



Appeal Decision

Site visit made on 04 May 2004

by **David Ward BSc(Hons) CEng MICE FIHT**

an Inspector appointed by the First Secretary of State

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Date

21 JAN 2005

Appeal Ref: APP/V4630/A/03/1136568

Aldridge Quarry, Birch Lane, Stonnall, Walsall WS9 0NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by RMC Aggregates (Western) Ltd against the decision of Walsall Metropolitan Borough Council.
- The application (Ref.02/1376/M1/M1), dated 29 July 2002, was refused by notice dated 11 July 2003.
- The development proposed is the retention of development under planning permission No BC61247P without compliance with conditions Nos 4, 23(e) and (f).
- The conditions in dispute are as follows:
 - 4 Mineral extraction and the deposit of mining waste shall cease not later than 25 years from the date of approval of permission BA13383P unless otherwise previously approved in writing by the mineral planning authority. In any event mineral extraction and deposit of mining waste shall not be carried out so as to require completion of the development including restoration after 21 February 2042
 - 23 No waste materials shall be deposited within the site to achieve final restoration contours for the approved after use under conditions 1 and 22 with this permission unless a working plan for infill operations has been previously approved in writing by the minerals planning authority that shows:
 - (e) The cessation of the deposit of waste materials not later than six years from the date of first deposit, being the period specified in the applicant's letter dated 23 August 2000 as anticipated for commencement of infill, unless these materials are soil forming materials required to achieve the standard of restoration to agriculture;
 - (f) That no waste material shall be treated, processed, sorted stored or removed from the site after being imported for deposition
- The reasons for the conditions are as follows:
 - 4 Pursuant to the requirements of the Town & Country Planning Act 1990 and the Environment Act 1995.
 - 23 To enable the site to be restored to the approved use within the earliest practicable timescale without necessitating the imposition of excessively onerous conditions that would require the carrying out of site preparation engineering operations including installation of linings, gas and leachate collection and monitoring systems and ongoing monitoring, to ensure that there was no adverse impact on the site and surrounding land arising from the wastes deposited.
- This decision supersedes that issued on 23 May 2004. That decision on the appeal was quashed by order of the High Court.

Summary of Decision: The appeal concerning conditions 4 and 23(e) is allowed; and concerning condition 23(f) is dismissed.

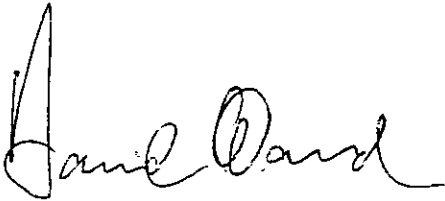
1. The decision of the 23 May 2004 was quashed by consent on 11 October 2004, due to the omission of the words "*and for the approved after use for agriculture after 12 September 2016*" from Condition 1 of permission granted in paragraph 31 of the decision notice.
2. The reason for quashing the decision given by the Court (paragraph 3 of the schedule) differs from that given in paragraph 10 of the particulars of claim. I have adopted that given by the Court for the purposes of this redetermination.
3. The decision was that the appeal should be allowed in part, such that permission was granted for the continuation of mineral extraction without complying with conditions 4 and 23(e). The flawed condition 1 was imposed in order to bring the permission into coincidence with conditions of permission BC64771P.
4. Condition 2 of the quashed decision stated: *No development shall be carried out under the terms of this permission except in accordance with the operation of the quarry and restoration of the site under Conditions 23(a) to (d), (f) and (g) of planning permission BC61247P dated 26 April 2001.*
5. It is now maintained by the appellant that in redetermining the appeal I should take into account a change in circumstances since the original appeal. That change is that in the same letter I dismissed an appeal against the refusal of the Local Planning Authority to permit an inert material recycling facility (MRF) at the same site. On this basis the appellant contends that Condition 23(f), which states "*That no waste material shall be treated, processed, sorted stored or removed from the site after being imported for deposition*" should be deleted. The essence of the appellant's new case is that it is not now possible to approach the determination on the basis that a decision on Appeal 1 (the MRF) would lead to a complementary decision on Appeal 2, since whilst Appeal 2 is being redetermined, it remains undetermined, but appeal 1 has been dismissed. Thus Appeal 2 should now be redetermined on its own merits, as concerns Condition 23(f).
6. It is the appellant's view that, taken on its merits, condition 23(f) is unnecessary because the activity it seeks to control would, if not controlled under the condition, be development in its own right, and thus controllable; that sufficient control exists in the working scheme to be approved under other provisions of Condition 23; and that further means of control exist under other legislation.
7. It is my view that there has been no change in planning circumstances since the initial determination of the appeals. At that time there was no MRF on the site. That remains the case. All planning policies remain the same. If condition 23(f) is unnecessary now, it was then, and the case now made for its deletion could have been made in exactly the same terms in the original appeal as it is now. The case was not made in the appeal which is now being redetermined. I shall not therefore consider whether the condition should be deleted in this redetermination.

