

**Planning and Development Board**

**8 July 2019**

**SUPPLEMENTARY REPORT**

**PAP/2018/0140**

**Land East of Castle Road and North of Camp Hill Road, Hartshill and Nuneaton**

**Outline application for mixed development including the erection of to 382 houses for**

**Tarmac Trading Limited**

**Introduction**

Members will have received the papers for this case with the agenda for the July Board meeting.

Just after its publication, a further letter was received from the representative of the quarry owner. This is attached at Appendix A.

This supplementary report has been prepared to respond to the letter.

**The Letter**

The first two or three paragraphs of the letter reiterate the concern that the Board treats the impact of the proposed residential development on the legitimate operation of the quarry as a material planning consideration. The report explicitly does so in a complete section on pages 5/8 to 5/12. Paragraph 182 is the source of this consideration and it is copied in full within that section.

The next few paragraphs refer to the need to explicitly draw attention to the view that there would be an additional 400 "receptors" in the locality of the "live" quarry and thus that there is a likelihood for a greater propensity for complaints to be made. The recent issue of a Planning Contravention Notice is cited, in that that led the operator to "engage in additional survey work, time and resources to disprove the allegation that a breach of control has occurred". The report explicitly recognises that the likelihood of complaint may increase - the bullet point at the top of page 5/11.

The letter then refers to the phasing of the quarry operations. The report explicitly describes this in the background section on page 5/9 and there is an illustration of that phasing at Appendix D. This background paragraph explicitly refers to "the southwest wall of that larger quarry would extend towards the site boundary. This is the part of the quarry closest to the application site".

The letter continues by outlining advice that the operator has received on how the "operation of the site might need to change to accommodate the proposed development". The County Council as the Minerals Planning Authority has responded to this – see Appendix B.

There is then reference to the para 182 issue that the residential development should mitigate any future impacts.

The letter then indicates that the operator does not consider that the possibility of including an “Informative” on any Decision Notice would provide a resolution of the matter. This expresses his current position.

The letter concludes by reference to the Minerals Local Plan. This is covered in the report with an update on the Development Plan – page 5/4 – and further comments in the bullet points on page 5/11.

### **Observations**

Much of what is raised by the letter in respect of omissions is covered above, but other responses are also needed.

Firstly, Members should be aware that the likelihood of a greater number of complaints is a material consideration. The issue is what weight is given to that. The report indicates that several matters mitigate the degree of that weight. Most notably the operator already has to monitor operations through the different legislative regimes he operates under. He will thus have the ability through normal practice to respond to complaints. There are established procedures in respect of alleged breaches of planning control as well as under the Environmental Protection Act 1990 if there is an alleged statutory nuisance due to the likes of noise, vibration and dust. There may well indeed be more complaints. Whilst it is not considered that the proposed development would introduce any material change in the nature of the complaints, there may be more related to vibration because of the matter mentioned below. The weight given to this matter is however still considered to be limited.

Secondly, the County Council acting as the Minerals Planning Authority has been asked to comment on the suggested changes to quarry operations. This in general terms indicates the suggested changes would not result in an overhaul of the quarry planning permission and indeed perhaps not any need to vary the conditions. There may be a need to submit a revised monitoring scheme. However if the changes are introduced then there could be more, but smaller blasts and it might be prudent to add new monitoring locations. There is no evidence submitted to support the quarry owner’s submission that this change would lead to a decline in productivity or indeed in the scale of that decline.

Thirdly, there is the matter of the current applicant proposing “mitigation measures”. These would apply if, in the terms of Para 182 of the NPPF, the “operation of an existing business could have a significant adverse effect on new development”. The applicant considers that it would not, provided that the quarry operates within its planning conditions. The County Council has neither suggested mitigation measures throughout the planning process here – the allocation; the Examination in Public, the application and indeed in response to the latest letter.

### **Conclusions**

Members have now received a number of reports which deal with the paragraph 182 matter and been reminded that this is a material planning consideration that has to be weighed in the final planning balance. Without it, it is considered that the balance would weigh in favour of the grant of a planning permission. The issue is whether or not it is of such weight to overturn this conclusion.

In looking at para 182 Members need to reach a conclusion on:

- whether the residential development would place unreasonable restrictions on the quarry operations and
- whether the quarry could have a significant adverse effect on the residential development.

In respect of the former, then Members will have seen the evidence set out on pages 5/10 and 5/11 of the 8<sup>th</sup> July report together with that now provided in Appendix B from the Minerals Planning Authority. Officers consider that this shows that any restrictions placed on the quarry would not be “unreasonable”.

