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Sharon Thompson
Head of Planning
Kent County Council

Contact Kevin Toogood
Email kevin.toogood@tmbc.gov.uk
Your ref
Our ref
Date 5 March 2019

URGENT - BY EMAIL ONLY

Dear Sirs,

**Re: Minerals Application TM/93/612; TM/97/751/MR102
Aylesford Quarry**

I am instructed by Tonbridge and Malling Borough Council ("TMBC") in connection with the minerals applications TM/93/612 and TM/97/751/MR102 due to be determined by KCC as Minerals Planning Authority tomorrow. These applications relate to restoration and aftercare conditions for Aylesford Quarry, and amount to Schedule 1 EIA development requiring an Environmental Impact Assessment to be carried out.

You will be familiar with the legal and technical requirements as to the adequacy of an Environmental Assessment and the consequences upon any permission granted based upon a flawed assessment.

TMBC considered the applications as a consultee and provided a thorough response to the proposals, detailed in the attached TMBC Officer's Report. A professional assessment of the Environmental Statement ("ES"), carried out by TMBC's Development Manager who is highly experienced in EIA matters, sets out a series of failings in that ES (see the tables at section 5.3 and 5.23 of the attached report). Assessed against the requirements of the Regulations, it is clear that the ES fails to deal with matters required by law. In particular, the requirements of Schedule 4 paragraphs 3, 5 and 6 of the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 are not met.

Furthermore, due to such failings, the KCC Officer's Report ("OR") draws a series of conclusions which are irrational as they are based upon flawed evidence. In particular, the conclusions at paragraphs 87, 92, 111, 117, 125, 134 and 145 are irrational and *Wednesbury* unreasonable.

The OR fails properly to address the matters raised by TMBC. By providing only a summary of the concerns raised, and in reaching flawed conclusions upon the adequacy of the ES, the OR is misleading and gives KCC Members a false impression that permission could be granted at this time.

In light of these significant and numerous flaws in both the ES and OR, KCC should not determine the application as it stands. The Applicant should have the opportunity to address the failings of the ES such that KCC officers can reach proper conclusions upon the matters considered necessary for EIA. If the County Council proceeds to determine these applications tomorrow, any decision issued will be susceptible to judicial review.

KCC members should be made aware of the contents of this letter prior to any consideration of the applications, failure to notify them of these matters may lead to further grounds for challenge.

Yours sincerely

Kevin Toogood
Solicitor-Advocate (Higher Courts Civil Proceedings)

**Applications delegated to Director of Planning,
Housing & Environmental Health to determine**

Aylesford Aylesford North And Walderslade	24 October 2018	(A)TM/18/02549/MIN (B)TM/18/02555/MIN
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Target Date for representations: 21 November 2018

Proposal: (A) Variation of conditions 20, 28 and 32 of planning permission TM/93/612 to provide a revised restoration and aftercare scheme and consistent noise limits for temporary operations such as restoration with those provided for by planning permission TM/97/751/WR102 (KCC ref: KCC/TM/0491/2018)

(B) Variation of conditions 2, 36 and 39 and deletion of condition 44 of planning permission TM/97/751/MR102 to provide revised restoration and aftercare scheme and access arrangements for that part of Aylesford Quarry. KCC ref: KCC/TM/0492/2018

Location: Former Aylesford Quarry Rochester Road Aylesford Kent

1. Description of Proposal:

1.1 Application (A) seeks to vary conditions 20, 28 and 32 of planning permission TM/93/612 to provide a revised restoration and aftercare scheme. The conditions in question are reproduced as follows:

20. Noise from operations on the site, including both fixed and mobile plant and machinery, shall not exceed 55dB LA eq 1h [free field] as measured at the nearest noise sensitive property, and the operators shall take such measures to the satisfaction of the County Planning Authority as may be necessary to ensure that this noise level is not exceeded.

28. Within twelve months of the date of this permission a scheme of restoration shall be submitted to the County Planning Authority for approval; such a scheme shall incorporate the general principles indicated on drawing number P1/1191/7 and shall include provision for:-

- (a) the nature of the intended after-use of the site;*
- (b) the sequence and phasing of restoration showing clearly their relationship to the working scheme;*
- (c) interim restoration measures in Area 2;*
- (d) restoration of the worked quarry margins in Area 2 with reference to final slope profiles and tree screen planting;*
- (e) lake shore profile and details of margin preparation related to the intended after-use of the site;*
- (f) the relationship to approved working and restoration schemes for planning permissions MK/4/49/338, MK/4/22/753 and TM/76/169;*
- (g) the details of additional tree planting outlined on drawing P1 /1192/7; the relationship of planting proposals to existing agreed schemes;*
- (h) the restoration and aftercare of the area known as "The Wharf";*
- (i) a timetable for implementation; and thereafter shall be implemented as approved.*

