draft):

Policy S1	-	Sustainable Development
Policy S2	-	Development Requirements
Policy S9	-	Minerals
Policy S10	-	Waste
Policy DR4	-	Environment
Policy DR6	-	Water Resources
Policy DR11	-	Soil Quality
Policy LA2	-	Landscape Character
Policy NC1	-	Biodiversity
Policy NC4	-	Sites of Local Importance
Policy NC8	-	Habitat Creation
Policy NC9	-	Management of Landscape
Policy W2	-	New Landfill Sites
Policy W8	-	Waste Disposal for Land Improvement
Policy M7	-	Reclamation of Mineral Workings

3. Planning History

3.1 Herefordshire County Council, Code 20190 - Extraction of sand and gravel (and reclamation by infilling) granted 1st December 1965.

3.2 CW2001/0769/M Imposition of new conditions and deletion of original conditions; determined under the terms of the Environment Act 1965, granted 15th August 2001.

4. Consultation Summary

Statutory Consultations

4.1 Environment Agency (after an exchange of correspondence with the Council and the applicant and the submission of further information):

- On the understanding that no imported material will be used to reclaim the site and on the basis of the Hafren Water Report of 22nd April 2005 have no objection to the proposed variation of conditions and recommend that a scheme of monitoring and mitigation as outlined in the Hafren Water Report be followed.

4.2 Highways Agency do not wish to comment.

4.3 Network Rail have no objection

4.4 Herefordshire Nature Trust generally support the proposals, particularly to create lowland heath but question whether it will emerge from historic seed survival or would not revert to scrub; propose monitoring and a fall back plan, recommend particular care to protect sand martins on site and reserve final comment until they have final restoration proposals.

4.5 CPRE - no response.

4.6 Hyder - no response.

- 4.7 RIGS Group (Earth Heritage Trust) orally, support the retention of faces as a potential RIGS (Regionally Important Geological and Geomorphological Site).

5. Representations

- 5.1 Pipe and Lyde Parish Council remain opposed to the principle of re-opening the gravel pit. With regard to the specific variations in conditions, object to the proposed changes to Conditions 4, 12 iv), 12 vi), 12 ix) and 26. Note that the changes proposed to Conditions 18, 22, 23 and 27 would as a corollary need to be amended. Support the proposed change to Condition 14 but wish the proposed bund to be extended to screen properties to the southwest.
- 5.2 In conclusion they cannot see the need for working this site of relatively poor gravel, with the consequent traffic dangers when there are two much larger sites nearby with far better access to the A49 and the railway.
- 5.3 Burghill Parish Council have no objections in principle to the variations proposed but are sympathetic to the views of Pipe and Lyde Parish Council.
- 5.4 Moreton-on-Lugg Parish Council objected to the original application (to reactivate the site) and have concerns about the risk to children, need for ongoing stewardship or suitable boundary fencing; that the high sides proposed are suitable for sand martins but a potential falling hazard for people; the effects additional lorry traffic will have; support encouraging wildlife areas but have concern about the time it will take wildlife to return to the site.
- 5.5 Letters of objection have been received from:
- Mr. A.W.C. Morris, Windrush, Portway, HR4 8NF (two letters).
 - Mr. E. Hayes, Bewdley House, Canon Pyon Road, HR4 7SQ.
 - Mr. M.J. Buffey, Pepperplock, Bewdley Bank, HR4 7SQ.
 - Anne Wilding, Fayre View, Portway, HR4 8NF.
 - E.E. Wilding, Fayre View, Portway, HR4 8NF.
 - D. Matthews, Springfield, Upper Lyde, HR4 8AF.

The main points of objection being:

- the lack of need for 'postage stamp' conservation areas
- adverse effects on local countryside features
- creation of a permanent scar
- loss of agricultural land
- creation of a lake as irrational, ill considered, with risks to ground water, water supplies, land and property stability, children and to pets and wildlife from algae formation
- risk of flash flooding
- the unsuitability and polluting nature of existing material on site
- question the expertise of the Herefordshire Nature Trust and request further consultation on the proposed planting
- question the safety and location of the proposed haul roads and request further noise attenuation bunds
- concerns about the stability of the final landform
- location, depth and design of the pond
- maintenance of the site

- need for further details earlier than proposed in the application
- preference for infilling
- need for Environmental Impact Assessment
- request the permission be revoked
- that the application is not in the interest of local people
- adverse effects on Human Rights.