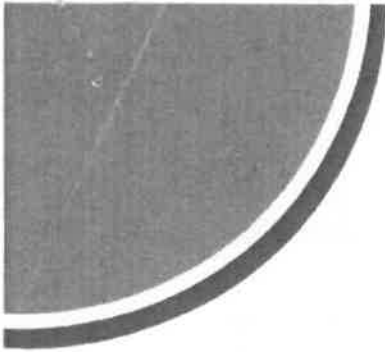
In respect of the second, then Members will have seen the evidence as set out above; that set out in the initial April report and the evidence submitted by the applicant in respect of this matter. Officers consider that this shows that any impacts arising from the quarry would not be significantly adverse.

The Board will need to reach its own conclusions on these two matters.

#### **Recommendation**

This remains unaltered from that printed in the July Board report.





# Groves Town Planning LTD

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Mr J Brown

North Warwickshire District Council

By email –

JeffBrown@NorthWarks.gov.uk

27 June 2019

Our ref : 19-04-001

Yr ref: PAP/2018/0140

Dear Jeff

Planning Application PAP/2018/0140 Land East of Castle Road & North of Camp Hill Road,  
Hartshill & Nuneaton

Dear Jeff

Thank you for the opportunity to view and comment on the draft report to Planning Board in respect of the above application.

I know that you have been in correspondence with Kathryn Lucas but it will not surprise you learn that we still have significant concerns over the presentation of planning issues relating to the operation of the quarry.

I consider that at the outset your Board should be made aware that a key material consideration is the impact of the proposed residential development on the legitimate operation of the quarry, and not just the acceptability of the proposed development in the locational context of a site in active mineral extraction.

In that context I note the lengthy discourse and effort by the application to show that acceptable levels of amenity can apply to new residents but that ignores the provisions of para 182 of the Framework and the responsibility of the Local Planning Authority to address the prospect of new development resulting in the imposition of unreasonable restrictions on an existing lawful operation.

The recent issue of a Planning Contravention Notice relating to current blasting operations by the County Council provides timely evidence of the problems that additional residential receptors will bring to the quarry operator. The issues raised are disputed but the County Council have

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nevertheless reacted to concerns over the impact of blasting by serving a PCN, requiring the operator to engage in additional survey work, time and resources to disprove the allegation that a breach of control has occurred.

I respectfully contend that the report should contain much greater emphasis on this point and how the addition of several hundred new residential receptors will increase the propensity for complaint, which even when totally unfounded will require action and investigation.

A key consideration in that regard, which your report does not cover, is that the live consent for minerals extraction was granted in the context of the existing location and number of residential receptors, not an additional 400 dwellings.

Your report implies that over time active parts of the Quarry will be further from the currently proposed development site. In fact, Phase 1 of the excavation involves the development of faces across the divide between the quarries but also involves expansion of the benches in the floor of the quarry with consequent activity of the southern edges of the wider operation.

My clients have engaged specialist advisers to explain how the management and operation of the site might need to change to accommodate the proposed development. It is suggested that the imposition of the residential proposal will require changes to the technical, locational and operational approach to blasting. Blasting will need be at less explosive levels, in different locations and smaller quantities if new development is brought to the application site. It will for example be necessary to alter blast designs previously used to ensure compliance with peak particle velocity requirements required in the Blast Monitoring Scheme. The proximity of new dwellings to the areas still to be excavated would require changes to the Maximum Instantaneous Charge in order to comply with the Blast Monitoring Scheme.

In some cases this would perhaps require the use of a larger number of smaller charges, reduction in blast hole diameters, reducing burden and spacing ratios. In each case this leads to greater resource requirements, increased drilling and charging costs, poorer fragmentation and increased need for secondary breakage and crushing. As an example the need to adhere to blast monitoring requirements relating to existing dwellings requires a 25% increase in the number of blast holes per unit compared to the reference blast design which would apply to those areas not currently constrained by proximity to residential areas. The changes brought about by the additional constraint of the new development would lead to a decline in productivity and efficiency of blast and drill operations compared to a scenario without the proposed development.

The residents of the proposed development would likely be able to perceive vibrations from blasting. As a result, despite the quarry operator meeting the constraints of planning conditions, it is probable that there will be ongoing tensions between new residents and the quarry operator. The developer of the new housing would in effect be burdening the quarry operator with the additional operating costs and costs of managing a relationship with 400 additional households.

Para 182 states that it is for the agent of change to manage such impacts not the existing operator.

Our discussion back in April did seek to consider any possible remedy, although our primary position remains that the application should be refused. I don't believe that we concluded that this might be as simple as the addition of an informative note, but rather sought to explore for a legal position which might exclude the scope for future residents to object to the lawful operation of the Quarry. We have explored this avenue – even though it is not my client's responsibility to do so, but the absence of further response to you reflects the inability to make such an approach workable.