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32. *Within 12 months of the date of this permission an aftercare scheme requiring such steps to be taken, for a period of five years, from completion of restoration in any part of the site, as may be necessary to return the land to a standard reasonably fit for amenity, recreation and nature conservation purposes.*

1.2 Application (B) seeks to vary conditions 2, 36 and 39 and delete condition 44 of planning permission TM/97/751/MR102 to provide revised restoration and aftercare scheme and access arrangements for that part of Aylesford Quarry. The conditions in question are reproduced as follows:

2. *Prior to the bringing into use of the new Quarry access to Rochester Road provided for under planning permission TM/98/462 as amended by Appeal Decision APP/W2275/A/01/1070715 granted on 23 November 2001, the only vehicular access to and egress from the site shall be by way of the access to Rochester Road shown on Dwg. No. P2/1192/3/1. Thereafter the Quarry access shall only be as provided for under planning permission TM/98/462 as amended by Appeal Decision APP/W2275/A/01/1070715. The only exception shall be the access to Area 8 where access shall be obtained from the private road serving Aylesford Waste Water Treatment Works as shown on plan no. P2/1192/3/1.*

36. *Within six months of the date of this permission a scheme of restoration shall be submitted to the mineral planning authority for approval; such a scheme shall incorporate the general principles indicated on drawing number P2/1192/4 and shall include provision for:*

- (a) the nature of the intended after-use of the site;*
- (b) the sequence and phasing of restoration showing clearly their relationship to the working scheme;*
- (c) interim restoration measures in Area 8;*
- (d) restoration of the intended quarry margins with reference to final slope profiles and tree screen planting;*
- (e) lake shore profile and details of margin preparation related to the intended after-use of the site;*
- (f) the relationship to working and restoration schemes for adjacent land pursuant to permissions TM/93/612, TM/99/1539 and TM/98/463;*
- (g) the details of additional tree planting outlined on drawing P2/1192/4 and the relationship of planting proposals to existing agreed schemes; and*
- (h) a timetable for implementation; and thereafter the scheme shall be implemented as approved.*

39. *Within 12 months of the date of this determination an aftercare scheme requiring such steps to be taken, for a period of five years, from completion of restoration in any part of the site, as may be necessary to return the land to a standard reasonably fit for amenity, recreation and nature conservation purposes. The aftercare scheme shall take account of aftercare provision under permissions TM/93/612 and TM/98/463.*

44. *Notwithstanding the requirements of condition (43) above, in that part of Area 4 identified as 'clay working area' on Dwg. No. P21192/3/1, clay may be worked for a temporary period subject to the following:*

The extraction of clay permitted under planning permission reference TM/99/1539 shall cease on or before 31 December 2005.

Clay shall be worked only to supply the Tilmanstone Brickworks.

The clay excavation shall be carried out and completed in all respects strictly in accordance with the documents and drawings submitted contained in the application as amplified and as permitted under reference TM/99/1539 and no variations or omissions shall take place without the prior approval in writing of the mineral planning authority.

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No extraction of clay shall take place below 11 metres AOD.

The clay working area shall be restored in accordance with the details of planning permission TM/99/1539.

- 1.3 Both applications appear to have been made to vary conditions that relate to the restoration of the site so that reference may be made to revised plans in order to allow for the extinguishment of the minerals consent and restoration to come forward. Together, the applications suggest that restoration will allow for nature conservation and amenity enhancements, etc.
- 1.4 The applications have purportedly been subject to EIA following the issue of a formal screening opinion by the County and what is being held out (by the applicant) as an 'Environmental Statement', comprising the following technical documents:
 - (i) Stability report;
 - (ii) Archaeological report;
 - (iii) Ecological assessment;
 - (iv) Landscape restoration strategy and masterplan;
 - (v) Tree report; and
 - (vi) Noise report.
- 1.5 Prior to these applications an outline planning application was submitted to TMBC (as local planning authority) for 146 residential units and associated infrastructure on part of the quarry site (cited on the plans as Plot C). This application is now subject to a non-determination appeal, to be considered by way of public inquiry that commences on 12 March 2019. The significance of this is discussed below.

2. The Site:

- 2.1 The application site relates to the eastern part of Aylesford sand pit and covers an area of approximately 4.92ha. The site is located immediately to the north and west of Aylesford Village and abuts the Aylesford Conservation Area. The quarry has an extant permission for the working of sand, gravel and clay deposits.

