
Report of 30 September 2010

Ditton
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TM/10/02029/MIN

Proposal: Proposed westerly extension to Hermitage Quarry (KCC ref TM/10/TEMP/0025)
Location: Hermitage Quarry Hermitage Lane Aylesford Kent
Applicant: Gallagher Aggregates Limited

1. Description:

- 1.1 This report relates to a consultation from KCC regarding an application for a 33 hectare extension to the west of the existing Hermitage Quarry. Kent County Council will determine the application and, as the Minerals Planning Authority, are responsible for assessing the strategic implications of the proposal within the wider context of the demand for and supply of minerals both in the County and the wider regional context as well as the whole range of planning considerations.
- 1.2 The excavation proposed is in part of an area known as Oaken Wood and the application has been submitted to seek the continuation of the existing quarry excavation for a further 23 years consistent with regional guidance for mineral supply.
- 1.3 The application site includes areas defined as Ancient Woodland, a Local Wildlife Site and is covered by a tree preservation order.
- 1.4 In summary in support of the application the applicants state that:
- *“Ragstone can only be worked where it is found; it is a valued and finite resource. A need to release new ragstone reserves has been proven. There are existing permitted reserves which are outside the applicant’s ownership. Whilst these are substantial they are of such poor quality as to be incapable of providing an alternative. An extensive search of the ragstone outcrop has failed to identify a comparable alternative to an extension into Oaken Wood.*
 - *Oaken Wood is a LWS (local wildlife site) designated due to its size and the presence of ancient woodland. Any nature conservation interest deriving from ancient woodland also comprises a valued and finite resource. The LWS and the ancient woodland habitat are protected interests, the former at the local level and the latter at the national level. The mineral interests and the nature conservation interests come together at Oaken Wood. There is however policy provision to address potential conflict between the two interests.*
 - *There is harm to protected interests from the proposal and some ancient woodland will be lost but policy allows for this if the development is necessary and the harm is local, temporary and fully mitigated. The nature and extent of*

the ancient woodland has been shown to be questionable and the KWT field surveys and EIA show the habitat value to be low. The selection of the application site and surrounding land as an LWS has also been shown to be questionable. The proposed extension at 33 ha amounts to less than 13% of the LWS. It has been demonstrated that there is a need for the proposed development and that there are no better alternative sites within which to work ragstone to ensure continuity of production.

- *The requirements of planning policies for the protection of nature conservation interests and ancient woodland have been addressed at national and local levels. The proposal meets the criteria for being treated as an exception to those policies and the required mitigation measures are provided. There is more than necessary mitigation provision within the proposals. There is no overall loss as the land is only borrowed and what is returned we have shown will be significantly better than exists now. The loss and harm is a temporary loss and harm while the ragstone is extracted and the site restored. Thereafter the loss turns to gain and the harm to benefit as the enhanced habitat matures and is managed. Indeed, overall the package of proposals is a significant enhancement and should be supported and encouraged.”*

2. Reason for reporting to Committee:

2.1 In light of public and Member interest.

3. The Site:

3.1 Hermitage Quarry is located approximately 500m north of Barming Heath approximately 1.5km south of the nearest housing in Ditton. The proposed quarry extension is immediately to the south west of the existing quarry and is in the north east corner of Oaken Wood. The area of the proposed quarry is mainly dense sweet chestnut coppice woodland with narrow rides. The proposed quarry would be linked to the existing by a low level access track. The current quarry has reserves for approximately 4 years working at current rates.

4. Planning History:

4.1 There is an extensive history, mostly related to minerals extraction on the nearby quarry site.

5. Consultees: (undertaken by KCC)

5.1 A large number of objections (200+) received from local residents and pressure groups objecting on the grounds of:

- loss of ancient woodland,
- loss of trees generally,

- loss of habitat, and
- general impact of the quarry works on the wider area.

6. Determining Issues:

- 6.1 When considering this application any determination should be in accordance with the adopted policy framework. In light of the revocation of the South East Plan the Government has issued guidance on dealing with such applications without Regional Strategy targets. The guidance is that Minerals Planning Authorities in the South East should work from the apportionment set out in the “Proposed Changes” to the revision of Policy M3, (of the previous South East Plan) published on 19 March 2010.
- 6.2 This guidance acknowledges the need for aggregate extraction sites and suggests that in the short term it may be beneficial to extend existing sites. However a detailed assessment of sustainability effects of new minerals sites will need to be undertaken at a local level, effectively County level, during the determination of planning applications. Therefore the County Council will need to consider whether, for this application, it has been shown that the need for extraction at this site outweighs the environmental impacts of the works.
- 6.3 The County Council will also have to consider how and to what extent its own policies are relevant. The County Minerals Plan was adopted as long ago as 1993 and the policies of that Plan have been legally “saved” by the Secretary of State until replaced by a new style Plan. In the 1993 Plan no additional areas of search for Ragstone are identified. The County Council subsequently published a further submission Plan in 2006, aimed at replacing the 1993 Plan, with regard to Construction Aggregates and the current application site did not appear in the area of search. That Plan was itself subsequently withdrawn. KCC has commenced further plan-making and has issued a “call for sites” but at present the 1993 Plan policies are in force.
- 6.4 The County Council will also need to have regard to the Borough Council’s planning policies. In MDEDPD the site is shown as lying within a Local Wildlife site (protected by policy NE1) and is in an area of Ancient Woodland protected by policy NE4).
- 6.5 The development has been designed in such a way as to provide an ecological corridor across the area, with access to the quarry under. The quarry workings are proposed to be phased so that the minimum area of land is taken away at any one time for quarrying, infilling and restoration. The application is supported by detailed phasing plans setting out this process. Worked areas would be infilled and the land returned to mixed native woodland and shrub.

