

**EAST HERTFORDSHIRE DISTRICT**

**APPLICATION FOR THE VARIATION OF CONDITION 2 (REMOVAL OF PLANT AND HARDSTANDINGS) OF PLANNING PERMISSION 3/0154-98 AT RICKNEY'S QUARRY, CHAPMORE END, HERTFORDSHIRE**

Report of the Director of Environment

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Local Member:- Bryan Hammond

**1. Purpose of Report**

- 1.1 To consider planning application reference 3/1454-04 for the variation of condition 2 of planning permission 3/0154-98 to allow the retention of buildings, fixed plant and hardstandings at Rickney's Quarry, Chapmore End, Hertfordshire.

**2. Summary**

- 2.1 Condition 2 of the latest permission relating to the site requires that mineral extraction shall cease by 31 December 2003, all buildings, fixed plant and hardstandings be removed by 30 June 2004 and restoration be completed by 31 December 2005.
- 2.2 Mineral extraction no longer takes place at the site (although it is understood that some limited reserves remain), however the plant site, hardstandings and ancillary buildings remain in place and have been mothballed by the applicant, pending the outcome of proposals for further mineral extraction. The applicant is currently at an advanced stage in the preparation of a planning application to extract sand and gravel from an extension immediately to the east of the existing plant site and stocking area.
- 2.3 The proposed application area is part of land identified as a Preferred Area for mineral extraction in the Minerals Local Plan Review, which will be the subject of a Public Inquiry in September/October this year. The Inspector's report from this Inquiry is anticipated sometime in the new year.
- 2.4 Pending the outcome of this Public Inquiry and the prospective planning application referred to above, the current application has been submitted to vary Condition 2 to extend the 30 June 2004 deadline to allow for the removal of the buildings, fixed plant and hardstandings and restoration of these areas by 30 June 2006.

- 2.3 The application site lies within a Landscape Conservation Area in the Green Belt. The proposal has resulted in a number of objections from Bengeo Rural Parish Council, Hertford Town Council, Ware Town Council, residents associations and local residents proximate to the site.
- 2.4 The main issues arising from the application for consideration are:-
- Green Belt;
  - the need for the proposed temporary retention of the buildings, fixed plant and hardstandings, and;
  - the landscape implications of retaining the buildings, fixed plant and hardstandings.

### **3. Conclusion**

- 3.1 The retention of the plant site in its current form is considered to represent inappropriate development in the Green Belt and to conflict with landscape policy. However, at this time, it is considered that it would be unreasonable for the County Council to insist on the removal of the plant and restoration of the plant site area at Rickney's Quarry until there is some certainty regarding the future status of the surrounding land as a Preferred Area. If the Council were to insist on the removal of the plant and restoration of the site at this current time, there is a risk that the plant could be reinstated in the future with any restoration work carried out being undone.
- 3.2 The uncertainty relating to the site's future status as a Preferred Area should largely be resolved by mid-2005. In terms of the timescale applied for, there would need to be a period of time between removing the plant and restoring the land. It is considered feasible that the buildings, fixed plant and hardstandings could be removed by 31 December 2005 with restoration by 30 June 2006 (six months later than that currently required).
- 3.3 Based on the reasons set out above and in the report, it is therefore considered that there are very special circumstances to justify the retention of the plant site for a temporary period and accordingly that Condition 2 of planning permission 3/0154-98 should be varied to state:

“The extraction of mineral shall cease by 31 December 2003. All buildings, fixed plant and hardstandings shall be removed from the site by 31 December 2005 and restoration of the site shall be completed by 30 June 2006.”

## **1. Background**

- 1.1 The extant permission for Rickney's Quarry was issued under the Review of Mineral Planning Permissions (RoMPP) in February 2001. Under the RoMPP a new schedule of planning conditions was imposed, updating the conditions attached to two planning permissions that were granted for sand and gravel extraction in 1958. From the County Council's records, mineral working and processing at the site ceased in 2001 (although it is understood that some limited reserves remain at the site), with further restoration and planting being carried out on previously worked areas during 2002 and 2003. To date, the site is closed with the processing plant, ancillary buildings and equipment still remaining in situ. The immediate areas surrounding the plant site have not been restored. The plant site has accordingly been 'mothballed' by the applicant.

