

## **WEST DUNBARTONSHIRE COUNCIL**

### **Report by the Chief Officer - Regulatory and Regeneration**

**Council: 3<sup>rd</sup> March 2021**

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**Subject: WP98/076: Review of Minerals Permission (ROMP) and DC02/447: Extension to Quarry, Sheephill Quarry, Milton, Dumbarton**

#### **1. Purpose**

- 1.1** The Review of Minerals Permission application (ROMP) and the extension application were considered by the Special Planning Committee in January 2021. The Chief Executive has deemed that both applications require to be reconsidered by Council under the Council's Standing Orders.

#### **2. Recommendations**

- 2.1** That the Council indicate that it is minded to grant full planning permission for an extension to the existing operational extraction area of the quarry, and delegate authority to the Planning, Building Standards and Environmental Health Manager to issue the decision subject to the conditions set out in Section 9 in Appendix 1: Planning Committee Report dated 11<sup>th</sup> March 2020 with the additional wording added to condition 19 whereby the Planning Authority will determine whether a wheel and undercarriage cleaning facilities are required within the site and to the satisfactory conclusion of a legal agreement in terms of the restoration bond(DC02/447).
- 2.2** That the Council accept the agreed conditions set out in Section 9 in Appendix 1: Planning Committee report dated 11<sup>th</sup> March 2020 and authorise officers to issue the Review of Minerals Permission(WP98/076) with the additional wording added to condition 19 whereby the Planning Authority will determine whether a wheel and undercarriage cleaning facilities are required within the site.

#### **3. Background**

- 3.1** The circumstances of the application for a ROMP and the extension application were set out in the report to the March 2020 Planning Committee meeting (Appendix 1). At that meeting, the Committee agreed to continue the application for consideration at a future meeting so that members could be provided with additional information regarding the Review of Minerals application process and how it relates to the extension application, the Scheduled Monument process and the proposed hours of working.

- 3.2** The two applications are presented in a conjoined report, although there are two separate applications, they are interlinked. The intention behind the planning application for the new extraction area of the quarry was that the existing permission to quarry the land next to Milton Hill would be “swapped” for the new consent to develop the north west extension area. This would allow Condition 2 of the ROMP to be agreed by the applicant whereby no evacuation or quarrying operations can take place in the area adjacent to Milton Hill without the risk of the Council being liable for financial compensation.
- 3.3** A report was presented to November 2020 Planning Committee addressing the above matters (Appendix 2). At that meeting the Committee agreed to continue the applications to a future meeting of the Committee in order to allow a fresh hearing to take place. The Committee also requested that an officer from Historic Environment Scotland attend the Committee meeting to provide further details regarding the Sheephill Fort and the Scheduled Monument Process.
- 3.4** At a Special Planning Committee in January 2021 the report provided an update on the number of representations received, the issues raised and further clarification of the Review of Minerals Permission and the extension application process. The report is attached as Appendix 3. Two officers from Historic Environment Scotland attended the Committee and gave a short presentation and answered questions about the Scheduled Monument and the Scheduled Monument Consent process. A fresh hearing also took place whereby those who made representation and the applicant’s agent addressed the Committee. The Special Planning Committee agreed to refuse the full planning application for the extension area (DC02/447) because of the effect it would have on the amenity of the area and on the residents of nearby properties. The Committee accepted the agreed conditions of the ROMP(WP98/076) with the additional wording added to condition 19 whereby the Planning Authority will determine whether a wheel and undercarriage cleaning facilities are required within the site.
- 3.5** Following the consideration of both applications by the Planning Committee, under Standing Order 20(a)(iii) the Chief Executive, following legal and financial advice, has deemed that both the ROMP and extension application ought to be reconsidered by the Council as there is a risk of substantial economic loss to the Council arising from the decision of the Planning Committee.