3. Planning History (relevant):

TM/18/01640/CCEASC screening opinion EIA 2 July 2018
required

Request for screening opinion under Regulation 6 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017: to determine whether an Environmental Impact Assessment will need to accompany any one or

all of the planning applications proposed to be submitted for revised restoration proposals for the Aylesford Quarry site (KCC ref: KCC/SCR/TM/0109/2018)

TM/17/02971/OA Subject to non-determination appeal

Outline application with all matters reserved except for access: Demolition of existing buildings, structures and hardstanding, land raising of development area, development of up to 146 dwellings as a mix of houses and apartments and provision of a local centre for Use Classes A2 (financial and professional services), A3 (cafe/restaurant), D1 (clinics/creche) and D2 (assembly and leisure) up to a total floorspace of 1,256 sq. m (13,519 sq. ft), and provision of new access road and pedestrian/cycle access, and provision of open space.

3.1 Various other planning applications, across many years, relate to the operation of the site as a quarry.

4. Consultees:

4.1 None by TMBC: since it is not the determining authority.

5. Relevant Policies & Determining Issues:

5.1 KCC as the determining MPA issued a screening opinion advising that the development as set out above is Schedule 1 EIA development. Both applications are identical in their content and conclusions. The following comments therefore address both procedural and substantive matters (to the extent possible).

Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571:

5.2 There is considerable doubt whether the applications before the County for their determination satisfy the Town and Country Planning (Environmental Impact Assessment) Regulations 2017/571 (the Regulations), for various reasons. There is consequently doubt over whether the applications being consulted upon by the County are even valid or proper applications, being ones that may properly be determined at this time.

5.3 There are considered to be important omissions and/or flaws in the content of the purported ES, as submitted, with regard to the requirements of Schedule 4 of the Regulations. The ES is inadequate. Examples underscoring the inadequacy of the ES are summarised in outline within the table below and which is not intended to provide an exhaustive critique of the ES:

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Regulation	Requirement	Comments
1	<p>A description of the development, including in particular:</p> <p>(a) a description of the location of the development;</p> <p>(b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;</p> <p>(c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;</p> <p>(d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.</p>	<p>The description of the development is set out at Section 3 of the ES. States that the restoration scheme for the East lake area (Appendix 2 of the document) involving earthworks, regrading of land, cut and fill, incorporation of landscape features.</p> <p>Reference to the end use subsequent to restoration is only contained within the "non-technical summary" (as entitled within the document) as being amenity, recreation and nature conservation uses and then again, scant reference in Section 6 but no adequate information is given as to the precise nature of the end use (publicly accessible for example) and no reference or acknowledgement is made to the broader intention of the developer to secure residential development.</p> <p>In addition, little to no reference is made to the different phases of development and the likely impacts of each phase, or the phases cumulatively. Given the current condition of the site, the significant extent of required earthworks and the required sequencing of these works, such an assessment is crucial to understanding likely impacts, both singularly and cumulatively.</p>
2	<p>A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.</p>	<p>None provided.</p>
3	<p>A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge</p>	<p>Baseline scenario is uninformed and inadequate: the ES refers to the fallback of quarrying operations. The extent to which such quarrying may in future be undertaken, and in respect of what area is not identified. The assessment of likely significant effects is necessarily dependent on the appropriate formulation of adequate baseline scenarios.</p>

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<p>4</p>	<p>A description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.</p>	<p>Inadequate and incomplete information provided in this respect, particularly in light of the fact that the end use and baseline scenarios are inadequate.</p>
<p>5</p>	<p>A description of the likely significant effects of the development on the environment resulting from, inter alia:</p> <p>(a) the construction and existence of the development, including, where relevant, demolition works;</p> <p>(b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;</p> <p>(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;</p> <p>(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);</p> <p>(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;</p> <p>(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;</p> <p>(g) the technologies and the substances used.</p> <p>The description of the likely significant effects on the factors specified in regulation 4(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection</p>	<p>As above in general terms. The ES mentions impacts within the context of a discussion on planning merits and mitigation, and not a holistic assessment of likely significant impacts. The ES is inadequately detailed with regard to the various phases of the development. This is emphasised by the inadequately formulated, incomplete or poorly expressed baseline and end use scenarios.</p> <p>The subject matters for likely significant effects, as stated, are as follows:</p> <p>Land stability; Impact on/loss of SSSI; Impact on/loss of ancient woodland; Water environment; Impact on heritage assets/archaeology; Ecological impact; Landscape impact; Health and amenity.</p> <p>My main report outlines various reasons why the assessment of these subject matters, are inadequate. Given the nature of the site and development proposed (both in terms of the notably limited brief set out in the ES and the wider project known to be proposed, the following subject matters are additionally required to be scoped in for assessment: 1(5) of Schedule 4:</p> <p>Transport and highways; Noise; Vibration; Air quality and dust; Public safety; Socio-economic; Land contamination</p>

