

WEST DUNBARTONSHIRE COUNCIL**Report by the Strategic Lead Regulatory****Planning Committee: 11 November 2020**

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

1. Purpose

- 1.1** To provide the Committee with further information relevant to the consideration of the Review of Minerals Permission application(ROMP) and the extension application.

2. Recommendations

- 2.1** That the Committee **accept the agreed conditions** set out in Section 9 in Appendix 1: Planning Committee report dated 11th March 2020 and authorise officers to issue the Review of Minerals Permission(WP98/076)
- 2.2** That the Committee indicate that it is **Minded to Grant** full planning permission for an extension area, 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 11th March 2020 and to the satisfactory conclusion of a legal agreement in terms of the restoration bond(DC02/447).

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 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, extension application and the Scheduled Monument. The following issues were raised by the Committee requiring further clarification and comment:

- The Review of Minerals application process and how it relates to the extension application.
- Further details of Scheduled Monument (SM) process and the role of the Council in that process
- The proposed hours of working and how it relates to modern standards.

4. Main Issues

Refusal of the ROMP

- 4.1** It was suggested that if the application for new conditions was refused that the application be handed over to the Scottish Ministers for determination on appeal. The guidance and legislation is clear that the planning authority, and only the planning authority is obliged to determine new conditions; the planning authority cannot refuse to determine the conditions. The Committee therefore requires to consider the conditions proposed by the applicant and either agree to approve these conditions or agree to determine conditions that differ from those set before them. There is no legal right to refer the conditions to the Scottish Ministers for determination. The ROMP is not granting a new permission but is reviewing the 1949 permission and agreeing to a new set of conditions which meets modern standards and working practices. The application for the extension is a normal planning application and the Committee can approve or refuse the application and if the application is refused there is the right to appeal to the Scottish Ministers.
- 4.2** In terms of the conditions recommended in the ROMP. The planning authority can determine conditions that differ from those proposed. However if these conditions adversely affect the asset value of the site then the Planning Authority would require to compensate the quarry operator accordingly. Where the Planning Authority determine conditions different from those submitted by the applicant and the effects of the conditions is to restrict working rights further than the existing conditions attached to the permission relating to the site the planning authority must provide a separate notice for determination. This should identify the working rights further restricted and state whether or not in our opinion in 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; a liability for compensation will arise. The applicant has 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 which was to be exchanged for the Milton Hill Area. This information demonstrates the loss in asset value in the event that working was restricted within the Scheduled Monument and Milton Hill 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 the quarrying of the extension area.
- 4.4** If the Council were to restrict operations to retain the Scheduled Monument the level of compensation payable would be in the region of several million pounds. From the figures provided, it is clear that there is a significant reduction in asset value and that the imposition of any condition that restricted development in the Scheduled Monument area which would prejudice to an unreasonable degree the asset value of the site, the Council would be liable to pay compensation. The planning permission granted in 1949 for Sheephill Quarry allows the full excavation of the whole site, which includes the rock

under Sheep Hill Scheduled Monument. If the Council was to impose a planning condition which restricted development so as to retain the Sheep Hill Scheduled Monument, then the Council would be directly responsible for the reduction in the asset value of the quarry and would require to compensate the operator.

Scheduled Monument Consent

- 4.5** The vitrified fort of Sheephill was designated as a Scheduled Ancient Monument by the Secretary of State in 1970. Scheduled Ancient Monument Consent (SAMC) 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 SAMC has since lapsed, the principle of removing the fort has been repeatedly established and Historic Environment Scotland have suggested that it would not seem reasonable to recommend refusal of any subsequent application for SMC at this stage.
- 4.6** Since the March Planning Committee Historic Environment Scotland have provided further details of the Scheduled Monument Consent process. They have indicated that while works to the scheduled area would require consent, there is a long established permission in place to extract minerals in this area which would be a significant consideration for any application for scheduled monument consent (SMC). SMC has previously been issued for the excavation and removal of Sheep Hill Fort and although the consent has now expired, the principle of its excavation has been established. Therefore there would be a presumption that Historic Environment Scotland would grant consent for a new application for excavation and subsequent removal of the monument were it to be made. All applications for scheduled monument consent are public and are lodged on their portal and anyone can comment on them. Any material comments would be taken into account in making the decision. They have indicated that the Council is not a statutory consultee and does not have a right to make an objection, but is free to comment on the application
- 4.7** Historic Environment Scotland have indicated that they would expect the applicants to consult them well before they submitted the application for SMC. These pre-application discussions would clarify their expectations of the archaeological work on the hill fort. For a large and complex case such as this, they would expect to have long discussions with the applicants and with their archaeological contractors, who would prepare detailed plans for the necessary archaeological work, which would be funded by the applicant. A project design with appropriate supporting documentation and agreements would then form part of the application for consent. It can take up to 8 weeks to process an application for consent, or more time by agreement between HES and the applicant. This case would also be referred onwards to Scottish Ministers for review and final decision.