- 5.6 Support is expressed in two letters for the creation of a temporary bund (proposed variation to Condition 14) in preference to tree planting.

The full text of these letters can be inspected at Planning Services: Minerals & Waste, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

6. Officers Appraisal

Background

- 6.1 Members should be aware that planning permission for the extraction of sand and gravel from the site exists by virtue of the original (1965) planning permission. Powers exist to revoke, modify, discontinue, prohibit and/or suspend planning permissions, subject to the payment of compensation. Members discussed these issues at the time of the Review of Old Minerals Permissions (ROMP) in 2001 and decided not to pursue them. It is open to the Council to pursue these at any time but Officers do not recommend this in view of the likelihood of very significant compensation costs.
- 6.2 If Members wished to pursue these options, Officers advice is that this report should be withdrawn pending further legal procedural and financial advice being obtained.

Restoration to Low Level

- 6.3 The application before Members is to vary a number of conditions. These all need to be addressed but the essence of the proposal is that the reclamation of the site should be varied. If permission were to be granted to vary Conditions 4, 19 and 22 to allow this, the variations to the other conditions relate to matters of detail which need to be considered in consequence. The existing permission is to infill the site with imported, inert construction and demolition waste and restore it to agriculture. The proposal is to vary this such that no material would be imported and to remodel the excavation using only indigenous materials. This would leave the site low level as a nature reserve with a pond, steep sides and an access ramp. The restored quarry floor would then shelve gently down to a kidney shaped pond c50 metres x 50 metres along its largest sides and about 0.5 metres deep. The final excavation would then vary between 4 metres and 8 metres deeper than adjoining land.
- 6.4 Officers consider that the proposal to restore the site using only indigenous materials would mean that some 320,000 tonnes of material would no longer need to be imported into the site. This would avoid at least 15,000 lorry movements in and the same number out of the site. Given the generally unsuitable nature of the Moreton Road and the local peoples' considerable and entirely understandable fears of heavy lorries on this road, Officers consider this very desirable. The corollary would however be that mineral working would leave a large excavation with steep sides. The applicant's proposal to soften this by partly infilling the site with indigenous materials would still leave a significant hole. In general terms this is not in accordance with the

landscape character of the area. The worst effects of the proposal would however at least be slightly mitigated by the fact that the excavation is on high ground, is not overlooked and would not be detectable from any public viewpoint.

- 6.5 Members should be aware however that the Council's discretion regarding the infilling is limited. Infilling the final excavation up to adjoining levels would probably need a Waste Disposal Licence from the Environment Agency which is difficult to obtain, requires the operator to have special (WAMITAB) qualifications and to pay substantial costs. It might also be difficult in functional terms for the operator to demonstrate that the fill material was satisfactory and would not affect the aquifer and adjoining private water supplies. The Environment Agency have only withdrawn their objection because the proposal has been revised to exclude any element of imported fill. In practice it would be extremely difficult to enforce conditions requiring the site to be infilled particularly because landfilling is not the BPEO for this waste stream. Officers' advice is therefore that for several reasons they consider the proposed low level restoration preferable and more realistic than the current restoration proposal. They recommend therefore that in principle the proposal to vary Conditions 4, 19, 22 and 23 should be granted. Officers have some concern about the proposed variation to Condition 12 iv) to allow topsoil to be sold. If permission for the general proposal for restoration to low level were to be granted they would recommend that the proposed variation to Condition 12 iv) should be refused and these materials used for infilling, thereby reducing slightly the depth of the excavation.

Nature Conservation Issues

- 6.6 In principle, Officers welcome the proposed restoration to a nature conservation use. Although not large the site is big enough to make a useful refuge. The features proposed are inherently desirable and would be a useful contribution to the County Biodiversity Action Plan site and species targets and the Head of Conservation and the Nature Conservation Trust support the concept. Both however express concern about whether some of the elements proposed are realistic. The natural regeneration of lowland heath is considered unlikely and the site would need considerable maintenance to prevent scrub regeneration. This would itself create worthwhile habitat, albeit not as valuable as those proposed and would be worth having in its own right. Officers' advice is therefore that if permission is granted, conditions should be imposed to require more detailed proposals so as to maximise the biodiversity value of the site.

