

**HERTFORDSHIRE COUNTY COUNCIL
DEVELOPMENT CONTROL COMMITTEE
TUESDAY, 12 SEPTEMBER 2000 , AT 10.30 A.M.**

Agenda No.

7

**EAST HERTFORDSHIRE DISTRICT
APPLICATION FOR THE DETERMINATION OF NEW PLANNING CONDITIONS
AT RICKNEYS QUARRY, WADESMILL ROAD, CHAPMORE END, HERTS.**

Report of the Director of Environment

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Local Members: B Hammond and F Escott

1. Purpose of the report

To consider particular planning conditions (application ref. 3/0154-98) submitted by Pioneer Aggregates under Schedule 13 of the Environment Act 1995 at Rickneys Quarry, Chapmore End that have the potential to restrict working rights and/or are contentious.

2. Summary

- 2.1 The Review of Mineral Planning Permissions (RoMPP) was introduced by the Environment Act 1995. The Review has essentially followed on from the updating of Interim Development Order (IDO) permissions, to address the need for the review and updating of conditions on mineral permissions granted between 1948 and 1982.
- 2.2 The application is to update two planning permissions for the extraction of sand and gravel that were granted in 1958 at Rickneys Quarry, Chapmore End. Restoration of the site was to be for agriculture. The site has approximately 80,000 tonnes of mineral remaining to be worked.
- 2.3 The applicant has submitted a total of 20 new working conditions, most of which are broadly acceptable. The focus of this report is in relation to two of these conditions. The first condition relates to the timescale by which extraction and restoration must be completed, and is particularly contentious. If the condition is altered and the completion dates brought forward the County Council would need to consider if this would restrict working rights and, if so, whether such an amendment would be in the public interest sufficient to outweigh the applicants' rights. The second condition concerns the importation of soils to aid restoration. Both of the 1958 permissions exclude the importation of any waste materials to the site.
- 2.4 The site is within the Metropolitan Green Belt and is designated as a Landscape Conservation Area within the East Herts District Local Plan.

3. Conclusions

The report concludes:

- a) that the Director of the Environment should be authorised to determine new conditions in respect of mineral working, restoration aftercare and afteruse at Rickneys Quarry on the basis of those submitted subject to:
 - (i) any necessary amendments to reflect current best practice in the wording of conditions;
 - (ii) any importation of clean sub- and topsoils to aid restoration having the prior approval of a method statement;
 - (iii) additional conditions be imposed to include (inter alia):
 - all plant and machinery to be removed from the site within 12 months of extraction being completed (i.e. by 31 December 2006);
 - whilst the Plant is operational no material from other extraction sites shall be imported into the site, or processed, at Rickneys;
 - the submission of additional details in respect to restoration and aftercare;
 - all lorries leaving the site are sheeted;
 - noise limits and control over reversing beepers;
- and
- b) that the Director of Environment should be given delegated authority to determine the method statement referred to in 1(ii) above if such a statement is forthcoming.

1. Description of the site and the proposed conditions

- 1.1 Rickneys Quarry is located two kilometres to the north of Hertford, to the south-west of Chapmore End. Access to the quarry is gained off Wadesmill Road where a concrete haul road of approximately 400 metres connects with the quarry workings. This haul road and the site offices do not form part of this application as they are the subject of different permissions.
- 1.2 The Review of Mineral Planning Permissions (RoMPP) was introduced by the Environment Act 1995. The Review has essentially followed on from the updating of Interim Development Order (IDO) permissions, to address the need for the review and updating of conditions on mineral permissions granted between 1948 and 1982.
- 1.3 The application is to review two planning permissions granted in 1958 for the extraction of sand and gravel with restoration to agriculture. The site is currently active with approximately 80,000 tonnes of mineral to be extracted. A number of footpaths and bridleways cross the site but do not cross any of the areas remaining to be worked.
- 1.4 Both the 1958 permissions were subject to ten conditions. These included the need for a scheme of working. There is no time limit stipulated within these conditions by which operations should be completed and when the site should be restored. The stated afteruse is that of agriculture suitable for cultivation. The relevant condition for restoration specifically excludes any refuse or waste materials being brought onto the site.
- 1.5 Although there are currently only limited conditions governing the site's operations the site has been worked on a voluntary basis to modern standards. There have been regular Local Liaison meetings to address neighbours' issues.
- 1.6 The applicant has submitted a total of 20 new working conditions that are broadly acceptable. This report focuses on two of these conditions.
- 1.7 The first condition (Condition 1) relates to the timescale for the completion of extraction and restoration, and is particularly contentious.

