

SECTION C
MINERALS AND WASTE DISPOSAL

Background Documents - the deposited documents; views and representations received as referred to in the reports and included in the development proposals dossier for each case; and other documents as might be additionally indicated.

Item C1

Variation of conditions 1 and 3 of planning permission SW/03/430 to extend the period of working and final restoration at the existing Hempstead House brickearth site until 31 October 2020 at land to the South of the A2 and East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

A report by Head of Planning Applications Group to Planning Applications Committee on 6 November 2013.

Application by Ibstock Brick Limited for a variation of conditions 1 and 3 of planning permission SW/03/430 to extend the period of working and final restoration at the existing Hempstead House brickearth site until 31 October 2020 at land to the south of the A2 and east of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013).

Recommendation: Permission be granted, subject to conditions.

Local Member: Mr A. Bowles

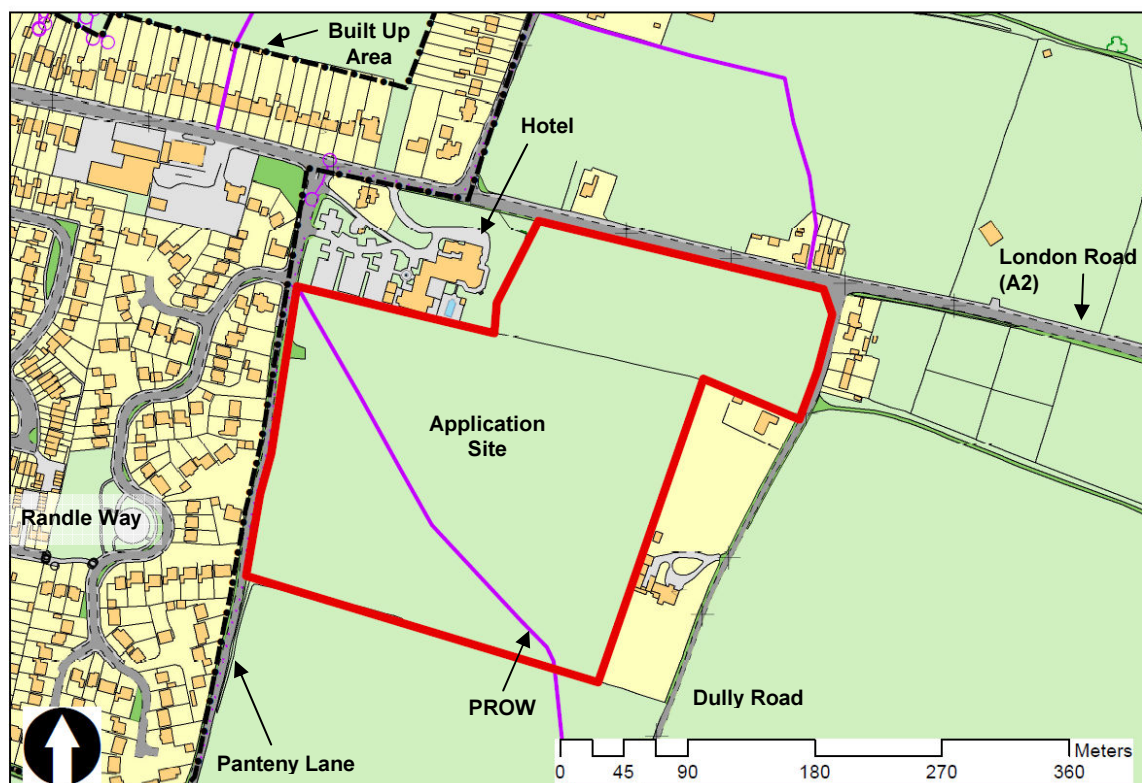
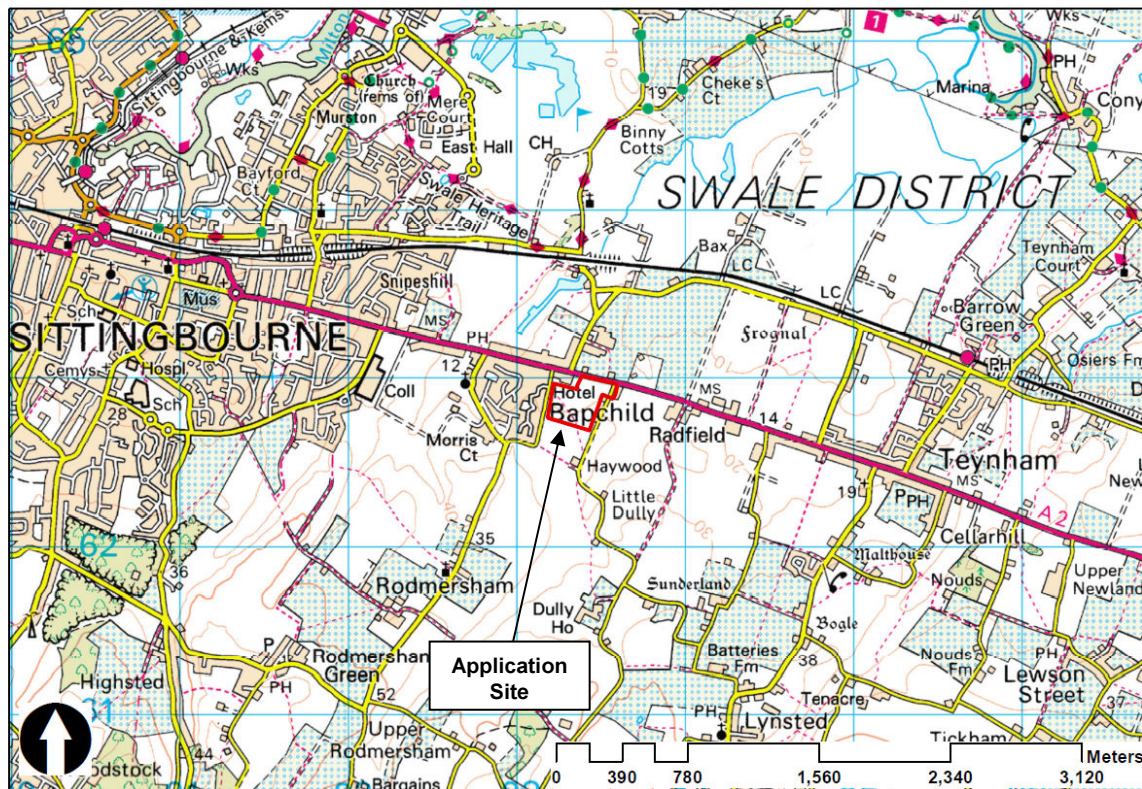
Classification: Unrestricted

Site

1. The application site forms agricultural land located off Panteny Lane, to the south of the A2 (London Road), immediately to the east of Bapchild and approximately 2km east of Sittingbourne town centre. The application site covers approximately 8.1 hectares (ha) of agricultural land (classified as Grade 1), which is principally used to grow arable crops and graze livestock. The site benefits from temporary planning permission for the winning and working of brickearth under planning permission SW/03/430. This permission allows for the progressive working and restoration of the site back to an agricultural use at a reduced ground level. Please see 'Background' section below for more details of the mineral permission.
2. The application site has a dedicated vehicle access to the west off Panteny Lane, approximately 120m south of the junction with the A2. The site is bounded by Hempstead House Hotel and the A2 (London Road) to the north, Dully Road and a residential property to the east, farmland to the south and Panteny Lane to the west. Further residential properties are located opposite the site on the far side of London Road, Dully Road and Panteny Lane. Please see attached site location plan.
3. A Public Right of Way passes diagonally across the site (and the field to the south), connecting Panteny Lane in the north-west with Dully Road in the south-east.

