

WALSALL METROPOLITAN BOROUGH COUNCIL

REPORT OF THE PLANNING AND BUILDING CONTROL SERVICES MANAGER

ENGINEERING AND TOWN PLANNING SERVICES

TO BROWNHILLS/ALDRIDGE NORTH AREA PLANNING COMMITTEE

ON 20<sup>TH</sup> JULY, 1999.

MODERN CONDITIONS TO BE APPLIED TO THE 1954 PLANNING PERMISSION FOR MINERAL EXTRACTION AT BIRCH COPPICE/BROWNHILLS COMMON.

1.0 PURPOSE OF REPORT.

- 1.1 To advise the Committee on progress with application BC 48813P for a schedule of modern conditions to be applied to the 1954 permission for winning and working coal and clay at Brownhills Common, including the unrestored part of Birch Coppice and the Swan Works Clay Storage areas as required by the Environment Act 1995.

2.0 RECOMMENDATION.

- 2.1 That the report is noted.

3.0 LEGAL IMPLICATIONS : None arising directly from this report.

4.0 FINANCIAL IMPLICATIONS : None arising directly from this report.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS : None arising directly from this report.

6.0 ENVIRONMENTAL IMPACT : Disturbance to Brownhills Common and habitats and adverse impact on the amenity of the surrounding area from additional HCV traffic on local roads, if mining ever took place on the common, should be minimised by the imposition of modern planning conditions.

7.0 **OTHER POLICY IMPLICATIONS** : None arising directly from this report.

8.0 **BACKGROUND TO REPORT.**

- 8.1 The Environment Act 1995 requires that quarrying at longstanding sites can only continue if permissions for mineral extraction are reviewed so that they are subject to modern planning conditions. The original mining permission at Birch Coppice and Brownhills Common was granted in 1954 and is now subject to statutory review. The application for new conditions (BC 48813P) was received in January, 1997. The Council can amend conditions submitted by applicants or impose its own conditions if it considers these are more appropriate.
- 8.2 This report is to inform the Area Planning Committee of the issues arising for this application in advance of receiving a full report on the determination of the modern conditions that would need to be imposed through the review. Applications for conditions have to be determined within an agreed timescale or the applicants submitted conditions are deemed approved. The Council cannot 'refuse' the submitted conditions but it can impose new conditions. The currently agreed period for determination expires on 31<sup>st</sup> October, 1999.
- 8.3 This application has not yet been brought forward for determination of a schedule of new conditions, with the agreement of the applicants. This deferral has been to allow for consideration of the implications a major legal cases culminating in a ruling from the House of Lords in February, 1999. Known variously as the 'Wensley Quarries' or 'Brown and Cartwright' case, the judgement has established that it is the new conditions under the statutory review that are the development consent that enables the mineral extraction to commence on the common. As a consequence for certain 'review' sites Mineral Planning Authorities can request full Environmental Impact Assessments (EIAs) for consideration with applications for new conditions, to properly determine the potential impact and the means of containment. Brownhills Common is one such sensitive site for which a full EIA is justified under the Environmental Impact Assessment Regulations 1999. The applicants have been informed of this requirement that a full EIA is required.

9.0 **TERMS OF THE ORIGINAL PERMISSION.**

9.1 There is one single permission subject to review. This is permission EB223 granted on appeal in 1954. This permission covers two physically separate areas located north and south of Coppice Lane, Brownhills, shown on the plan with this report.

9.2 The Inspectors decision letter for the original appeal permission dated 1954 grants planning permission for the winning and working of clay and coal in the two areas. (It does not allow tipping).

9.3 There are four conditions on this permission the most significant of which is condition 2 which states :-

“After the 30<sup>th</sup> September, 1954, the winning and working of minerals and the restoration of the land shall proceed in accordance with such arrangements as may be agreed from time with the local planning authority, or, in default of agreement, as shall be determined by the Minister.”

9.4 There have been three sets of working arrangements approved under this condition; in 1955, 1975, and most recently in 1996. The conditions imposed through the review entirely supersede and replace the 1955 and 1975 approvals. The 1996 approval affects the eastern part of Birch coppice only and secured a fixed programme for restoration for that area.

10.0 **APPLICATION DETAILS.**

10.1 The application documents are comprised of a schedule of conditions accompanied by a supporting statement, a proposed working programme and additional supporting information such as ecological and archaeological surveys requested by the Council.

10.2 The conditions application proposes that there should be no further mineral extraction from the western half of the Birch Coppice Site which has been restored. This is the area formerly subject to landfill. It is proposed for the eastern half to be kept for clay storage and removal in accordance with the permission granted in 1996 on appeal. The conditions imposed in 1996 governing the timescales for clay removal and



restoration and the operational controls are proposed for incorporation into the conditions to be issued for the review of permission EB223.

