

SH/06/1219 – ALLENS BANK, OFF DENNES LANE, LYDD.

A report by Head of Planning Applications Group to Planning Applications Committee on 6 November 2007.

Planning application SH/06/1219: Proposed Variation of Conditions (2), (3) and (13) and deletion of Condition (15) of Planning Permission SH/98/322 for the Extraction of Sand and Gravel, Allens bank, Off Dennes Lane, Lydd, Kent. Brett Aggregates Limited.
(MR. TQ 044217)

Recommendation: Permission be Granted

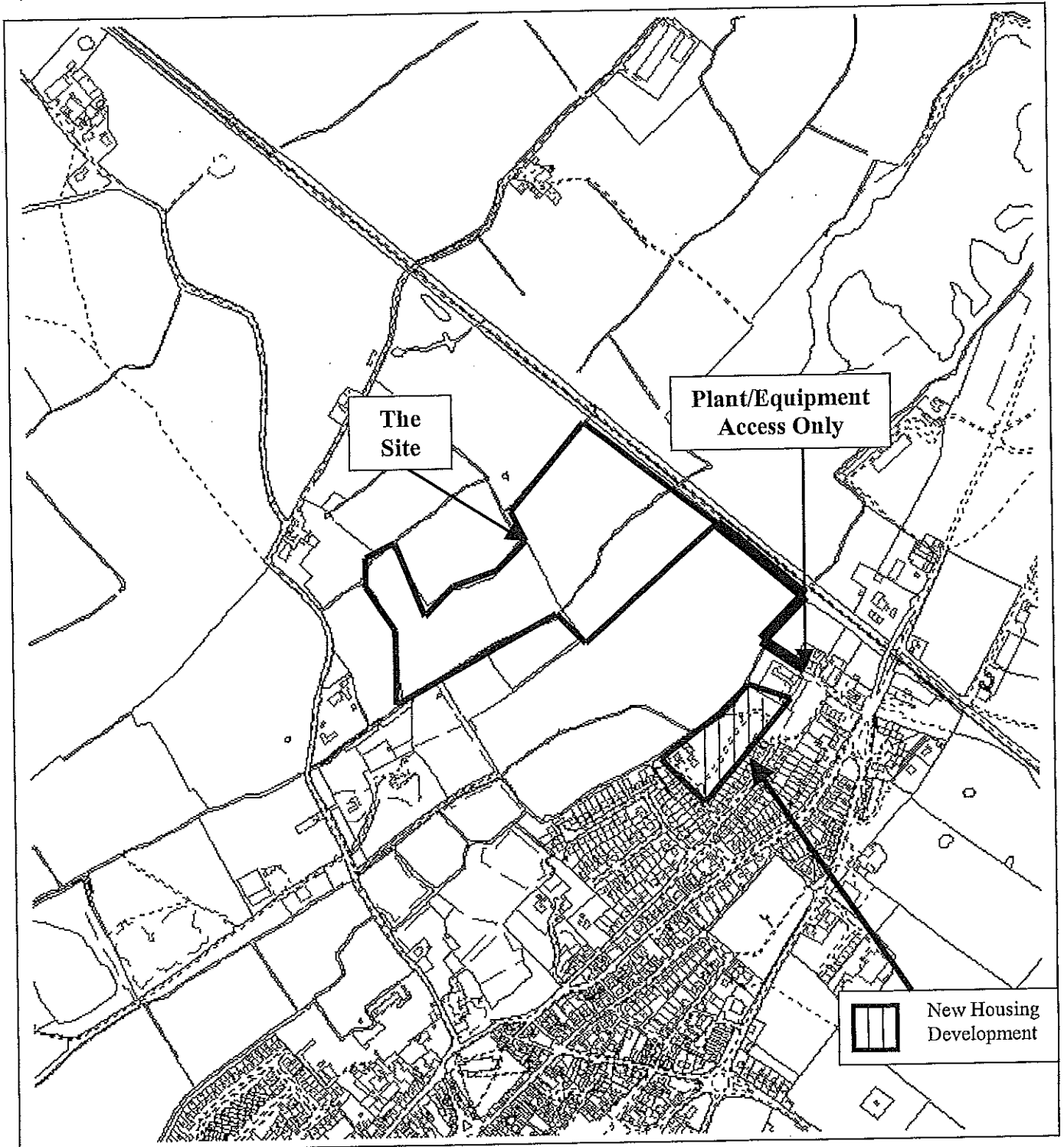
Local Member: Mr F. Wood-Brignall

Classification: Unrestricted

Site Description and Background

1. The application relates to a site which covers an area of some 10.6 hectares and lies on the northern outskirts of the Town of Lydd. Its north eastern boundary adjoins the Appledore to Dungeness railway line. The site falls within an area of search for sand and gravel as identified in the saved policies of the Kent Minerals Local Plan for Construction. The site also falls within the Dungeness, Romney Marsh and Rye Bay SSSI.
2. The area currently consists of a number of separate fields all of which, with the exception of a small area in the northern section are down to pasture. It is generally flat with a series of shingle ridges rising slightly above the level of the surrounding land.
3. The nearest concentration of housing lies approximately 230 metres to the south of the site.
4. In August 1999 permission was granted ref: SH/98/322 for the extraction of some 700,000 tonnes of sand and gravel from the site together with its processing, for delivery to the Channel Tunnel Rail Link (CTRL) by rail, and restoration back to grazing land using inert waste materials imported by rail.
5. In July 2004 just prior to when the permission was due to expire Bretts confirmed that, following soil stripping together with associated archaeological investigations of the disturbed area, they had commenced gravel extraction and created a small stockpile of material on site, albeit no materials were exported off the site. In their opinion this constituted the formal implementation of the permission. However, contrary to this view, the County Council were of the opinion that in the absence of having satisfactorily demonstrated the operations were specifically in connection with the CTRL they did not constitute a legal commencement. Consequently the County Council served an Enforcement Notice on Bretts on the grounds that the extraction of minerals had taken place without the benefit of planning permission and required the site to be reinstated.

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6. Bretts appealed against the Enforcement Notice and following a Public Enquiry their appeal was subsequently upheld. This was on the basis that notwithstanding the description of the original application as set out under the planning permission, which included specific reference to the use of the materials solely for the CTRL, the decision notice itself did not place any such restrictions other than those specifically referred to by condition, requiring the applicant to demonstrate that the operations which had taken place were in connection with the CTRL. It was therefore held that the extraction and stockpiling of materials on site had legally implemented the permission.