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Site Location Plan



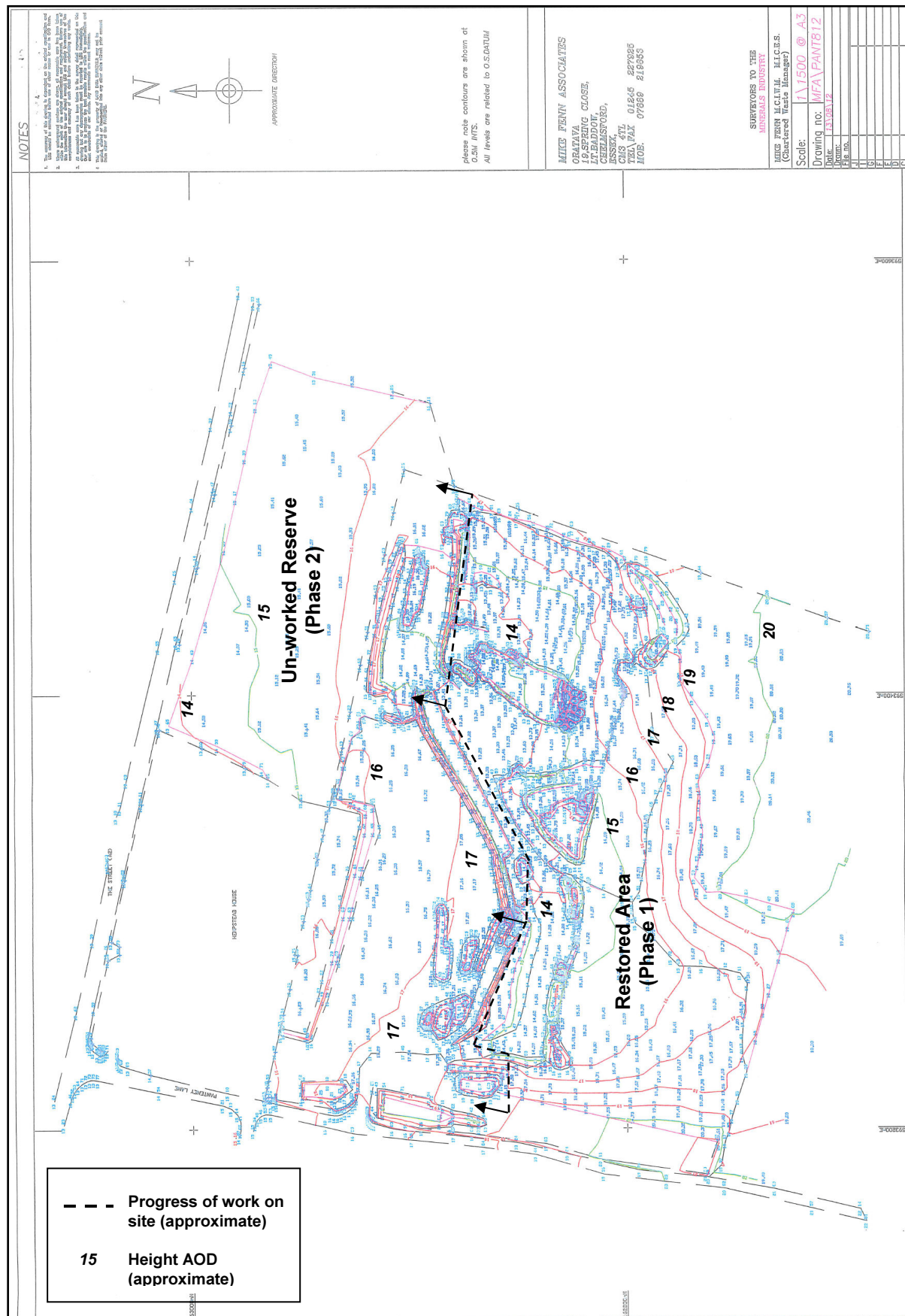
Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Permitted Working Area and Method of Working (including stand-offs from nearby properties)



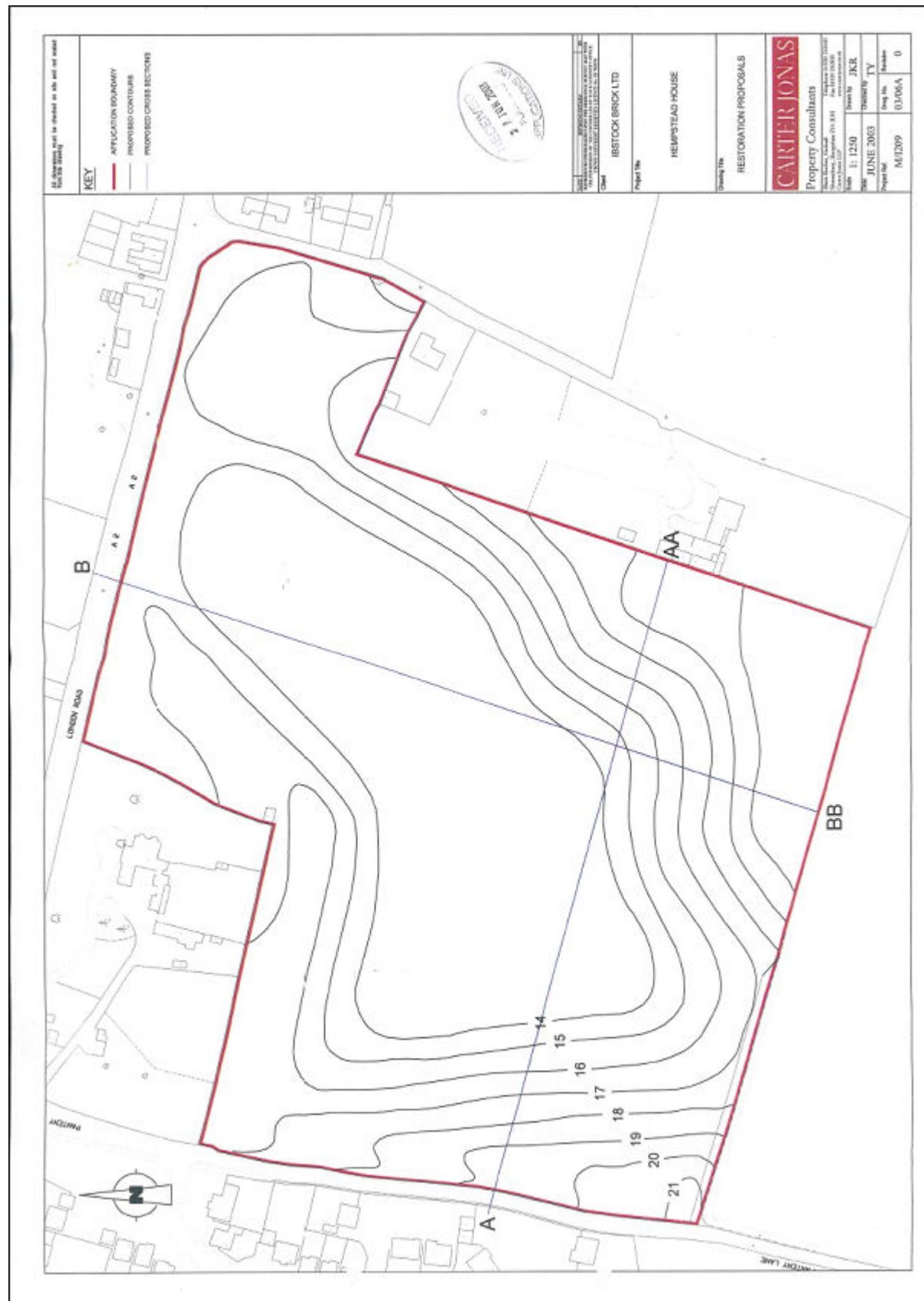
Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Latest Topographic Survey