- 10.3 The proposals for working Brownhills Common are set out in a working programme. This proposes that approximately 30,000 tonnes of coal and 200,000 tonnes of clay are worked in four phases over a period of 27 years from commencement. Restoration would be carried out progressively after extraction in each phase. Approximately 7 years supplies of clays would be retained in stockpiles on the site. Coal would be removed immediately on extraction in conjunction with the phases of clay extraction. Clay would be stored up to a height of 4 metres. Overburden would be stored in various parts of the site as working progressed, in stockpiles up to 10 metres high. Access is proposed to be obtained by constructing a new access directly onto the A452 Chester Road North. Screen mounds would be constructed around the perimeter of the site using existing on site material. Footpaths would be directed around the working or closed. Site support facilities such as weighbridge and office would be adjacent the access.
- 10.4 The applicants own submitted conditions, to be applied to the 'Common' area of the permission, cover time limits extending the validity of the conditions to 2042. This is unacceptable because the statutory periodic review of new conditions takes place 15 years from their approval. Access Coppice Lane and Chester Road North, wheelwashing facilities, working programme, soil management, environmental protection for, blasting, noise levels dust, surface water drainage and pollution control, fencing restoration and aftercare, are also covered.

#### 11.0 **REPRESENTATIONS.**

- 11.1 Applications of this nature for new conditions are treated in the same manner as normal planning applications. Occupiers of nearby residential property were consulted on the application. A total of 40 letters of reply were received, including replies on standard letters. Two of the standard letters have petitions attached (with a total of 20 signatures) that support the concerns in the letters. All of these letters object to the mineral extraction from the common. The nature of these objections can be summarised as follows :-

1. There was a significant and unacceptable adverse impact on the area during the period of mineral extraction and landfill at Birch Coppice from visual intrusion, noise, dust, odours, and pollution, and from mining traffic through residential areas.
  2. If mineral extraction ever took place on Brownhills Common this would have an adverse environmental impact of the same nature which would not be acceptable.
  3. Mineral extraction from the Common would destroy wildlife including that in areas outside the permission, which is entirely unacceptable. There would be an unacceptable visual intrusion and the loss of access to a scenic area is not acceptable.
  4. Landfill at the Common would be an inevitable consequence after mineral extraction compounding the adverse environmental impact that would be caused.
  5. All possible efforts should be made to avoid the mining ever taking place on the Common.
  6. There would be a devaluation of properties because of the presence of a quarry in the area.
- 11.2 The number of letters received and the nature of the concerns raised demonstrates that there is serious concern in the local community over the prospect of the permission being implemented at the Common.

## 12.0 **CONSULTATIONS.**

- 12.1 This application is not for a new mineral working. However Central Government advice is that the applications for these modern conditions should be treated in the same manner as applications for new permissions. Accordingly there has been consultation with statutory bodies. The application was advertised in the press and the applicant requested to display a site notice.
- 12.2 The following replies were received from statutory agencies/other organisations :



- i) British Waterways : the amenity of the area adjacent the canal which is woodland should be preserved;
- ii) Urban Wildlife Trust. The implementation of the permission will have serious consequences for Brownhills Common. This is Walsall's second largest SINC. The applicants first submission made no reference to the loss of this. The Council is urged to do all in its power to prevent implementation of the permission. Further information in an ecology survey and restoration management is required over and above that first submitted;
- iii) South Staffs Water : No objection;
- iv) Environment Agency : No objection, however, no more clay should be stored on Birch Coppice. A water collection and treatment facility needs to remain on site after restoration at Birch coppice;
- v) Health and Safety Executive : The proposed means of working must allow for stable bases for the worked areas to withstand weathering. The position of any known mine shafts should be made known. The additional information presented by the applicants meets these concerns;
- vi) Sites and Monuments Record Officer. (Joint Data Team).

There is considerable archaeological interest within, and in the vicinity of, Brownhills Common. The initial submission did not cover this matter. The additional information submitted did not cover the field work specified in the brief supplied. Conditions that require a full archaeological investigation before mineral extraction commences on the common would be reasonable and are justified;

- vii) Environmental Health and Consumer Services :

The conditions put forward by the applicants for environmental controls on the area of Birch Coppice for clay stockpiling were generally satisfactory. It should be noted that mineral extraction is not proposed on Birch Coppice. The applicants submitted conditions cover environmental controls but some modifications are needed to meet the Councils requirements. Conditions will need to cover, blasting restriction, noise levels and monitoring, dust

prevention ground vibration, prohibition of use of draglines, use of water houses, sheeting of loads and control on any materials used in restoration;

viii) Highways and Transportation :

The application documents contain a proposal that shows a new access to Chester Road North for the Brownhills Common part of the site. These documents do not demonstrate that the required design standards have or could be met without works to remove vegetation and regrade the embankment of the adjacent former railway line which is in Council ownership.

