

WEST DUNBARTONSHIRE COUNCIL

Report by the Chief Officer - Regulatory and Regeneration

Planning Committee: 8th June 2022

Subject: Appeal Decision - DC02/447: Extension to Quarry, Sheephill Quarry, Milton, Dumbarton (PPA-160-2034)

1. Purpose

- 1.1** To provide the Committee with an update regarding the appeal decision for the above application, further information relevant to the Review of Minerals Permission application (ROMP) and the Scheduled Monuments Permission.

2. Recommendations

- 2.1** That the Committee notes the outcome of the appeal and the current situation regarding the ROMP and Scheduled Monument Consent.

3. Background

- 3.1** The Committee will recall that the above application was refused by the Council in March 2021. Shortly after, the appellant appealed the decision to the Planning and Environmental Appeals Division. The February 2022 Planning Committee was advised a "Notice of Intention" was issued by the Reporter that he was minded to allow the appeal and grant planning permission subject to 39 conditions and following the signing and registering or recording of a planning obligation under section 75 of the Town and Country Planning (Scotland) Act 1997 or some suitable alternative arrangement, securing a bond sufficient to cover the expected restoration and aftercare works for the quarry extension. The legal agreement also relinquish all rights to quarry or otherwise extract rock from the excambion area adjacent to Milton Hill. The Reporter had given the appellant and the Council up to a 12 week period to conclude the planning obligation. The principle of such a bond had been previously agreed between the appellant and Council officers and it is necessary to ensure that the quarry extension site is restored after it has been worked.

4. Main Issues

- 4.1** The Council advised the Reporter that a planning obligation under Section 75 of the Act, as detailed above has been submitted to and acknowledged by the Keeper of the Registers of Scotland. As a result the Reporter issued the planning decision notice for the above extension on 9th May 2022. The Reporter in reaching the decision on balance found that the proposal was in accordance with the development plan and the reasons and justification for

the approval were detailed in the report to February 2022 Planning Committee which is contained in Appendix 1 and a copy of the planning decision notice.

- 4.2** The Reporter's decision is final. However there is a right of appeal to the Court of Session within 6 weeks of the date of the appeal decision however this could only be made on a point of law. It is considered the conclusions and decision reached by the Reporter are reasonable and justified and there are no points of law which could form grounds for an appeal to the Court of Session.

Award of Costs

- 4.3** The appellant submitted a claim for an award of costs to the Reporter for the appeal. The Council refused the extension area because of the effect it would have on amenity of the area and on the residents of nearby properties. The appellant submitted that the council acted unreasonably because it failed to give complete, precise and reasons for refusal; reached its decision without reasonable planning grounds for doing so; and refused the application solely on the grounds that it did not accord with the provision of the development plan and without having regard to other material considerations.
- 4.4** The Reporter found, although the Council's reason for refusing the application was brief and makes no reference to any policies in the development plan and does not explicitly apply the test in Section 25 of the Act, he was not persuaded that the reason given is not sufficiently "complete, precise and relevant" to quote the Circular. In terms of the effects on residential amenity, the Reporter found a lack of technical evidence as to the effects from noise, vibration and dust and failed to identify why such effects would be significant for nearby properties or identify which those properties are. The Council had failed to demonstrate any reasonable planning grounds for its decision in relation to noise, vibration and dust and the Reporter considered it to be unreasonable behaviour. On the appellants third point the Reporter agreed that the appeal proposal required to be considered on its own merits and separate from the ROMP decision. The Reporter did not consider that the Council acted unreasonably in not making reference in its decision to the condition in the ROMP consent which would prohibit extraction in the excambion area. The Council did not seek to bring in the hours of operation of the quarry as an additional reason for refusal as this was controlled by a planning condition, the terms of which were not a matter of dispute between the council and the appellant.
- 4.5** A partial award of the appellant's expenses in addressing only these matters (being effects of noise, vibration and dust on nearby residential properties) was granted. It was concluded that the council has acted unreasonably by not being able to support with reasonable planning grounds, its reasons for refusal as it relates to the effects of noise, vibration and dust on nearby residential properties.

Update on Review of Minerals Permission (ROMP)

- 4.6** It was previously advised to Committee that the quarry operator is appealing the conditions contained within the ROMP Decision Notice and had requested that the ROMP application should be determined only subject to the conditions set out in the Decision Notice with the exception that condition 2 in the Decision Notice should be deleted. Condition 2 excludes the Milton Hill area from quarrying. The quarry operator previously had advised that once the Decision Notice is issued, and planning permission granted, for the extension area the quarry operator has agreed to withdraw the appeal against the ROMP conditions. The appellant's agent has advised that this will take place once the timescale for the appeal to the Court of Session for the extension area has passed.

Scheduled Monument Consent

- 4.7** Historic Environment Scotland on 21st November were minded to grant Scheduled Monument Consent for quarrying operations which affect the Scheduled Monument. This was subject to a number of conditions regarding the excavation, recording and publishing of findings regarding the Sheephill Fort. The application is still awaiting a decision from the Scottish Ministers who have extended the time period for consideration. To date no decision has been issued by the Scottish Ministers.

5. People Implications

- 5.1** There are no personnel issues.

6. Financial and Procurement Implications

- 6.1** As indicated in section 4 above the quarry operator has made a claim against the council for the award of its expenses in making the appeal against the refusal of the extension application. The Council opposed any award of expenses. The Reporter has found the council liable to the appellant in respect of the expenses of the appeal. This is a partial award and the council and the appellant are expected to agree expenses between themselves. However if this is unsuccessful it will be remit the account to the Auditor of the Court of Session to decide on a party/party basis.
- 6.2** The award of expenses will be paid from the Planning and Building Standards budget. When the withdrawal of the appeal of the ROMP and the agreement of the ROMP between the Council and quarry operator the significant financial implications for the Council of excluding the Milton Hill area from quarrying will be removed.

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 Consultation was carried out during the planning and appeal processes.

10. Strategic Assessment

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

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Date: 8th June 2022

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Appendices: Appendix 1 – 16th February 2022 Planning Committee report

Background Papers: Appeal Decision Notice – DC02/447
Claim for an Award of Expenses Decision Notice – DC02/447
Planning Committee Reports
- 11th March 2020
- 11th November 2020
- 26th January 2021
- 3rd March 2021
- 10 November 2021

Wards affected: Ward 3 (Dumbarton)