7. As a result of the appeal decision Lydd Town Council formally requested that the County Council lodge an appeal in the High Court against the Inspectors decision on the grounds that the site was no longer needed in order to supply materials to the CTRL, on the basis that this project was by then nearing completion. Given that such action would have involved significant costs including those being awarded against this authority on behalf of the defendant in the event that such action was unsuccessful, the County Council sought Counsel's opinion. Counsel advised that an application to the court would have no more than an even chance of success. The matter was subsequently referred to a Panel meeting of the Regulation Committee who, having regard to Counsel's advice decided not to challenge the appeal decision.
8. Having been legally implemented, albeit to date no materials have been removed off site, the site therefore has the benefit of an existing permission together with associated conditions. These include;
 - a requirement for the development to be carried out strictly in accordance with the application details (condition (2))
 - extraction to be completed within two years of the commencement of the development i.e. by 6 July 2006 (condition (3))
 - the site to be restored within a further three years in accordance with the approved restoration scheme (condition (13))
 - minerals extracted to only be used in connection with construction works associated with the CTRL (condition (15)).

Proposal

9. Bretts have formally applied to vary conditions (2), (3) and (13) of their current planning permission ref.SH/98/322 and for the deletion of condition (15) such that;
 - (a) It is no longer proposed that deliveries would be made 'solely to the CTRL' enabling them to serve other markets at any rail connected depot.

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- (b) Extraction would not be completed within two years but over a longer period of 10 Years.
- (c) The approved method of working would be amended to follow the principles associated with mineral extraction and restoration employed uniquely at their site at Deanary Farm, Chartham whereby one parcel of land must be completed before extraction from the next phase can commence. Provision is made under the amended scheme for the site to be worked annually over 10 separate phases each covering less than 1 hectare which would be progressively backfilled and restored as extraction progresses in each successive phase.

(N.B. Before this application was formally validated I sought Counsel's opinion on the manner in which it had been submitted, given that my initial view was that what was proposed represented a fundamental departure from what was permitted which had previously been predicated on the basis of a site dedicated to serving a specific project. Therefore it could not be treated as a variation to the existing permission but would need to be the subject of a full application. However, contrary to this view Counsel advised that the court would be unlikely to conclude that Bretts application to vary the terms of the existing consent as proposed constitutes a fundamental alteration to the existing permission but a proposed change to the conduct of the permitted use of the land. Accordingly the County Council was advised to validate and formally determine the application as it stands).

