

Local Members' Interest	
Mrs V. Wilson	Kinver

PLANNING COMMITTEE – 4 October 2018

MINERAL COUNTY MATTER:

South Staffordshire District: Application Nos. [SS.15/13/627 M NMA1](#) and [SS.15/13/627 M D5](#)

Date Received: 25 July 2018 and 30 July 2018

Date Revised/ Further Details Received: 13 September 2018 - topographical plan for progress report

JPE Holdings Limited for:

- a) Non-material amendment relating to condition 11 of planning permission [SS.15/13/627 M](#); and,
- b) Submission of details in compliance with condition 33 of planning permission SS.15/13/627 M relating to a 6-month progress report (fourth review)

at Seisdon Quarry, Ebstree Road, Seisdon

Background

1. Seisdon Quarry has operated since the late 1940s (originally as three separate quarries) and was acquired by the applicant in 2014. In July 2016, planning permission was granted for the continued winning and working of the remaining sand and gravel mineral reserve and import of restoration materials, enabling the restoration of Seisdon Quarry (ref: [SS.15/13/627 M](#)). An important aim of granting this new permission was to ensure that the site is restored to high environmental standards at the earliest opportunity.
2. The new permission requires that working operations, including the export of mineral and the import of restoration materials, should cease no later than 31 December 2018, with final restoration being achieved by 31 December 2019 in accordance with plans showing the phasing of extraction and restoration works. Condition 33 requires the submission of detailed 6-monthly Progress Reports in order that progress towards the 'cessation date' of 31 December 2018 and the 'final restoration date' of 31 December 2019 can be monitored.
3. This report considers the latest Progress Report, the proposed non-material amendment to the planning permission and whether there is merit to updating the phasing plan as referred to under condition 11 in the light of changes to the timing of restoration works identified in the submitted Progress Report.

Summary of Proposals

The non-material amendment application (ref. [SS.15/13/627 M NMA1](#))

4. Condition 11 of the planning permission SS.15/13/627 M requires that: *The ‘working operations’ and ‘restoration operations’ shall only be carried out in accordance with the phasing shown on the ‘[Planning Statement Appendix A - Outline restoration phases and timings’ plan](#)’ (Dwg No CE-SD0609-DW15b)*. This plan indicates that extraction operations were due to cease by 30 June 2018.

5. Given that mineral extractive operations have continued after 30 June 2018, the applicant seeks to resolve this issue with this application for a “non-material amendment” to the planning permission to take account of the latest approved Progress Report (and phasing plan) by proposing the following changes to condition 11 (the proposed changes are highlighted in **bold**):

*The ‘working operations’ and ‘restoration operations’ shall only be carried out in accordance with the phasing shown on the ‘[Planning Statement Appendix A - Outline restoration phases and timings plan](#)’ (Dwg No CE-SD0609-DW15b) **’ or as otherwise amended by submissions approved in accordance with Condition 33 (the 6-month Progress Reports).***

The submission of details to discharge condition 33 (the 6-monthly Progress Report (ref. [SS.15/13/627 M D5](#)))

6. This is the fourth Progress Report submitted in accordance with condition 33. The Report describes the restoration progress up to July 2018 and includes the following details:
 - a) A commercially confidential appendix with information about sales of sand and gravel (exports) from the quarry and imports of waste materials used to provide backfill and soil cover providing data to indicate that over the last 6 months sales are significant but within the output limit and that mineral stockpiles as of July 2018 were not sufficient to maintain exports up to the end of 2018;
 - b) An updated ‘Mineral Working and Remediation Plan’ (ref: CE-SD0609-DW26a) showing the areas of the site that are now subject to restoration works and the extent of the site where mineral extraction is continuing. The actual ‘wet extraction’ area is shown larger than originally approved;
 - c) An updated ‘Outline restoration phases and timings plan’ (Dwg No CE-SD0609-DW27a) which indicates that extraction within the lake area (phase 3a) is largely complete and that extraction on the northern slopes around the lake area (phases 3b and 4) will continue up to 31 December 2018 rather than 30 June 2018; and,
 - d) An updated topographical plan based on a survey of the site undertaken on 25 July 2018. This plan shows that levels formed by backfilling with waste within the southern part of the quarry on the former lagoon area, are higher than approved.
7. In terms of assessing the balance of materials required for the restoration, the Progress Report states that *“based on exportation rates from the Site, the surplus material retained on Site for restoration and the current rate of import, no deficit of*

material is currently envisaged that would significantly impinge on the Site's ability to achieve restoration." To overcome constraints encountered with progress over the preceding 6- month period the operator proposes the following measures:

- a) To continue extraction beyond 30 June 2018 north of the main lake to facilitate formation of the restoration gradient. Extraction would maintain mineral production for 2018, which was originally planned to be facilitated by the formation of stockpiles, which has been delayed by weather conditions.
- b) To amend the approved restoration plan to retain the extended lake. This will require an amendment to the defined northern shoreline of the lake and the slopes to the north of the lake.
- c) To regularise and amend the restoration plan to retain / regrade the current restored levels in the southern area of site.

The Applicant's Case

8. According to the applicant, most of the site is non-operational or undergoing restoration and mineral extraction operations are limited to a relatively small area to the north of the main lake.
9. Over extraction / exportation has not occurred. Imports are in line with expectations. However, weather conditions (e.g. waterlogged and frozen ground) have frustrated restoration progress in some areas of the site.
10. A series of pragmatic measures are proposed to overcome these operational constraints and to allow continued restoration of the site, in accordance with the planning permission. The proposed modifications to the approved restoration plan will generally be in line with the principle and design of the approved scheme but would regularise the landform in line with the current restoration levels on the site and minimise the need to regrade, excavate and re-engineer areas that have already been restored.

Relevant Planning History

11. The relevant planning history is as follows:
 - a) [SS.15/13/627 M](#) dated 28 July 2016 to consolidate the previous planning permissions for Seisdon Quarry, allowing for the continued winning and working of the remaining sand and gravel mineral reserve and import of restoration materials, enabling the restoration of Seisdon Quarry by 31 December 2018. The planning permission is subject a Section 106 legal agreement dated 28 July 2016. Schedule 5 to the agreement sets out planning obligations for the review of the Seisdon restoration and aftercare scheme.
 - b) [SS.15/13/627 M D1](#) dated 5 June 2017 for approval of details in compliance with conditions 17 (Wheel Wash), 19 (Noise Monitoring), 20 (Dust Monitoring), 26 (Invasive Species Method Statement), 27, 28, 29 (Ecology Method Statement) and 32 (Restoration and Aftercare Scheme) related to planning permission SS.15/13/627 M.

- c) [SS.15/13/627 M D2](#) dated 31 March 2017 for approval of details in compliance with condition 33 of planning permission SS.15/13/627 M relating to a 6-monthly progress report (first review).
- d) [SS.15/13/627 M D3](#) dated 28 September 2017 for approval of details in compliance with condition 33 of planning permission SS.15/13/627 M relating to a 6-monthly progress report (second review).
- e) [SS.15/13/627 M D4](#) dated 6 April 2018 for approval of details in compliance with condition 33 of planning permission SS.15/13/627 M relating to a 6-monthly progress report (third review).

Findings of Consultations

Internal

- 12. The Environment Advice Team (EAT) – With regard to the Progress Report, EAT agree with the recommendation of the Progress Report for the submission of a revised restoration and aftercare scheme which should address: the restored levels in the southern part of the quarry; the need for a revised programme of seeding and planting; the reinstatement of the northern slopes around the lake area; and, compensation for any reduction in areas of species rich grassland.
- 13. The Planning Regulation Team (PRT) – After receiving legal advice, the PRT advised the applicant that the continued extraction of mineral after 30 June 2018 was in breach of planning condition 11 and that formal action would be considered. [Note: The application for the non-material amendment was submitted to seek to remedy this breach.] The PRT advised that they have carried out 8 formal site monitoring visits and made additional visits to investigate alleged complaints. Recent complaints relate to concerns about the continued mineral extraction after 30 June 2018 and the implications for lorry movements through Seisdon village; excessive lorry movements; size of lorries; mud on the road; and, the deposit of unauthorised wastes within the quarry. All complaints have been investigated (some of these investigations are ongoing) and no formal enforcement action has been taken. The PRT also attend liaison committee meetings arranged by the site operator with representatives of the local community at which ongoing issues associated with the quarry are discussed. Since the implementation of the current permission, 5 liaison meetings have been held and the most recent meeting on 2 August 2018 considered the latest Progress Report.