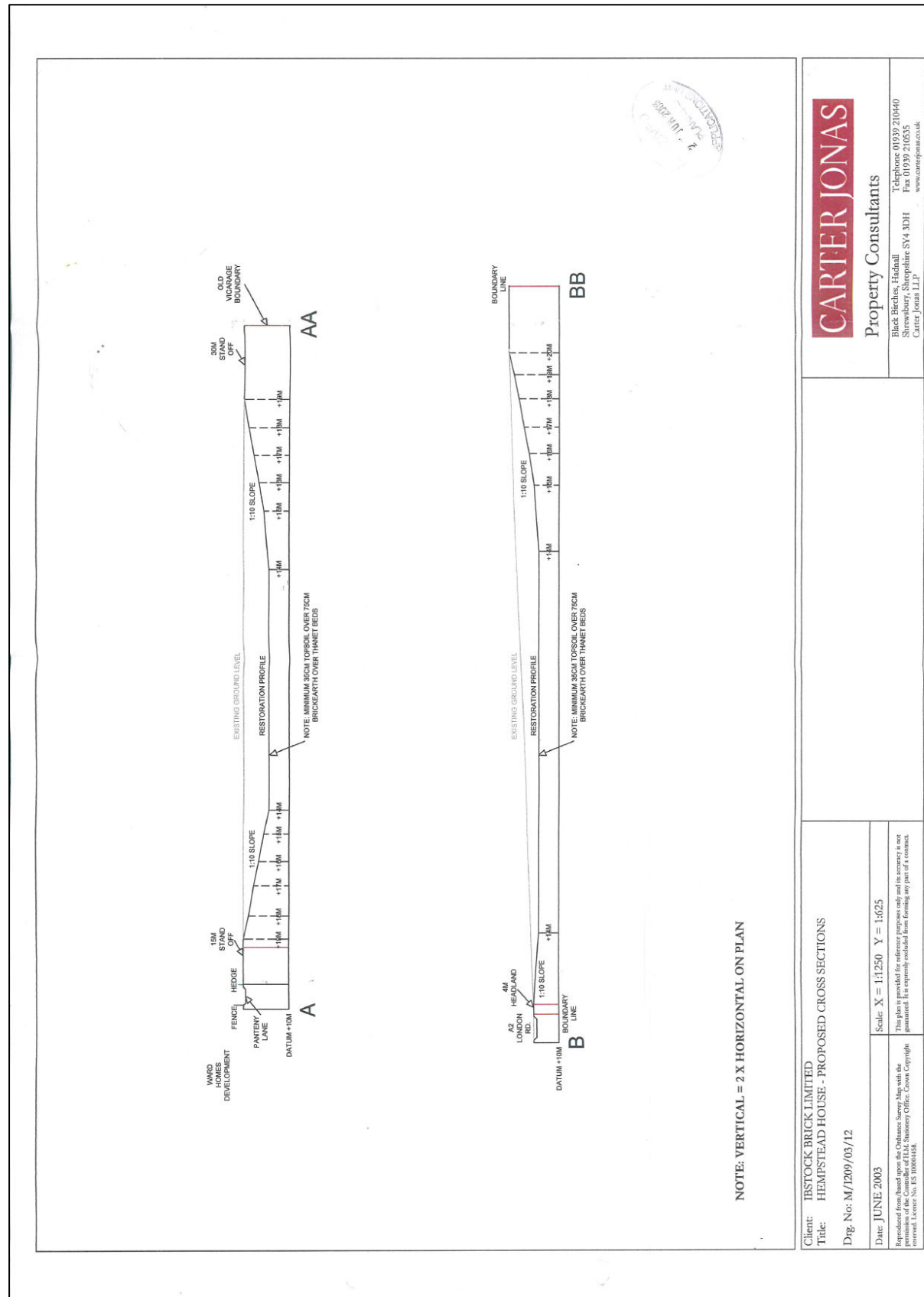
Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Approved Restoration Contours



Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Approved Cross Sections (following restoration)



Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

4. The Hempstead House site is identified for the extraction of brickearth and safeguarded from development which would either sterilise workable reserves or be adversely affected by such working within the Kent Minerals Subject Plan: Brickearth (1986). The Swale Local Plan (2008) identifies the application site as falling outside the confines of built up area of Bapchild within the open countryside. The site also overlies an aquifer and is identified by the Environment Agency as being within a Groundwater Source Protection Zone (SPZ) 3. The area is also identified as having a high potential for archaeological remains. There are no other site specific designations, although more general development plan policies are set out in paragraph (15) below.

Background / Relevant Planning History

5. Brickearth is a superficial mineral deposit that overlies the Chalk and Tertiary deposits of North Kent. The name originates from the brick-making industry to describe deposits which require little or no additional material to render them suitable for brick manufacture. Brickearth deposits in Kent have been worked in various locations across the county but particularly north of the chalk escarpment in the Faversham – Sittingbourne area. These deposits produce a yellow brick product known as the 'London Yellow Stock'.
6. Planning permission to extract brickearth from the application site was originally granted in 1988 under SW/86/859. At the time this permission was not proceeded with, nor was a subsequent consent permitted in 1994 to extend the time to implement the original proposals, which lapsed in 1999.
7. The extant minerals permission (SW/03/430) was granted by the County Council on 15 September 2003, subject to a number of conditions controlling operations on site. This permission allows for the progressive working and restoration of the land back to agricultural use at a lower ground level (on average 3 metres lower across the site) over a 10 year period. The permission allows for the land to be worked for a maximum of 4 weeks each year (between the months of May to September) up until 31 October 2013. The site can only be worked in dry weather to avoid damage to the soil structure. A total of 5.58 ha of the site area is available for brickearth extraction (allowing for land allocated as stand-offs from neighbouring buildings). During the permitted working periods no more than 100 heavy goods vehicles (HGVs) are allowed to visit the site each day (100 in / 100 out). The site is permitted to be worked in phases using a 360 degree excavator to carefully strip the topsoil, extract the brickearth and load the mineral directly into HGVs for transportation off site. All HGVs accessing the site are required to run on a central haul road, with speed limits imposed within the site boundary in order to minimise dust. A water bowser is required to dampen down any dust generated by the operations. Following this process the area worked is carefully re-contoured and the topsoil replaced in accordance with an approved restoration scheme (see attached plan and section drawings). This progressive restoration ensures that outside of the permitted operational periods each year the un-worked and restored areas of the site remain in / revert back to an agricultural use. At the point when planning permission was granted, brickearth was originally transported from site to the applicant's Funton brickworks (north-west of Sittingbourne). However, following the closure of the Funton site the mineral is now transported to the applicant's Ashdown factory, Bexhill-on-Sea, East Sussex. The Ashdown brickworks stockpiles mineral from the site and continues to

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

supply yellow products typical of the local vernacular.