10. In support of their application which was submitted prior to the expiration of the two year period for completing extraction, Bretts refer to previous Minerals Planning Guidance Note MPG2 where it stated under paragraph C4 of Annex C that ' where permission for mineral working becomes time expired and workable deposits remain, an application for its renewal should be considered in the normal way but it is expected that such an application would normally be granted unless there has been a material change of planning circumstances since the expiring permission was granted.' Within this context the company, in support of their application, have identified what they consider are three key changes of planning circumstances since the permission was originally granted, against each of which they have assessed whether what is now proposed would represent a material change of use to the permitted site.
11. Firstly Bretts argue that the date currently set under condition (3) of their existing permission by which the site to has to have been worked and restored must now be varied in order to allow the continuation of the currently authorised operations. In their view delays have previously been incurred partly as a direct result of having to await the outcome of the enforcement action taken by the County Council. This has meant that no operations could take place until the appeal decision was issued. This in turn has made it no longer feasible to supply materials under contract to the CTRL given that the project has now been completed and supplies of aggregate are no longer required. Accordingly new outlets must be served if the benefits associated with the supply of high quality sand and gravel from the site by rail are to be realised. Bretts have identified their existing rail aggregate depot at Sevington in Ashford as one such location which was originally the planned destination for the delivery of aggregates for use in the CTRL. The site at Sevington is also currently the

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subject of two applications for the expansion and permanent retention of the existing aggregate depot along with proposals to develop an associated waste transfer/recycling facility.

12. Bretts also point to what they consider is an unreasonable period over which the site is currently required to be worked and restored, notwithstanding that the current period set is consistent with the principles established in Kent Minerals Local Plan requiring quarrying operations in the area to take place within a short timescale, as originally recommended in the inspectors report following the Local Plan Inquiry. Whilst in his report the Inspector held the view that the sites identified to the north of Lydd were relatively small and which could therefore be worked within the space of one or two years, Bretts argue at that time the site identified at Allens Bank extended to some 23.5 hectares (58 acres) containing as much as 1.8 million tonnes of material. In their view, based on the 2003 Aggregates Monitoring Report the deposit at Allens Bank was of a magnitude sufficient to supply the whole of the County's flint gravel requirements for almost two years. Bretts therefore assert that it is clear the Inspector did not at that stage consider the possibility that the deposit would be worked in connection with a single high demand project such as the CTRL, and could only have assumed that the site would be worked as a progression to the nearby site at Whitehall Farm, where historically the quarry had produced in the region of 125,000 tonnes of gravel per annum. The company hold the view therefore that the current requirement for the land to be worked over a short timescale must take account of the amount of material to be worked combined with the amount of land that would be out of agricultural use at any one time. In their opinion the operating principles that would be adopted as proposed in their current application which makes provision for the progressive working and restoration of the site over a number of relatively small individual phase is not in conflict with the Kent Minerals Local Plan neither would it involve a material change of use to what is already permitted.
13. With regard to the currently permitted end use of the materials, the only restriction on their destination is provided for under condition (15) which requires that they shall be used solely in connection with construction works associated with the CTRL. Bretts point out that whilst in the original application it was the intention for materials to be delivered to their site at Sevington for use in the CTRL, Sevington remains in their control and is identified in the Kent Minerals Local Plan as a site needing to be safeguarded in the longer term for such use. The site is also identified in the Kent Waste Local Plan as being suitable in principle for a waste recycling facility. Therefore if the County Council is minded to grant permission in respect of the two current applications to retain and expand Sevington, not only will this provide a long term facility for the delivery of aggregates but also one from where the inert waste materials required to backfill Allens Bank can be delivered.
14. In support of their request to be allowed to deliver materials for uses other than the CTRL, Bretts make reference to previous case law which provides legal authority in relation to the general principle that in judging the character of the use of land in accordance with the general planning implications of a proposal, what happens off site to the aggregates once they have been extracted and then exported from the site is irrelevant. Hence in seeking to continue mineral extraction without complying with condition (15) of the current permission,

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it is Bretts view that no material change of use of the land will take place.

15. In the context of the above, Bretts conclude that whilst there have been material changes in 'planning circumstances' to warrant the proposed alterations to the existing permission, none would represent a material change in the use of the land itself.
16. Earlier in February this year a group of Members visited the site. Representatives were also present from Shepway District Council and Lydd Town Council together with representatives who spoke on behalf of the applicant. A note of the meeting is attached under Appendix 1.