## **2. Description of the Site and Surrounding Area**

- 2.1 Rickney's Quarry is located two kilometres to the north of Hertford, to the south-west of Chapmore End. Access to the quarry is from the B158 Wadesmill Road, where a concrete haul road of approximately 400 metres connects with the quarry workings. The site lies generally in the area between Wadesmill Road to the east and Sacombe Road to the west.
- 2.2 The existing plant site is surrounded by a plateau of large-scale open fields interspersed with substantial woodland blocks and hedges. The main centre of population in the area is Hertford to the south of the application site. There are a number of small villages and hamlets and isolated dwellings around the application site including (but not exclusively) Waterford, Stapleford, Stonyhills, Chapmore End and Crouchfields.
- 2.3 The site lies within the Green Belt and a Landscape Conservation Area. A number of well used footpaths and bridleways are proximate to the application site.

## **3. Description of Proposal**

- 3.1 The application has been submitted to extend the deadline for the removal of the buildings, fixed plant and hardstandings and restoration of the plant site at Rickney's Quarry, Chapmore End.
- 3.2 Under the RoMPP, a revised schedule of 35 conditions were imposed for working at Rickney's Quarry in February 2001. Condition 2 states that:

"The only mineral extraction within the site shall be sand and gravel and the extraction of mineral shall cease by 31 December 2003 and restoration shall be completed by 31 December 2005. All buildings,

fixed plant and hardstandings shall be removed from the site by 30 June 2004.”

- 3.3 The applicant has confirmed that extraction has ceased. The restoration of most of the permitted mineral working areas has already been satisfactorily completed, in advance of the deadlines imposed by Condition 2. However the plant site, hardstandings and ancillary buildings remain intact and have been mothballed, pending the outcome of proposals for further mineral extraction.
- 3.4 Land to the north, south and east of Rickney’s Quarry, adjoining the existing plant site area, has been identified as a “Preferred Area” for sand and gravel extraction in the draft Hertfordshire Minerals Local Plan Review 2002-2016. A Public Inquiry into the draft Mineral Local Plan commences on 7 September 2004 and it is anticipated that the Inspector appointed to preside over the Inquiry may issue a report and recommendations early in 2005.
- 3.5 At the time of writing it is understood that the applicant is at an advanced stage in its preparations of a planning application to extract sand and gravel from a 10.5 hectare extension immediately to the east of the existing plant site and stocking area (extension application). The proposed extension area falls entirely within the draft ‘preferred area’ and it is expected that that the application for the extension would seek to utilise the existing access, fixed plant and ancillary infrastructure in accordance with the draft Planning Proposals for the Preferred Area in the Minerals Local Plan Review.
- 3.6 Pending the outcome of the Public Inquiry and the proposed planning application to extend the sand and gravel extraction operations, the applicant submits that it would be premature and inappropriate to comply with the existing deadlines for the removal of the buildings, fixed plant and hardstanding areas and for the restoration of the land. This application therefore seeks to vary Condition 2 by imposing a revised deadline of 30<sup>th</sup> June 2006 for the removal of the buildings, fixed plant and hardstandings and restoration of the plant site area, with completion of all other restoration by 31 December 2005 (the latter being in accordance with the current condition). The applicant therefore proposes to amend the condition to state:

“The only mineral extraction within the site shall be sand and gravel and the extraction of mineral shall cease by 31 December 2003 and restoration of the mineral working areas to the south and west of the plant site shall be completed by 31 December 2005. All buildings, fixed plant and hardstandings shall be removed from the site and restoration of these areas shall be completed by 30 June 2006.”