8. The 2003 application included a traffic assessment (based on the proposed maximum number of vehicle movements), a separate noise assessment and dust mitigation measures. The permission includes a number of controls to help mitigate the impacts of the operations, including hours of operation, noise, dust, sheeting and cleaning of HGVs and a programme of archaeological works to ensure the preservation of any archaeological remains. The Public Right of Way that crosses the site (north-west to south-east) is maintained on legal alignment outside the annual working periods, and is subject to diversion orders as and when the extraction cuts directly across the path.
9. Work on site is at the present progressing through Phase 2 of the permitted reserves, however a significant area remains un-worked which would provide approximately 80,000 tonnes of brickearth. The latest topographic survey (attached) depicts the current position, with the site partially restored at the lower ground level. Phase 1 (to the south) has been completed and restored back to a beneficial agricultural use. The northern part of the permitted quarry area remains at existing ground levels with the open / un-restored working face stretching across the site (east-west).
10. During the initial year of operations on site file records show that the County Council registered 16 complaints from members of the public in relation to the quarry. These complaints principally related to amenity concerns, including: failure of / missing dust mitigation measures; loaded vehicles leaving the site un-sheeted; mud and debris on the public highway; noise concerns from plant and vehicle movements; work commencing outside the permitted hours; the construction of the access road and the pattern of working on site; amongst other matters. During subsequent years the number of complaints recorded declined (4 in the second year and no recorded complaints in subsequent years).

Proposal

11. The current “section 73” (s73) application seeks permission to vary the conditions 1 and 3 imposed on permission SW/03/430 to allow more time to work and restore the Hempstead House brickearth site. The proposals would extend the life time of the consent from the permitted end date of 31st October 2013 for a further period of 7 years to the 31st October 2020. The application does not seek to amend any other existing working practices, controls or conditions, which are proposed to remain the same as permitted under permission SW/03/430.
12. The applicant states that the quarry remains partially worked due to unforeseen delays caused in large part by the economic down turn. During the permitted lifetime of the quarry the continued depression in the brick market has meant that extraction of mineral from site has remained proportionately low with little or no work taking place in some years.
13. If permission is granted the applicant proposes to continue to work the site in accordance with the permitted working plan. Extraction would continue in sequence on an annual basis, moving towards the north eastern corner of the site (adjacent to the A2) where the direction of quarrying would return progressively to the west along the south

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

side of the Hempstead House Hotel. The permitted working plan includes stand-offs of a minimum of 25 metres from the façades of the closest neighbouring properties, including the Hotel.

14. In support of the proposals, the application documents also include clarification of working practices relating to restoration and aftercare of the site back to beneficial agricultural use. This information would additionally address outstanding requirements under conditions 15 and 21 of planning permission SW/03/430 (i.e. relating to groundwater protection to ensure not less than 75cm of brickearth is left in the base of the quarry and soil / aftercare practices proposed to deliver the land back to the required standards for agricultural use) which were not previously fully addressed.

Planning Policy

15. The following Government Policy and Guidance and Development Plan Policies are of particular relevance to the consideration of this application:

- (i) **National Planning Policy and Guidance** – the most relevant National planning policies and policy guidance are set out within the following documents:

National Planning Policy Framework (NPPF) (March 2012) sets out the Government's planning policies for England at the heart of which is a presumption in favour of sustainable development, including contributing to an economic, social and environmental role. The guidance is a material planning consideration for the determination of planning application. It does not change the statutory importance of the development plan which remains the starting point for decision making. However, the NPPF indicates that the weight given to development plan policies will depend on their consistency with the Framework (the closer the policies in the development plan are to the policies in the NPPF, the greater the weight that may be given).

In determining applications, the NPPF states that local planning authorities should look for solutions rather than problems and that decision-takers at every level should seek to approve applications for sustainable development where possible.

In terms of delivering sustainable development in relation to this development proposal, the NPPF guidance and objectives covering the following matters are also relevant:

- Chapter 1 (Building a strong, competitive economy);
- Chapter 3 (Supporting a prosperous rural economy);
- Chapter 4 (Promoting sustainable transport);
- Chapter 8 (Promoting healthy communities);
- Chapter 11 (Conserving and enhancing the natural environment);
- Chapter 12 (Conserving and enhancing the historic environment);
- Chapter 13 (Facilitating the sustainable use of minerals); and
- Accompanying Technical Guidance (Minerals policy).

- (ii) **Development Plan Policies:**

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Kent Mineral Subject Plan: Brickearth (1986) Policies:

- Policy B1** Identifies potential sites for the extraction of brickearth and states that extraction from such sites will be acceptable subject to the County Council being satisfied that there is a sufficient case need to override any material planning interest.
- Policy B2** Seeks to safeguard brickearth sites identified under Policy B1 or sites with planning permission from development which would either sterilise, or adversely affect, workable reserves.
- Policy B4** Requires evidence that a site contains economically workable reserves that justify taking land out of an existing beneficial use.
- Policy B5** Requires at least 75cm of brickearth and topsoil to be retained within a permitted brickearth excavation in the case of restoration over Thanet Beds.
- Policy B6** Requires brickearth excavation to include a progressive working and restoration scheme.
- Policy B7** Requires a programme of agricultural after-care.
- Policy B9** Requires proposals for brickearth working to incorporate safe access onto the public highway.
- Policy B10** Requires adequate measures to prevent mud or debris from being carried onto the public highway.
- Policy B11** Requires the County Council to be satisfied that operations will not cause unreasonable disturbance to surrounding land uses by virtue noise, dust, visual impact, vehicle movements and other forms of intrusion and where necessary measures to avoid disturbance or provide sufficient safeguarding margins.
- Policy B12** Amplifies policy B11, requires noise levels that will not cause unreasonable nuisance, best practical means to avoid dust emissions, and measures to ensure vehicle movements do not adversely affect built-up areas.
- Policy B13** Seeks measures to retain and where appropriate enhance existing landscape features and planting.
- Policy B14** Seeks to protect Public Rights of Way taking account of the interests of users of footpaths.

Members will be aware that the above saved policies within the adopted Kent Mineral Subject Plan: Brickearth (1986) are still relevant despite the date of the plan

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

and that the broad thrust of the policies is reflected within the NPPF and emerging Kent Minerals and Waste Development Local Plan.

Swale Borough Local Plan (2008) Policies:

- Policy SP1** In meeting the development needs of the Borough, proposals should accord with principles of Sustainable Development, including minimising impact on the environment and encouraging sustainable economic growth.
- Policy SP2** Requires development proposals to protect and enhance the special features of the visual, aural, ecological, historical, atmospheric and hydrological environments of the Borough.
- Policy SP3** Seeks to optimise the Borough's economic potential.
- Policy SP5** Development proposals within the countryside will seek to increase self-sufficiency and satisfying local needs, whilst protecting the character of the wider countryside.
- Policy TG1** Within the Thames Gateway Planning Area, seeks appropriate development that meet environmental, economic and housing objectives. Amongst other matters, land that is of importance to agriculture, landscape, biodiversity or settlement separation, will be protected from unnecessary development.
- Policy E1** Development proposals should, amongst other matters, seek to reflect the positive characteristics of the locality; protect and enhance the natural and built environments; cause no demonstrable harm to residential amenity; and provide safe vehicular access.
- Policy E2** Requires all development proposals to minimise and mitigate pollution impacts.
- Policy E4** Seeks to minimise the degree of risk of flooding, either to, or arising from, development.
- Policy E6** Requires the quality, character and amenity value of the wider countryside to be protected and where possible enhanced.
- Policy E8** Development on agricultural land will only be permitted when there is an overriding need that cannot be met firstly on land within the built-up area boundaries.
- Policy E9** Seeks to protect the quality, character and amenity of the wider landscape, through development that is sympathetic to, and minimises impact on local landscape character.