National and Regional Policy Context

17. Minerals Policy Statement 1 (MPS 1), 'Planning and Minerals' gives recognition to the essential role minerals play to the nation's prosperity and quality of life and the need therefore to ensure an adequate supply of material to provide the infrastructure, buildings and goods that society, industry and the economy needs. With this principle in mind it advises that minerals planning should therefore aim to provide a framework for meeting such needs whilst seeking to avoid any detrimental effects on the environment through appropriate mitigation. Annex 1 of MPS 1 contains advice on how the need for aggregates should be met, particularly through the provision of landbanks, where Mineral Planning Authorities should aim to ensure a release of permissions sufficient in the case of sand and gravel, to ensure a landbank of at least 7 years.
18. MPS 2, 'Controlling and Mitigating the Environmental Effects of Minerals Extraction in England' replaces in part Minerals Planning Guidance Note 2 (MPG 2) in relation to the consideration to be given to impacts from noise and dust. It also advises MPAs on the consideration to be given in respect of the proximity of mineral workings to communities where they must ensure that adequate mitigation measures can be satisfactorily employed in order to safeguard the quality of the local environment, as experienced by neighbouring communities. In particular it recognises that the duration of operations can be a significant factor in determining the appropriate levels of control and mitigation, where some sand and gravel workings, given their relatively shallow deposits may be completed and restored within a few years whereas a clay pit or a quarry producing aggregates or building stone may be operational for many years. In this context the programme of work and/or the location of plant within the mineral working should take account of the proximity to occupied properties, as well as legitimate operational considerations. A programme of work should be agreed which takes account, as far as is practicable, of the potential impacts on the local community over the expected duration of operations.
19. Regional Planning Guidance for the South East (RPG 9) (as amended) and the emerging South East Plan seek to encourage the development of construction practices with the long term aspiration that annual consumption of primary aggregates will not grow from the 2016 level in the subsequent years (Policy M1). In order to help meet the objectives of Policy M1 the use of secondary and recycled aggregates should be increased (Policy M2). Mineral Planning Authorities should plan to maintain a landbank of at least 7 years of planning

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permissions for land-won sand and gravel which is sufficient, throughout the Mineral Plan period, to deliver 13.25 million tonnes (mt) of sand and gravel across the region, with the Kent/Medway apportionment amounting to some 2.53mtpa.

20. National Policy is therefore to increase the use of secondary aggregates and recycled materials together with a corresponding decrease in the use of primary aggregates to the extent that by 2016 (at the end of the plan period) the growth in the annual consumption of primary aggregates as currently experienced will stabilise.

Kent and Medway Structure Plan

21. Consistent with the objectives of regional and national guidance the strategy for minerals is to maximise the use of secondary and recycled materials whilst maintaining continuity of supply and at the same time avoiding any unacceptable environmental impacts.

Policy MN1: seeks to maintain sources of supply.

Policy MN2: encourages the use of secondary/recycled aggregates.

Policy MN3: sets out the assessment criteria against which the potential impacts from minerals development should be considered.

Policy MN5: seeks to ensure the supply of aggregates is sufficient to meet national, regional and local needs including the maintenance of at least a 7 year landbank at the agreed regional apportioned levels until the end of the plan period.

Saved Policies of the Kent Minerals Local Plan for Construction Aggregates

Policy CA6: gives preference to sites within areas of search provided there is a satisfactory case of need and no unacceptable environmental impacts.

Policy CA16: requires that adequate access to the site can be obtained

Policy CA18: requires that noise, dust and vibration can be satisfactorily controlled.

Policy CA22: requires that measures are incorporated to ensure the site is properly restored to assist its merging back into the surrounding landscape.

Policy CA23: requires that a satisfactory working and restoration scheme form an integral part of the proposal.

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**The Core Mineral Strategy Development Plan Document
Primary Mineral Development Control Policies Development Plan Document
Construction Aggregates Development Plan Document**

22. In November 2006 following pre-submission public participation with the community and other stakeholders on the preferred options the County Council formally submitted these documents to the Secretary of State for independent examination. Once adopted the documents, which constitute Development Plan Documents (DPD'S) will form the Kent Minerals Development Plan. Their policies seek to develop the Government's objectives for minerals planning. As these documents progress towards formal adoption the extent to which their policies represent a material consideration will gain in weight.
23. Of particular relevance to the application Policy CA9 of the Construction Aggregates DPD makes specific reference to the application site insofar as it recognises this relates to an existing sand and gravel planning permission for construction aggregates and which will therefore need to be protected from development that would prejudice its continued operation.

Consultations

24. **Shepway District Council:** No objection in principle given that the Council has accepted that this site is suitable for gravel extraction and provided the County Council is satisfied that there is a strong economic necessity for Working the site. Requests that consideration be given to reducing the period for completing operations in order to reduce any long term impacts on the community.

Kent Highway Services: No objection

County Archaeologist No objection

Jacobs (landscape): No objection

SEERA: No comments

Environment Agency: No objection

Natural England: No objection in principle subject to the imposition of appropriate (Nature Conservation) conditions to safeguard and protect as far as possible the scientific interests of the site including a requirement for the site to be restored to acid grassland.

