

**Representations received by Environment and Transport Cabinet
(ETCC) Committee post publication of papers for the meeting of 28th
November 2018**

1. Brett Group, the promoter of the M2 Lydd Quarry Site
2. Local resident on behalf of Whetsted Residents in respect of the M10 and M13 sites at Stonecastle Farm
3. Ryarsh Protection Group in respect of M8 West Malling Site
4. Borough Green Sandpits, the promoter of the M8 West Malling Site in the form of a legal opinion dated 27th November 2018 from Landmark Chambers

From Brett Group, the promoter of the M2 Lydd Quarry Site

Email to Members of ETCC dated 27th November 2018

To All Concerned,

Lydd Quarry has less than 2 years remaining reserves.

Brett has identified further mineral resources to keep the quarry alive.

KCC is not proposing to allocate these new resources in its new Minerals Plan.

This is now a serious concern, not only for our business, but for the community of Lydd as a whole.

There are now **very serious** consequences that I would ask you all to consider ahead of your meeting tomorrow:

Without Lydd Quarry:

50 plus jobs associated with the quarry will come to an end;

- . The only alternative for supplying construction aggregates to the Lydd Quarry market area is via imports from wharves located on the River Thames.
- . Deliveries from this alternative source instead of Lydd Quarry would raise carbon dioxide emissions by up to 17,000 tonnes.

Whilst resources are available, they should be made available.

Our products are required every day, **by you, me, and everyone.**

Lydd Quarry has a SPA designation, which coincidentally covers our restored areas. Our excellent track record of restoration can only enhance this designation.

Without Lydd Quarry, the economy of Lydd is in jeopardy.

Jobs will ultimately be at risk which I don't want to tell my 50 plus employees.

We gave every one of the 10 year Pupils at Lydd Primary School a brand new bicycle this year and paid for their cycling proficiency test; we sponsor every Lydd Club Day...all giving back to the community ...a community spirit that we respect and that we want to continue to support.

May I make a plea to come and talk to you about this individually or as a group ?

Apologies for the desperate nature of this email...but this is now serious.

Kind regards,

Senior Planning Manager

Brett Group, Robert Brett House, Ashford Road, Canterbury, Kent. CT4 7PP



LYDD QUARRY

OUR PLANS FOR THE FUTURE OF LYDD QUARRY

Lydd Quarry on the border of East Sussex and Kent has been part of the local landscape for over 50 years. Extraction of high quality and high strength sand and gravel from the Quarry, commenced in 1967 and is a key ingredient in the construction of houses and highways projects in the area.

Other local projects recently supplied include the building of sea wall defences at Camber Sands, the development of a helicopter Search and Rescue hangar at Lydd airport and the construction of a Nitrogen plant at Dungeness power station. Our products can be found in local DIY stores such as Travis Perkins and Jewson, caravan bases at local holiday parks and can even be found on the beach at Lydd.

Extending the life of the quarry

In meeting the annual demand for its products, the permitted reserves at the quarry will be exhausted within the next two years.

We have identified similar high quality deposits on land adjoining the quarry which will mean that the life of the quarry can be extended and we can continue to meet local demand for building materials for a further 15-20 years. Brett has evaluated alternative means of meeting the demand and presented its findings to the planning authorities in East Sussex and Kent, and to Natural England.

We have also assessed the environmental, ecological and socio-economic benefits of continued working. We are preparing draft designs to work the adjoining land at the quarry and over the coming months we will consult with local residents, the wider Lydd community and other stakeholders on how best to secure the long term future of the site.

Some facts about the quarry

We employ people from the local area and there are currently over 50 jobs associated with the current operations.

The quarry contributes £1.8M each year into the economy through taxes and business rates.

In 2006 the whole quarry area was designated part of a Site of Special Scientific Interest (SSSI) for its geomorphological and ecological interest by Natural England.

Ecology

In 2014, Brett restored areas were designated as a Ramsar site and, in 2016, a Special Protection Area (SPA) designation was added under European legislation. These designations recognise the international importance the restored areas at Lydd Quarry have for breeding and wintering water birds, birds of prey, passage warblers and breeding seabirds.

The extension proposals will include restoration plans which will further enhance these restored areas for wildlife, in particular creating habitat for species of birds that are considered as endangered such as the Hen Harrier.