The condition submitted by the applicant states that:

“Extraction of minerals shall cease by 31 December 2005 and restoration shall be completed by 31 December 2007 and buildings to which this permission relates shall be removed by 31 December 2007 unless otherwise agreed in writing by the Mineral Planning Authority.”

- 1.8 The second condition (Condition 6) concerns the importation of soils to aid restoration. As mentioned above in para 1.4 both 1958 permissions expressly exclude the importation of waste materials of any kind.

The condition submitted by the applicant states that:

“Subject to prior approval by the Planning Officer, inert subsoil and topsoil may be imported and used in the final 1 metre, to aid restoration of the new landform.”

2. Consultations and representations

- 2.1 A consultation exercise was undertaken when the application was first received in January 1998 and the responses received (and summarised below) were made in the spring of the same year. Objections were also received in respect of the submitted Condition 20 that proposed a Restoration and Aftercare Scheme be submitted no later than 3 years after approval of the RoMPP submission. The County Council requested additional information from the applicant, which has included a scheme for restoration and aftercare, so this condition has been amended to require that restoration and aftercare are compliant with the submitted Scheme.
- 2.2 East Herts District Council (Planning) object to the timescales set out in Condition 1 as it will extend the duration of the visual damage to the locality and there will be no relief to the footpath and bridleway network. Throughout the whole period which the site continues there will remain continuing risks to the aquifer, the adjacent woodland, continuing traffic noise, and dust from workings and so on. The District Council thus wishes for the County Council to substitute the relevant condition so that extraction of minerals will cease by 31 July 2000 and restoration and the removal of buildings shall be completed by 31 July 2002.
- 2.3 East Herts District Council (Environmental Health) are satisfied with regards to the proposed hours of working, the matters regarding dust and the operation of plant. Noise monitoring should take place every 3 months and only if the Company prove there is no alteration in their mode of operation should it be possible to agree to less frequent sampling.
- 2.4 Environment Agency suggest amending Condition 5 (Depth of Working) to leaving 2 metres of sand and gravel overlying the chalk bed and limiting the importation of soils (Condition 6) to clean, uncontaminated subsoil and topsoil. Other suggested conditions relate to reporting chalk exposures, chalk contour mapping and the spillage of contaminants.
- 2.5 The County Council as Highways Authority have no comments.
- 2.6 The County Council as Highways Authority (Rights of Way) note that none of the paths crossing the quarry appear to cross areas where material has yet to be extracted. During restoration works paths on this site must be available for use at all times. Permission and agreement must first be gained for any operation at the quarry that takes place over any of the Rights of Way.
- 2.7 Three Valleys Water Co identify that the majority of site lies within the Inner Groundwater Protection Zone for their Wadesmill pumping station. At least 1 metre depth of undisturbed sand and gravel should be left after excavation and a method statement should detail how this condition can be practically achieved. All bunds holding pollutants should be regularly maintained and only clean, inert soils should be imported into the site.

- 2.8 Bengeo Rural Parish Council rejects the application completely, stating that Condition 1 should state that extraction should cease now and restoration should take place immediately to a nature conservation end use.
- 2.9 Stapleford Parish Council concur with the objections raised by the Campaign Against Gravel Extraction in relation to Condition 1.
- 2.10 Campaign Against Gravel Extraction (C.A.G.E) consider that the proposed timescale is totally inappropriate to the remaining levels of reserves. A condition requiring all loads to be sheeted should be made and the use of reversing beepers banned. Importation of any soils be restricted to that agreed with the MPA as being necessary for restoration of the site. A condition to stop working if any rare species are recognised pending agreement via the MPA on an appropriate conservation plan.
- 2.11 Chapmore End Association object to the time scales set out in Condition 1 and consider that the site should be restored promptly.
- 2.12 Molewood Residents Association consider that the time scale set proposed for Condition 1 is too long. Reversing beepers should be banned and all loads should be sheeted to limit dust and debris on the road.
- 2.13 Stonyhills and Dimmings Action Group consider that the extraction of minerals should cease now and restoration should immediately take place to nature conservation.
- 2.14 Hertford Civic Society consider that the limited reserves should be worked out as soon as possible and the site restored without unreasonable delay.
- 2.15 Local representations – a total of 32 responses have been received from surrounding households. The main issues of concern are:
- the time taken to complete extraction and restore the site is in excess of that which is reasonably required. Concern that the Company is dragging out the working and restoration in hope that planning permission is some day granted in the surrounding locality;
 - all lorries should be sheeted;
 - the importation of soils should be for restoration purposes only;
 - reverse beepers on machinery should be banned;
 - work should stop if any national or locally rare species are found on site;
 - restoration and afteruse of the site should be for nature conservation/amenity as per the plans prepared by East Herts District Council;
 - working hours should be reduced and there should be no working on weekends;
 - the processing plant should only be used to process mineral won within the site.