Natural England: No objection subject to the satisfactory handling of soils in order

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(Agriculture) to safeguard their integrity

NATS: No objection
(Airfield Safeguarding)

EDF: No objection subject to access being made available to them to maintain their high voltage overhead power cables which cross the site

Network Rail: No objection subject to the prior agreement of tree species to be planted when the site is finally landscaped

Lydd Town Council: Raise objection on the grounds that there is no longer a requirement to supply materials to the CTRL, unacceptable impacts on the nearby residents of Megan Close/The Poplars, increase in lorry traffic, risk of flooding, adverse impact on agriculture and site of scientific interest

Kent Wildlife Trust: Raise objections on the grounds that in the absence of a need to supply material to the CTRL the application has to be considered against the general principle as to whether mineral extraction and processing at this site is acceptable, and therefore should be tested against the considerations set out under existing national, regional and development plan policy along with emerging guidance. In this context no evaluation has been undertaken of the impacts on nature conservation which currently appears to conflict with policy guidance

Local Member

25. The Local Member Mr Fred Wood-Brignall was notified of the application on 12 September 2006. To date I have received no written comments from him.

Representations

26. The application was advertised in the local press and notices posted on site. In addition I also wrote to the occupiers of some 136 properties most directly affected by the proposal. As a result I have to date received 22 letters of objection including one from the local MP. Their grounds for raising objection include;

- Traffic Impacts
- Detrimental Impacts from noise and dust
- Adverse impacts on nature conservation
- Increased risk from flooding
- No need in the absence of a requirement to supply materials to the CTRL

Discussion

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27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations indicate otherwise.
28. The application has been made pursuant to Section 73 of the Town and Country Planning Act 1990 which provides for a different procedure from that applying to applications for full planning permission, and requires the local planning authority to consider only the question of the conditions subject to which planning permission should be granted. This therefore allows for them;
- to grant permission in accordance with what has been applied for,
 - grant permission subject to conditions differing from those subject to which the previous permission was granted or,
 - if they decide that permission should be granted subject to the same conditions as those subject to which the previous permission was granted, to refuse the application.

The scope of a local planning authority's jurisdiction when considering an application under Section 73 is, in principle, therefore more limited than when considering an application for full permission.

29. Having regard to the scope of the County Council's jurisdiction when formally considering this application in the context of the limitations as referred to in paragraph (28) above, in my opinion the main determining issue is the extent to which the proposed variations to the existing permission for sand and gravel extraction granted under ref. SH/98/322 would result in any additional impacts above those already considered to be acceptable in principle where conditions have previously been imposed in order to ensure operations do not result in any unacceptable adverse impacts.
30. Prior to when planning permission was first granted, the area was originally identified in the Kent Minerals Local Plan for Construction Aggregates as being suitable in principle for the extraction of sand and gravel, on which it was therefore expected applications would come forward. As mentioned in paragraph (23) above, the site has since been identified under policy CA9 in the more recently published Construction Aggregates DPD as an existing sand and gravel working needing to be safeguarded from any future development that may prejudice operations at this site.
31. With the exception of the market end use of the material, in principle the site would be worked in accordance with the existing permission insofar as working and restoration would progressively take place over separate phases, albeit over a longer period of 10 years as opposed to the 5 years currently permitted. Most fundamentally in my view, all materials would be transported off site and inert restoration materials imported by rail, thus avoiding the generation of heavy goods vehicles along the local road network. Members may recall at their meeting of the Planning Applications Committee held in February this year when they considered two applications by Bretts for the redevelopment and permanent retention

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of their existing rail aggregate depot at Sevington along with proposals to develop an associated waste transfer/recycling facility. The site at Sevington is located to the south east of Ashford, adjacent to the A2070 Southern Orbital Road south of junction 10 of the M20 Motorway. In resolving to grant permission, Members were mindful of the strategic importance of the site, particularly in respect of being able to provide a means by which the demand for construction aggregates for the planned future growth of Ashford could be met. In my opinion there are sound planning reasons for allowing an opportunity to use some or all of the high quality materials at Allens Bank to meet this future demand, which has a direct link to Sevington by rail. Bretts also have a Marine Aggregate Wharf at Cliffe where they import sea dredged aggregates. The quality of the material imported to this site varies, with some loads containing a relatively high percentage of silt and sand which has to be washed and then blended with aggregates before it can be marketed for construction purposes. Material from Allens Bank could therefore also be taken by rail to the site at Cliffe from where a significant volume of processed material is already sold into the Kent Market, including Ashford.

