

Application Ref: 12/01189/WCMM

Proposal: Variation of condition 1 of planning permission 10/00488/WCMM to vary the completion date of the permitted infilling from 31/07/2012 to 31/07/2013

Site: Cross Leys Quarry, Leicester Road, Wansford, Peterborough
Applicant: Mick George Ltd

Agent:
Referred by: Head of Planning and Transportation and Engineering
Reason: The application seeks retrospective approval for a large scale development that is clearly contrary to policy

Site visit: 15.11.2012 (and previously)

Case officer: Mrs T J Nicholl
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Recommendation: **REFUSE**

1 Description of the site and surroundings and Summary of the proposal

Site and Surroundings

The site area is part of and lies within the Cross Leys Quarry situated to the south of the A47 close to the boundary with East Northamptonshire District. To the south/southwest of the site lies Wittering coppice and Eastern Hornstocks wood which are Sites of Special Scientific Interest (Wittering Coppice is also a County Wildlife Site) and are part of several blocks of ancient woodland within the vicinity, another being Bedford Purlieus to the east. The quarry is largely extracted and is an alien feature within the local landscape which is characterised by gently undulating meadows interspersed with the woodland blocks. The site falls within the Nassaburgh Limestone Plateau Character Area of the Peterborough Landscape Character Area Assessment. The site contains a series of pools, some of which are permanent (towards the rear of the site, adjacent the woodland) and some which are more seasonal. The site is colonised in various locations by Great Crested Newts (GCNs) which are protected species under European and UK law.

06/00415/MMFUL was an application for the importation of 126,000 cubic metres of inert fill over 3 years. The waste would be spread over 8.8 hectares of worked out parts of the quarry on either side of an oil pipeline safeguarded area to reduce the current approved gradients from 1:3 to approximately 1:8 to allow a larger area of the site to be restored to agriculture and farmed in one block.

This time limit was extended for a further two years under a variation to condition 1 attached to the above permission under reference 10/00488/WCMM. This further temporary permission to infill within the limited site area set out above expired on 31 July 2012. Since then infilling has continued i.e. material has been brought into the site and this is unauthorised. The site at present appears to contain fill material situated in locations that have never been approved. The amount of fill and proposed contours remained as approved under 06/00415/MMFUL.

Proposal

This is an application to vary condition 1 attached to 10/00488/WCMM to further extend the completion time for infilling with inert material this limited area of Cross Leys Quarry until 31 July 2013.

2 Planning History

Reference	Proposal	Decision	Date
10/00488/WCMM	Variation of condition 1 of planning permission 06/00415/MMFUL to vary the completion date of the permitted infilling from 31/07/2010 to 31/07/2012	Application Permitted	29/06/2010

3 Planning Policy

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise.

National Planning Policy Framework (2012)

109 Natural and Local Environment – Should be enhanced through the protection and enhancement of valued landscapes, geological conservation interests and soils; recognising the wider benefits of ecosystem services; minimising impacts on biodiversity and providing net gains in biodiversity. New and existing development should not contribute to or be put at unacceptable risk by unacceptable levels of soil, air, water or noise pollution and land instability.

118 Biodiversity- Development resulting in significant harm to biodiversity or in the loss of/deterioration of irreplaceable habitats should be refused if the impact cannot be adequately mitigated, or compensated. Proposals to conserve or enhance biodiversity should be permitted and opportunities to incorporate biodiversity into new development encouraged.

Development within or outside a Site of Special Scientific Interest or other specified sites should not normally be permitted where an adverse effect on the site's notified special interest features is likely. An exception should only be made where the benefits clearly outweigh the impacts.

144 Restoration and Aftercare- Should be provided for at the earliest opportunity and carried out to high environmental standards through the use of appropriate conditions

Cambridgeshire & Peterborough Mineral and Waste Core Strategy DPD (2011)

MW25 - Restoration and Aftercare of Mineral and Waste Management Sites

Minerals workings and waste management sites will be restored to a beneficial afteruse with aftercare arrangements. Restoration proposals will be considered on a site by site basis but must meet the criteria set out in the policy.

MW33 - Protection of Landscape Character

Minerals and Waste development will only be permitted where it can be assimilated into the local landscape character in accordance with the Cambridgeshire Landscape Guidelines, local Landscape Character Assessments and related SPDs.

MW35 - Biodiversity and Geodiversity

Mineral and waste management development will only be permitted where there will likely be no significant adverse affect on local nature conservation or geological interest. Where it is demonstrated there are overriding benefits to the development compensation and/or mitigation measures must be put in place. Proposals for new habitat creation must have regard to the Peterborough Biodiversity Action Plan and supporting Habitat and Species Action Plans.

Cambridgeshire and Peterborough Minerals and Waste Site Specific Proposals DPD

Cross Leys Quarry is allocated as an inert landfill site and as a site for inert waste recycling under policies W1 and W2. The site is shown on insert map 44 and the implementation issues set out in detail which matters would need to be addressed in a planning application.

4 Consultations/Representations

Transport and Engineering Services (11.09.12)

No objections

Wildlife Officer (25.09.12)

Objects to the application without provision of a detailed revised restoration scheme and a newt (and other protected species) mitigation and revised protocol.