3. Planning Considerations

- 3.1 The development plan comprises the Hertfordshire Structure Plan Review 1991-2011 (Adopted April 1998), the Hertfordshire Minerals Local Plan 1991-2006 (Adopted July 1998), the Hertfordshire Waste Local Plan 1995-2005 (Adopted January 1999) and the East Herts Local Plan – Alteration 1986 – 2001 (Adopted December 1999).

- 3.2 The site is within the Metropolitan Green Belt and is designated a Landscape Conservation Area in the East Herts Local Plan.
- 3.5 As it can be seen from the consultations and representations summarised in Section 2 of this report, Condition 1 (Duration of Permission) has been particularly contentious. The point of contention is the date by which extraction and restoration is to be completed in relation to the capacity of the plant site and remaining reserves.
- 3.6 The current plant site has a capacity to process some 750,000 - 800,000 tonnes of aggregate a year, whilst the remaining reserve of sand and gravel to be worked is around 80,000 tonnes. Whilst the operator could potentially work the remaining reserve within a relatively short period of time, over recent years production has been substantially reduced. The submitted condition would enable the operator to continue to work at this reduced output with extraction to be completed by 2005.
- 3.7 Representations received have requested that the time period for completion of extraction and restoration to be brought forward. This would force the operator to work the mineral at a faster rate than proposed in the submitted condition.
- 3.8 Mineral Planning Guidance Note 14 (Review of Mineral Planning Permissions) provides guidance on updating planning conditions. This states that conditions that can be imposed by a Mineral Planning Authority (MPA) may include any conditions that could be imposed on a grant of planning permission for development consisting of the winning and working of minerals. This could reasonably include a condition relating to the time by which it is expected that mineral extraction and restoration will be completed when taking into account mineral reserves and anticipated production.
- 3.9 It is therefore possible for the Mineral Planning Authority to amend the timescale for the completion of extraction and restoration so that it is brought forward. However, if the timescales for Condition 1 were brought forward it would be necessary for the MPA to assess whether the effect of the new condition would further restrict working rights. In forming such an opinion MPA's must have regard to the guidance in MPG 14.
- 3.10 Paragraph 59 of MPG 14 states that working rights are restricted if any of the following is restricted or reduced in respect of the mineral site in question:
- “(f) the period at the expiry of which any winning or working of minerals or the depositing of mineral waste is to cease;”*
- 3.11 If the date for the completion of extraction is brought forward then working rights are restricted. It may also result in another working right being restricted, this being:
- “(d) the rate at which any particular mineral may be extracted;”*
- 3.12 This would be as a result of the operator being forced to work the material within a shorter timescale than they were planning to.

- 3.13 In considering the above guidance it is clear that working rights would be restricted if a condition was imposed that would bring forward the date of completion of mineral extraction. In determining new conditions therefore, it needs to be considered whether the restriction on working rights would be such as to prejudice adversely to an unreasonably degree the asset value or economic viability of the site.
- 3.14 Annex M of the Guidance provides an illustrative guide to conditions, and in respect of Time Limits gives the following advice:
- “Conditions should provide for the date on which the winning and working of minerals or the depositing of mineral waste must cease. New time limit conditions should only be imposed with the agreement of the applicant, otherwise the condition would constitute a restriction on working rights which could give rise to a liability for compensation.”*
- 3.15 Given that the operator has submitted a proposed end date, consideration needs to be given as to whether it is in the public interest to impose an earlier completion date sufficient to outweigh the restriction on working rights. The timescale submitted is in line with production over recent years and reflects the company’s commercial interests. At this level of production the consequential environmental effects of the operations, if controlled by condition, are not considered to be sufficiently adverse to warrant the imposition of a shorter timescale.
- 3.16 Condition 6 (Importation of waste material) - As indicated in paragraph 1.4 above, both the 1958 permissions excluded the importation of any waste materials. Whilst the operator is not intending to import waste materials, it is proposed, subject to availability, to bring onto the site clean and excavated sub- and topsoils that would be used in the final 1 metre of the restored landform. This would be beneficial as there are limited soil resources within the site and thus further soils would assist in the restoration of the site and the intended afteruse of agriculture and forestry.
- 3.17 Although the principle of importing soils for restoration is considered acceptable, the operator has not defined a source or a time when this may occur, if at all. In order to ensure that any soils coming into the site are suitable it would be necessary for the operator to notify the MPA of their intention to import soils and provide a method statement for approval. This would need to include details of where the soils were to be derived, in what quantity, how and when the soils would be processed and spread and any consequential arrangements that the importation would have upon the approved restoration and aftercare scheme.
- 3.18 Obtaining suitable soils for importation is very difficult and the timescale for securing such material is usually very short. Therefore, to ensure a rapid response to the method statement it is concluded that such approval should be delegated to the Director of Environment so that a response as to whether the method is acceptable can be made within 7 days of receipt of such a statement.