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Policy E11 Requires biodiversity and geological conservation interests to be protected, maintained, or enhanced.

Policy E16 Development that does not achieve acceptable mitigation of adverse archaeological effects will not be permitted. Where preservation in-situ is not justified, the applicant will be required to ensure that provision will be made for archaeological excavation and recording, in advance of and/or during development.

Policy T1 Development proposals that generate volumes of traffic in excess of highway capacity and or result in a decrease in highway safety will be refused unless these issues can be addressed by environmentally acceptable improvements to the highway network.

(iii) Emerging Development Plan Policy

Kent Minerals and Waste Development Framework: Minerals and Waste Core Strategy: Strategy and Policy Directions Consultation (2011) – Draft Policies:

Policy CSM1 Requires proposals for minerals development to address the Government's objectives for sustainable development appropriately whilst also meeting the Kent MWDF Sustainability Framework Objectives

Policy CSM2 Requires specific sites for brickearth and clay for brick and tile manufacture to maintain a landbank of permitted reserves equivalent to at least 25 years of production based on past sales.

Policy CSM4 Requires identified economic mineral resources to be safeguarded from being unnecessarily sterilised by other development.

Policy DM1 Requires minerals and waste development to be designed to ensure impact on the environment is minimised, including protecting and enhancing the character of an area.

Policy DM2 Requires minerals and waste development to ensure that there is no significant adverse effect on the character, appearance, ecological, geological or amenity value of sites of international, national and local importance

Policy DM3 Minerals and waste likely to affect important archaeological features should make provision for preservation in situ, excavation or recording of any interest, in accordance with the level of importance of the finds.

Policy DM7 Requires minerals and waste development to preserve quality and flow of ground and surface water and not exacerbate flood risk.

Policy DM8 Requires minerals and waste development to protect qualities of

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

life and wellbeing of adjoining land uses from unacceptable adverse effects from noise, dust, vibration, odour, emissions, visual intrusion or traffic.

- Policy DM9** Seeks to protect the environment and local amenity from unacceptable cumulative impacts resulting from individual or a number of minerals or waste developments occurring either at the same time or in sequence.
- Policy DM10** Minerals and waste development will be required to minimise road miles except where: there is no practicable alternative; the proposed access arrangements would be safe and appropriate; and the highway network is able to accommodate the traffic that would be generated without an unacceptable impact on highway safety, the environment or local community.
- Policy DM11** Planning permission will only be granted for minerals and waste development that adversely affect a public right of way if satisfactory prior provisions for its diversion are made which are both convenient and safe.
- Policy DM15** Requires minerals and temporary waste management development to include satisfactory provision for the restoration and after-use of the site.
- Policy DM16** Requires after-use of minerals and temporary waste management sites to take account of character and landscape setting prior to development, ensure long-term agricultural value and provide for enhancement of landscape quality, biodiversity interests and the local environment.

Kent Minerals and Waste Development Framework: Minerals Sites Plan Preferred Options Consultation (2012) – identifies the potential need for new brickearth sites during the plan period in order to continue production of traditional stock bricks in accordance with the current national minerals policy requirement to maintain landbanks of brick clay (which includes brickearth) of at least 25 years. The Preferred Options include new sites at: Paradise Farm, Hartlip and Newington; Land to rear of Jeffries, Claxfield Road, Teynham, Sittingbourne; Barbary Farm, Provender Road, Norton Ash, nr Faversham; and Barrow Green Farm, Barrow Green, Teynham, Swale.

Members will be aware that emerging Kent Minerals and Waste Framework has not yet reached Submission stage, as such the draft Plans and policies carry little weight as material planning considerations.

Consultations

16. **Swale Borough Council:** raises no objection to the proposals, subject to a condition ensuring the development ceases before 31st October 2020 and the site is restored to its

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

former state.

17. **Tonge Parish Council:** no comments received (consulted on 26 July 2013).
18. **Bapchild Parish Council:** no comments received (consulted on 26 July 2013).
19. **Environment Agency:** raises no objection to the application, subject to a continued requirement to retain 75cm of brickearth at the base of the void over the bedrock. The Agency advise that, should planning permission be granted, the applicant will be required to submit an updated Extractive Material Management Statement (EMMS) under the Environmental Permitting regime.
20. **South East Water:** no comments received (consulted on 26 July 2013).
21. **Natural England:** advises that the Local Planning Authority should determine whether the application is consistent with national and local policies.
- Natural England's standing advice recommends: proceeding with application, subject to an informative stating that if a protected species is encountered during the course of the development, then works should cease and advice be sought from an ecological consultant.
- The advice recommends that (where appropriate) opportunities for biodiversity enhancements should be considered by the applicant.
22. **Kent County Council Public Rights of Way and Access Service:** raises no objection to the application.
- The Area Officer requests that a gradient of not more than 1:10 is left on the legal alignment of the public footpath at the completion of each phase of works. The comments confirm that a temporary closure would be required if the public footpath is directly affected by any phase of extraction and that the applicant be made aware that any planning consent given confers no consent or right to disturb or divert any Public Right of Way without the express permission of the Highway Authority.
23. **Kent County Council's Landscape Officer:** raises no concerns or comments in relation to landscape considerations.
24. **The County Archaeological Officer:** raises no objections to the application, subject to conditions covering a revised programme of archaeological works for the remaining area of the quarry and the completion of post excavation works and reporting for the archaeological investigations that have taken place to date within 18 months of the grant of permission.

The County Archaeological Officer's advice is based on the archaeological potential of the site and the findings of the original site evaluation report, which suggests that part of the northern area of extraction (referred to as the 'Circus Field') may include remains of a section of Roman road. He is recommending a revised Written Scheme of Investigation on the basis that the remaining unworked land has a greater

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

archaeological significance than the area of the site worked to date. His advice acknowledges that an extension to the time allowed to work the site would result in a delay in the completion of earlier archaeological investigations, some of which date back to 2004/5. For this reason he is recommending that the post excavation works and reporting for the investigations completed to date be carried out within the next 18 months, with reporting on future investigations to follow in due course in accordance with the revised programme being recommended.

25. **Kent County Council Highways and Transportation:** raises no objection on behalf of the local highway authority, having considered the development proposals and the likely effect on the highway network.

Local Member

26. The local County Member for Swale East, Mr A. Bowles, and the adjoining Member for Swale West, Mr M. Baldock were notified of the application on 26 July 2013.

Publicity

27. The application was publicised by the posting of a site notice, an advertisement in a local newspaper and the individual notification of 167 residential properties.

Representations

28. In response to the publicity, 2 letters of representation have been received objecting to the application. The key points raised can be summarised as follows:
- Objects on the grounds of past and potential impacts on residential amenity during the permitted working periods each year, particularly as a result of noise and dust generated by excavation and HGV movements from 0700 hours to 1800 hours weekdays and 0700 and 1300 hours on Saturdays.
 - Raises concern about the dust mitigation measures employed on site. Considers that dust generated by the site has previously been unbearable despite the applicant putting up screens to minimise windblown dust. Suggests that the applicant has previously failed to use the required water bowser to dampen the ground. Notes that dust has previously made its way into residential properties.
 - Raises concern that the site is always worked during hot weather when neighbouring residents have windows and doors open. Notes that residents are unable to sit in their gardens due to the noise generated by the site.
 - Advises that numerous complaints concerning noise and dust have had to be made in the past, including as a result of noise from lorries, beeping horns, missing dust screens and failing to use the required water bowser to dampen the ground. (See 'Background' section for further details concerning the existing operations).
 - Raises concern about the potential for mud and debris on the public highway. Notes that this issue has been raised during previous phases of working.