Landscape Officer (25.09.12)

No objections in principle. Understands a restoration scheme has not been provided but this could be provided by condition.

Natural England - Consultation Service (01.10.12)

A revised ecological mitigation strategy and restoration proposal should be submitted to PCC's satisfaction prior to this application being determined.

Environment Agency (25.09.12)

No objection

Wansford Parish Council (20.11.12)

No objections

Defence Infrastructure Organisation (MOD - Statutory) (20.09.12)

No objections

Local Residents/Interested Parties

Initial consultations: 1

Total number of responses: 0

Total number of objections: 0

Total number in support: 0

No comments received

5 Assessment of the planning issues

Main Considerations

The main considerations are:-

- The principle of allowing a further extension of time
- Visual and landscape issues
- Impact on protected species

Principle

On 21 December 2011 a screening opinion was issued in relation to this proposal which confirmed that the development is an Environmental Impact Assessment (EIA) development and that any application would need to be accompanied by an Environmental Assessment. The previous applications set out above should also have been subject to EIA but in error were not. This same screening opinion letter set out that the temporary permissions previously granted – which have allowed over 5 years of tipping imported inert fill to take place with no overall implementable restoration scheme being in place, were only ever meant to be a temporary stop gap whilst the

applicant/site owners submitted an overall restoration scheme for the whole quarry which takes into account the GCNs present on site. No overall restoration scheme has been forthcoming. The submitted "Environment Statement" (ES) submitted with the current application recognises that the submission of a comprehensive restoration scheme is necessary but fails to provide one. The principle of inert landfill and recycling is acceptable as the site is allocated but this must be subject to a comprehensive scheme which addresses all the issues relating to the site as set out in the implementation issues in the Cambridgeshire and Peterborough Minerals and Waste Site Specific DPD.

A regulation 22 request (under the EIA Regulations) was sent to the agent on 1st October requiring that a complete restoration scheme and new mitigation scheme be submitted within eight weeks. The agent was also required to confirm within two weeks whether or not the applicant would provide this information within the timescale. A reply was received on 23rd October which does not answer these questions but stated that a meeting was to be held between the applicant and Aggregate Industries (the site owners) in early November to agree a "practicable way forward". As of 13th November this meeting has not taken place. The applicant also sent a letter to Natural England (NE) (in response to NE's consultation response) setting out that the ecology consultant SLR is reviewing the existing GCN protocol to make sure it is "fit for purpose" and that the current measures were always meant to be a stop gap provision until a masterplan for the whole quarry can be prepared.

The NPPF advises at paragraph 144, that local authorities should ensure that in granting planning permission there are no unacceptable adverse impacts on the natural environment and to provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards. There is no implementable comprehensive restoration plan approved for this site and the application does not include one. The proposal is therefore contrary to these aims of the NPPF and no further importation of material should be permitted until this issue has been properly addressed. The applicant has been given a lot of leeway in this respect, indeed five years to address the issue (during this "stop gap" period) but has failed to do so. Policy CS25 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy DPD requires mineral workings and waste management sites to be restored in a phased manner to a beneficial afteruse with aftercare arrangements. The proposal provides no adequate or comprehensive restoration and aftercare scheme and so is contrary to policy CS25.

Visual and Landscape Issues

At present, the site is an eyesore within the natural landscape and there is no implementable overall landscape scheme that can be delivered on the site. The minimal restoration scheme approved as part of the extant Review of the Old Minerals Permission (ROMP - ref 99/01273/RMP) which is only for extraction and not importation of fill material, cannot be implemented due largely to the populous of GCNs on site. Under this ROMP permission restoration needs to be achieved by 2016. It appears that there is very little scope for any further material to be tipped within the red line area of this current application site, the boundary of which is contrived and very difficult to judge where it actually lies on site. It begs the question as to why further imported material is necessary within this area. As there is no overall implementable restoration and landscaping scheme, it is impossible to judge how further imported material will make any positive contribution towards the visual and landscape appearance of the site. Policy CS33 of the Core Strategy states that minerals and waste development will only be permitted where it can be demonstrated that it can be assimilated into its surrounding and local landscape character area in accordance with the Cambridgeshire Landscape Guidelines, local Landscape Character Assessments and related supplementary planning documents. The Peterborough Local Landscape Character Assessment contains guidelines in relation to development which states that comprehensive strategies are to be provided including sensitive earthworks, woodland and hedgerow planting and management of calcareous flora opportunities to visually and ecologically integrate existing and potential minerals sites. With no overall restoration and landscape scheme submitted for the quarry site the proposal fails to address these aims/objectives and it is impossible for officers to determine that the proposal is making any sort of positive contribution towards assimilating the site into its local landscape character area without an overall scheme. This being the case, the proposal is contrary to policies

CS25 and CS33 of the Core Strategy and does not meet the aims of the NPPF in terms of sustainability and achieving high environmental standards.