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	objectives established at Union or Member State level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC(1) and Directive 2009/147/EC(2).	No explanation has been attempted to clarify why any/all of the above have been scoped out of the assessment.
6	A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.	Some methodologies provided only, in few instances.
7	A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.	Vague and inadequate references made to abstractly framed mitigation measures within the ES. These ambiguities are highlighted by the incompleteness of the ES.
8	A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU(3) of the European Parliament and of the Council or Council Directive 2009/71/Euratom(4) or UK environmental assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.	None which are of particular relevance given the nature of the existing land use and the nature of the works required to be undertaken as part of the purported restoration scheme.
9	A non-technical summary of the information provided under paragraphs 1 to 8.	The non-technical summary is contained within the opening section of the ES. Much of the discussion within the body of the ES

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		is taken verbatim from the non-technical summary and provides no further technical evidence on any matters required under Schedule 4 of the Regulations. In fact, the ES is nothing more than an introductory document in the form of a (inadequate) planning statement that appends various technical reports. This is inadequate for the purposes of the Regulations.
10	A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.	Appendices 3 – 8 (inclusive) set out the reports that have been produced 'to inform' the ES.

5.4 In addition, Regulation 18(5) sets out that in order to ensure the completeness and quality of the environmental statement:

(a) the developer must ensure that the environmental statement is prepared by competent experts; and

(b) the environmental statement must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.

5.5 The consenting authority is under a duty to ensure it is satisfied as to the competency of the experts for these purposes. Appendix 9 provides a statement of relevant expertise and states that the ES has been authored by the developer, citing his general experience in planning matters with particular reference to minerals and waste planning. There is however no notably expertise cited in respect of the matters upon which the author has made various assumptions and assertions in the ES particularly with regard to technical matters that are founded on no or no apparent evidence base, still less an evidence base that is robust (see table below, for examples).

5.6 It is considered that the County cannot properly conclude that the Regulations (including regulation 18(5)) are met.

5.7 Notwithstanding the above, substantive observations are also made, below.

The Scope:

5.8 It is suggested by the information submitted that the scope of the EIA was agreed informally with the County, and not by means of any formal opinion having been issued. Certainly, TMBC was not consulted this scope. On this basis it is assumed that no opinion was formally issued. Matters that have been scoped in are set out below:

(i) Land stability;

- (ii) Impact on/loss of SSSI;
- (iii) Impact on/loss of ancient woodland;
- (iv) Water environment;
- (v) Impact on heritage assets/archaeology;
- (vi) Ecological impact;
- (vii) Landscape impact;
- (viii) Health and amenity.

5.9 Given the nature of the site and development proposed (even when just assuming the developer's stance on this), this scope is inadequately narrow. As a minimum, in addition to the above, the following matters should have been included and in order to address short term construction and operational phases (which no chapter of the ES adequately does):

- (i) Cumulative highway/traffic impacts for the lifetime of the project;
- (ii) Public safety;
- (iii) Land contamination;
- (iv) Noise, dust and vibration;
- (v) Air quality; and
- (vi) Socio-economic impacts.

The Baseline:

5.10 The Regulations (the relevant breadth of which is not rehearsed here in full) prescribe that EIA must include: a "*description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge*".

5.11 The lawful planning fallback position is set out within the applications as being the full operation of the quarry in accordance with the extant minerals consent. This is agreed. This however cannot define entirely the baseline scenarios that must be considered. There is a requirement for the ES to formulate all appropriate baseline scenarios and progress to adequately identify and assess all likely significant effects in light of the appropriate baselines.

5.12 However, minerals extraction (and to the fullest extent of the extant permission) does not itself characterise the baseline scenario. This is not least because it is unknown, which is indeed characteristic of a fallback position, whether quarrying will be continued. There is similarly doubt over the extent of any quarrying that may continue. Notably, no alternative baseline scenarios have been identified or assessed. No explanation is given for this approach.

The Project:

5.13 It will be understood that TMBC considers that the residential scheme should be taken together with the restoration scheme - to which Applications (A) and (B) relate - as a single project for the purposes of the Regulations. To undertake EIA in respect of the residential and restoration schemes separately (which has apparently been the applicant's approach), rather than holistically, is unlikely to satisfy the Regulations on account that cumulative impacts arising from the relevant, larger proposal for development, have not been identified or assessed.