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Discussion

29. The application, made under Section 73 of the Town and Country Planning Act 1990, seeks planning permission for a variation of conditions 1 and 3 of planning permission SW/03/430 to extend the period of working and final restoration at the existing Hempstead House brickearth site until 31 October 2020. The application is being reported to the Planning Applications Committee as a result of two letters of objection received from nearby residential properties. See paragraphs (16) to (25) and (28) for details of all representations and consultee views received.
30. Section 38(6) of the Planning and Compulsory Purchase Act (2004) requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, this proposal needs to be considered in the context of the adopted and emerging Development Plan Policies, the National Planning Policy Framework, other Government Policy and Guidance and any other material planning considerations. In considering this proposal the planning policies outlined in paragraph (15) above are particularly relevant.
31. In my opinion the main considerations in this particular case are:
- Need;
 - Amenity Impacts (noise and dust);
 - Highway Considerations;
 - Archaeological Potential;
 - Public Right of Way; and
 - Restoration and After Use.

Need

32. NPPF states that minerals are essential to support sustainable economic growth and quality of life and requires determining authorities to give great weight to the benefit of mineral extraction. It acknowledges that minerals are a finite natural resource that can only be worked where they are found and that it is important to make best use of them to secure their long-term conservation. It also promotes the need to safeguard mineral resources of local and national importance to ensure they are not needlessly sterilised.
33. Government policy seeks a steady and adequate supply of minerals. In the context of brick clay (which includes brickearth), it requires mineral planning authorities to maintain a stock of permitted reserves of at least 25 years to support continued investment in new or existing plant by the brick-making industry and their maintenance. It also requires local planning authorities to take account of the need for provision of brick clay from a number of different sources to enable appropriate blends and products to be made.
34. Kent Minerals Subject Plan: Brickearth (1986) ('the Brickearth Plan') identifies the application site for extraction. Policies B1 and B2 of the Brickearth Plan specifically supports extraction at the site in principle and require that the location is safeguarded from development that would sterilise workable reserves. The Brickearth Plan seeks to ensure that the identified mineral resources are preserved to reduce the pressure on the release of further land for mineral working.

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

35. The evidence base prepared for the emerging Kent Minerals and Waste Local Plan acknowledges that there is now only one operational brickworks remaining in Kent, following the closure of Funton brickworks by the applicant. As set out within the 'Background' section above, Ibstock Brick moved the production of yellow stock bricks (involving the use of brickearth from the application site) to its Ashdown Brickworks in East Sussex. Notwithstanding this, the emerging Framework and Minerals Sites Plan makes it clear that in addition to the permitted reserves within the County (which include those within the current application site) new brickearth reserves will be required during the plan period to maintain a steady supply of mineral to support the brick making industry irrespective of the final location of the brickworks that manufacture the product. This includes maintaining the production of 'London yellow stock', which is an important building material within the local vernacular. The preferred sites identified within the Minerals Sites Plan include significant new reserves at Paradise Farm, Hartlip and Newington (678,000 tonnes), Land adjacent to Claxfield Road, Teynham (95,000 tonnes), Barbary Farm, nr. Faversham (1,241,686 tonnes) and Barrow Green Farm, Teynham (760,000 tonnes).
36. Given the identified requirement for new reserves within the emerging plan period, I am satisfied that there is an identified need for the mineral resource and that sterilisation of the remaining mineral deposit at this site (approx. 80,000 tonnes) would prompt the applicant to seek to promote new resources at an earlier point in time. In the absence of a very good reason, this would not represent sustainable development.
37. In determining this application, 'need' for a development becomes a material consideration if (demonstrable) harm could be caused by the proposals. Further consideration of issues relating to local amenity impacts, highways considerations, archaeology, the public right of way, restoration and after use, together with any other material planning considerations, are set out within the sections below.

Amenity Impacts (including noise and dust)

38. The NPPF requires mineral planning authorities to ensure that proposals do not have unacceptable adverse effects on the natural or historic environment or on human health, including noise, dust, visual intrusion, traffic, slope stability and surface and groundwater quality, amongst other considerations. Government policy requires that a programme of work be agreed which takes account, as far as practicable, of the potential impacts on the local community over the expected duration of operations, including the proximity to occupied properties as well as legitimate operational considerations. The NPPF suggests that in some cases it may be justified to consider adequate separation distances, taking account of the nature of mineral extraction, need to avoid undue sterilisation of mineral resources, location and topography, environmental effects and potential mitigation measures.
39. Policies B11 and B12 of the Kent Brickearth Plan (1986) require that extraction does not cause unreasonable disturbance to residential property or other sensitive development by virtue of noise, dust, visual impact, traffic and other forms of intrusion. The policies require that if measures to avoid unreasonable disturbance cannot be provided then either permission should not be granted or a safeguarding margin around the site will be

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

required.

40. Swale Borough Local Plan Policies E1 and E2 require development to minimise and mitigate for any pollution impacts ensuring that there are no significant adverse effects on human health, residential amenity, flora and fauna or water resources (amongst other matters). The emerging policies within the Kent Minerals and Waste Plan require development proposals to demonstrate that they are unlikely to generate unacceptable adverse effects from noise, dust, emissions, visual intrusion, traffic or associated damage to the qualities of life to adjoining land uses.
41. It is noted that during the first year of operation the Mineral Planning Authority recorded 16 complaints from nearby residents in relation to the amenity impacts of the permitted brickearth extraction, including from noise and dust impacts. From the significant reduction in the number of complaints on record there would appear to have been fewer problems in subsequent years. It should be noted that the site has been worked less frequently and also that the operational areas on site have generally moved further away from the majority of neighbouring properties, which are positioned to the west of the site within the outskirts of Bapchild. Any complaints received by the County Council in the past have been investigated and raised with the applicant as soon as possible, including drawing attention to the mitigation measures / controls required by the planning permission. The site has been monitored by the County Council on a regular basis, during the relatively short period of working permitted each year (4 weeks). A report on such monitoring visits is prepared and sent to the applicant. In turn the applicant has maintained regular contact with the planning authority and local parish council, providing information on the progress of work on site and giving prior notice of the intention to work each year in accordance with the permission.
42. The publicity carried out as part of the consideration of this application has attracted two letters raising objections to the proposal. Both letters originate from properties to the west of the application site, closest to the vehicle access route and the early phases of working. The objections relate to the potential amenity impacts, primarily from noise and dust generated from activities on site and the associated HGV movements.
43. The conditions imposed on the existing permission SW/03/430 include (amongst other matters) a number of controls that seek to minimise disturbance from operations and avoid any unacceptable impacts on the local community and environment. The conditions allow for: brickearth extraction to take place over a maximum of four weeks each year; hours of operation between 0700-1800 Monday to Friday and 0700-1300 on Saturday; the provision of a dedicated vehicle access; measures to ensure mud and other materials are not deposited on the public highway; all HGVs leaving the site to be sheeted, a maximum of 100 HGVs per day (100 movements in / 100 movements out); noise from the operations not to exceed 70dB(A) at the noise sensitive properties; and the provision of dust suppression measures. The permitted dust suppression measures include the provision of a water bowser on site, road-going vehicles to only run on the internal haul road and speed limits within the site boundary to minimise dust generated by vehicle movements. The permitted working area (shown on the drawing provided on page 3 above) also includes the provision of stand-offs around the site to ensure a minimum distance of 25m between the quarry area and the façade of the closest neighbouring properties, in most instances this distance is far greater. The requirement

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

for stand-offs on site accords with the recommendations set out within the NPPF and Brickearth Plan.