- 3.7 The applicant states that the revised deadline would provide sufficient time for the submission and determination of the aforementioned extension application. If the extension application is approved by the County Council, the permission would impose revised timescales for

the removal and restoration of the fixed plant and infrastructure, following completion of extraction. However, should the extension application be refused planning permission, the applicant states that restoration would be completed by 30<sup>th</sup> June 2006, in accordance with Condition 2, as amended.

#### **4. Consultations**

- 4.1 East Herts District Council (Planning) does not wish to object to the proposal on the basis that all buildings, fixed plant and hardstandings shall be removed from the site and restoration work will be completed by 30 June 2006<sup>1</sup>.
- 4.2 East Herts District Council (Environmental Health) has no comments to make in respect of the application.
- 4.3 Environment Agency has no comments on the proposal.
- 4.4 Thames Water has no objection to the proposal.
- 4.5 Bengeo Rural Parish Council object to the application as:
- compliance with the current conditions would neither influence the outcome of the forthcoming planning application nor prevent Rickney's adoption as a preferred area should that be the conclusion of the Minerals Local Plan (MLP) Review;
  - that irrespective of the result of the MLP inquiry, any application submitted by the applicant would need to demonstrate that sufficient need for the material to be extracted existed at the relevant time. Should the expected new application be rejected on that ground, the proposed variation of Condition 2 would allow the applicant to leave the plant idle until 2006 in the hope that need could be proven at a later date. In such a situation the plant would have remained in situ but 'mothballed' for five years. This could appear to be both an abuse of the planning process and a distortion of the market;
  - any further delay in the restoration of the entire site and removal of plant will extend the duration of the current visual damage to the area to the detriment of residents and members of the public who use the extensive network of footpaths and bridleways.
- 4.6 Hertford Town Council objects to the application as no justification has been given for the variation of Condition 2 of the planning permission.

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<sup>1</sup> It should be noted that the comments do not convey or imply any variation to East Herts Council's formal objections, dated 12 December 2002 and 18 December 2003 regarding the Hertfordshire Mineral Local Plan Review 2002-2016.

- 4.7 Ware Town Council objects to the proposal as the applicant accepted this condition when signing in 2001. The applicant should have made their intentions clear earlier and put an application in for variation before the due date for removal in order to give the County Council and interested parties time to consider all the implications in a reasoned manner. Conditions are attached for good reason and should not be lightly disregarded. Ware TC request that the existing condition is enforced to ensure the removal of the plant and restoration of the area
- 4.8 Hertford Civic Society strongly object to the proposed amendment which, if accepted, would be a signal that any condition attached to mineral workings would be overridden whenever it proved inconvenient for the operators. If the application for an extension to Rickney's were submitted as a matter of urgency, it could include a proposal for the condition to be replaced by a new one appropriate to the terms of the new application and the outcome would then depend on whether the application was successful. If the application for the extension were to be refused then the present condition would stand, there would be no extension of the deadline and enforcement action should begin without more ado. The Civic Society see no reason for amending the condition, to delay the removal of the plant, buildings and hardstanding, without an application for an extension being first determined.
- 4.9 The Chapmore End Association strongly object to the proposal as the application has been left until the last moment. The applicant has intimated that they will be making an application for an extension but have, to date, failed to do so. In any event, if an application is made and it is successful the applicant would then be able to retain the plant, then the proposed date of June 2006 is far too long – June 2005 being more appropriate. Furthermore, no date for the restoration of the remaining area by the plant is proposed in the revised proposal.
- 4.10 Stonyhills and Dimmings Action Group (SADAG) strongly objects as the removal of plant and hardstandings would not be 'premature and inappropriate' – it would not, and should not, have any effect on the outcome of the MLP Review Inquiry. The plant and hardstanding should be removed within the required period stated when the original permission was given and the area returned to peace and Mother Nature so that the people who love it can enjoy it.
- 4.11 Local Residents: A consultation was carried out in accordance with the County Council's Code of Practice for Publicity which included press advertisements and site notices being erected at various locations around the site's boundary as well as approximately 200 neighbour notification letters. At the time of writing this report 32 individual letters of objection have been received. The main issues of objection can be summarised as:

- that the County Council should enforce the removal of the plant and restoration of the plant site;
- that no application for an extension of mineral working has been submitted;
- the application for the variation of the condition should not have been submitted during the summer holiday period of 2004, it should have been submitted earlier;
- the proposal for a retrospective variation undermines the planning system, the conditions imposed and the powers of the planning authority;
- the continuing existence of the dilapidated plant and surrounding area is an eye sore, detrimental to the landscape and flora and fauna;
- that no restoration is proposed on the area to the north of the plant site;
- the existence of the plant causes a danger to children and attracts trespassers, vandals and motor-bike riders;
- if the application is granted commercial advantage will have been gained through a cynical manipulation of the planning process;
- the applicant is attempting to 'pre-judge' the outcome of the Minerals Local Plan Inquiry and the retention of the plant would add evidence to favour Rickney's as a site for future gravel extraction.

A number of objections have also been raised regarding the impact of any future mineral extraction at Rickney's Quarry. These objections are not considered material to the determination of this planning application.

## **5. Planning Considerations**

- 5.1 The development plan comprises the Hertfordshire Structure Plan Review 1991-2011 (Adopted April 1998), the Hertfordshire Minerals Local Plan 1991-2006 (Adopted July 1998) and the East Herts Local Plan – Alteration 1986 – 2001 (Adopted December 1999).
- 5.2 The site is within the Metropolitan Green Belt and is designated part of a Landscape Conservation Area in the East Herts Local Plan.
- 5.3 In originally imposing Condition 2 of the RoMPP application, the County Council considered that it was in the public interest to impose a date for the removal of the buildings, fixed plant and hardstandings earlier than the operator proposed. The decision was taken to require mineral extraction to cease by 31 December 2003, restoration by 31 December 2003 and the removal of plant etc. by 30 June 2004 as these timescales were consistent with the production rates in the years before 2001 and were therefore considered not to restrict working rights to an unreasonable degree. Since Condition 2 was imposed in February 2001, mineral extraction has ceased, although it is understood that some limited reserves remain. Restoration of most of the site has been completed.

- 5.4 All that now remains at the quarry is the plant site area comprising large processing plant structures, ancillary buildings, equipment and unrestored stocking areas to the north and east of the plant site. The plant is not operational having been ‘mothballed’ by the applicant.

### Green Belt

- 5.5 Structure Plan Policy 5 states that in the Green Belt there is a presumption against inappropriate development and permission will not be given, except in very special circumstances, for purposes other than those listed in Planning Policy Guidance Note 2 (PPG2 - Green Belts). This Policy is supported by Policy RA2 of the East Hertfordshire Local Plan.

- 5.6 Paragraph 3.2 of PPG2 states that:

“Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and other harm, is clearly outweighed by other considerations.”

- 5.7 In so far as proposals seek permission for mineral extraction, they need not conflict with Green Belt Policy. PPG2 states that minerals can be worked only where they are found. Their extraction is a temporary activity. Mineral extraction need not be inappropriate development: it need not conflict with the purposes of including land in Green Belts, provided that high environmental standards are maintained and that the site is well restored. The erection of new processing plant in connection with the winning or working of minerals on land in or adjacent to and belonging to a quarry, is permitted development under the General Permitted Development Order 1995 (Schedule 2, part 19, class A). However, as is the case at Rickney’s Quarry, development rights at plant sites are usually restricted so that development would normally require planning permission with a requirement for plant to be removed within a specified timescale.

- 5.8 As mineral extraction has now ceased at the site, and is no longer permitted to occur by virtue of Condition 2, the retention of the buildings, fixed plant and hardstandings cannot be said to maintain openness within the Green Belt or safeguard the countryside from encroachment, and as such the development should be classed as inappropriate development in relation to Green Belt Policy. The plant, buildings and structures are no longer deemed to be ancillary to mineral extraction and, being free-standing, are prominent within the landscape. Therefore, it should be considered whether there are any very special circumstances that exist to outweigh any consequential harm to the Green Belt by virtue of the inappropriate nature of the development within it.