- 6.6 The quarrying works would result in ancient woodland being replaced with newly planted mixed native woodland that, according to the applicants, would be of increased wildlife value. The term Ancient Woodland is used when an area has been wooded continuously since at least 1600. Such woodland can be divided into two groups, Ancient Semi-natural Woodland and Ancient Replanted Woodland. The applicant contends that the proposed quarry site is the latter and therefore of lesser importance due to the predominantly dense chestnut coppice and the results of survey work. This indicates that the land was previously agricultural prior to being planted as chestnut coppice and that a species study indicates that this particular area of Oaken Wood should not in fact be designated as Ancient Woodland. There has though been no change in the designation from Natural England.
- 6.7 The application is supported by a detailed study of alternative ragstone quarry sites across Kent. The findings of this study are such that although the ragstone is found in the Hythe Beds that run approximately east to west across Kent, the best site for quality and yield would be an extension to Hermitage Quarry. The County Council in its role as Minerals Planning Authority will have to assess if this is truly the best site in terms of the actual resource, if the need for the resource is proven at this stage and whether or not the significant environmental cost of the extraction is overridden by such identified and quantified need.
- 6.8 KCC must also consider whether it would be premature to reach a positive decision on this proposal, given that the site is not an allocated minerals site and was not included in the area of search in the course of previous Development Plan work. Moreover the County Council have commenced work on a new Minerals Development Framework which will take a fresh and comprehensive view of industry needs and supply. Bearing in mind the importance of the site in other terms it is surely the case that any decision on the site should await the outcome of that work.
- 6.9 Unless the County Council is satisfied beyond any reasonable doubt that there is a current and overriding need for this material that cannot be met from an acceptable alternative site and that this need is so urgent that it cannot wait until the current Minerals Development Framework has been advanced then permission should be refused in light of the breach of MDEDPD policies NE1 and NE4. Therefore at this stage the Borough Council should lodge a strong objection to the proposal on the grounds of the loss of ancient woodland and that any decision would be premature.

7. Recommendation:

7.1 Raise objection on the following ground:

- 1 The Borough Council objects to the proposal as it involves the loss of the Ancient Woodland, woodland covered by a tree preservation and part of the Local Wildlife Site which should not be allowed to take place unless and until Kent County

Council has established that there is a current, overriding and demonstrable need for this material which cannot be met elsewhere. Any such case of need, if proven, can only be properly established through the comprehensive Minerals Development Framework and until such time the current proposals are premature.

Contact: Robin Gilbert

SUPPLEMENTARY REPORTS

AREA 3 PLANNING COMMITTEE

DATED 30 September 2010

**Ditton
Ditton****TM/10/02029/MIN****Proposed westerly extension to Hermitage Quarry (KCC ref TM/10/TEMP/0025) at Hermitage Quarry Hermitage Lane Aylesford Kent for Gallagher Aggregates Limited**

Since the report was drafted two further matters have arisen.

The applicants have offered the Committee the opportunity to visit the site to view current activities and the area where the proposed activities would take place, including viewing the woodland area.

The applicant's minerals advisor has also written criticising some aspects of my report. These notes are an **Annex 1** to this Supplementary Report.

DPTL: With regard to the invitation to a visit to the site we have investigated how this offer could be dovetailed with the County Council's decision making timetable. I would not want the offer to vitiate this Council's normal aim of having its comments reproduced in the substantive County report on this subject. We understand from County officers that the application is likely to be subject to a KCC site inspection and public meeting in December with a decision following that. To ensure that TMBC written comments can be reported as such it would be possible to take up the applicant's offer of a site inspection separate from that of KCC by meeting before the Committee of 11 November. That would almost inevitably mean a daytime (weekend) site inspection.

With regard to the critique, it is of course fair to say that not all Minerals Policies from 1993 have been saved, as the agent points out; for, of course only the formally Saved policies remain in place.

Concern has been expressed that not all element of the 2006 document are mentioned. Given that this document was noted only for context, as it has been withdrawn, it is not surprising that it was précised. Indeed mention of the 2006 document was made simply to indicate that something of a policy vacuum exists at present.

