

Local Member	
Councillor J Jessel	Needwood Forest

Planning Committee: 02 December 2021

Minerals County Matter

Application No (District): [ES.21/01/501 MW](#) (East Staffordshire)

Applicant: Aggregate Industries U.K. Limited

Description Application to vary conditions 5, 6 and 7 of permission ES.17/13/501 MW to allow the concrete products factory and associated mobile plant to operate on a 24/7 basis and to extend the hours during which HGVs can access the concrete products factory for a temporary 12 month 'trial' period.

Location: Newbold Quarry, Concrete Products Factory, Lichfield Road, Barton Under Needwood

Background

1. Planning permission was originally granted for the concrete products factory at Newbold Quarry in 1998. Permissions were subsequently granted to link the life of the factory to the extended quarry operations and to increase the weekday operating hours to 24 hours (see 'Relevant Planning History' section below).

Site and Surroundings

2. Newbold Quarry and the Concrete Products Factory are approximately 4 kilometres to the south-west of Burton upon Trent; to the south of Tatenhill village; to the west of the Branston Water Park, the A38, the Branston Industrial Estate and the Trent and Mersey Canal; and to the north-east of the village of Barton under Needwood. Access to the factory is via the existing quarry access off the Barton Turn junction of the A38 trunk road (see Planning Committee Report - Plan 1).
3. The nearest residential properties are about 270 metres to the south-east of the factory on Lichfield Road (A38).



Location Plan and extract taken from County Council's aerial photography supplied by Bluesky International Ltd and Getmapping Plc 2021 – the factory is highlighted in yellow

Summary of Proposals

4. The proposed changes to the conditions of the current planning permission for a 12-month trial period are shown emboldened below.
 - a) The extended the 24 hours per day factory operational hours
From:
24 hours per day but no operations between 1pm on Saturday and 6am on Monday (there was no mention of Public/Bank Holidays)
To:
24 hours per day - **7 days per week**
 - b) The extended lorry movement hours
From:
7am to 7pm Monday to Friday and 7am to 1pm on Saturdays, excluding Sundays and Public/Bank Holidays

To:

7am to 7pm Monday to Friday and 7am to 1pm on Saturdays, **and up to 3 bulk tanker vehicles to enter the site (6 movements) on Sundays and Public/Bank Holidays**

- c) The extended times when mobile plant operating outside is limited to two items (typically a forklift truck and a loading shovel)

From:

7pm to 7am Monday to Friday, excluding Sundays and Public/Bank Holidays

To:

7pm to 7am - **7 days per week**

5. It is proposed that the 12-month trial period would only commence after a noise monitoring scheme has been submitted and approved. During the trial period, if noise is found to be exceeding the existing permitted limits (current condition 10) then the extended hours would cease until the noise has been investigated and mitigated.
6. At the end of the trial period, it is proposed that the operating hours would revert to the previous times.
7. The application is supported by a 'Planning Statement'. The agent provided a response to comments received and updated the Planning Statement to reflect the revised proposals (the bulk tanker deliveries).

The Applicant's Case

8. Increased demand for concrete products in the local market has led to a need for the factory to both maximise its productivity and increase its efficiency. The current permitted working hours for the factory limit the level of productivity and the down-time, necessary under the current working hours, affects the site's efficiency as plant and machinery within the factory has to be shut down on Saturdays and then re-started on Mondays.
9. The concrete products factory currently employs approximately 33 staff. By extended the operating hours a 4th shift can be added which would provide employment for 7 additional staff.

Relevant Planning History

10. The planning history:
 - a) [ES.20/06/501 MW](#) (not yet determined – report on this Committee

agenda) - application to vary (not to comply with) conditions 8 and 17 of planning permission ES.20/03/501 MW to facilitate an increase in the site's output from 1 million tonnes to 1.4 million tonnes per year by extending the hours of operation for mineral extraction and processing from 1900 to 2200 Monday to Friday, extending the hours for the maintenance of processing plant from 0600 to 2000 Monday to Saturday to 24 hours/day Monday to Saturday and permitting up to 5 lorries associated with the on-site mineral operations to enter the site and park overnight after 1900 Monday to Friday and after 1600 on Saturdays.