District/ Parish Council

- 14. South Staffordshire Council – no comments in relation to the Progress Report or the non-material amendment application.
- 15. Trysull & Seisdon Parish Council – object. The Parish Council question the need to continue extraction beyond 30 June 2018 and on behalf of residents in Seisdon, raise issues about continued HGV movements associated with the quarry through the village. It is suggested that lorries should exit and enter the quarry in a northerly direction towards Lower Penn. The Parish Council also strongly objects to the proposed amendment to condition 11.

Publicity and Representations

16. No publicity is required by the relevant regulations in respect of the application for the non-material amendment or submission of details but the Planning Regulation Officer informed members of the liaison committee of the application and submission.
17. County Councillor Wilson, the Local Member, has facilitated local residents in raising their concerns and 11 representations have been received as well as 2 written enquiries about site operations. The representations are summarised below:
 - Mineral excavation should not be allowed to carry on beyond the permitted deadline so that lorries cannot carry on using local roads;
 - The size and frequency of lorries cannot be endured any longer;
 - There has been damage to the public highway caused by lorries particularly the highway verges;
 - Noise and pollution is caused by lorries; and
 - There are highway safety concerns caused by the passage of large speeding lorries.

The development plan policies and proposals, and the other material considerations, relevant to this decision

18. Refer to [Appendix 1](#) for the development plan policies and other material considerations relevant to this decision.

Observations

19. This report considers: an application for a non-material amendment relating to condition 11 of planning permission SS.15/13/627 M; and, a submission of details in compliance with condition 33 of planning permission SS.15/13/627 M relating to a 6-monthly progress report (the fourth review) at Seisdon Quarry, Ebstree Road, Seisdon.
20. Having given careful consideration to the application, submission and supporting information, including the information subsequently received, the consultation responses and the representations received the relevant development plan policies and the other material considerations, referred to above, the key issues are considered to be:
 - Should the non-material amendment application be approved?
 - Should the latest Progress Report be approved??

Should the non-material amendment application be approved?

21. As described earlier, the Local Member (County Councillor Mrs Wilson), the Parish Council and local residents have expressed concerns about the continued export of mineral beyond 30 June 2018. The Planning Regulation Officer has advised the operator to remedy this breach of condition 11. This resulted in the application for a

non-material amendment to condition 11 to accommodate any changes referred to in the Progress Reports required by condition 33.

22. [Planning Practice Guidance](#) advises that there is no statutory definition of a non-material amendment because it will be dependent on the context of the overall scheme (an amendment that is non-material in one context may be material in another). In particular, regard to the effect of the proposed change, together with any previous changes made under section 96A of Town and Country Planning Act 1990, on the planning permission as originally granted should be considered.
23. There are no other non-material amendments applicable to planning permission SS.15/13/627 M to consider. It is important, therefore, to consider the proposed changes recommended in the Progress Reports (notably the proposed continuation of mineral extraction after 30 June 2018) taking account of the ‘cessation date’ and ‘final restoration date’ in condition 3; as well details shown on the approved working scheme drawing, the restoration concept plan and the approved detailed restoration and aftercare scheme.
24. Condition 11 requires that operations are carried out in accordance with phasing details shown on the ‘Outline restoration phases and timings plan’ and the reason for the condition is as follows:

“To define the phasing of working and restoration in accordance with the approved ‘Restoration phasing plan and timescales’ and to assist with the effective monitoring of the planning permission, to ensure the orderly operation of the Site in this Green Belt location and to protect the environment and amenity of local residents in accordance with: the Minerals Local Plan for Staffordshire (policies 4 and 6); the Staffordshire and Stoke-on-Trent Waste Local Plan (policies 1.1, 1.6, 4.1 and 4.2); the South Staffordshire Core Strategy (policies GB1, EQ1, EQ4 and EQ9); the National Planning Policy Framework (sections 7, 9, 11 and 13); and, the National Planning Policy for Waste (paragraph 7 and Appendix B); Planning Practice Guidance (Minerals – restoration and aftercare of minerals sites) (Also to update Condition 3 of planning permission ref. SS.08/08/627 M).”
25. Condition 33 requires the submission of 6 monthly Progress Reports to ensure that progress of the ‘working operations’ and ‘restoration operations’ can be monitored. The reports include revised plans outlining progress and amendments to the timing of operations to achieve restoration in accordance with the requirements of Condition 3 of the planning permission. As such, the details shown on the approved plan referenced under condition 11 are superseded by details included in the Progress Reports approved by the Mineral Planning Authority pursuant to the requirements under Condition 33.
26. *Conclusion:* Having regard to the policies, guidance, comments from consultees and representations received, all referred to above, it is reasonable to conclude that the amendment to condition 11 is acceptable as it would clarify the purpose of the Progress Reviews without materially changing the planning permission. In this context, any changes proposed in Progress Reports would only be acceptable if they do not propose material changes to the planning permission. The proposed amendment to condition 11 has been modified in the recommendation below for the sake of consistency with the wording of similar conditions used by the County Council.