THE CONTINUED BENEFITS OF USING LYDD QUARRY

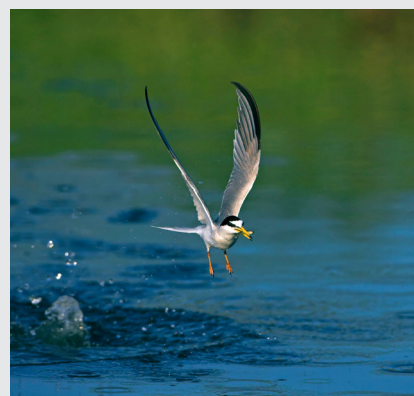
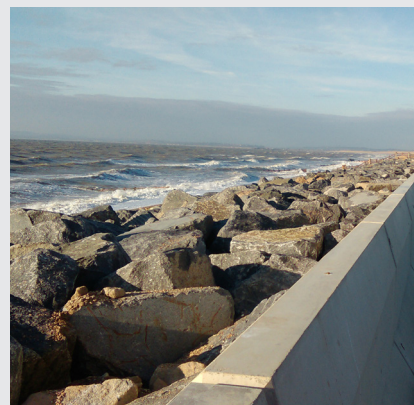
- **Job opportunities retained** – local jobs associated with the quarry will be protected for up to 20 years.
- **£1.8m economic contribution** – the site will continue to make a contribution of £1.8M in business rates and taxes to the economy.
- **Less Co2 emissions than alternative options** – the only alternative for supplying construction aggregates to the Lydd Quarry market area is via imports from wharves located on the River Thames. Deliveries from this alternative source instead of Lydd Quarry would raise carbon dioxide emissions by up to 17,000 tonnes.
- **Fewer lorry miles, and less impact on the roads than other options** – Lydd Quarry is 30 miles closer to its market area than the Thames wharves. Working the proven deposits at Lydd would save up to 11 million lorry miles of traffic on the East Sussex and Kent roads.
- **There will be no planned increases to lorry movements or operating conditions** – in the proposals for the new operating area there are no plans to increase lorry movements or operating conditions beyond current agreements.
- **The infrastructure already exists** – Lydd Quarry currently benefits from investment in mineral processing facilities, services, access and other infrastructure which will be used when working the new area. The identified reserves of sand and gravel would be sterilised if not worked while this infrastructure exists.
- **Lydd Quarry supplies specialist sand to brick making plants** in the South East of England and rounded cobbles for use in the milling industry beyond the South East. An alternative for these regionally unique products has yet to be identified.
- **Nature conservation areas would increase by 200 hectares** – Restoration of the proposed extensions and the current workings in a manner similar to the completed biodiversity targeted restoration would occur. This would enable the internationally important SPA and Ramsar sites to be extended by more than 200 hectares and enhance the nature conservation interest in the quarried land.
- **Controlled access across parts of the restored areas could be provided** – this would enable greater enjoyment of wildlife for interest groups and the general public.
- **Preserving knowledge for future generations** – Working of the extension resources would occur in tandem with University-led research studies of the geomorphology of the SSSI, self-funded by the material released. This would enable current and future generations to have access to further knowledge and understanding of the evolution and occupation of the Romney Marsh. Funding to allow such research may never again be available.

FOR MORE INFORMATION

email: planning.department@brett.co.uk

telephone: **01227 829000**

www.brett.co.uk



Aggregates from the quarry are recognised within the building and construction industry for their quality and are regularly used in housing and highways developments in the area. Other projects recently supplied include the building of sea wall defences at Camber Sands, the development of a helicopter Search and Rescue hangar at Lydd airport and the construction of a Nitrogen plant at Dungeness power station. Our products can be found in local DIY chain stores such as Travis Perkins and Jewson, caravan bases at local holiday parks and can be even found on the beach at Lydd.

On behalf of Whetsted Residents in respect of the M10 and M13 sites at Stonecastle Farm

Sent: 27 November 2018 16:00

Subject: *** URGENT *** OBJECTIONS - KCC MINERAL PLAN - FROM RESIDENTS OF WHETSTED

Dear Councillor Hills

I am writing this email to express the concerns of several residents who reside in the community of Whetsted regarding the proposed further development of sites at Stonecastle Quarry.

I live at the Oast House, Stonecastle Farm and have been actively involved with the mining operators for more than twenty years. This was with Redland, later Lafarge and now Tarmac. The mining at Stonecastle Quarry ceased around 2008 due to the viability of the minerals and general economic conditions. Tarmac have now decided to commence operations to extract minerals from the areas prescribed under the terms of the planning permission KCC1599A granted in 2002 with recent amendments.

We wish to lodge our objection to the site M13 Stonecastle extension, Hadlow and site M10 Moat Farm which are included in the Kent Mineral Review Plan that is being considered tomorrow at the Environment and Transport Cabinet Committee.

The reasons are :-

A – We have been informed by members of Tarmac's site management team that the mineral reserves at these sites are of low grade and have a limited use.