- b) [ES.20/03/501 MW](#) dated 20 October 2020 – (the most recent quarry planning permission) - planning permission to amend the approved Restoration Plan to facilitate the change of use of land from agricultural to equestrian uses and the erection of a barn.
- c) [ES.17/13/501 MW](#) dated 22 June 2018 - permission to amend the hours of the concrete products operation (to reinstate the hours permitted in 1999).
- d) [ES.16/23/501 MW](#) dated 10 February 2017 – permission to retain concrete product operation for the duration of permitted mineral extraction.
- e) [ES.12/03/501 MW](#) dated 22 August 2014 – (the original extension planning permission) - planning permission for a 160-hectare extension to Newbold (and Tucklesholme) Quarry to extract 13.5 million tonnes of sand and gravel before 31 December 2029 and to progressively restore the land to agriculture, woodland and wetland for nature conservation, recreation and amenity uses by 31 December 2031, followed by a 5-year period of aftercare (extended to 15 years by the Section 106 Legal Agreement).
- f) The [Section 106 Legal Agreement](#) dated 15 August 2014 includes planning obligations related to: vehicle routing (all HGV traffic leaving the site to use the A38 other than for local deliveries); extended aftercare (and additional 10 years); the periodic review of the restoration plan (every 5 years); and the establishment and terms of reference for the quarry liaison committee.
- g) [ES.18136/06](#) dated 19 October 1999 – planning permission to amend the hours of the concrete products operation.
- h) [ES.18136/03](#) dated 19 September 1999 - planning permission to increase the height of stockpiles.
- i) [ES.18136/01](#) dated 16 November 1998 - planning permission - industrial development for the manufacture of pre-cast concrete.

Environmental Impact Assessment (EIA)

11. As the proposed development does not fall within the applicable thresholds and criteria for screening for EIA development (ref. Schedules 1 and 2 to the [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2011](#) / [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#)), the County Council has not issued a "Screening Opinion".

Findings of Consultations

Internal

12. **County Council's Noise Engineer** and **Planning Regulation Team** – no response.
13. **County Council's HS2 Manager** referred to [The Code of Construction Practice](#) for HS2 (CoP) and any conditions stipulated by a Section 61 consent (Control of Pollution Act 1974). The CoP states that:

Core working hours will be from 08:00 to 18:00 on weekdays (excluding bank holidays) and from 08:00 to 13:00 on Saturdays.

To maximise productivity within the core hours, the nominated undertaker's contractors will require a period of up to one hour before and up to one hour after normal working hours for start-up and close-down of activities. This will include (but not be limited to) deliveries, movement to place of work, unloading, maintenance and general preparation work. This will not include operation of plant or machinery likely to cause a disturbance to local residents or businesses. These periods will not be considered an extension of core working hours.

[Note: as mentioned earlier, the applicant's case is that this proposal is in response to a general increase in demand for the concrete products produced by the factory, so it is not directly related to HS2.]

External

14. **East Staffordshire Borough Council (Planning)** - no comments other than to pass on comments received from neighbours and a Parish Council which they asked to be taken into account.
15. **East Staffordshire Borough Council (Environmental Protection)** - no comments on the understanding that the HGVs are not allowed to travel through Barton and the other local villages and utilise the A38, so the extended times won't have additional effect on residents (Note: the Newbold Quarry Section 106 Legal Agreement requires all HGV traffic leaving the site to use the A38 other than for local deliveries).

16. **Dunstall Parish Council** – object. The Parish Council are concerned about the impact on the amenity of local residents along Lichfield Road due to noise, dust and light pollution.

Publicity and Representations

17. Site notice: YES Press notice: YES
18. 35 neighbour notification letters were sent out and 7 representations have been received. The representees were also informed of modifications to the proposals made by the applicant in response to the comments received. The representations are summarised below:
- **The length of the trial period** - 3 months is long enough.
 - **The impact on local amenity** due to traffic noise and vibration (including the disturbance to HGV drivers using the truck stop overnight), light pollution, and dust churned up by HGVs on the access road.

The development plan policies (and proposals) and the other material planning considerations relevant to this decision

19. National Planning Practice Guidance – Determining planning application - [How must decisions on applications for planning permission be made?](#) explains that:

‘To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.

The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at [paragraph 11 \[not 14 as stated\] of the \[National Planning Policy\] Framework](#). If decision takers choose not to follow the National Planning Policy Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.’

20. [Appendix 1](#) lists the development plan policies (and proposals) and the other material planning considerations, relevant to this decision.