ix) Leisure and Community Services : Brownhills Common has a significant ecological interest including amphibia (newts) and invertebrates (insects). Rights of way will need to be diverted. The initial submission should have been supported by an environmental statement and there should be detailed proposals for restoration and management. Construction of an access to Chester Road that requires removal of vegetation from, and regrading of land, that is in the Councils ownership (being the adjoining railway embankment) will not be acceptable;

x) English Nature : Brownhills Common is an area of significant ecological interest and value, being comprised of a complex mosaic of wet and dry heathland habitats. Mineral extraction under this permission would irreparably damage and destroy the existing habitat. The conditions imposed should seek to minimise the damage and secure the highest quality restoration to a similar habitat. The initial submission did not give sufficient attention to ecological information. The ecological survey carried out when requested, formed the minimum level of survey acceptable.

xi) Landscape and Conservation Services :

The information submitted with the application is not of sufficient quality to demonstrate how environmental impact would be minimised. Whilst proposals to restore the site to heathland should be supported consideration should be given to retention or translocation of the most valuable areas. A detailed conservation



management plan to demonstrate how restoration will be achieved is necessary. This could be supplied through a full Environmental Impact Assessment. The permission area will need to be effectively secured to prevent incursion onto other areas of the Common. As well as having a significant ecological value, the Common is of considerable archaeological interest. Footpaths will need to be safeguarded and the visual impact of mineral extraction fully assessed to determine appropriate mitigation measures.

### 13.0 OBSERVATIONS

13.1 The determining issues for this application are whether the scheme and modified conditions :-

1. Minimise environmental impacts.
2. Secure an appropriate restoration standard.
3. Recognises the ecological sensitivity of the site.
4. Addresses public access and security issues.
5. Allow for vehicular access to the Common for mineral extraction.

13.2 Brownhills Common is designated as a Site of Importance For Nature Conservation within the green belt. It is comprised of a complex system of interlinked and diverse habitats. Mineral extraction from the area of the permission on the common could destroy part of that system and pose a risk to any untouched areas within the permission and outside of it. Minimising the environmental impact will require close control to be exercised from the commencement of operations, to the completion of restoration. The most appropriate means of establishing how to minimise the impact is for a full Environmental Impact Assessment to be carried out before conditions are determined. This has been requested from the applicants. If carried out there will need to be at least 1 year for this to be done before conditions can be determined. The applicants will need to agree to extend the time period for determination for this to be carried out.

*ie: would  
+ could be  
permanent  
& not restored  
properly.*

13.3 Environmental Impact need not be confined to the Common area of the permission. The conduct of mineral extraction and transport to processing works can potentially cause adverse impacts such as from noise, dust and particularly traffic. The nearest residential property is 160 metres from the boundary of the permission on Coppice Lane. There are other houses on



the A452 Chester Road North and the nearby Hussey Estate. A schedule of conditions will need to cover noise and dust and other environmental controls to protect the amenity of these properties. Quarry traffic will need to be routed to avoid as many residential properties as possible.

13.4 The application makes general proposals for restoration without specifying detail. The ecology at the Common consist of a mosaic of wetland, woodland and heathland habitats. Restoration to this standard will require strict control over site preparation works and storage and management of soils including prevention of invasion of unacceptable plant species. Restoration works will need to be carefully controlled and the period of aftercare will need to be ten years rather than the usual five years.

*Feasibility study plus EIA required*

13.5 The ecological sensitivity of the Brownhills Common SINC is well known. Whilst the applicants did submit an ecological survey, this was the minimum level of survey acceptable. The submission therefore has not given full recognition to the sensitivity of the site and matters will have to be addressed through a full EIA and appropriate conditions imposed. The applicants have been informed that a full EIA is required. This will need to address archaeological issues as well as ecological issues.

*Translocation where? Cost?*

13.6 Brownhills Common is registered common land. There has been a legal agreement in place since 1927 that allows the Council to manage the common. This scheme specifically preserves mining rights. Consequently rights of public access over the area subject to the permission would be suspended during the period of mineral extraction. The status of a site as common land does not prejudice the right to let down the surface of the land for mineral extraction. The mineral working will need to be securely fenced to prevent trespass. Conditions and working plans approved through the review can protect lines of footpaths for the future and require the diversion of existing footpaths to safeguard some public access. There are three public rights of way affected by the area of the permission on the Common, which will need to be safeguarded or diverted. Other paths are 'informal' created by habitual usage.

13.7 The area of the permission on the Common does not have any means of vehicular access. It is considered that planning permission is required for construction of a new means of access for this part the permission. The application assumes that an access would be constructed to the A452 Chester Road North. The only alternative is for an access to Coppice

*Compensation of proposed*

Lane. The applicants may challenge the view of the Council that a separate planning permission is required.

14.0 **CONCLUSIONS.**

14.1 It is expected that a full Environmental Impact Assessment will be submitted. On receipt of this further consultations will be carried out including with the local community and a detailed assessment of the EIA completed by officers.

14.2 On completion of the consultation and assessment the application will be the subject of a further detailed report for consideration by Committee.

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