#### **4. Main Issues**

- 4.1** Review of Minerals Permission (ROMP) and Extension Application  
Appendix 1 contains the planning report presented to the March Planning Committee for the ROMP and extension planning application. It contains the development details, the background to the applications, consultations, representations, assessment against the Development Plan and material considerations as well as recommendations and proposed conditions. There is a long history to these applications and this has been fully detailed in this report. The Review of Minerals Permission (ROMP) is not a normal

application for planning permission as no planning permission is being sought. It is reviewing the 1949 permission for the quarry which has only 7 conditions. The ROMP is agreeing to a new set of conditions which meet modern standards and working practices. Presently the Quarry can work unrestricted and can operate 7 days a week, 24 hours a day. The agreed conditions would allow the quarry to operate under more restricted and modern conditions which take into account amenity, environmental and landscape matters.

The second application (DC02/447) is to extend the existing operational extraction area of the quarry. The extension would measure approximately 1.53ha at the north western boundary of which some 1.07ha relates to the proposed excavation area. This application is to allow for an area of land which would be 'swapped' with the western part of the existing quarry consent to the rear of the residential properties in Milton Hill. The extension area is considered to be acceptable in both policy and environmental grounds.

- 4.2** In the report to the November Planning Committee attached as Appendix 2 further details was provided of the ROMP process in Section 4 of the report. It advises that the ROMP conditions proposed by the applicant, the Council can either agree to approve these conditions or to agree to determine conditions that differ from those set before them. However if these conditions restrict working rights then the Planning Authority would require to provide a separate notice of determination. This should identify the working rights further restricted and state whether or not in their opinion the effect of that restriction would be such as to prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site; in either of those cases a liability to pay compensation will arise. The applicant would have a right of appeal to the Scottish Ministers against the planning authority's opinion. Scottish Government advice considers that conditions which would restrict working rights to the extent of unreasonable prejudice should not be imposed except in exceptional circumstances.
- 4.3** The applicant has provided the asset values for the overall site, the Scheduled Monument area, the Milton Hill area and the proposed extension area. This information demonstrates the loss in asset value in the event that working was restricted within the Milton Hill or Scheduled Monument areas. The asset values of Milton Hill and the proposed extension area are not significantly different and the proposal does represent a reasonable exchange for restricting operations at Milton Hill and allowing quarrying of the extension area.
- 4.4** The applicant has confirmed that they would accept ROMP Condition 2 which removes the Milton Hill area from excavation or quarrying operations. This has been agreed on the understanding that the Council was minded to grant the extension area as an alternative development area to Milton Hill. The applicant has advised that if the Council is minded to refuse the extension application they will no longer accept Condition 2 and that the development proposals will revert to those submitted with the ROMP application whereby

the area adjacent to Milton Hill can be quarried as per the 1949 permission or Condition 2 remains and the applicant seeks compensation for the asset loss of this part of the quarry site which would be around £2.245 million.

#### Extension Area

- 4.5** The proposed extension does not create any significant environmental or amenity impacts and the policy framework detailed in Appendix 1 report-Section 6 and 7 supports the continued working of minerals at Sheephill and the new extension area. When linked to the proposal to relinquish land at Miltonhill the extension proposal has significant benefits both in terms of a significant reduction in visual impact and a reduction in amenity impact. The proposed extension area comprises grassland which has no significant ecological importance. The Milton Hill area is largely woodland and it is a Local Nature Conservation Site and is covered by a Tree Preservation Order. The proposal to retain the Milton Hill area in preference to the extension area represents a clear benefit from an ecological viewpoint. Landscape and visual impact has been addressed in the Environmental Statement which accompanied the planning application for the extension. Visualisations were prepared showing the changes to the view across the quarry from Dumbuckhill, Milton Brae, Middleton and Erskine Golf Club, these locations being considered to be representative of views taking in both the quarry and the Kilpartick Hills. The visualisations clearly demonstrate that the proposed extension area would have a significantly lesser visual impact than the quarrying of the Milton Hill area. Apart from the residential properties on Milton Hill, the closest residential property to the proposed extension is Middleton, which is located some 560m to the north-west of the existing quarry and would be some 480m north-west of the closest point of the proposed extension. This is a significant stand-off distance and this will ensure that Middleton and other residential properties would not experience any significant amenity impacts. Condition 2 of the ROMP will secure significant improvements with respect to residential amenity for residents on Milton Hill in the short and long term.