Observations

- 21 Having given careful consideration to the application and supporting

information, including the information subsequently received, the consultee comments and the representations received, the relevant development plan policies and the other material considerations, referred to above, the key issues are considered to be:

- Any material changes to the development plan policies and other material considerations (including the site and the surroundings)
- The matters raised by the Parish Council and representees
- The need to review and update the planning conditions

Any material changes to the development plan policies and other material considerations (including the site and the surroundings)

22. When determining an application to vary a planning permission, national planning guidance [refer to [Annex A: summary comparison table of 'Flexible options for planning permissions'](#)] advises that local planning authorities should focus their attention on national and development plan policies and other material considerations which may have changed significantly since the original grant of permission.
23. Commentary: The factory currently operates 24 hours per day Monday to Friday (including Public and Bank Holidays) and up to 1pm on a Saturday. However, only 2 items of mobile plant are permitted to operate outside between 7pm and 7am Monday to Friday (excluding Public and Bank Holidays) and HGV movements are restricted to 7am to 7pm Monday to Friday and 7am to 1pm on Saturdays (excluding Sundays, Public/Bank Holidays).
24. The proposed changes would allow the factory to operate on Saturdays and Sundays, except that HGV movement times would remain unchanged, other than for an additional 3 bulk tanker deliveries on Sundays and Public/Bank Holidays. It is also proposed that the two items of mobile plant permitted to operate outside during the evening and at night during the week would also operate on Saturdays and Sundays (including Public/Bank Holidays).
25. The potential noise and lighting are relevant considerations and the current permission includes conditions that require: the operations to be carried out below noise limits; noise management measures to be carried out (e.g., the closure of the factory doors and noise monitoring in accordance with an approved scheme); a screen bund to be maintained; and the operations to be carried out in such a way that no nuisance is caused due to noise, vibration, dust, lighting or other pollutants. The conditions were imposed to safeguard the amenity of local residents and users of the canal towpath in accordance with the provisions set out in the planning application and in accordance with the MLP (Policy 4) and the National Planning Policy Framework.

26. Although the factory permission was first issued in 1998, the most recent permission, issued in June 2017, took account of the latest MLP policies adopted in February 2017.
27. The National Planning Policy Framework (NPPF), first issued in 2012, has been revised on several occasions since then, most recently in July 2021, after the latest permission was issued. However, the NPPF changes since then are not considered to be material to the determination of this application.
28. No material changes to the factory site have occurred since the 2017 permission was issued. In terms of the surroundings, the current proposal to increase the quarry output and weekday operating hours, described in a separate report to this Committee meeting, are relevant as they have the potential to impact on the same local residents as these proposals. Changes have occurred to the north of the site. These include the development of a new secondary school (the John Taylor Free School), the Burton Rugby Club, housing development and a road improvement scheme at Branston Locks. However, the nearest of these developments (the Burton Rugby Club), is located about 1.3 kilometres from the factory.
29. Conclusion: Having regard to the relevant development planning policy and other material considerations referred to above, it is reasonable to conclude that there have been no significant material changes to planning policy and to the factory site since the 2017 permission was issued. Also, as the separate report to this Committee meeting recommends approval to the proposed changes to the quarry operations, subject to conditions, including a 3-month trial period, it is reasonable to conclude that there are no significant material changes to the surroundings.

The matters raised by the Parish Council and representees

30. As reported earlier, no technical consultees have objected to the proposals, however a Parish Council objected, and 7 representations were received.
31. The matters raised generally relate to local amenity and as such Policy 4 in the Minerals Local Plan and the National Planning Policy Framework (Section 12: Achieving well-designed places; Section 15: Conserving and enhancing the natural environment, and Section 17: Facilitating the sustainable use of minerals) are particularly relevant as they seek to minimise any unacceptable adverse impacts on local amenity.
32. The agent's response on behalf of the applicant and your officer's observations on the matters raised are set out below.
33. The length of the trial period - 3 months is long enough. This concern was put to the agent who responded by confirming that the 12-month period

would enable noise surveys to be carried out to check compliance and if necessary, to propose, commission and monitor the effectiveness of the mitigation measures.