- 4.8** The Council will have the opportunity to make representations to both Historic Environment Scotland and the Scottish Ministers asserting that the Scheduled Monument is an important archaeological site which should be retained and that the SMC application be refused. As the 1949 planning permission pre-dates the scheduling of the Sheep Hill SM site, if the Scottish Government were to refuse SMC then the Scottish Government would under the Ancient Monuments and Archaeological Areas Act 1979 be liable to pay compensation to the operator.

Hours of working

- 4.9** The Quarry can work unrestricted and can operate 7 days a week, 24 hours a day, at present due to 1949 permission. The agreed conditions as part of the ROMP would allow the quarry to operate under more restricted and modern conditions which take into account amenity, environmental and landscape matters. The current operations are undertaken on a double shift worked 6am to 10pm Monday to Friday, 6am to 1pm on a Saturday and 8am to 4:30pm on a Sunday. Working at weekends may be extended for specific contracts or where delays have been experienced.

- 4.10** The Committee had commented about the long hours of working and how they can meet modern standards. Planning Circular 34/1996: Environment Act 1995 gives advice to planning authorities and the minerals industry on the statutory procedures to be followed for the consideration of updated planning conditions in the review process. In terms of hours of working it states: "that it is not the hours of working themselves which cause disturbance but the environmental effects associated with the operation - e.g. traffic, noise, dust etc. Restricting working hours may not therefore achieve environmental improvements if production is intensified during the shortened working period."

It is proposed that Sheephill Quarry is to operate from 0600-2200 hours Monday to Sunday, and no operations other than emergency works, water pumping, servicing, maintenance and testing of plant being permissible outside these hours. Outwith 0700–1900 hours Monday to Friday and 0700 hours to 1400 hours on Saturday and Sunday (with the exception of haulage vehicles entering and leaving the site), all operations would be undertaken below ground level within the quarry void where there is less risk of it causing noise or other disturbance. A similar condition would be applied to the extension permission.

- 4.11** There are no 'standard times' for operational hours within the quarrying industry. This is reflected in the guidance in Circular 34/1996 as it advises that the precise nature of the condition and times specified will depend upon the circumstances of the particular case. Longer or shorter hours may be appropriate. Therefore it would be unreasonable to set operational hours at a quarry purely on the basis that these hours were the same as another operation elsewhere.

- 4.12** A detailed noise assessment was undertaken with the Environmental Statement and recently an updated noise report from noise consultants, based upon BS5228 and PAN 50, was submitted with respect to the locations of noise sensitive receptors. The assessment contains operational limits for both the ROMP and extension area. The predicted noise levels have been assessed against the criterion in PAN 50 based on the hours of working specified in Condition 3 contained in the Committee report in Appendix 1 and a noise criteria table, which is referenced in condition 4 in both the ROMP and extension application in relation to noise limits, has been agreed with the applicant. Whilst concern was expressed by the Committee at the length of the proposed hours of working, the guidance contained in Circular 18/1996 advises that longer working hours, including 24 hour working, may be acceptable where the location of the site and/or other conditions can ensure that residential and other sensitive property do not suffer adverse effects. PAN 50 includes recommended noise levels for working 1900-0700hrs, designed to ensure that quarries can operate 24hrs if need be, but without causing noise disturbance at nearby residences. This proposal complies with this 'night time' noise level including for daytime working on Sundays. The noise levels agreed by condition 4 complied with the recommendations of both PAN 50 Annex A and the World Health Organisation (WHO).