5.14 It should be acknowledged that a proposal for development should not be taken in isolation if, in reality, it is most appropriately to be regarded as an integral part of what amounts to a more substantial development. The importance of not "salami slicing" what amounts to the relevant development scheme for the purposes of EIA, is well established.

5.15 TMBC has taken the opportunity to advise the Planning Inspectorate of its outline view at an early stage. TMBC is presently awaiting a formal determination as to whether they consider EIA is required for the project as a whole. We understand that they are currently undertaking their own screening exercise accordingly. There are also wide reaching consequences in terms of the potential impacts of this development that require consideration.

5.16 In terms of applications (A) and (B), the assessment that has been provided is based on an end use that is not, in point of fact, characterised in whole by the developer. They are therefore ultimately prefaced on inappropriate assumptions.

5.17 This has more immediate implications for the consideration of applications (A) and (B) not least because of the apparent ambiguity of the end use of the site, once restoration has taken place. A scheme must be readily ascertainable in order to allow for EIA to effectively take place. At present, there is a broader intention for at least part of the site to be used for residential purposes, with the remainder supposedly given over to a nature conservation/amenity use - but it is unclear on what basis. It is ultimately impossible therefore to accurately assess and adjudge the adequacy of impact mitigation.

The End User

5.18 Notwithstanding the above, even were the development to be viewed narrowly and in isolation (i.e. treating separately, the restoration scheme and the subsequent use

of the land for what is described as nature conservation/amenity purposes) there remain notable unknown quantities that prevent any robust and adequate assessment.

- 5.19 There is a notable lack of clarity over how the restored site will be used in practical terms. The purported use is stated to be for nature conservation/amenity purposes but no reference is made regarding whether the land would be publically used or accessible by any means. This is ultimately capable of influencing the likely significant impacts on safety given the restored site would contain altered land levels (and thus links to land stability considerations) and large expanses of deep water.
- 5.20 This is also relevant when considering the developer's wider aspirations to develop the site, at least in part, for residential purposes and the potential for safety and amenity to be impacted (and to what extent being dependant on the phasing of each element - which is also unknown).
- 5.21 This is also relevant to land stability, water environment, and health and amenity (when considering the topics scoped in to the assessment) as well as to socio-economic, land contamination and highway impacts, being subject matters that should properly have been scoped in to the assessment.
- 5.22 The fundamental ambiguities that arise mean that the (limited) assessment that is recorded is flawed, incomplete and inadequate.

Technical Evidence:

- 5.23 Broadly, the submitted technical evidence and assertions made within the ES fail to correlate in various instances. The technical reports are deficient in their content and, in some cases, are non-existent. The ES purports instead to report its own technical judgements, without evidence base or expertise. Of the matters scoped into the EIA, the following comments (which should not be taken as being exhaustive) are made:

Topic	Evidence	Commentary
Land stability	Stability Report prepared by the Civil Engineering Practice, dated October 2018 (Appendix 3)	<p>This provides only background information concerning the context of the site; explains the geology of the site and area, levels and gradients involved; sets out the proposed works, and concludes no risks established or substantive mitigation. It is unclear from the information what land raising is necessary as part of the residential scheme or the restoration proposals.</p> <p>The materials proposed for, their transportation onto site, and the construction method(s) envisaged for, altering land levels are not defined clearly or at all.</p> <p>The ES lifts certain aspects of the conclusions of the report and concludes a positive impact (due to</p>

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		<p>landscaping apparently) once the restoration is complete.</p> <p>This does not amount to EIA in respect of land stability and no substantive assessment on this can be reasonably or rationally concluded.</p>
Impact on/loss of SSSI	None	<p>No specific reports. The ES merely suggests that no restoration works are required within the SSSI, and on this basis, that no impacts are to be considered. This is demonstrably narrow and inadequate in EIA terms, particularly given that the County (albeit informally, it appears) scoped this topic in to the EIA.</p>
Impact on/loss of ancient woodland	None	<p>No specific reports. The ES merely suggests that no restoration works are required within the SSSI, and on this basis, that no impacts are to be considered. This is demonstrably narrow and inadequate in EIA terms, particularly given that the County (albeit informally, it appears) scoped this topic in to the EIA.</p>
Water environment	None	<p>This is addressed only very briefly in the ES in terms of surface water and groundwater impacts. The only conclusion is that there would be a generally positive impact as a result apparently of biodiversity enhancements (presumably in terms of the completed development but this is not made clear).</p> <p>There is no technical evidence to support this claim/conclusion, and so it is not founded on any clear basis and is limited in nature in any respect. Consideration is inadequate.</p>
Impact on heritage assets/archaeology	Archaeological Report prepared by SWAT dated October 2018 (Appendix 4)	<p>The report describes the broad evolution of the site in historical terms and sets out the need to record buildings in situ, setting out a suggested methodology for doing so which appears, of which the County may have been notified.</p> <p>The ES merely refers back to the methodology for such recording of buildings. This does not comply with EIA requirements and no substantive assessment on this can possibly be accurately concluded, giving rise to inadequacy.</p> <p>The ES discusses matters of heritage, asserting no impact on the Aylesford Conservation Area (due apparently, to woodland management and landscaping). This conclusion is not based on any technical evidence or assessment. The heritage section does not incorporate any discussion any of the nearby listed buildings that would unarguably be impacted by the development.</p>