34. Commentary: The applicant is seeking to add a fourth shift during the 12-month trial period and to monitor noise, after which the hours would revert to the current hours. Noise monitoring would be carried out in accordance with an approved scheme during the trial period and if noise is found to be exceeding the existing permitted limits (current condition 10) then the extended hours would cease until the noise has been investigated and mitigated.
35. A 3-month trial period has been recommended by your officers to assess the effects of the increased output and additional hours for the quarry operations (the subject of separate report to this Committee). In that case if the trial proves to be successful then the changes would continue to apply. In this case, the applicant proposed the 12-month trial period, proposed that the hours would revert to the previous hours at the end of the trial period, and the consultation was carried out on that basis. Also, as the factory is already operating 24 hours per day on weekdays, and due to the location, the changes are potentially less significant compared to the proposed changes to the quarry operations. A 12-month trial period is therefore considered to be acceptable.
36. The concerns about the impacts on local amenity were put to the agent who responded by confirming that:
 - a) the changes are for a 12-month trial period to monitor the effects.
 - b) the changes are in response to an increase in demand.
 - c) the plant would be operated more efficiently as it would not have to be shut down at weekends.
 - d) a fourth shift would be employed (7 extra staff).
 - e) the HGVs would continue to follow the routes set out in the Section 106 Legal Agreement (via the A38 other than local deliveries).
 - f) no HGV movements would take place outside the current permitted hours, except for 3 bulk tanker deliveries on Sundays, Public / Bank Holidays which do not 'clatter' when empty.
 - g) the HGV movements represent 6% of the current combined total from the quarry access.
 - h) due to the nature of the operations inside a factory building and the nature of the concrete products, dust is not generally an issue.

Moreover, the proposed changes to the operating hours are unlikely to increase the risk of dust within the factory site. There is the potential for dust to arise along the access road, however it is a shared access, managed as part of the wider quarry operations, and the factory HGV movements are small relative to the total (see the improvements to the access road, reduced speed limit and use of a water bower referred to in the separate report to this Committee).

- i) the factory already operates during the night on weekdays, no change is proposed to the current lighting arrangements and the applicant has received no complaints.

- 37. Commentary: The Parish Council's objections and the representations from local residents and a business on the Lichfield Road (A38) are similar to those received in respect of the proposed changes to the quarry operations (the subject of separate report to this Committee). In that case and in this case, there are no objections from technical consultees. In this case the factory already operates 24 hours per day on weekdays. Following discussions between your officers and the agent, the applicant has agreed to amend the extended hours for HGV movements to limit this to no more than 3 bulk tanker deliveries on Sundays and Bank/Public Holidays. This change is considered to be acceptable, subject to the recommendation below that the 3 deliveries take place between 8am and 1pm on Sundays and Bank/Public Holidays.
- 38. Conclusion: Having regard to the policy, guidance, consultee comments and representations, referred to earlier and above, it is reasonable to conclude that subject to the existing, updated and additional conditions recommended below, the proposals would not result in an unacceptable adverse impact on local amenity.

The need to review and update the planning conditions

- 39. The NPPF (Section 4, paragraph 54) states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through conditions. Paragraph 55 of the NPPF explains that:

'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects'.
- 40. The Vision, Strategic Objective 3 and Policy 4 of the MLP seek to ensure that mineral sites operate to high environmental standards and seek to minimise the impact of mineral development on people, local communities and the environment.
- 41. The Planning Practice Guidance explains that:

'To assist with clarity decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged' (Planning Practice Guidance, Flexible options for planning permissions; How can a proposal that has planning permission be amended?, What is the effect of a grant of permission? paragraph 015).

42. The Planning Practice Guidance also explains that:

'In granting permission under section 73 the local planning authority may also impose new conditions – provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission' (Planning Practice Guidance, Use of planning conditions, The use of pre-commencement conditions, How are conditions treated under section 73? paragraph: 040).

43. Commentary: In this case, the most recent planning permission was issued in 2017. Having regard to the above guidance, most of the conditions remain relevant and up to date as they take account of the current policies and approved details. However, in order to take account of the proposed variations and the recommended conditions, it is considered reasonable and necessary to update the conditions as follows:

- Condition 1 (Definition of the Consent) updated to refer to the documents submitted with this application.
- Conditions 5, 6 and 7 (Operating Hours) updated to refer to the extended factory operating hours, the extended times and limited number of HGV (bulk tanker) deliveries, and the extended times when mobile plant can be used outside.