- 5.9 The applicant has provided reasons for the request to vary Condition 2, which are, in summary:-
- That land to the north, south and east of the Quarry, adjoining the plant site area, has been identified as a 'Preferred Area' for sand and gravel extraction in the draft Hertfordshire Minerals Local Plan Review 2002-2016. Should the land be identified in the MLP, once adopted, there are obvious advantages to processing these minerals through the existing plant, which is well screened and benefits from an excellent access onto the B158 Wadesmill Road, and;
  - A planning application is currently being prepared to extract sand and gravel from an 10.5 hectare extension immediately to the east of the existing plant site and this application will seek to utilise the existing access, fixed plant and ancillary infrastructure.
- 5.10 The Public Inquiry into the Minerals Local Plan commences on 7 September 2004 and is scheduled to close on 5 October 2004. Following the Inquiry the County Council anticipates that the Inspector's Report and recommendations would be published in the new year, with further modifications and final changes to the Minerals Local Plan in Spring 2005 and an estimated final adoption of the Plan by Summer 2005.
- 5.11 Based on these estimated timescales it is likely that the future status of the Rickney's site and accordingly whether the land surrounding the existing Rickney's Quarry will or will not be identified as a preferred area for mineral extraction will become known by early 2005.
- 5.12 The applicant has indicated that the application for an extension of sand and gravel extraction will be submitted late Summer/early Autumn 2004. It is unlikely that the County Council would seek to determine the application until receipt of the Inspector's Report following the Minerals Local Plan Review Inquiry. In any event, past experience of similar applications is that it would take at least 6 months to determine the application.
- 5.13 The applicant has indicated that the extension application will be submitted irrespective of the Minerals Local Plan Review. If the site is not recommended for inclusion as a Preferred Area, and if the application is refused by the County Council, it is likely that the applicant would appeal this decision. Any appeal lodged would cause further delay and uncertainty as to whether or not mineral extraction is to take place at the Quarry. Notwithstanding the outcome of an application for future extraction at the site, it is clear that at this current time there is considerable uncertainty as to whether the land surrounding the Quarry will be worked in the future.

- 5.14 A number of representations have been received regarding the Council's failure to enforce the removal of the plant and restoration of the area. For the Council to ensure compliance with Condition 2 of the RoMPP permission, the decision to enforce has to be a reasonable one, based on relevant facts and planning issues. Moreover, to enforce the removal and restoration of the site, the Council must ensure that it is expedient to do so in order to remedy an injury to amenity.
- 5.15 If the Council were to insist upon the removal of the plant site at this current time, the applicant may be able to remove the plant, buildings and equipment over the next few months. However, officers of the Council would not expect land restoration to be carried out over the winter period for fear of damage to soil structure during wet periods. Realistically, and in accordance with best practice, it would not be possible for the plant site and immediately surrounding land to be restored until Summer 2005, which is the estimated date for the final adoption of the Minerals Local Plan. In any event, the current condition requires that the land be restored by 31 December 2005.

#### Landscape

- 5.16 The site is located within a Landscape Conservation Area. Policy RA11 (Landscape Conservation Areas) of the adopted District Plan states, inter-alia, that planning permission will not be granted for development which will have a detrimental effect on the landscape, or detract from the visual quality of Landscape Conservation Areas. The retention of the existing plant site and associated development unrelated to extraction does not serve to meet this policy objective. Nevertheless, Policy 8 (Landscape – general) of the adopted Minerals Local Plan states, inter-alia, that in recognition of the fact that minerals can only be worked where they are found and in accordance with policies on need, there will be no blanket presumption of refusal provided landform, restoration and land management proposals appropriate to the area can be secured within a reasonable timescale.
- 5.17 As the surrounding area to Rickney's Quarry has been identified as having significant workable reserves of sand and gravel, a plant site would form part of any future working at the site, should permission be granted in the future. In landscape terms therefore, the plant site may be considered to be acceptable were it directly linked to extraction development, however, such landscape issues would need to be considered afresh at the time the extension application is submitted. The plant site, currently standing alone and inactive, does not meet the landscape policy for the area.