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These issues are different to your assumption that the operation of the site will be unaffected provided conditions continue to be followed. Irrespective of compliance my client will have to change operational processes in order to continue the operations as they are currently. Your list of responses fails to recognise the fact that the new development introduces 382 potential complainants.

I am not sure how relevant it is to suggest that the absence of objection through the development plan process is to the determination of this application. I would suggest that no weight can be afforded to such circumstances in the determination of the application. It is clearly our contention that planning permission cannot be granted under the terms of paragraph 182. This renders the delivery of the allocation as untenable, a position we felt obliged to bring the Local Plan Inspectors attention.

We are somewhat surprised that neither the previous, nor the current report makes any reference to the Minerals Local Plan. This site is clearly earmarked to deliver quantities of material against the identified needs of the MLP. It would clearly be appropriate for the MPA to raise issue in circumstances where the potential for future restriction of the level of extraction anticipated becomes a material planning consideration in the determination of a planning application.

I would welcome your consideration of the issues raised here and their inclusion into your report to ensure that your Board members are properly informed.

Yours faithfully



John Groves





**Tonks, Amanda**

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**From:** Laura White <laurawhite@warwickshire.gov.uk>  
**Sent:** 04 July 2019 07:34  
**To:** Brown, Jeff  
**Subject:** PAP/2018/0140 Land East of Castle Road & North of Camp Hill Road, Hartshill & Nuneaton

Dear Jeff

Following on from comments by my colleagues regarding the above application I have now had sight of the letter, dated 27 June 2019, from John Groves on behalf of the operator of Hartshill Quarry and as such have further comments to make.

Overall the letter raises some valid points regarding the impact of the proposed houses on the operation of the quarry.

It is indeed likely that the occupiers of the proposed homes could have cause to raise issue, to WCC or NWBC, with operations at the quarry. Contacts from existing residents of Hartshill have primarily concerned the condition of the highway, dust and impacts of blasting operations. It is not a stretch to suggest that more residents in the vicinity could result in a greater number of complaints. That, in itself, is not the issue Mr Grove appears to be raising in his letter.

Rather, he is raising concern with how the quarry operations may have to evolve in order to continue operating in line within the existing permission when a significant number of new sensitive receptors are proposed.

The issues of the condition of the highway and dust are less likely to cause the operator to change operations within the quarry than would be currently required. The blasting operations, however, are more likely to require alteration should these proposed houses be built.

As you may be aware, blasting at the quarry is covered in the main by conditions 3 and 10 of the permission. Condition 3 requires the submission and approval of a Blast Monitoring Scheme while condition 10 sets out vibration limits for blasting. A Scheme pursuant to condition 3 has been approved.

It is considered that blasting operations would change to meet the limits set out in condition 10 when monitored from the location of the proposed housing. We would not consider it likely that this condition would, or even could, be varied.

It is most likely that the Blast Monitoring Scheme ("the Scheme") pursuant to condition 3 would require alteration.

It is, as Mr Grove suggests, conceivable that there will be a need for more frequent smaller blasts. Whilst there is no limit on the frequency of blasts, the current Scheme requires the vibration reports to be sent to and acknowledged by WCC before another blast can take place. It would be challenging for both the operator and WCC to achieve this in a very short time frame.

It is also worth mentioning that the current Scheme specifies 10 locations where vibration monitoring takes place. The area that is subject of this application is not one of those locations. This could be rectified through an amendment to the Scheme. WCC are not clear at this stage whether this is something that could be required or if it would be reliant on the operator voluntarily agreeing to additional monitoring.

The letter from Mr Groves also refers to a resulting "decline in productivity" from changes to blasting and other operations. We cannot prove or disprove this statement. If it is accurate then potentially an application to extend the life of the quarry could be submitted. That being said, unrelated factors that could see an extension to the life of the quarry sought. We have no current reason to anticipate an extension to the life of the quarry.

It should also be noted that the current permission, which is a Review of Minerals Permissions under the Environment Act, is due for review in 2031. This will not change the planning status but instead allow a full and comprehensive review of the operating conditions.

Finally, in relation to the Planning Contravention Notice, the Council issued this due to not only local complaints but to concerns that there were issues of compliance with the Blast Monitoring Scheme and condition 10. Following the PCN and subsequent correspondence, WCC consider that some blasts carried out prior to 31 May 2019 were not wholly compliant.

The 2 blasts carried out in June 2019 were smaller and closer together in time than any previous blasts. This was in part a response to the issues raised through the issuing of the PCN, in part due to the weather and in part due to operational matters. It is anticipated that future blasts will be more in line with these most recent blasts than those prior to 31 May 2019.

I trust the above is of assistance.

Kind regards

Laura White  
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