The existing quarry has direct access onto the A82(T) and the proposed extension has no impact on the trunk and local road networks. The operation of the extension area would be covered by planning conditions which would address environmental issues as dust, noise, traffic, blasting, restoration which are similar conditions being proposed in the ROMP for the wider quarry. It is considered that the proposed extension has no significant negative impacts in planning terms.

#### Representations

- 4.6** A new hearing for the ROMP and extension applications is to take place at Council as per the Council's agreed hearing procedures whereby those who have made representation and the applicant and his agent will address Council. There now are eleven letters of representations including Bowling and Milton Community Council and Silverton and Overton Community Council. This includes two recent representations who object to the extension application only. There are a further four letters of support from residents of Milton Hill which support both the ROMP application and extension application

and welcome the removal of uncertainty over quarrying adjacent to Milton Hill. They also indicate that the supply of stone from Sheephill will reduce the Council's carbon footprint and could be used for projects such as the Exxon site and the new relief road.

The reasons for objection are summarised below and have been updated to include additional comments received since the March Planning Committee Report.

- The proposed operating hours are not in keeping with modern standards and are excessive and unnecessary. The operating hours presented to the Planning Committee in 2005 are reasonable;
- The proposed operating hours would result in the significant loss of amenity for local residents in the form of noise and light pollution early in the morning and late in the evening;
- The requirement for works to be carried out below ground level within certain periods is insufficiently clear in its intention;
- The proposed operating hours exceed those granted for the neighbouring Dumbuckhill Quarry;
- The applicant should ensure that the levels stipulated in the assessments are met and that regular checks are carried out;
- No noise survey was carried out at Middleton Farm, the property closest to the proposed quarry extension;
- The renewal and proposed extension would be contrary to local planning policies in particular GB1- Greenbelt, KH1- Kilpatrick Hills, MIN 1 – Mineral Extraction, CON3 –Core Path;
- The proposed extension is in the Greenbelt and would involve the removal of a large section of a hillside in a countryside location, causing irreversible environmental harm;
- There would be a major permanent and detrimental impact on the landscape and scenic skyline and it would restrict access to the Kilpatrick Hills;
- Part of the quarry site is a Site of Importance to Nature Conservation and is protected under the adopted Local Plan;
- The extension borders with a designated Core Path and it would be impossible to maintain safe public access to the path if consent is granted for the extension area;
- Blasting operations would require the path to be closed either intermittently or permanently;
- The extension application is unacceptable to residents of Milton Brae and it would have a severe negative impact on their amenity;
- Middleton Farm was not neighbour notified when the current planning application was submitted in 2002 nor residents of Treedom Cottage or Milton Brae and therefore they were denied the opportunity to object to the planning application prior to 2005 Planning Committee;
- The landscape information, national environmental standards and planning requirements in the Environmental Statement prepared in 2002 needs updated and does not reflect changes in the adjacent area;
- The arguments presented to justify the extension are meagre and contradictory such as providing employment, enhanced safety, benefits to the residents of Milton Hill;

- It is never been shown that the proposed extension area and Milton Hill are of equal value;
- There are practical challenges to excavating Milton Hill making it extremely doubtful whether the operator would ever be able to do so;
- The ROMP and extension application are legally distinct, with the latter being presented as a solution to the issue of excluding the Milton Hill area from future quarrying;
- The extension application must not be linked to the ROMP. The Scottish Government Chief Planner has clarified that separate decisions are required according to the relevant legislation;
- Any potential loss of amenity for the residents of Milton Hill can be effectively dealt with using the ROMP process;
- An application for significant changes to the area worked at Dumbuckhill Quarry was rejected by the Planning Committee and rejected by the Scottish Ministers;
- There should be no quarrying within the immediate proximity of the Sheephill Fort;
- The historic remains of the vitrified fort which is a Scheduled Ancient Monument should not be destroyed until a proper professional archaeological exploration and documentation is carried out.
- Work has commenced on the extension and there has been significant rock fall onto the path below.
- Water is coming from the extension and new access road to the quarry which has been channelled down the hillside potentially flooding the A82.
- There is another ancient structure below.

Responses to these issues are addressed in sections 6 and 7 of the March Committee report, section 4 of the November, January Planning Committee reports and section 4 of this report.