44. The temporary operation of the quarry each year has the potential to generate some disruption to the local area, particularly as the working of the site can only take place on dry days during the months of May to September. This is due to the nature of the material being extracted and the need to avoid periods of wet weather when soil quality would be adversely affected by working. However it should be noted that any disruption is confined to a maximum of four weeks each year (i.e. a total of 22 working days). At all other times the un-worked and restored areas of the site remain within agricultural use, which in itself will inherently generate some amenity impacts for the surrounding area, particularly at peak times of the agricultural year. The Planning Applications Committee considered the potential amenity impacts in detail at its meeting on 12 August 2003, concluding that subject to the conditions mentioned above, the proposals would not have unacceptable adverse effects on the surrounding land uses, including nearby residential properties.
45. In addition to the recommended conditions, stand-offs built into the working plan and the maximum of four weeks working each year, it should be noted that due to the phasing of extraction the majority of the area still to be worked is located to the north and east. This arrangement would move the key operations on site further away from the majority of residential properties to the west of Panteny Lane. During the operation of the site to date the applicant has maintained regular contact with the Planning Authority, Bapchild Parish Council and other appropriate stakeholders, including the adjacent hotel and local residents. The applicant aims to ensure interested parties are kept informed of the commencement and duration of operations in any given year. The applicant remains committed to ensure that appropriate measures are undertaken on site to minimise local impacts during the short period of working each year.
46. Taking the above considerations into account, I am content that the proposals could be adequately controlled by the imposition of the existing conditions so as not result in unacceptable impact on the local environment, including on local amenities if a further permission were to be granted. I am therefore satisfied that the proposed development would be acceptable in amenity terms and would accord with the relevant development plan and Government policies detailed above.

Highway Considerations

47. Government policy on transport matters set out within Chapter 4 of the NPPF recognises that land use planning has a key role in delivering sustainable transport choices and reducing the need to travel, including the movement of goods and supplies. The policy requires planning decisions to take account of whether opportunities for sustainable transport have been taken up (depending on the nature and location of the site), safe and suitable access can be achieved and measures are put in place to limit significant impacts on the transport network. The NPPF states that development should only be prevented or refused on transport grounds where the cumulative impacts of development are severe. Policies B9 and B10 of the Kent 'Brickearth Plan' (1986), T1 of the Swale Borough Local Plan (2008) and DM10 of the emerging Minerals and Waste Development Framework (2011) require access arrangements for all development to be

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

safe and appropriate and the highway network to have capacity to accommodate traffic generated by the development without a decrease in safety or an unacceptable impact on the environment or local communities.

48. The application site has a dedicated vehicle access to the west off Panteny Lane, which was constructed under the existing permission. The access point is located approximately 120m south of the junction of Panteny Lane with the A2 (London Road), allowing vehicles attending site to have good access to the primary road network. The potential highways impact of the development was considered in detail before the existing planning permission was granted. The planning permission allows up to 100 HGVs to attend the site during any one day during the four weeks the site is operation each year (100 movements in / 100 movements out). At that time the Area Transportation Manager considered this to be acceptable, subject to the provision of the above mentioned access, a specific cap on the maximum number of movements per day, vehicles to be sheeted and wheel washing facilities made available on site to prevent debris on the public highway. Having considered the current application and the potential effect on the highway network, Highways and Transportation raises no objection on behalf of the Local Highway Authority.
49. It is noted that one of the objections received raises concerns that in the past mud and debris on the public highway has been an issue during operation of the site. The conditions imposed on the existing permission include a requirement for measures to be taken to ensure this does not become an issue. Subject to this condition being replicated on any further permission I consider that there would be sufficient controls in place to ensure appropriate measures are taken. However, it would be necessary for the County Council to secure compliance with the conditions should this prove necessary.
50. The proposed number of vehicle movements has not changed from that previously considered and accepted by the County Council. The number of movements is considered to be acceptable given that the site would only be operational four weeks a year and has ready access to the primary road network. Given the Local Highway Authority's views and subject to the replication of the conditions imposed on the previous permission, I am satisfied that the proposals conform with the current development plan and Government policies relating to highway matters as set out above.

Archaeological Potential

51. The NPPF requires that the effect of an application on the significance of a non-designated heritage asset (including archaeological remains) should be taken into account in determining applications. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm or loss and the significance of the heritage asset. Where an asset would be lost the NPPF seeks to ensure that developers record and advance understanding of its significance in a manner proportionate to its importance and the impact. Notwithstanding the above, the NPPF makes it clear that the ability to record evidence of the past should not be a factor in deciding whether such a loss should be permitted.

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

52. Policy E16 of the Swale Borough Local Plan (2008) and Policy DM3 of the emerging Minerals and Waste Development Framework (2011) require development to take account of archaeological features, including preservation of significant remains in-situ. Where preservation in-situ is not justified, the development plan policies require provision for archaeological excavation and recording in accordance with the level of importance of the potential finds.
53. The County Archaeological Officer has confirmed that part of the un-worked northern area of the application site lies within the known corridor of the main London to Canterbury and coastal Roman road (known as Watling Street). The original evaluation report prepared for the entire site may have identified part of a Roman road running within the northern 20m of the area proposed for extraction.
54. On this evidence the Archaeological Officer's advice suggests that the archaeology in the northern part of the site is likely to be more complex than that discovered to date requiring a longer lead in time and greater resources to investigate. He recommends that, if permission is granted, the applicant be required to undertake enhanced archaeological works in accordance with a revised Written Scheme of Investigation, to be approved by the County Planning Authority, to ensure that any remains are adequately investigated and documented in accordance their significance.
55. The Archaeological Officer also recommends that, if the County Council is minded to grant additional time to complete the working of the quarry, the outcome of the archaeological investigations carried out on the earlier phases of the quarry, including post excavation work and reporting, should be completed within the next 18 months to ensure that this work is not lost or unnecessarily delayed by the current application.
56. The applicant has acknowledged the revised archaeological conditions being recommended and has indicated general agreement to an updated Written Scheme of Investigation and the completion of post excavation work relating to earlier phases of archaeological investigation. Subject to the revised archaeological conditions, I am satisfied that the proposed development would accord with the development plan policies and Government policy concerning archaeological assets.

Public Right of Way

57. A Public Right of Way (PROW) (footpath ZR194) passes across the application site (and the field to the south) from Panteny Lane in the north-west to Dully Road in the south-east. Chapter 8 of the NPPF, Kent Brickearth Plan Policy B14 and Policy DM11 of the emerging MWDF seek to protect Rights of Way and where necessary ensure that any diversions permitted are safe and convenient.
58. The County Council's Public Rights of Way Officer raises no objection to the application, subject to the gradient left on the legal alignment of the public footpath not exceeding a gradient of 1:10 at the completion of each phase of working. The advice received confirms that a temporary closure would be required if the footpath is directly affected by any phase of extraction. Given that the remaining reserves on site are generally north-east of the footpath and that the site would only be worked four weeks each year, it is not anticipated that development would have a significant impact on the use of the

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

Public Right of Way and I am not aware of any problems having occurred so far in this regard.