Other conditions of note

- 3.19 Depth Limit – concerns have arisen from the Environment Agency and Three Valleys Water regarding the protection of the chalk aquifer, and these consultees have

suggested conditions which they feel appropriate. However, these conditions appear onerous given the limited amount of remaining reserves. The submitted condition proposes that 1 metre of undisturbed sand and gravel be left over the underlying chalk and should this depth be inadvertently reduced then a layer of sand shall be deposited so that it restores a minimum cover of 1.5 metres over the chalk. This condition is broadly similar to that attached to the original consent and appears to have provided the necessary safeguards to the aquifer.

- 3.20 Vehicle movement restrictions – there are no vehicle movement limitations proposed in the application. Given the limited amount of reserves, the number of vehicle movements is unlikely to exceed those experienced when the site was operating at maximum output. Vehicle movements related to any importation of soils could be controlled through the method statement.
- 3.21 Additional conditions proposed – a suitable condition should be imposed requiring the removal of all processing plant and machinery within 12 months of extraction being completed (i.e. by 31 December 2006). Whilst the processing plant is operational it should be conditioned that no material from other quarries shall be imported into the site at Rickneys. Conditions relating to the sheeting of lorries that leave the site and noise generation should be imposed, including noise from reversing beepers.
- 3.22 A scheme for the restoration and aftercare of the site has now been submitted and is considered acceptable in principle. There are however some additional matters that ought to be included in the scheme and these could be required by condition.

4. Conclusions

- 4.1 In relation to Condition 1 (Duration of Permission) it is concluded that the Condition as submitted by the operator should remain unchanged in that the benefits to public amenity in bringing the date forward are not sufficient to outweigh the restrictions that would arise on the applicant's working rights.
- 4.2 The importation of sub- and topsoils for aiding restoration is also considered acceptable as being beneficial to the quality of restoration and proposed afteruse of the site. However, prior to the commencement of any occurrence of importation, the operator should submit a method statement to the Mineral Planning Authority for approval. This statement should include (inter alia) details of where the soils are to be derived, in what quantity, how and when the soils would be processed and spread, the number of lorry movements and any consequential arrangements that the importation would have upon the approved restoration and aftercare scheme.
- 4.3 Furthermore, it is concluded that, in order that such a statement can be dealt with expeditiously, such approval should be delegated to the Director of Environment so that a response can be made within 7 days of receipt.
- 4.4 Other conditions, as appropriate, that cover working, restoration, and aftercare should be imposed in line with current best practice.

5. Financial Implications

- 5.1 If Condition 1 is approved as submitted no restriction of working rights will occur and therefore there will be no possibility of compensation arising from that particular condition. Should the Committee conclude that a shorter period is in the public interest, sufficient to outweigh the restriction on working rights, then the possibility of compensation issues arising would need to be considered prior to reaching a decision.
- 5.2 As regards other conditions it is concluded that different conditions to those submitted by the applicant should be imposed. Minor re-wording, together with the additional conditions suggested in this report would ensure that the relevant conditions are enforceable and/or would cover environmental, amenity, restoration and aftercare requirements. These changes should not restrict the working rights and should not therefore give rise to the potential for compensation.

Background information referred to by the author whilst compiling the report;

Planning Application ref. 3/0154-98 and supplementary information supplied by the applicant
Consultation responses and representation received in response to Planning Application ref. 3/0154-98.

Hertfordshire Structure Plan Review 1991 to 2011 (April 1998).

Hertfordshire Minerals Local Plan 1991- 2006 (July 1998).

East Herts Local Plan – Alteration 1986 – 2001 (Adopted December 1999).

Mineral Planning Guidance Note 14 (September 1995).

If you would like to know more about the issues referred to in this report please contact Tim Williams (Tel. 01992 556254)