Pond

- 6.7 The application includes proposed variations to Condition 12 vi) to allow excavation to below the water table to create a pond and to Condition 26 to generate clay to line the proposed pond. In principle Officers welcome the proposed pond and the very large area of pond margin proposed (20 metres at its widest) to allow moisture loving plants to grow within a seasonally fluctuating water table. These could be valuable habitats for a wide range of species.
- 6.8 The submission indicates a pond depth of about half a metre and it should not be necessary to go much deeper. The water table would be an average of 0.75 metres above the final excavation depth in the north of the site and below final ground level in the south. The applicant's consultants estimate a seasonal water fluctuation of a maximum of 1 metre. The water should therefore never be very deep and at its maximum should only cover one eighth of the site, half of which would be shallow, seasonal flooding. Officers do not consider these would be any risk to adjoining

properties from the pond. If permission were to be granted, Officers recommend that conditions should be imposed to limit the maximum depth of extraction for clay production (i.e. below the sand and gravel into the underlying Raglan Mudstone) to 1 metre and for the pond to be designed so that any such excavations are well away from the edges to make it impossible for anyone to accidentally wade into deep water.

Hazards

- 6.9 The site is already partly worked out and 4-6 metre high faces already exist and have done so for a very long time. Officers have monitored the site since 1990 and have found the excavation faces to be very stable, in spite of their near vertical steepness. Local people's concerns about the possible risks are understandable but Members should be aware that the site is on private ground to which there is no public right of access. It has to be fenced (and is currently) under the Quarry Regulations and would incorporate a vehicular access ramp. The site is already bounded with a hedge on (most of) two sides and the proposal is to make this a 3 metre wide belt of blackthorn to prevent access. The County Landscape Architect has reservations about the visual impact of extending this hedge around all four sides of the excavation but this could be imposed by condition. On balance Officers recommend this.
- 6.10 The exposures which would be left would however be valuable in themselves. A photograph of them is , for example included in the British Geological Survey Report "Geology of the Country between Hereford and Leominster." The site is very likely indeed to be designated a RIGS site (Regionally Important Geological and Geomorphological Site) and the existing permission already requires a significant exposure to be retained in anticipation of this. The exposures are also valuable as sand martin nesting sites and if permission is granted Officers recommend that a condition should be imposed to retain some of the faces and enhance their value for sand martins.

Existing Tipped Material

- 6.11 The site is already partly tipped with agricultural wastes under Permitted Development Rights. Officers' own site investigations in the past confirm objectors' assertions that this is a mixture of material, some of which is probably unsuitable as fill because it could contaminate the aquifer. If permission were to be granted for the basic proposal to allow the site to be restored to low level, Officers recommend that conditions be imposed requiring the existing material on site to be sorted and all man made and or putrescible materials to be removed and disposed of off site. Although therefore Officers recommend that Condition 12 ix) be varied they do not recommend that the variation proposed by the applicant should be permitted.

Protection of Local Peoples' Residential Amenities

- 6.12 The current Condition 14 requires a block of native shrubs at least 10 metres high to be planted along the northern boundary of the site. Local people have made it clear at a site meeting that the loss of the view this would cause in the long term would be undesirable. The application is to vary this to create a temporary soil mound instead. Some objectors have written in support of this. Officers consider that it would protect nearby residents from noise from the site and have no objection to it.

Timing of Final Details

- 6.13 The current Condition 14 iii) refers to details of the final planting to be undertaken on the reclamation of the site. The proposal is to vary this condition to clarify that it only refers to planting outside of the excavated area. Officers have no objection to this or the proposal to vary Condition 27 to change the date when an aftercare scheme should be submitted.
- 6.14 Since the original planning permission was issued a number of other conditions have been complied with, one has been found to be ambiguous, (No. 39) and one rendered unacceptable by subsequent legal decisions (No. 2). If permission for this application were to be granted it would be appropriate to update these and revised conditions are proposed.

Summary

- 6.15 The basic proposal made here is to change the proposed reclamation of the site from infilling to original levels for an agricultural use to leaving the site low level with a pond, retaining most of the excavated faces, for a nature conservation use. The process necessitates changes to eleven conditions but is relatively simple. Officers advice is that the existing reclamation is probably unrealistic.
- 6.16 Members should be aware that the value of the sand and gravel on site is low and because of the difficulties of processing it on site (because of lack of water and lack of space) and would have to be sold 'as dug' i.e. at an even lower price. Infilling the site would once have been profitable and easy. The impact of the Landfill Tax, need for qualified operators and technical difficulties relating to the need to protect the aquifer presumably now make it unattractive and Officers consider it very significant that this, potentially the most profitable part of the proposal is now being given up.
- 6.17 The proposed variation to a lower level restoration is probably therefore the best that can be achieved and the proposed nature conservation use probably the most realistic after use. Officers would recommend changes of wording to those proposed by the applicant to reflect current best practice and to other conditions on the permission but otherwise support the proposal.