Impact on Protected Species/biodiversity

The previous applications were accompanied by a Great Crested Newt Mitigation and Method Statement dated September 2009. This was based upon previous newt surveys. The protocol was meant to be part of the “stop gap” measures put in place to allow continued working at the site and basically provided for stand offs around newt areas and newt habitat areas. An updated survey has been submitted with the current application, which shows that newts were present at the time of the surveys (May 2012) in varying and additional locations to those previously surveyed. This is of concern (and is to Natural England) because clearly the newt mitigation method statement for working at the quarry contained in the 2009 report has not completely worked and also this is now out of date given the more recent surveys. Site visits have confirmed that it appears that earth working and tipped material has been placed very close to newt safeguarded areas and one of the ponds/habitat areas identified in May 2012 (pond 19) is no longer apparent on site. This together with the lack of overall restoration scheme and newt mitigation strategy plus the continued unauthorised tipping of imported fill in areas which appear to be outside the previously approved areas (and which since July has been unauthorised in any event) raise enough cause for concern that GCNs might not be adequately protected. There is certainly no comprehensive mitigation scheme, which again has been promised by the developer since the temporary permission for infilling of part of the quarry was permitted.

Paragraph 118 of the National Planning Policy Framework (NPPF) states that if significant harm resulting from a development cannot be avoided (restoring the quarry site cannot be avoided) adequately mitigated or compensated for then planning permission should be refused. Adequate mitigation is required for the GCN population and is not provided as part of this proposal. Similarly the Local Planning Authority (LPA) is not assured by the proposal that there are no unacceptable impacts on the natural environment i.e. the GCNs by allowing further importation of material onto the site contrary to paragraph 144.

Policy CS35 of the Core Strategy provides that minerals and waste development will only be permitted where it has been demonstrated that there will be no likely significant adverse impact on any landscape feature that is of principal importance to wild fauna – this will include the newt habitat across the site. There are no over-riding benefits to the proposal and if there were, adequate mitigation measures would need to be put in place and managed.

Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural environment, minimising impacts on biodiversity and where possible providing net gains in biodiversity. There are concerns that the proposal is not providing protection for existing habitats but also the proposal provides for no net gains in biodiversity because there is no comprehensive restoration scheme. These policies cannot be complied with until an acceptable comprehensive restoration and newt mitigation scheme is submitted. As such the application is contrary to the provisions of the NPPF and policy CS35 of the Core Strategy.

6 Conclusions

The LPA permitted two previous temporary permissions to import inert fill for deposit within a defined/discrete area of Cross Leys Quarry. This was only ever meant as a temporary measure to enable the developer to continue operating at the site whilst producing a comprehensive new restoration and newt mitigation scheme – something which the applicant admits in the submission is required. Some five years later, no such scheme has been submitted and since the last permission expired in July 2012 infill operations have continued. Circular 11/95 advises LPAs not to continue to grant temporary permissions. Unfortunately, granting these temporary permissions has probably contributed to further intransigence on the part of the site owners and developers in failing to produce the necessary restoration scheme.

The proposal is not acceptable in terms of the principle of the development because it fails to

provide a comprehensive restoration scheme in accordance with the NPPF and policy CS25 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy (the Core Strategy).

In terms of impact on the landscape, the present condition of the quarry is an eyesore and the proposal contains no comprehensive landscaping scheme to remedy this in accordance with the provisions of the NPPF and policy CS33 of the Core Strategy. There are also concerns with the present site activity and lack of an up to date and comprehensive newt mitigation strategy that the protected GCNs are in danger of being harmed if further material is permitted to be imported and tipped without a comprehensive scheme in place to protect the newts and provide adequate habitat.

The application is accompanied by what purports to be an Environmental Statement. The LPA do not agree that this is the case because the assessment fails to address the site wide issues particularly with regard to comprehensive restoration (land levels, contouring and landscaping) nor a comprehensive newt mitigation strategy. There is inadequate assessment of cumulative impacts and alternative solutions. An inadequate response has been provided to the Council's request under regulation 22. Finally, from site inspections it is difficult to see where any further fill material could be deposited (safely without harming any GCNs) within the application site boundary therefore calling into question the need for the development.

The proposal is unacceptable having been assessed in light of all material considerations, including weighing against relevant policies of the development plan and for the specific reasons given below.

7 Recommendation

The Head of Planning, Transport and Engineering Services recommends that planning permission is **REFUSED**

- R 1 The proposal provides for no comprehensive restoration scheme, landscaping scheme or adequate protection and mitigation for the great crested newt population and their habitat present on the site. This is contrary to policies CS25, CS33 and CS35 of the Cambridgeshire and Peterborough Minerals and Waste Core Strategy DPD and the provisions of the NPPF which require minerals sites to be restored to high environmental standards including the protection of protected species and habitats, providing biodiversity enhancements and assimilating landscape into the local landscape character.
- R 2 The applicant has failed to adequately respond to a request under regulation 22 of the Environmental Impact Assessment Regulations 2011 and the local planning authority has no confidence that the required environmental assessment will be provided within a timely manner. As such the application is contrary to the above regulations which require the application to be accompanied by an environmental statement as the LPA does not consider that the submission is adequate in this instance and cannot be called and considered an environmental statement.

Copies to Councillors: Holdich (OBE), Lamb