32. Whilst the application seeks to increase the timescale for completing operations from 5 to 10 years, amendments to the working scheme make provision for the site to be progressively worked and restored over 10 separate phases each of less than 1 hectare. This would result in a relatively limited area of the site being left open at any one time and in my opinion would help reduce the impact of operations in the locality during the period over which the site would be worked. I am mindful that this method of working has previously been successfully employed at Bretts' site at Deanary Farm Chartham, and which helped mitigate any adverse impacts on nearby housing, some of which were more proximate than the nearest housing at Allens Bank. With regard to a more rapid approach being adopted than currently proposed to work the site as advocated by Shepway District Council, in my view this would not be practical given the relatively restricted areas available to store large volumes of material either on site or at the destinations intended for the material. If such storage were to occur at the site itself, this would be visually intrusive in what is a relatively flat landscape and would compromise the overall objectives of the currently proposed method of working to keep the impact from operations to a minimum. In conclusion therefore, whilst increasing the duration of operations from 5 to 10 years would double that currently permitted, compared to quarry operations elsewhere in the locality and in other parts of the county including those operated by Bretts, in my opinion 10 years would still be of a relative short duration for a quarry site. In this context it would not therefore be inconsistent with the general principles establish in the Kent Minerals Local Plan in respect of the need to undertake operations in this area over a relatively short period of time. In my opinion the proposed increase in the duration of operations above that currently permitted is acceptable, especially when weighed against the benefits that would derive from the proposed low key method of working.
33. Of the other objections raised in relation to noise, dust and increased risk from flooding, these include those from the occupiers of properties shown on the site plan as new housing development, which was formally the site of a caravan park. Whilst these properties do not yet appear on the ordnance survey base they were nevertheless present at the time during which the original planning application for sand and gravel extraction was being considered

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and where, in determining the application it was felt, subject to the imposition of appropriate conditions, that permission should be granted.

34. Those Members who attended the site visit earlier in February may recall they viewed the application site from along the site access which has been created to allow plant and equipment to enter along with quarrying staff. From this position they were able to see the rear gardens of the nearest housing, which are some 230 metres from the site boundary. As a means of helping to reduce any adverse impacts it is proposed that topsoils stripped from the site would be used to create a 2-3 metre high bund along the southern site boundary which faces on to the nearest properties. In my opinion this, together with the conditions which would continue to apply on the existing permission will ensure operations do not cause any unacceptable impact on the local environment.
35. Concerns have also been raised over the adverse impacts on the Dungeness, Romney Marsh and Rye Harbour SSSI designated by Natural England earlier this year, within which the application site falls. Allens Bank is included as part of this designation because of its geomorphological interest. In their formal response on Bretts' application, whilst Natural England have raised no objections in principal in recognition that permission for gravel extraction from the site already existed at the time of their SSSI designation, they have requested should permission be granted that a condition be imposed requiring details of the proposed species mix in respect of the intention for site to be restored to acid grassland.
36. Finally, whilst for the reasons set out under paragraphs (28) and (29), it is not strictly relevant to consider the question of need in the context of the County's landbank requirement, I am mindful nonetheless that the volume of reserves of sand and gravel currently permitted is likely to be above the minimum required to maintain a landbank of at least 7 years. It should be noted however that this figure is a minimum that should be maintained in accordance with both national and regional guidance and is also a requirement under Policy MN3 of the Kent and Medway Structure Plan. It does not therefore represent an upper ceiling and provided proposals do not give rise to any unacceptable impacts and are consistent with other development plan policies permission need not be withheld unless other material considerations indicate otherwise.

Conclusion

37. In conclusion notwithstanding the objections that have been raised, in my opinion there are sound planning reasons for permission to be granted, which in strategic terms would provide an opportunity for a significant volume of high quality reserves to be worked and transported off site by rail in order to meet a future wider county demand for aggregates. I am satisfied that with the imposition of appropriate conditions the site can be worked in a manner which will ensure no adverse impacts on the local environment. Accordingly I recommend that permission be granted.