8. For the reasons given above and having regard to all other matters raised, I conclude that the appeal concerning Condition 23(f) should be dismissed, and that relating to Conditions 4 and 23(e) allowed, as set out in the formal decision below.

Formal Decision

9 I grant planning permission for the continuation of mineral extraction under planning permission no BC61247P dated 26 April 2001 without compliance with conditions Nos 4 and 23(e) at Aldridge Quarry, Birch Lane, Stonnall, Walsall WS9 0NF in accordance with the application (Ref.02/1376/M1/M1) dated 29 July 2002 subject to the following conditions:

- 1) Mineral extraction and the deposit of mining waste shall not continue after 12 September 2010 and no other operations for restoration including the infill and spreading of subsoils and topsoils but excluding aftercare shall be carried out so as to delay the restoration of the site to the contours on plan P1/133/13/1 approved under condition 22 of planning permission BC61247P dated 26 April 2001, and for the approved after use for agriculture after 12 September 2016, unless otherwise previously approved in writing by the mineral planning authority.
- 2) No development shall be carried out under the terms of this permission except in accordance with the operation of the quarry and restoration of the site under Conditions 23(a) to (d), (f) and (g) of planning permission BC61247P dated 26 April 2001.



Paul David



Walsall

Metropolitan Borough Council

TOWN AND COUNTRY PLANNING ACT 1990

NOTIFICATION OF DECISION ON AN APPLICATION FOR PLANNING PERMISSION

Applicant: RMC Aggregates (Western) Ltd

Agent: RMC Aggregates (UK) Ltd
RMC House
Church Lane
Bromsgrove
Worcestershire
B61 8RA

Site: Birch Lane Quarry, Birch Lane, Aldridge, Walsall, WS9 0NF

Application No: 02/1376/M1/M1

Particulars of Development: Implementation of planning permission no: BC61247P without compliance with condition nos 4, 23(e) and (f).

Date Accepted: 29 July 2002

Walsall Metropolitan Borough Council, as Local Planning Authority, hereby **REFUSE** planning permission for the development described above, as shown in the plans which accompanied the application.

For the following reason:

1. The grant of planning permission for removal of the prohibition on waste processing from the mineral working permission at Birch Lane Quarry, which is solely to make way for a development for which refusal of planning permission has been determined, is unacceptable since; the implementation of the proposal for recycling would result in a significant extension to the time required to restore the quarry, leading to an unacceptable impact on the character and function of the Green Belt. As such the proposal is contrary to the requirements of the following:

- a) Paragraph 77 of Minerals Planning Guidance Note 14;
- b) Policy 3.1 in the Adopted Walsall UDP;
- c) Policy 3.2 in the Adopted Walsall UDP;
- d) Policy MWD3 in the Adopted Walsall UDP;

and also that all relevant material considerations for the proposal demonstrate that the determination should only be in accordance with the development plan.

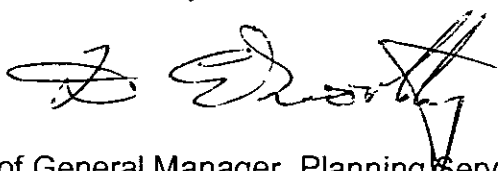


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Date of Decision: 11 July 2003

Signed:

A handwritten signature in black ink, appearing to be 'J. Smith', written over a horizontal line.

On behalf of General Manager, Planning Services.
Civic Centre, Darwall Street, Walsall, West Midlands. WS1 1DG

YOUR ATTENTION IS DRAWN TO THE ATTACHED NOTE