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		<p>The scope of the assessment in respect of heritage assets makes no regard to heritage assets other than the CA. There are a number of important listed buildings in the immediate vicinity of the site (some immediately adjacent to its boundary) and to fail even to attempt to assess the likely significant impacts on their setting demonstrates the inadequacy of the heritage assessment.</p> <p>An adequate assessment as to likely significant impacts on Old Mill House, 22 -32 Mount Please and Trinity Court must be incorporated.</p>
<p>Ecological impact</p>	<p>Ecological Assessment prepared by JFA Environmental Planning, dated September 2018 (Appendix 5)</p>	<p>This is an update report following an earlier report produced on behalf of the developer in relation to the residential planning application for part of the site. This document is however far more akin to what would be expected in order to assess impacts and propose mitigation measures. It will also be noted that the report indicates that the assessment provides a baseline for assessing ecological impacts of proposed mineral extraction and residential development across the site, and so is contradictory in terms of what the developer actually says <u>these applications</u> relate to. Some mitigation measures are proposed, but these are predicated predominately on the end use rather than throughout the lifetime of the development, from commencement.</p> <p>The ES fails to address development holistically, considering cumulative impacts.</p> <p>The ES inadequately lists a series of enhancement measures intended to be secured at the completion of the development (nature conservation and amenity use).</p>
<p>Landscape impact</p>	<p>Landscape Restoration Strategy Report prepared by JFA Environmental Planning, dated October 2018 (Appendix 6)</p> <p>Tree Report prepared by Tree Ventures Ltd, dated September 2018 (Appendix 7)</p>	<p>Landscape analysis as submitted is notably limited to discussion about SSSI and CA, and only at the completion stage of the project.</p> <p>General assessment of tree quality across the site and mitigation measures set out</p> <p>The ES explains the documents should be read together and draws very broad (and inadequate) conclusions in terms of positive long term impacts arising from restoration (nature conservation and amenity use)</p> <p>A proper discussion must adequately address the likely significant landscape impacts and likely significant impacts to the setting of the AONB, to the north of the site. The assessment is inadequate.</p>

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<p>Health and amenity</p>	<p>Noise Assessment prepared by Peter Moore Acoustics Ltd, dated October 2018 (Appendix 8)</p>	<p>One baseline scenario is stated, within the context of the quarry being in full operation (see above comments on baseline flaws). On this basis the ES concludes no amenity impact on the basis that planning conditions would adequately govern. There is no cumulative assessment of impacts and with regard to all relevant baseline scenarios.</p> <p>Matters of health and amenity should reasonably include issues of broader public safety and given the nature of the site and works required to facilitate restoration this should not least be considered in terms of safety during the restoration phase both for those involved in those operations but also more broadly given the fact that the site is bounded almost entirely by a network of public footpaths.</p> <p>As set out above, there is inadequate clarity over how the restored site will be used. The purported use is for nature conservation/amenity purposes but with no reference being given as to whether the land would be publically accessible. This would ultimately have a bearing on the likely significant impacts on safety given the restored site would contain altered land levels (and thus links to land stability considerations) and large expanses of deep water. This also has relevance when considering the developer's wider aspiration to develop the site, at least in part, for residential purposes and the potential for safety and amenity to be impacted (and to what extent being dependant on the phasing of each element - which is also unknown).</p>
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Conclusion:

- 5.24 The strong appearance is that there are various errors, in light of the inadequacy of the ES, arising in respect of both applications. As such, it is not considered possible for the County to determine the applications at present.
- 5.25 Moreover, the equally strong appearance is that the applications are merely an attempt at extinguishing in effect the extant minerals consent and associated early restoration. The applications are prefaced upon a flawed or non-existent evidence basis, and so erroneously assess on this basis alone that there would be no significant environmental effects. Aside from the adoption of flawed or incomplete baseline scenarios, and the incompleteness of the evidence base, the conclusions of the assessment conducted are also flawed.
- 5.26 In these circumstances TMBC is unable to make detailed representations on the proposed development in terms of its merit, impacts, and all likely significant effects.