59. I am satisfied that the existing controls in place have served to protect the interests of the users of the PROW over the last 10 years of working on site and can see no reason why this should change, subject to an appropriately worded informative reminding the applicant of its legal responsibilities when it comes to maintaining this access. On this basis, the application would accord with the above policies.

Restoration and After Use

60. The NPPF encourages restoration and aftercare of mineral sites at the earliest opportunity and to the highest environmental standards. Policies B5, B6 and B7 of the Brickearth Plan require the progressive restoration of sites at the earliest opportunity, preserving or enhancing the agricultural value of the land.
61. The existing permission includes a site-specific landscape strategy that requires the progressive reclamation and restoration of land back to agricultural use at the earliest opportunity following each annual period of the extraction. Please see a copy of the previously approved restoration plan included above. The controls placed on the consent include measures to ensure that the valuable top-soil is stripped, stored and replaced appropriately, alongside measures to ensure that a minimum depth of brickearth is retained at the base of the working to safeguard groundwater and the agricultural value of the land following extraction.
62. In support of the proposals, the applicant has submitted further clarification on the working practices in place to ensure the land is returned to a beneficial agricultural use. This information satisfactorily addresses previous outstanding requirements of conditions 15 and 21 of the extant planning permission SW/03/430 relating to groundwater protection and soil / aftercare practices. The information received in support of the application also includes a letter from the landowner confirming that there is no evidence of drainage problems developing within the restored areas of the site and that there is good evidence that the soil structure is re-establishing. Overall the landowner indicates that he is very satisfied with the restoration work completed to date.
63. The successful restoration and after use of the land is a key consideration in the context of the current application. As confirmed above, the permitted site area is only partially worked. Phase 1 of the quarry has been restored to the agreed landform and contours at a reduced ground level (an average of 3m lower than original levels across the site). This first phase of working has now been successfully returned to effective agricultural use, as evidenced by the letter received from the landowner. However, the un-worked northern part of the site remains at original ground levels with the working face running east to west across the site dividing the field in two. This arrangement is not acceptable in the long-term as it creates an alien land form and limits the future ability to use the site for agricultural purposes.
64. If planning permission for the continued working and restoration of the site is refused, the planning authority would need to secure the restoration of the land from its current

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

form (i.e. partially worked) back to an appropriate landform to enable continued agricultural use. This would necessitate discussions with the applicant and potentially the landowner to attempt to secure a compromise position, which in itself would be likely to necessitate significant land forming work to create a useable gradient. The process of re-contouring the land would generate similar amenity concerns to those raised about the continued operation of the site. This approach could also lead to a less desirable landform from an agricultural perspective and would result in the sterilisation of the permitted mineral reserves.

65. The approved restoration scheme is designed such that the finished landform following exaction of all permitted reserves is progressively restored and left as a workable field in accordance with best practice. The restored land form would include shallow side slopes of 1 in 10 within the site area and to the northern boundary, grading the ground levels across the site gradually into the surrounding land form. This position could not be achieved without working the remaining reserves.
66. On the evidence of the work completed to date, I am satisfied that the continued working of the mineral is the most sustainable way of achieving an acceptable landform and ensuring the return of the entire site area to an effective agricultural use, whilst preserving the valuable mineral resources. I am also satisfied that the permitted working, restoration and aftercare scheme would ensure that the land is returned to effective agricultural use in accordance with the NPPF and relevant development policies.

Ecology

67. In determining planning applications Chapter 11 of the NPPF and Policy E11 of the Swale Borough Local Plan (2008) require planning authorities to seek to conserve and enhance biodiversity. The site area forms part of an active quarry and agricultural holding which has been, and would continue to be, subject to a high level of disturbance on a regular basis. None of the surrounding hedgerows or planting on the field boundary would be impacted by the proposed operations. On this basis the site is not considered to include features or habitats that are likely to support protective species. Natural England's standing advice recommends proceeding with application, subject to an informative stating that if a protected species is encountered during the course of the development, then works should cease and advice be sought from an ecological consultant. I am satisfied that the proposed development would be accord with the development plan and Government policy in terms of ecology and biodiversity.

Conclusion

68. The application has been considered in the context of the Development Plan and material planning considerations, including the NPPF. I note that the principle of the development is established through the existing planning permission and the Kent Brickearth Plan (1986). With the exception of increasing the period of time allowed to work the remaining quarry reserves, there would be no significant change to the operations being proposed. The emerging Minerals and Waste Local Plan establishes a clear need for continued excavation of brickearth in order to maintain a steady supply of mineral and to support the brick making industry. The remaining reserves available

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

within this site would make a significant contribution to this need and would delay the call to release new locations for mineral extraction. There is also a need to secure the effective restoration of the entire site area to a visually acceptable landform and to preserve the effective long-term agricultural use. Whilst the operations on site would generate some local amenity impacts, I am satisfied that the existing measures to control the development and protect residential amenities are suitable, especially given the temporary nature of the operation and very short working periods each year. These controls could be adequately replicated by re-imposing the existing conditions (updated as necessary) on any new permission.

69. Subject to the above and the condition(s) recommended by the County Archaeological Officer to secure a revised scheme of archaeological investigation and to bring forward reporting on previous investigations, I am satisfied that the proposed development is sustainable and consistent with the relevant development plan policies and Government policies against which the proposal should be considered and that there are no material planning considerations that mean the planning application should be refused. I therefore recommend that planning permission be granted.

Recommendation

70. I RECOMMEND that PERMISSION BE GRANTED, SUBJECT TO conditions to address (amongst others) the following matters:

- the development being completed and the site restored no later 31 October 2020;
- the restoration and landscaping of the site if excavation ceases and does not recommence for a period of two years;
- the development being carried out in accordance with the submitted plans and documents, those previously approved under planning permission SW/03/430 and any approved pursuant to the conditions set out below;
- all non-agricultural vehicles attending site using the permitted access;
- all loaded HGVs leaving site being sheeted;
- no more than 100 HGVs visiting the site per day (100 in / 100 out);
- hours of operation between 0700 and 1800 hours Monday to Friday and 0700 and 1300 hours on Saturday, with no operations on Saturday afternoon, Sunday or Bank Holidays;
- extraction and removal of brickearth only taking place for a maximum of 4 weeks each year between the months of May to September;
- no materials being processed on site;
- the applicant giving 2 weeks notice of its intended working periods each year;
- maintenance of the approved landscaping scheme;
- safe storage and handling of any oil, fuel, lubricants required on site;
- 75cm of brickearth being maintained at base of void;
- removal of any crop or vegetation before soil stripping commences each year;
- soil protection measures;
- measures to manage and protect topsoil stored on site;
- restoration to agriculture being completed in accordance with details approved under permission SW/03/430;
- topsoil being evenly re-spread to achieve 35cm depth following extraction;

Variation of permission SW/03/430 to extend the period of working and final restoration at Hempstead House brickearth site until 31 October 2020 at Land East of Panteny Lane, Bapchild, Sittingbourne – SW/13/939 (KCC/SW/0227/2013)

- development being carried out in accordance with an approved aftercare scheme;
- reasonable precautions to prevent unauthorised persons from entering operational areas on site;
- noise from operations on site not exceeding 70dB when measured at noise sensitive properties;
- dust suppression measures;
- the public right of way not being obstructed by the development;
- the remaining quarry area being worked in accordance with a modified programme of archaeological works; and
- the completion of post excavation works and reporting for all archaeological investigations that have taken place to date within 18 months of the grant of permission.

Case Officer: James Bickle	Tel. no: 01622 221068
----------------------------	-----------------------

Background Documents: see section heading