RECOMMENDATION

- 1) **That planning permission be granted to delete Conditions 4, 12 vi, ix, 14 i, iii, 19, 22, 23, 26 and 27 of permission CW2001/0769/M subject to the imposition of the following substitute conditions:**
4. **All mineral extraction shall cease and the site reclaimed for the purposes of nature conservation and all buildings, structures, plant, machinery, foundations, hardstandings, stockpiles and materials associated with or arising from the use of the site in connection with the development hereby permitted shall be removed from the site within 12 years of the date of the permission hereby granted.**
12. **No soil shall be stripped unless and until a working scheme for the development hereby permitted and a programme and illustrative plans and sections showing the scheme have been submitted to the local planning**

authority for their approval in writing. The submitted scheme shall specify:
[clauses i to x unchanged other than as below]

- 12ix) That all tipped material shall be removed from the existing excavation and sorted into naturally occurring, non contaminating, non-putrescible materials which may be retained on site for deposit within the excavation, man made, non contaminating, non putrescible materials which shall only be deposited within the site with the written approval in advance of the local planning authority and putrescible or potentially contaminating materials, plastics, containers or other materials which might have adverse effects on the groundwater quality which shall be removed off site within 7 days of written notice to do so from the local planning authority. No pile of any material so formed shall be more than 1 (one) metre in height.
- 12vi) That no excavation shall be undertaken more than 1 metre below the water table and the depth of water at any point shall be demonstrated to the local planning authority within 7 days of any written request to do so from the local planning authority.
- 14i) Proposals for the creation of a temporary bund 4 metres high alongside the northern boundary of the permitted excavation area formed from soils stripped from the site and to be removed as part of the final reclamation of the site.
- 14iii) Details of the final planting to be undertaken outside of the boundary of the excavation on the reclamation of the site, including the provision of a solid block of Blackthorn at least 3 metres wide to be planted along the entire length of the top of the exposed quarry faces to be retained, apart from the access into the site.
- 14.A. Not later than 12 months after the approval in writing of all of the schemes required under Condition 12, proposals for the tree, shrub, herb, heath and pond marginal planting to be undertaken to achieve the reclamation proposed in plan EAP2 and the numbers, sizes, species and seed mixtures and for works to be done to the faces of the site to maximise its value for sand martins and timetable proposed shall be submitted to the local planning authority for their approval. Planting shall be carried out in accordance with the approved scheme.

Reason: To ensure that the site can be reclaimed to a beneficial after use which maximises its potential benefit for nature conversation.

19. Soil stripping, excavation of minerals and reclamation shall take place progressively and in accordance with the directions shown on Plan EAP1.
22. The site shall be reclaimed to the contours and levels shown on Drawings EAP1, EAP3a and EAP3b except that on final completion of extraction the pond shall be remodelled to have gently shelving gradients throughout.
23. (To be deleted)
26. No excavation shall be undertaken below the sand and gravel deposit other than to provide clay to line the pond shown on plan EAP2.

27. No mineral shall be extracted from the southern half of the site as shown on plan EAP1 unless and until an aftercare scheme has been submitted to the local planning authority for their approval in writing. The submitted schemes shall specify:

- i) The Biodiversity Action Plan species or groups of species which are to be fostered, and
- ii) Measures to monitor the success of the reclamation undertaken to date, and
- iii) That at least 5 annual reports assessing the success of the work undertaken to achieve i) and ii) above and means to improve that success shall be submitted to the local planning authority in writing after reclamation works have been completed or for the 5 years commencing 11 years from the ste of this permission, and
- iv) That the approved scheme will be carried out in full.

2) That Condition 3 shall be deleted and the following substituted:

“No further soil shall be stripped within the site unless and until 7 days notice of that stripping has been submitted to the local planning authority in writing.”

Condition 39 shall be deleted and the following revised wording substituted:

“The maximum number of lorry movements to and from the site for the purposes of removing materials from and/or importing materials to the site shall not exceed 11 (eleven) in any one working day and for the avoidance of doubt the maximum amount of materials which shall be transferred to and or from the site during one working day shall be 220 tonnes and a record of the registration number, size and time of every vehicle movement exporting and or importing material into the site shall be made each day the site is operational and such records shall be made available to the local planning authority within 5 working days of their request in writing.