- 4.13** The current and proposed future operations have appropriate distances from residential properties. It has been agreed that early morning and evening operations will be restricted to areas below ground level, where reduced noise levels can be achieved; and it has been demonstrated to the satisfaction of Environmental Health that operations can be undertaken without any amenity impact in relation to noise, dust, or traffic movement. The extension area would have no significant impacts on any sensitive receptors and that appropriate separation distances are being maintained from all properties. The setting of specific noise levels enables any noise complaints to be assessed in terms of strict adherence to the specified noise criteria set out in Condition 4. The operator is required to routinely monitor these levels to ensure they are being achieved. Should a resident complain of noise disturbance, even when it was within the specified noise limit, Environmental Health would investigate and potentially may require a reduction in the output noise level in terms of the Environmental Protection Act 1990 if it is deemed to be a statutory nuisance.

Link between ROMP Permission and Extension Application

- 4.14** The applicants had confirmed that they would accept ROMP Condition 2, which removes the Milton Hill area from the quarrying.

ROMP Condition 2 states "No excavation of rock or quarrying operations or the storage of any materials/aggregates, equipment or the parking or servicing of any vehicles or equipment shall take place within the area coloured green on ROMPS Development Plan Figure REVDEV/06.12101 . "

The applicant has indicated that this condition was 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 Sheephill Extension application they will no longer accept Condition 2 and that development proposals will revert to

those submitted with the ROMP application whereby the area adjacent to Milton Hill can be quarried as per 1949 permission or the applicant seeks compensation for the asset loss of this part of the quarry site. Condition 4 on the ROMP application would require to be revisited as noise limits will require to be reviewed and uplifted to correspond with the levels that will be experienced at Milton Hill during the development of this phase of operations.

Letters of Representations

- 4.15** In the March Committee report there were eight letters of representations including Bowling and Milton Community Council and Silverton and Overtoun Community Council and one letter of support which supports the extension application. At the Committee, the objectors and the applicants agent addressed the Committee. Since the Committee a further objection has been received and they believe that the work has already been carried out and there has been significant rock fall onto a 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. They believe that there is another ancient structure directly below and will be contacting Historic Environment Scotland and West of Scotland Archaeology Service.
- 4.16** In response to the above issues raised the applicant has advised that any rock movement was attributable to on-going works within the quarry boundary and health and safety protocols were in place to ensure that all works were being undertaken safely. Surface water runoff from a significant proportion of the surrounding hillside has historically been channelled through the area below Sheephill. There is no potential for flooding of the A82 from this source. They are unaware of any previously unrecorded archaeological features in the area and much of the hillside below Sheephill is disturbed ground with derelict man-made structures for during the war. Historic Environment Scotland or West of Scotland Archeology Service have not raised any issues regarding other ancient structures.

Other Issues

- 4.17** The Environment Statement (ES) supporting the application was prepared in 2002. It has been suggested that the contents of the ES are out of date. The various aspects of the ES have been discussed with the applicant and that in relation to the assessment and the principle of the methodology for assessing landscape and visual impact, this has not changed since the original assessment was undertaken. No significant changes have occurred in the management of dust and no change in relation to archaeology. A number of matters have been updated since the ES was submitted such as the water management plan, updated noise and blast vibration assessments and an updated ecological survey is required by condition to be undertaken prior to commencement of operations and, if required, that appropriate mitigation is implemented on site. The consultation process has not raised issues which have not been addressed or can be dealt with by condition.

5. People Implications

- 5.1** There are no personnel issues.

6. Financial and Procurement Implications

- 6.1** Financial implications may arise if the proposed conditions are altered or additional conditions added without the agreement of the applicant.

7. Risk Analysis

7.1 A risk assessment is not required.

8. Equalities Impact Assessment (EIA)

8.1 There are no equalities issues identified.

9. Consultation

9.1 Neighbours and objectors have been consulted through the planning process.

10. Strategic Assessment

10.1 The ROMP supports the Councils strategic priorities of the Council.

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Date: 11th November 2020

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Appendices:	Appendix 1 – Planning Committee Report – 11 th March 2020
Background Papers:	<ol style="list-style-type: none">1. Application forms, plans and Environmental Statement;2. Consultation Responses;3. Letters of representation;4. Glasgow & Clyde Valley Strategic Development Plan 2012;5. Clydeplan6. Scottish Planning Policy;7. West Dunbartonshire Local Plan 2010;8. West Dunbartonshire Council Proposed Plan 1 and 29. Planning Circular 34/1996;10. Planning Advice Note 50 and Annexes;
Wards affected:	Ward 3 (Dumbarton)