B - The junction of the Access Road/Whetsted Road/A228 has become a notorious blackspot. The current operations are being assessed by KCC Highways due to the vast increase in HGV traffic already envisaged. Any further increase resulting from the proposed additional sites M13 and M10 would present a substantial, potentially fatal, danger to road users. Last year a Tarmac lorry overturned at the A228 junction and spilt aggregate.

C - The area of Stonecastle is now included in the Environment Agency's flood plan (Zone 3) which was not the case when the current permission was granted in 2002. Any further development should only be considered after a full Flood Risk Assessment that includes both the impact of the current extraction plan and the proposed new sites.

D – Local residents have already raised several issues with Tarmac/KCC regarding the levels of noise and dust pollution from the current extraction plan. The Stonecastle Liaison Committee is being formed which will hopefully determine appropriate measures. Any further development should only be considered after these measure have been implemented. The local communities are extremely concerned about the levels of noise and dust that would potentially continue for decades.

E - I am aware of the ecology report that is now being prepared but a full assessment of the environmental impact on the established lakes and surrounding areas is needed. These areas have returned to nature over the ten years since mining ceased in 2008 and the original assessments need updating. Any further development should only be considered after a full Environmental Impact Assessment that includes both the current extraction plan and the proposed new sites M13 and M10.

F – The proposed M10 Stonecastle extension (Phases 3 and 6 of the original plan) was rejected by the planning committee back in 2002. All the issues considered in that decision still apply – with the addition of increased flood and road safety risks.

I would appreciate receiving a reply confirming safe receipt of our objections

Ryarsh Protection Group in respect of M8 West Malling Site

A copy of the Protection Group's document ' Why Ryarsh is an inappropriate location for the proposed M8 quarry development. A copy of this document is already included in the papers at Appendix 3 to the Minerals Sites Plan – Mineral Site Assessment 2018

In addition ETCC was advised that a petition opposing the development with 3,615 signature was submitted to the House of Commons in November 2018.

Legal Opinion from Borough Green Sandpits, the promoter of the M8 West Malling Site in the form of a legal opinion dated 27th November 2018

ROUGHETTS SANDPIT, WEST MALLING, KENT ADVICE

1. I am asked to advise Borough Green Sandpits ("BGS") in relation to its promotion of a site at Roughetts Sandpit, West Malling, Kent ("the Site"). The Site has been promoted for allocation within the Kent Mineral Sites Plan ("KMSP"). The KMSP is due for consideration by the minerals planning authority Kent County Council ("KCC")

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1. I am asked to advise Borough Green Sandpits ("BGS") in relation to its promotion of a site at Roughetts Sandpit, West Malling, Kent ("the Site"). The Site has been promoted for allocation within the Kent Mineral Sites Plan ("KMSP"). The KMSP is due for consideration by the minerals planning authority Kent County Council ("KCC") shortly, in its pre-submission draft form. The Site is not included within the KMSP.

2. Having undertaken a call for sites and a site selection exercise, KCC is proposing to allocate another site, rejecting the Site on the basis of Green Belt impacts due to the impacts on the openness of the Green Belt caused by landscape mitigation bunds, extraction machinery, and lorries.

3. The reasoning is set out in detail in the evidence base document, the Mineral Site Assessment (2018)("MSA"), at page 83:

The site is within the Metropolitan Green Belt. Mineral extraction is not considered on its own to be inappropriate development, however structures such as bunds, plant and machinery which may impact the openness of the Green Belt can be considered to be inappropriate development. Restoration of the site by backfilling with inert materials would comprise inappropriate development. In accordance with national and local policy an assessment of whether 'very special circumstances' exist that would allow the development within the Green Belt is required. This assessment is set out in Appendix 2 and considers whether other considerations would outweigh the harm to the openness of the Green Belt or any other harm. This assessment concludes that while restoration of the mineral working by infilling to existing ground levels would constitute inappropriate development, it is considered that very special circumstances exist to override the presumption against this particular inappropriate development within the Green Belt. However, activities associated with the minerals extraction activity also constitute inappropriate development and, by virtue of the fact that the need for the development (supply of soft sand) could be met at an alternative site outside of the Green Belt, it is considered that very special circumstances do not exist to override the presumption against inappropriate development in the Green Belt and allocation of this site in this location would therefore be inconsistent with local and national Green Belt policy.

4. Appendix 2 to the MSA identifies that the minerals extraction activity at the Site would not undermine any of the five Green Belt 'purposes' (paragraph 4.7, page 179). It refers to some

case law in support of the proposition that openness has a visual element and then says this (paragraph 4.9):

Again, the inclusion of mineral extraction in the list of potential development that can be considered appropriate development supports the view that mineral excavation is capable of meeting the NPPF policy text and that mineral extraction per-se does not automatically mean that all mineral extraction would impact upon openness such that it is considered inappropriate. To conclude that all mineral extraction is inappropriate would make the policy wording in the NPPF meaningless. Consideration needs to be given on a case-by-case basis, taking into account the various bunds, proposed to screen the development, access and parking, site offices and welfare facilities, plant, screener and stockpiles.