3) That Officers named in the Scheme of Delegation to Officers be authorised to delete or amend any other conditions on the permission as necessary.

4) That the application to vary Condition 12 iv) to allow solids to be removed from the site shall be refused.

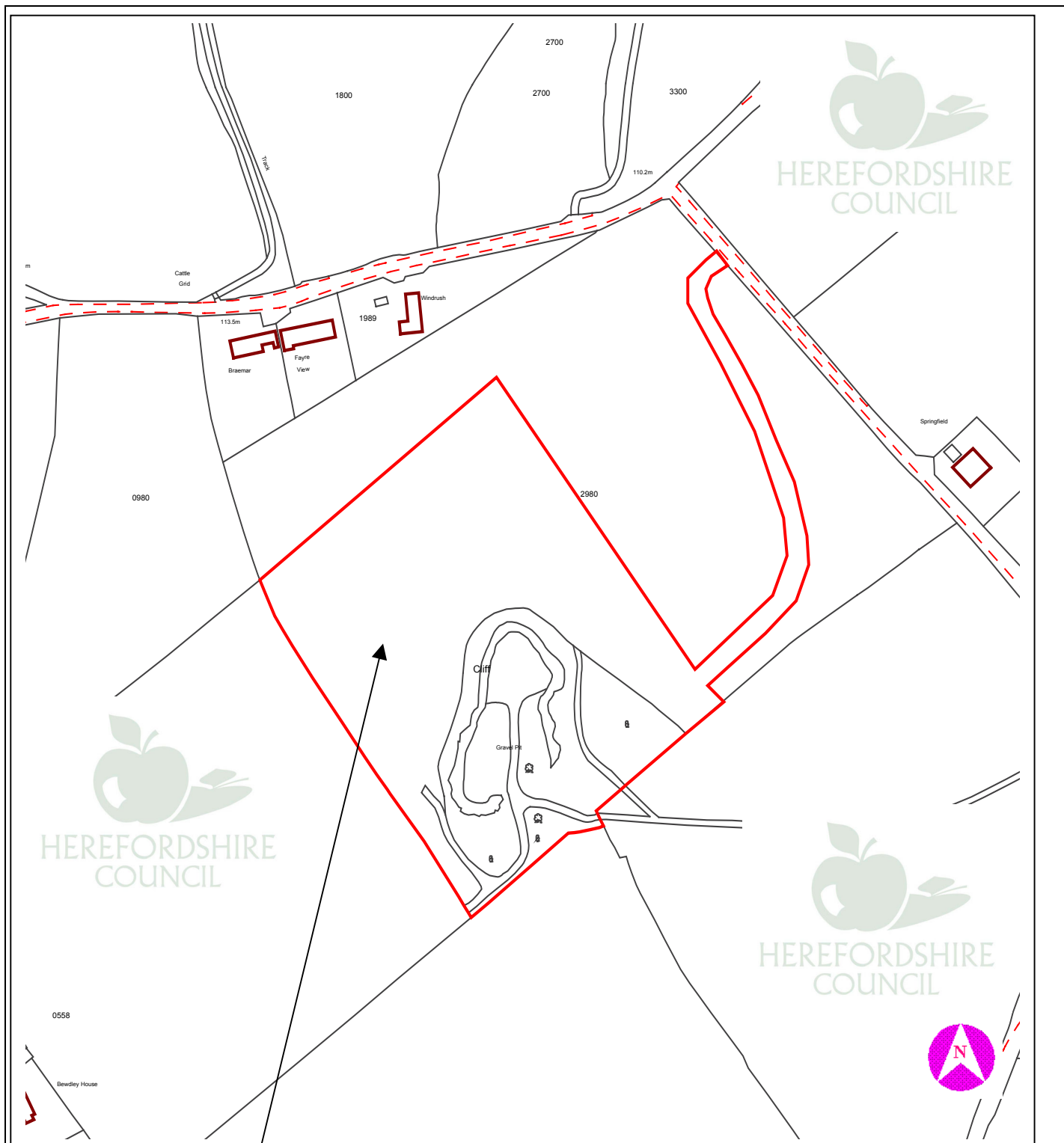
Decision:

Notes:

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Background Papers

Internal departmental consultation replies.



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APPLICATION NO: DCCW2004/0394/M

SCALE : 1 : 2500

SITE ADDRESS : Part of O.S. parcel 2980, Upper Lyde Gravel Pit, Upper Lyde, Herefordshire

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