Should the latest Progress Report be approved?

27. Condition 33 requires that the Progress Report shall take account of the 'cessation date' and 'final restoration date' (refer to condition 3); as well details shown on the approved working scheme drawing, the restoration concept plan and the approved detailed restoration and aftercare scheme to ensure that progress of the 'working operations' and 'restoration operations' can be monitored. This requirement for review is reinforced under Schedule 5 of the Section 106 legal agreement, which also requires the site operator to consult the Quarry's Liaison Committee on the findings of the Progress Reports.
28. Three Progress Reports have already been approved by the Mineral Planning Authority and although changes have been made to the timings of restoration works, there has been no indication that restoration would be delayed. It is noted that condition 34 of the permission required a 'Revised Working, Restoration and Aftercare Scheme' to be submitted by 28 February 2018, if the previous (third) Progress Report indicated that the rate of import of restoration material was not sufficient to achieve the dates for restoration as defined under condition 3. It was determined by the Mineral Planning Authority that a revised scheme was not required (ref: [SS.15/13/627 M D4](#)).
29. With regard to the fourth and latest Progress Report, three measures have been proposed by the site operator to overcome the poor weather conditions encountered during the period from January 2018 to July 2018 referred to earlier. Contrary to the approved working scheme, the latest Progress Report proposes that mineral extraction continues after 30 June 2018 (up to the end of 2018) which was stated as the cessation date for extractive operations. Originally as indicated in the report presented to Planning Committee in February 2016, it was proposed that mineral would have been extracted at a rate so that mineral stockpiles would be formed by the end of June 2018 sufficient to maintain exports of mineral to the end of 2018. This has not been achieved and it is evident that mineral extraction is continuing and being exported from the quarry rather than being used to build up a stockpile.
30. This is a key issue as highlighted by the representations received from the Parish Council and residents. The concern is that the deadline defined under condition 3 for the cessation of exports and imports of materials is not extended by the need to remove additional sand and gravel.
31. It is evident in the Progress Report (and as noted under paragraph 7 above) the balance of restoration materials available on site should be sufficient to achieve a satisfactory restoration of the site without the need to export or import materials after 31 December 2018. It is considered, therefore, that the proposed extension of time for mineral extraction is acceptable in terms of progressing restoration; and does not materially change the aims of the permission to complete the exports of sand and gravel by the end of the year and to achieve the final restoration landform and placement of soils by 31 December 2019.
32. The operator has identified aspects of restoration progress that need to be addressed by amending the approved restoration and aftercare scheme. These include the following works:

- reinstating the extended northern lake shore and associated slopes within phase 3b;
 - grading / retaining the higher levels of backfill used to restore the former lagoon area in the southern part of the site (phase 1a); and,
 - revising the timing of approved seeding and planting programmes.
33. It is not anticipated that these amendments would materially change the approved restoration scheme e.g. they would not result in a shortfall of restoration material requiring more time during which to import materials to achieve the final restoration landform by 31 December 2019.
34. *Conclusion:* Having regard to the policies, guidance, comments from consultees and representation received, all referred to above, it is reasonable to conclude that the information submitted accords with the requirements of condition 33 of the permission and should be approved. It is recommended, however, that the operator be advised that:
- a) any mineral or mineral stockpiles remaining at the end of 2018 should be retained on site for use in the restoration of the quarry;
 - b) any amendments to the approved Restoration and Aftercare Scheme to address the matters described in paragraph 32 above should be submitted within 3 months to avoid delays in the restoration of the site by 31 December 2019; and,
 - c) Any changes to the approved Restoration and Aftercare Scheme will not be looked on favorably if they would prolong mineral extraction or the restoration of the site as such changes would be contrary to: condition 3 of the planning permission; the purpose of the progress reports (condition 33); and, the undertaking in the Section 106 legal agreement; which were all imposed to ensure that the restoration of the site is achieved within the permitted timescale.