In a context where landscape is generally well enclosed, and where the predominant effect of development would be to reduce existing grounds levels, it is unlikely that, by themselves, the activity of extracting the mineral and the resulting void would result in a reduction in openness to the extent that it would be material to the openness of the Green Belt. However, there is potential that a negative impact would arise due to the location and layout of the site compound, material stockpiles, processing plant, movement of HGVs accessing the site and screening requirements. In respect of the site offices and welfare facilities, these would be located within a single storey unit at current ground level. Mobile plant, a screener and stockpiles would also be located at current ground level during the first 6-12 months of the development. The supporting text to policy DM4 of the Kent Minerals and Waste Local Plan, specifically recognises that *“processing plant, although commonly associated with mineral extraction, is considered unlikely to preserve openness, owing to its size, height and industrial appearance and would therefore be inappropriate development”*. Similarly, the introduction of offices and welfare facilities and the movement of HGVs accessing the site and parking arrangements would introduce urbanising features into the countryside which would have a negative impact on openness for the duration of the works – ie 29 years. Depending on their height and location, material stockpiles could also impact on openness. Three-metre high screening bunds, together with tree planting, are proposed to mitigate the visual effect of the development for the lifetime of the activities (minimum 24 years), however, I consider that they will impact on the openness of the Green Belt for a significant period of time.”

5. The references to appropriate/inappropriate are to what is now paragraph 146 of the National Planning Policy Framework (“NPPF”), which provides that *certain other forms of development are also not inappropriate in the Green Belt provided that preserve its openness and do not conflict with the purposes of including land within it. These are (a) mineral extraction...*”

6. The case law referred to in Appendix A to the MSA includes the leading case of *R(Samuel Smith Old Brewery (Tadcaster) and Oxtou Farm) v North Yorkshire County Council* [2018] EWCA Civ 489. That case held that the (identical provisions of the 2012 NPPF) “implicitly requires the decision maker to consider how those visual effects bear on the question of whether the development would ‘preserve the openness of the Green Belt’”.

7. I now consider whether there is anything objectionable in the MSA reasoning.

Inherent parts of the minerals operation

8. Although it is true to say that one cannot simply assume that all minerals extraction projects are 'not inappropriate' (because of the proviso "provided they preserve ... openness"), it is not right to say that landscaping, extraction plant, vehicles and ancillary buildings should all be taken into account when assessing impact on openness.

9. Paragraph 146(a) covers all minerals extraction, both subterranean and that comprising surface extraction. It would make little sense if the NPPF excluded minerals extraction from the ambit of 'inappropriate development', but then put it back into that category on the basis of aspects of mineral extraction that form an inherent, universal, part of the minerals extraction in question.

10. Assessing on a case-by-case basis whether the diggers actually carrying out the extraction harmed openness would not, it seems to me, be an exercise rationally consistent with the NPPF, as long as the diggers were not somehow out of the ordinary (eg many times bigger and taller than the usual type of diggers associated with that form of mineral extraction). The approach that KCC takes in the MSA and in the report to committee does, however, approach the question in that way, judging the following to cause harm to openness:

- (1) the extraction activity itself and associated plant and machinery including screeners;
- (2) bunds
- (3) stockpiles
- (4) access and parking areas
- (5) site offices and welfare buildings

11. There is no suggestion that the Site would be the subject of anything unusual where these activities, items and buildings are concerned. As the High Court said in *Europa Oil & Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643,

"... some level of operational development for mineral extraction, sufficiently significant as operational development to require planning permission has to be appropriate and necessarily in the Green Belt without compromising the two objectives. Were it otherwise, the proviso would always negate the appropriateness of any mineral extraction in the Green Belt and simply make the policy pointless. Extraction is generally not devoid of structures, engineering works and associated buildings. The policy was not designed to cater for fanciful situations but for those generally encountered in mineral extraction."

12. Despite making a passing reference to this case in Appendix A to the MSA, KCC has apparently not recognised that to consider run-of-the-mill aspects of mineral extraction like screeners and site offices in the way they do is contrary to the guidance given by the High Court in the *Europa Oil & Gas* case.

13. In my view, the analysis in the MSA, and in the Committee report, which underpins the judgement reached excluding the Site from allocation, is flawed and should be reconsidered on a proper legal basis before the allocations process goes any further. Not to do so would be liable to render the emerging KMSP unsound.