6. Recommendation:

6.1 Objections Be Raised to Kent County Council as Minerals Planning Authority in respect of Applications (A) and (B) as follows:

Reasons:

- 1 The Local Planning Authority does not consider that the applications made and currently under formal consideration by the Minerals Planning Authority satisfy the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, including under Regulation 18 (1-5) and Schedule 4. The applications are inadequate in both procedural and substantive terms. As such, the Local Planning Authority is of the view that the assessment underlying the purported Environmental Statement is inadequate, taken as a whole. It is therefore not possible for any informed or proper decision to be made as regards all likely significant environmental effects of the relevant development, when properly characterised.
- 2 Further to [1] above, the Local Planning Authority does not consider that the scope of subject matters which form the basis of purported Environmental Impact Assessment are adequate, or have allowed for any adequate assessment of all likely significant environmental impacts of the development, when properly characterised. The following subject matters require adequate assessment:
 - Cumulative highway/traffic impacts for the lifetime of the project;
 - Public safety;
 - Land contamination;
 - Noise, dust and vibration;
 - Air quality; and
 - Socio-economic impacts.
- 3 Further to [1] and [2] above, the Local Planning Authority considers that the subject matters which have formed the basis of the purported Environmental Impact Assessment overall have not been robustly or adequately assessed pursuant to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (including Regulation 18 (1-5) and Schedule) in other respects.
- 4 Of relevance to the above, the Local Planning Authority notes that the basis for the assessment undertaken assumes an end use that comprises a nature conservation/amenity function. No adequate detail has been provided to specify this use. It is not clear whether the site will be made publically available or retained on a private basis, a matter that would have important implications for the parameters of the assessment to be undertaken. In addition, the Local Planning Authority is aware

that the developer has a clear intention to utilise at least part of the site for residential purposes. There is no assessment of impacts on, or from, that residential development.

- 5 The Local Planning Authority considers that the single baseline scenario adopted in the assessment provides for an inadequate basis of assessment by virtue of the fact that it merely considers quarrying activities in full and in an abstract form. The Local Planning Authority is of the view that various and permuted baseline scenarios, prefaced upon minerals extraction either not being undertaken or being undertaken in part, should properly have been incorporated with the Environmental Statement and, in turn, should have informed the overall assessment of all likely significant effects.

Informative:

The County Council is advised that:

- 1 **The Local Planning Authority reserves the right to make further formal representations on the Environmental Statement and merits of the proposed development in the event that the above matters are refined. As such, the Local Planning Authority formally requests the County to give due notification upon any such further information being received. Equally, if the County does not intend to seek the resolve these matters, the Local Planning Authority requests notification to allow for its consideration over whether further representations are to be made.**

Signed.....
Emma Keefe

Endorsed By.....

Dated:

STATUTORY INSTRUMENTS

2017 No. 571

**The Town and Country Planning (Environmental
Impact Assessment) Regulations 2017**

PART 5

**Publicity and procedures on submission of
environmental statements and decision making**

Environmental statements

18.—(1) Subject to regulation 9, an EIA application must be accompanied by an environmental statement for the purposes of these Regulations.

(2) A subsequent application is to be taken to be accompanied by an environmental statement for the purpose of paragraph (1) where the application for planning permission to which it relates was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, but this is subject to regulation 9.

(3) An environmental statement is a statement which includes at least—

- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the proposed development on the environment;
- (c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the developer, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any additional information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

(4) An environmental statement must—

- (a) where a scoping opinion or direction has been issued in accordance with regulation 15 or 16, be based on the most recent scoping opinion or direction issued (so far as the proposed development remains materially the same as the proposed development which was subject to that opinion or direction);
- (b) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (c) be prepared, taking into account the results of any relevant UK environmental assessment, which are reasonably available to the person preparing the environmental statement, with a view to avoiding duplication of assessment.
- (5) In order to ensure the completeness and quality of the environmental statement—
- (a) the developer must ensure that the environmental statement is prepared by competent experts; and
 - (b) the environmental statement must be accompanied by a statement from the developer outlining the relevant expertise or qualifications of such experts.