Further concern is expressed at the reference to prematurity. I am aware of the government's guidance on prematurity but, of course, each case decision has to be made on its specific merits. In this case it must be remembered that the only extant minerals policy framework is some 17 years old and the emerging DPD is some time away but a decision on this case could prejudice the consideration of the new DPD. However, that judgement is one that only KCC can reach because the strategic context is key.

It also questions the interpretation of MDE DPD policy NE4. What the policy says is:

NE4

- 1. The extent of tree cover and the hedgerow network should be maintained and enhanced. Provision should be made for the creation of new woodland and hedgerows, especially indigenous broad-leaved species, at appropriate locations to support and enhance the Green Infrastructure Network as illustrated on the Diagram. This includes provision of new habitats as part of development proposals.**
- 2. Development that would result in the net loss or deterioration of woodland will only be permitted if all of the following tests are met:**
 - (a) development cannot reasonably be located on an alternative site;**
 - (b) the need for development clearly outweighs any harm which may be caused to the ecological, archaeological and landscape value of the woodland; and**
 - (c) harm can be reduced to acceptable limits through the implementation of positive environmental mitigation measures within the site or by replacement planting elsewhere or enhanced management.**
- 3. Ancient woodland will be protected, and where possible, enhanced through improved management. Development that would adversely affect ancient woodland will not be permitted unless the need for, and benefits of, the development in that location can be demonstrated to override the harm that would be caused to the ecological and historical importance of the ancient woodland.**

As can be seen clearly development is acceptable in the context of 2.(b) and 3. *ONLY* if the need for the development clearly outweighs the adverse impact. Of course, that need cannot be taken at face value but has to be demonstrated clearly and the assessment of this need can be made only by KCC as the Minerals Planning Authority. Clearly KCC as the decision maker must be satisfied to a high level of certainty that the need for the development outweighs the adverse impact before being satisfied that there is compliance with NE4.

REVISED RECOMMENDATION

Members are INVITED to indicate if they wish too take-up the applicant's offer of a site inspection and therefore defer the consideration of the application until the meeting of 11 November or decide this Council's views this evening.

Annex 1**“Ref. Area 3 Planning Committee 30 September 2010, Item 5, TM10/01029, Hermitage Quarry**

I act on behalf of Gallagher Aggregates Limited, the applicant in respect of TM/10/02029/MIN. Having viewed the Agenda and Report on the Borough’s website I wish to draw your and the Planning Committee’s attention to serious factual errors in the officer report to Committee regarding Item 5 and the proposed extension to Hermitage Quarry.

The officer report at paragraph 6.3 does not present a factually correct summary as to relevant mineral planning policy on which the application is to be considered. The factual inaccuracies are:

- Not all the policies of the 1993 Minerals Local Plan are saved policies. Only selected policies are saved. The policies that are saved are set out in the adopted Kent Minerals and Waste Development Scheme – a document that the officer report fails to mention.
- The third sentence refers to ‘additional’ areas of search whereas the only areas of search identified in the Minerals Local Plan are for sand and gravel. The Plan’s approach to Ragstone supply did not entail the identification of areas of search back in 1993..
- Contrary to the statement in the fourth sentence, The Submission Document on Construction Aggregates, November 2006, considered Kent’s ragstone resources in Section 3, paragraphs 3.3.6 to 3.3.13. Again the approach to Ragstone supply did not entail the identification of areas of search. The proposed extension site the subject of the application before your committee was considered in Section 3. This fact is not mentioned in the officer report.
- The final sentence of paragraph 6.3 repeats the factual mistake that all the 1993 Plan policies remain in force.

The officer report at paragraph 6.4 does not advise your Committee fully as to the direction and content of the Borough’s own Planning Policies NE1 and NE4. For example the Inspectors binding report on the Managing Development and the Environment DPD altered Policy NE4. Policy NE4 provides for the provision of new woodland, especially indigenous broad-leaved species and allows development such as is proposed subject to the tests set out in parts 2 and 3 of the Policy. Without a clearer statement this paragraph lacks the balance expected of an unbiased report.

The issue of ‘prematurity’ is cited in paragraph 6.8 but the officer report offers no guidance as to how ‘prematurity’ is dealt with in the planning system. I would draw your attention to ‘The Planning System: General Principles (ODPM 2005) paragraphs 17 to 19) where the matter of what weight to be given to emerging Development Plan Documents is set out. There is only a low weight associated with the KCC Documents which are only at an early consultation stage. It might have been more helpful to your Committee if the officer report had pointed this out.

The reference to 'satisfied beyond any reasonable doubt' in paragraph 6.9 is emotive and unreasonable language for a committee report. It is factually incorrect to suggest that the proposal has to be judged as if it was in a courtroom and subject to legal process! There is no policy test in PPS9, County Council Planning Policies or the Borough Councils Planning policies that require such a test or uses such language. Further the proposed extension cannot be in 'breach' of Policies NE1 and NE4 where those policies allow for development under certain circumstances (as noted above).

I would ask that the above matters are drawn to the attention of your Committee prior to their consideration of my clients application on 30 September."