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Recommendation

38. I **RECOMMEND** that **PERMISSION BE GRANTED** to vary conditions (2), (3) and (13) and to delete condition (15) of Planning Permission Ref. SH/98/322 such that;

- (a) Extraction of sand and gravel from the site would take place over a period of 10 years
- (b) The Scheme of Working provides for extraction to take place over 10 separate phases together with their progressive restoration upon the completion of extraction in each successive phase using imported inert waste materials
- (c) There is no restriction on where the extracted materials are subsequently exported

SUBJECT TO the following conditions;

- (1) The progressive working and restoration of the site shall be carried out strictly in accordance with the application details as indicated on drawing no. AB/200 rev A. submitted with the letter from Davies Planning dated 30 March 2007.
- (2) Within 10 years from the date of the recommencement of sand extraction, operations shall cease and the site shall be restored within a further 12 months in accordance with the ' Further Revised Restoration & Landscape Assessment' undertaken on behalf of Brett Aggregates Ltd by Keith Funnell Associates dated February 2007 which accompanied the letter from Davies Planning dated 30 March 2007.
- (3) Written notice shall be given to the County Planning Authority at least 14 days prior to the recommencement of sand extraction at the site.
- (4) Within 3 months from the date of this permission details of the proposed treeplanting and seed mixes including those areas of the site to be reinstated as acid grassland shall be submitted to the County Planning Authority for approval

Informatives;

- (a) Attention is drawn to the requirements of EDF Energy, Natural England and Network Rail as set out in their letters attached to this permission.
- (b) All other conditions imposed on Planning Permission Ref. SH/98/322 remain in effect.

Case Officer: Mike Clifton	01622 221054
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Background Documents - see section heading
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**APPLICATION SH/06/1219 – VARIATION OF PERMISSION TO EXTEND
THE DURATION OF OPERATIONS AND ALLOW MATERIALS TO BE
SOLD ON THE OPEN MARKET AT ALLANS BANK, OFF DENNES LANE,
LYDD**

NOTES of a Planning Applications Committee Members' site meeting at Allens Bank, Lydd on Thursday, 1 February 2007.

MEMBERS PRESENT: Mr R E King (Chairman), Mr J A Davies, Mr J B O Fullarton, Mrs E Green, Mrs S V Hohler, Mr S J G Koowaree, Mr J F London, Mr T A Maddison and Mr R A Mr A R Poole. Mr F Wood-Brignall was present as the local Member.

OFFICERS: Mr M Clifton (Planning) and Mr A Tait (Legal and Democratic Services)

THE APPLICANTS: Bretts (Mr M Drury, Mr M Davies and Mr R Hanley).

OTHER LOCAL AUTHORITIES: Shepway DC (Mr J Bailey (Planning)); Lydd TC (Cllrs CE Albrow – Mayor, D J Alford – Chairman of Planning, Mrs M R Masters, Mrs B A Walsh and M J Walsh).

(1) The Chairman opened the meeting and welcomed everyone present. He explained that its purpose was for Members of the Committee to see the site and to listen to the views of those present.

(2) Mr Clifton introduced the application. He said that permission had been granted in August 1999 for the extraction of some 700,000 tonnes of sand and gravel from the site for processing and delivery to the CTRL by rail.

(3) Bretts had written to KCC in July 2004 (shortly before the permission was due to expire) to say that they had commenced gravel extraction, thereby formally implementing the permission. KCC had disagreed, taking the view that this had not been a valid start as the operations were not been specifically taken in connection with the CTRL. Consequently, an Enforcement Notice was served.

(4) Bretts had appealed against this decision and their view was upheld at a Public Enquiry. It had therefore been legally established that Bretts had the benefit of an existing permission together with associated conditions.

(5) Bretts had now applied to formally vary three conditions and had also applied to no longer need to comply with Condition 15. This would have the effect of enabling Bretts to:-

- (a) no longer need to make deliveries solely to the CTRL. They would be able to serve other customers by a rail connected aggregate depot;

- (b) complete extraction over a period of 10 years instead of the 2 currently specified; and
- (c) work the site over 10 separate phases, each covering less than 1 hectare with each phase being progressively backfilled and restored to agriculture before proceeding to the next phase.

(6) Mr Clifton said that he had sought Counsel's opinion as to whether this would need to be a separate application rather than a variation of an existing permission. Counsel had advised that KCC should validate and determine this formal application as a Court would be unlikely to conclude that it was a fundamental alteration to the existing permission. It would be seen, instead as a proposed change to the conduct of the permitted use of the land.

(7) In support of their application, Bretts had referred to MPG2 which stated: -

" where a permission for mineral working becomes time expired and workable deposits remain, an application for its renewal should be considered in the normal way but it is to be expected that such an application would normally be granted unless there has been a material change of planning circumstances since the expiring permission was granted."