Overall Conclusion

35. Overall, as an exercise of judgement, taking the relevant development plan policies as a whole and having given consideration to application, the submission, the supporting information, the consultation responses, the representations and the other material considerations, all referred to above, it is reasonable to conclude that the application for a non-material amendment to condition 11 and the submitted Progress Report to discharge condition 33, be approved.

RECOMMENDATION

1. **TO APPROVE** the application for a non-material amendment to condition 11 (ref. [SS.15/13/627 M NMA1](#)) to amend the condition to read as follows (the changes being highlighted in **bold**):

The 'working operations' and 'restoration operations' shall be carried out in accordance with the phasing shown on the 'Planning Statement Appendix A - Outline restoration phases and timings plan' (Dwg No CE-SD0609-DW15b) **unless otherwise approved in writing by the Mineral Planning Authority in**

connection with the latest approved Progress Report submitted in accordance with Condition 33.

2. **TO APPROVE** the Progress Report submitted in accordance with condition 33 (the fourth progress report) [ref: [SS.15/13/627 M D5](#)] namely:
 - 6 Month Progress Review for the period up to 28 July 2018 (ref: CE-SD0609-R13-Final)
 - Appendix R2 – topographical Plan – July 2018
3. **TO ADVISE** the site operator that:
 - a) any mineral or mineral stockpiles remaining at the end of 2018 should be retained on site for use in the restoration of the quarry;
 - b) any amendments to the approved Restoration and Aftercare Scheme to address the matters described in paragraph 32 above should be submitted within 3 months to avoid delays in the restoration of the site by 31 December 2019; and,
 - c) Any changes to the approved Restoration and Aftercare Scheme will not be looked on favorably if they would prolong mineral extraction or the restoration of the site as such changes would be contrary to: condition 3 of the planning permission; the purpose of the progress reports (condition 33); and, the undertaking in the Section 106 legal agreement; which were all imposed to ensure that the restoration of the site is achieved within the permitted timescale.

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A list of background papers for this report is available on request and for public inspection at the offices of Staffordshire County Council, 1 Staffordshire Place, Stafford during normal office hours Monday to Thursday (8.30 am – 5.00 pm); Friday (8.30 am – 4.30 pm).

The development plan policies and proposals, and the other material considerations, relevant to this decision

The relevant development plan policies

The [Staffordshire and Stoke on Trent Joint Waste Local Plan](#) 2010 to 2026 (adopted 22 March 2013):

- Policy 1: Waste as a resource
 - Policy 1.1 General principles
 - Policy 1.3 Construction, demolition and excavation waste
 - Policy 1.6 Landfill or landraise
- Policy 4: Sustainable design and protection and improvement of environmental quality
 - Policy 4.1 Sustainable design
 - Policy 4.2 Protection of environmental quality

[Staffordshire and Stoke on Trent Minerals Local Plan](#) (2015 - 2030) (adopted 16 February 2017):

- Policy 1: Provision for Sand and Gravel
- Policy 4: Minimising the impact of mineral development
- Policy 6: Restoration of Mineral Sites

[The South Staffordshire Local Plan](#) (adopted 11 December 2012):

- Core Policy 1: The Spatial Strategy
 - Policy GB1: Development in the Green Belt
- Core Policy 2: Protecting and Enhancing the Natural and Historic Environment
 - Policy EQ1: Protecting, Expanding and Enhancing Natural Assets
 - Policy EQ4: Protecting and Enhancing the Character and Appearance of the Landscape
- Core Policy 3: Sustainable Development and Climate Change
 - Policy EQ9: Protecting Residential Amenity
- Core Policy 4: Promoting High Quality Design
 - Policy EQ11: Wider Design Considerations
 - Policy EQ12: Landscaping

The other material planning considerations

- [National Planning Policy Framework – updated 24 July 2018](#) (NPPF):
 - Section 2: Achieving sustainable development

- Section 13: Protecting Green Belt land
- Section 15: Conserving and enhancing the natural environment;
- Section 17: Facilitating the sustainable use of minerals

- [Planning Practice Guidance](#)
 - [Minerals](#)
 - [Natural environment](#)

- [National Planning Policy for Waste](#) (published on 16 October 2014) and accompanying [Planning Practice Guidance on Waste](#).

[Back to paragraph 18 in the Report](#)