And updated where appropriate to include conditions that:

- the 12-month trial period shall commence after a noise monitoring scheme has been submitted and approved. Also, if during the trial period noise is found to be exceeding the permitted limit (current condition 10) then the extended hours shall cease until the noise has been investigated and mitigated.
- at the end of the trial period the operating hours shall revert to the previous times.

44. Conclusion: Having regard to the policies and guidance referred to above, it is concluded that it is reasonable and necessary to recommend the updates to the existing conditions referred to above and below.

Overall Conclusion

45. Overall, as an exercise of judgement, taking the relevant up-to-date development plan policies as a whole and having given consideration to application, the supporting information, including the information subsequently received, the consultee comments, the representations and the other material considerations, all referred to above, it is reasonable to conclude that the proposed development accords with the development plan and as such represents sustainable development, and there are no clear and convincing reasons to indicate that the application for planning permission should not be permitted.

Recommendation

Permit the application to vary conditions 5, 6 and 7 of permission ES.17/13/501 MW to allow the concrete products factory and associated mobile plant to operate on a 24/7 basis and to extend the hours during which HGVs can access the concrete products factory for a temporary 12 month 'trial' period, subject to conditions.

The conditions to include the following:

Condition 1 (Definition of the Consent) updated to refer to the latest approved details and this application.

Conditions 5, 6 and 7 (Operating Hours) updated to refer to the extended factory operating hours, the extended times and limited number of HGV (bulk tanker) deliveries, and the extended times when mobile plant can be used outside:

- a) Condition 5 - the factory operating hours:

24 hours per day - **7 days per week**

- b) Condition 6 - the extended lorry movement hours:

7am to 7pm Monday to Friday and 7am to 1pm on Saturdays, **and up to 3 bulk tanker vehicles to enter the site (6 movements) on Sundays and Public/Bank Holidays between 8am and 1pm**

- c) Condition 7 - the extended times when mobile plant is limited to two items operating outside (typically a forklift truck and a loading shovel)

7pm to 7am - **7 days per week**

And updated where appropriate to include conditions that:

- d) the 12-month trial period shall commence after a noise monitoring scheme has been submitted and approved. Also, if during the trial

period noise is found to be exceeding the permitted limit (current condition 10) then the extended hours shall cease until the noise has been investigated and mitigated.

- e) at the end of the trial period the operating hours shall revert to the previous times.

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Due to current Coronavirus restriction, the list of background papers for this report is only available on request by email sent to planning@staffordshire.gov.uk and can only be provided by email.

Appendix 1 The development plan policies (and proposals) and the other material planning considerations, relevant to this decision

The development plan policies and proposals

[The Minerals Local Plan for Staffordshire \(2015 - 2030\)](#)

(adopted 16 February 2017)

- Strategic Objective 3 – Operating to high environmental standards
- Policy 4: Minimising the impact of mineral development
- Policy 4.6: Ancillary development

A [partial review of the Minerals Local Plan for Staffordshire](#) to check conformity with the revised National Planning Policy Framework took place in February 2019. The review concluded that the policies in the Minerals Local Plan conform with the revised NPPF and therefore they continue to carry weight in the determination of planning applications for mineral development.

[East Staffordshire District Local Plan](#) (2012-2031) (adopted 15 October 2015)

- Principle 1 - Presumption in Favour of Sustainable Development
- Strategic Policy SP1 - Approach to Sustainable Development
- Strategic Policy SP24 - High quality design
- Strategic Policy SP34 - Health and wellbeing
- Strategic Policy SP35 - Accessibility and sustainable transport
- Detailed Policy DP1 - Design
- Detailed Policy DP7 - Pollution and contamination

The other material planning considerations

- [National Planning Policy Framework](#) (updated 20 July 2021):
 - [Section 1](#): Introduction
 - [Section 2](#): Achieving sustainable development

- [Section 4](#): Decision-making
- [Section 9](#): Promoting sustainable transport
- [Section 11](#): Making effective use of land
- [Section 12](#): Achieving well-designed places
- [Section 15](#): Conserving and enhancing the natural environment
- [Section 17](#): Facilitating the sustainable use of minerals
- [Planning Practice Guidance](#)
 - [Design](#)
 - [Environmental Impact Assessment](#)
 - [Health and wellbeing](#)
 - [Minerals](#)
 - [Natural environment](#)
 - [Noise](#)
 - [Use of planning conditions](#)

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