(8) Mr Clifton then said that Bretts had pointed to what they considered an unreasonable period in which the site was currently required to be worked, even though the period set was consistent with the Kent Minerals Local Plan and had been recommended in the Inspector's report following the Local Plan Inquiry. It was Brett's contention that the Inspector could not have foreseen the possibility that the site could be worked for a single high demand project such as the CTRL and would therefore have assumed that it would be worked as a progression from the nearby Whitehall Farm site. Therefore, Bretts took the view that the requirement for the land to be worked over a short timescale had to be taken in the context of the amount of material to be worked and the amount of land that would remain out of agricultural use at any one time. Consequently, in Brett's view, the application to work in relatively short individual phases was not in conflict with the Kent Minerals Local Plan.

(9) Mr Clifton concluded his presentation by saying that the application would need to be considered in the light of the existing planning status of the site (where permission already existed for mineral extraction), and the extent to which the proposed variations to the current consent would result in any additional unacceptable impacts.

(10) Mr Drury (Bretts) said that Committee Members should bear in mind that Bretts were currently bringing forward an application for the retention of the existing railhead at Sevington, Ashford for the importation of aggregate, demolition and construction waste. If permission were granted, it would enable the extracted sand and gravel to be moved by rail, avoiding pressure on the road network. The intention was to work very small, discrete areas, which would be restored before work commenced on the next area.

(11) Mr Bailey (Shepway DC) said that his Council accepted that the site was suitable for gravel extraction and had therefore raised no objection. It was nevertheless recognised that there would be extensive implications for local residents and the environment. An appropriate balance needed to be found between extraction and the environment. The District Council had therefore requested mitigation measures and that operations be completed quickly. They believed that extraction should take place over 5 years instead of the 10 applied for.

(12) Mr Allbrow (Lydd TC) said that Lydd had suffered enough over a number of years sites such as this one. This one was inappropriate because of the The Poplars housing development which was nearer to the site than other developments had been when permission was first granted. He added that the site at nearby Whitehall Farm was already overdue for reinstatement.

(13) Mrs Masters (Lydd TC) agreed with the view that a 10 year permission was far too long.

(14) Mr Wood-Brignall (local Member) said that Lydd did not want any more excavation to take place. The agreement had been that this site would only be worked for the CTRL. There was still a large amount of gravel that needed to be extracted from Whitehall Farm. Currently large housing estates were being built which would overlook the development. He pointed out that the proposed development was in an SSSI. He believed that this would make it impossible for Bretts to work the site. If, however, they were able to do so, he was concerned that Allens Bank would be used to dispose of waste emanating from London's Olympic Games preparations.

(15) Mr Clifton confirmed the SSSI designation and said that the applicants would need to demonstrate to Natural England's satisfaction that the site would be properly restored. Currently, Bretts only had permission to infill with inert waste.

(16) Mr Droury responded to a question from Mrs Hohler by saying that all infill materials would be brought to the site by Rail. There would be no additional movement on local roads. The entire development would be under Brett's control and responsibility. The waste would be examined in Sevington and only acceptable materials would be sent on to Allens Bank. Bretts already had an Environment Agency permit to refill and restore the land and therefore knew what was required. The needs of the CTRL would have been served by rapid and intense excavation of the site. The needs for Ashford were spread over a much longer period. These could best be met by working with less intensity on smaller parcels of land.

(17) Mr Allbrow said that the railway line between Appledore and Lydd was in bad condition. He asked whether there was an opportunity for waste to be imported using single track. He suggested that Natural England would have a lot of work to do to ensure that the SSSI was protected as soon as the excavation went below 18 inches.

(18) Mr Droury said that Bretts were aware of the geomorphologic features that had caused the SSSI designation. He then responded to a question from Mr Fullarton by saying that a five year permission would lead to Bretts working the site with far greater intensity, leading to a far greater impact.

(19) Mr Fullarton asked what the effect of the recent SSSI designation had been on the current planning conditions. Mr Clifton replied that the designation had made no difference to the current permission. In relation to this application, Natural England had requested details relating to geomorphology, restoration and habitat creation.

(20) Mr Koowaree asked what the anticipated time lag would be between excavation and restoration. Mr Droury said that the intention would be to work one section per year, completing the entire process (excavation, refilling, restoration and resoiling) within that time before moving on to the next section.

(21) Mr Clifton confirmed that the Kent Minerals Local Plan had identified Allens Bank as part of a Greater Area of Search because of the permission that had already been granted. The Inspector had identified this as such because his remit was purely to look at the land-use implications, rather than the purpose for which the materials would be used. He had therefore concluded that the fact that permission had been granted purely for the CTRL was immaterial.

(22) The Chairman thanked everyone for attending. The notes of this visit would be appended to the Head of Planning Applications Group's report to the determining Committee meeting.

(23) Following the meeting, Members inspected the site from the Kitewell Lane entrance. Mr Wood-Brignall asked Committee Members to note the close proximity of The Poplars housing development to the site.