#### Scheduled Monument Consent

- 4.7** The planning permission granted in 1949 for Sheephill Quarry allows the full excavation of the whole site which includes the rock under the Sheephill Scheduled Monument. The vitrified fort of Sheephill was designated as a Scheduled Ancient Monument by the Secretary of State in 1970. Scheduled Ancient Monument Consent (now called Scheduled Monument Consent - SMC) was granted in 2002 by Historic Scotland subject to a condition that the archaeological excavation be carried out in strict accordance with a Written Scheme of Investigation and that the loss of the fort shall be mitigated by the excavation, recording and publishing of findings. Although the 2002 SMC has since lapsed, the principle of removing the fort has been established. A new application will required to be submitted and Historic Environment Scotland have indicated that it would not seem reasonable to recommend refusal of any subsequent application for SMC at this stage.
- 4.8** Officers from Historic Environment Scotland attended the Special Planning Committee and provided further details about the Scheduled Monument and the Scheduled Monument process. They indicated for a large and complex case such as this they would expect to have long pre application discussions

with the applicants and with their archaeological contractors before the submission of the SMC who would prepare detailed plans for the necessary archaeological work. The officers from Historic Environment Scotland indicated given the significance of the Scheduled Monument it would be referred onwards to the Scottish Ministers for review with the final decision being taken by the Scottish Ministers. Further details about the Sheephill fort and the Scheduled Monument process is provided in sections 7.20-7.21 of the March Report (Appendix 1) and sections 4.5 – 4.8 of the November Committee Report (Appendix 2).

## **5. People Implications**

- 5.1** There are no personnel issues.

## **6. Financial and Procurement Implications**

- 6.1** There are likely to be potentially serious financial consequences for the Council if conditions are determined that are different from those proposed such as different operating hours than those agreed or the conditions of the ROMP are not agreed with the applicant and the restriction would be such as to prejudice adversely to an unreasonable degree either the economic viability of operating the site or the asset value of the site. With regards to Milton Hill, the asset value of the rock lost if no quarrying takes place in this respective area would be around £2.245 million.

## **7. Risk Analysis**

- 7.1** There is a strong risk of financial loss if the Council refuse the planning application for the North West extension area and agree the ROMP with Condition 2 whereby there is no excavation of rock or quarrying operations within the quarry area adjacent to Milton Hill. A separate notice of determination would require to be produced and it would state whether or not in our opinion in the effect of that restriction would be such as to prejudice adversely to an unreasonable degree the asset value of the site. The quarry operator would seek substantial compensation if Condition 2 of the ROMP remains without the north west extension area being approved to compensate for the loss of asset value. The quarry operator can appeal the notice of determination to the Scottish Ministers who would determine if compensation was payable. Any dispute about the amount of compensation would be referred to the Lands Tribunal for Scotland.

## **8. Equalities Impact Assessment (EIA)**

- 8.1** There are no equalities issues identified.

## **9. Consultation**

**9.1** Neighbours and those with an interest in the applications have been consulted through the planning process. Hearings have been held at the March Planning Committee and January Special Planning Committee. A new hearing will be held at Council.

## **10. Strategic Assessment**

**10.1** The ROMP and extension application supports the strategic priorities of the Council.

**Peter Hessett**  
**Chief Officer – Regulatory and Regeneration**  
**Date: 3<sup>rd</sup> March 2021**

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**Appendices:** Appendix 1 – Planning Committee Report – 11<sup>th</sup> March 2020  
Appendix 2 – Planning Committee Report – 11<sup>th</sup> November 2020  
Appendix 3 – Planning Committee Report – 26<sup>th</sup> January 2021

**Background Papers:**

1. Application forms, plans and Environmental Statement;
2. Consultation Responses;
3. Letters of representation;
4. Glasgow & Clyde Valley Strategic Development Plan 2012;
5. Clydeplan
6. Scottish Planning Policy;
7. West Dunbartonshire Local Plan 2010;
8. West Dunbartonshire Council Proposed Plan 1 and 2
9. Planning Circular 34/1996;
10. Planning Advice Note 50 and Annexes;

**Wards affected:** Ward 3 (Dumbarton)