SCHEDULE 4

Regulation 18(3)

INFORMATION FOR INCLUSION IN ENVIRONMENTAL STATEMENTS

1. A description of the development, including in particular:
 - (a) a description of the location of the development;
 - (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
 - (c) a description of the main characteristics of the operational phase of the development (in particular any production process), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
 - (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation and quantities and types of waste produced during the construction and operation phases.
2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of the availability of environmental information and scientific knowledge.
4. A description of the factors specified in regulation 4(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.
5. A description of the likely significant effects of the development on the environment resulting from, inter alia:
 - (a) the construction and existence of the development, including, where relevant, demolition works;
 - (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
 - (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
 - (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
 - (e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
 - (f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
 - (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 4(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the project, including in particular those established under Council Directive 92/43/EEC(1) and Directive 2009/147/EC(2).

6. A description of the forecasting methods or evidence, used to identify and assess the significant effects on the environment, including details of difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

7. A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

8. A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks of major accidents and/or disasters which are relevant to the project concerned. Relevant information available and obtained through risk assessments pursuant to EU legislation such as Directive 2012/18/EU(3) of the European Parliament and of the Council or Council Directive 2009/71/Euratom(4) or UK environmental assessments may be used for this purpose provided that the requirements of this Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

9. A non-technical summary of the information provided under paragraphs 1 to 8.

10. A reference list detailing the sources used for the descriptions and assessments included in the environmental statement.

(1) OJ No L 206, 22 7 1992, p 7

(2) OJ No L 20, 26 1 2010, p 7

(3) OJ No L 197, 24 7 2012, p 1

(4) OJ No L 172, 2 7 2009, p 18

Wooldridge, Jim - GT EPE

From: Bonser, Sarah - IL
Sent: 06 March 2019 09:28
To: Wooldridge, Jim - GT EPE; Thompson, Sharon - GT EPE
Subject: Aylesford Quarry minerals applications - Planning Applications Committee 6/3/1

Dear Jim and Sharon

I refer to the email from Kevin Toogood, Principal Litigation Solicitor at Tonbridge and Malling Borough Council and his letter and attachment.

My colleague Susan Mauger (Senior Solicitor) has previously advised in this matter and I restate her advice below:

The main issue to be considered is as follows:

Whether the EIA / ES as currently undertaken / submitted is sufficient to enable KCC to determine the application positively without a significant risk of legal challenge (having regard to T&MBC's position set out in its objections to the mineral planning applications and accompanying delegated report, its report on application TM/17/02971/OA, the PINS Screening Opinion and the correspondence and advice provided by AHL); and

My thoughts are:

It is a matter for the decision maker to determine whether the EIA/ES is sufficient to determine the application positively. As T&MBC have taken the view that the residential application was not EIA, I fail to see why it should now be EIA development under the purported "single project" with the applications before KCC in respect of the restoration of the land. It is condition of the minerals permission that the land be restored. The applications have been screened and in consultation with KCC on the scope of the EIA/ES the application was accompanied by an EIA/ES. The decision maker should under the EIA Regulations 2017 Schedule 3 take into account the cumulation of the impact of other existing and/or approved development. There is no existing or approved development at this time to take a view on cumulative impact.

As it is a matter for the decision maker to determine whether it has sufficient information to determine the applications, it is unlikely that the courts would interfere with that decision unless it could be shown to be Wednesbury unreasonable.

T&MBC have made representations on the suitability of the EIA but fail to provide clear and cogent reasons for that opinion in circumstances where the residential scheme is outside the scope of the need for an EIA/ES.

PINs have now determined in their screening opinion that the application for residential development is not EIA development and confirm that the residential development will only occur after the restoration works are completed under the proposed amendments to the restoration scheme currently under consideration by the Minerals Authority.

In respect of the more recent representations:

Whilst I note TMBC's contention that the conclusions at paras 87, 92, 111, 117, 125 134 and 135 of the officer's report are "irrational and Wednesbury unreasonable" by reference to the table provided by TMBC at para 5.3 and 5.7 of the report attached to the letter, I cannot see how that statement can be supported in circumstances where the statutory consultees, being Historic England, Natural England, the AONB management Unit and KCC archaeology unit, each have no adverse comment to make on the ES.

Whilst there is always a possibility of a legal challenge whenever a planning permission is granted, I repeat my conclusion from the previous advice; it is unlikely that the courts would interfere with that decision unless it could be shown to be Wednesbury unreasonable.

Please let me know if I can assist further.

Kind regards

Sarah

Sarah Bonser

Head of Planning & Highways Group

Invicta Law Ltd - Priory Gate - 29 Union Street - Maidstone - ME14 1PT

e: Sarah.Bonser@invicta.law
t: 03000 415863 - Direct Line
t: 03000 411100 - General Office/Reception
m: 07515 190611
dx: 133544 Maidstone
w: <http://www.invicta.law/>



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