#### Site Safety

- 5.18 A number of representations have been received regarding the safety risk the plant area poses to children as well as attracting vandals and

other trespassers. The applicant has expressed at local liaison meetings that reasonable measures are taken to dissuade people from venturing onto the site, however it is accepted that the site in its redundant state does attract trespassers, particularly given the number of rights-of-way in the vicinity. It is unlikely that, taking into account the applicant's efforts to post warning signs and secure damaged fencing, that the situation regarding unauthorised access would improve until such time as the plant site becomes operational once again or is removed and the land reinstated.

## **6. Conclusions**

- 6.1 At this time it is considered that it would be unreasonable for the County Council to insist on the removal of the plant and restoration of the plant site area at Rickney's Quarry until there is some certainty regarding the future status of the surrounding land as a Preferred Area and accordingly whether there is a likelihood that the proposed application to extend the workings would be permitted or refused. If the Council were to insist on the plant site's removal and restoration at this current time, there is a risk that the plant could be reinstated in the future with any restoration work carried out being undone. This would not represent best practice as it would require further handling of the reinstated soils which would not have been given sufficient time to recover from handling and placement.
- 6.2 The retention of the plant site in its current form is considered to represent inappropriate development in the Green Belt and to conflict with landscape policy. Nevertheless, in light of the present uncertainty regarding future extraction at the site, particularly in the context of the Minerals Local Plan Review it is considered that the requirement to remove the buildings, fixed plant and hardstandings before the future of Rickney's Quarry is known would be unreasonable at this moment in time. The next issue therefore is the duration of any extended period of time to allow for this uncertainty to be resolved such that, if required, the removal of the plant and restoration of the land can be secured at the earliest opportunity.
- 6.3 The applicant has requested that all buildings, fixed plant and hardstandings shall be removed from the site and restoration of these areas shall be completed by 30 June 2006. There would need to be a period of time between removing the plant and completion of the restoration. The uncertainties relating to the site should largely be resolved by mid-2005. It is considered feasible that the buildings, fixed plant and hardstandings could be removed by 31 December 2005 with restoration by 30 June 2006 (six months later than that currently required).
- 6.4 Based on the reasons discussed, it is therefore considered that there are very special circumstances to justify the retention of the plant site

for a temporary period and accordingly that Condition 2 of planning permission 3/0154-98 be varied to state:

“The extraction of mineral shall cease by 31 December 2003. All buildings, fixed plant and hardstandings shall be removed from the site by 31 December 2005 and restoration of the site shall be completed by 30 June 2006.”

## **7. Financial implications**

- 7.1 Planning applications should be determined on the basis of material planning considerations, and not on the basis of their financial implications for the County Council. However, it is a requirement of the County Council to advise all Committees of the financial implications that may arise from their decisions.
- 7.2 If a planning application is refused or is not determined within a specific period, the applicant has a right of appeal. Any appeal would result in additional costs, which in part can be met from existing budget provisions. However, a major public inquiry may give rise to significant costs for which there is no specific budget provision. If the County Council refuses an application without reasonable planning grounds on which to base its decision, it may be liable to pay the costs of the applicant in contesting the appeal.

### **Background information used by the author in compiling this report**

Planning application letter and plans reference 3/1454-04.

Consultation responses and representations received in response to planning application ref. 3/01454-04.

Hertfordshire County Structure Plan Review 1991-2011.

Hertfordshire Minerals Local Plan 1991-2006, adopted 1998.

Hertfordshire Minerals Local Plan Review 2002-2016, Second Deposit Draft 2003 (Pre-Inquiry Changes version)

East Hertfordshire Local Plan 1986-2001, adopted 1999.

PPG 2 Green Belts