

**WALSALL METROPOLITAN BOROUGH COUNCIL**

**REPORT OF THE GENERAL MANAGER - PLANNING SERVICES  
BROWNHILLS/ALDRIDGE NORTH AREA PLANNING COMMITTEE**

**2<sup>nd</sup> APRIL 2001**

**SPECIAL PLANNING AND TOWN AND DISTRICT CENTRES COMMITTEE  
ON 23RD APRIL, 2001.**

**APPLICATION BC61247P NEW CONDITIONS FOR EXISTING MINERAL  
WORKING PERMISSION BA13383P PURSUANT TO SCHEDULE 14 OF  
THE ENVIRONMENT ACT 1995 AT BIRCH LANE QUARRY, BIRCH LANE,  
ALDRIDGE.**

**1.0 Purpose of Report**

- 1.1 To determine planning application BC61247P, the schedule of new conditions for mineral working permission BA13383P at Birch Lane Quarry, Aldridge under the requirements of Schedule 14 of The Environment Act 1995.

**2.0 Recommendations**

- 2.1 That the schedule of conditions set out in Appendix 2 to this report is approved.

**3.0 Legal Implications**

- 3.1 Rights of appeal against conditions that are unreasonable.

**4.0 Financial Implications**

- 4.1 Potential costs of appeal. Potential costs if a compensation liability established from conditions that affect working rights.

**5.0 Equal Opportunities Implications**

- 5.1 None arising directly from this report.

**6.0 Environmental Sustainability Implications**

- 6.1 Operation of quarry to modern standards and restoration to a beneficial after use.

## **7.0 Other Policy Implications**

7.1 None arising directly from this report.

## **8.0 Background To Report**

8.1 The Environment Act 1995 requires that mineral working permissions granted since 1948 are subject to review to have modern conditions imposed. The review requires that permissions granted between 1948 and 1982 are the first to be subject to review. Planning permissions granted after 1982 are subject to a slightly different procedure in that these are not subject to review until 15 years from the date of approval.

8.2 The planning permission for Birch Lane quarry was granted in 1985. This was for an extension to a quarry covered by previous permissions. The legislative provisions have the effect that the previous permissions were not subject to review and therefore have expired by virtue of the site being worked out and restored (by infill of the void). The active quarry area is covered by the 1985 planning permission as shown on the plan with this report as Appendix 1.

## **9.0 Statutory Provisions**

9.1 Statutory procedures require that permissions subject to review expire unless quarry operators or landowners submit applications with their own schedule of proposed conditions by a specified date. Mineral Planning Authorities can amend, replace or impose conditions as they consider appropriate. Applicants have a right of appeal against conditions that are unreasonable. Conditions that affect the asset value or the economic structure of the operation can leave the Council liable to pay compensation. It is not open to the Council to refuse to approve a schedule of conditions. If conditions are not determined by an agreed specified date, the applicants own submitted conditions are 'deemed approved'. The Council is not making a determination as to whether mineral extraction shall continue but the manner in which it shall continue. The time period agreed for determination of these conditions expires on 30<sup>th</sup> April 2001.

9.2 There is provision for mineral planning authorities to request an Environmental Impact Assessment with applications for new conditions. An EIA was requested for this application. This information was supplied in accordance with DETR guidelines as applying to that portion of the development not yet completed ie: remaining mineral extraction. This was done.

## **10.0 Terms Of Permission**

- 10.1 At this site there is only one permission that is subject to review which is BA13383P granted in 1985. For this permission the original planning application form describes the development applied for as "Extension to existing sand quarry with restoration to agriculture by backfilling with imported inert wastes".

The decision notice issued reads ".....planning permission has been granted ..... in accordance with planning application B/A/13383P. Such planning consent has been granted subject to the following conditions:-"

- 10.2 Consequently the development permitted is mineral extraction. Any implied consent for a secondary permission means that any landfill with imported waste is explicitly only for restoration to agriculture and is subordinated to the mineral extraction. The conditions approved in 1985 retain reference to landfill. Therefore the conditions contain the implied consent for landfill and such consent can only exist if the condition is valid and enforceable. The effect of imposition of new conditions under the review renders all previous conditions invalid and unenforceable, and the implied consent disappears unless specifically re-created in new conditions.

## **11.0 Application Details**

- 11.1 The application was submitted in May 2000. The period currently agreed for determination currently expires on 30<sup>th</sup> April, 2001. The applicants have declined to agree any further time extensions beyond this date.
- 11.2 The applicant submitted a schedule of conditions with a supporting statement and Environmental Impact Assessment. The conditions cover the terms of the permission the control of operations and the restoration of the site. The restoration with agriculture as the after use assumes that landfill with imported inert materials to achieve pre-existing contours will take place.
- 11.3 The Environmental Impact Assessment submitted with the application covered matters of access and traffic, ecology hydrogeology and particular environmental impacts of visual intrusion, noise and dust generation. The assessment concluded that there would be no adverse impact. Subsequently further information was submitted to confirm the amount of inert material required for infill to be 500,000m<sup>3</sup> over a period of 6 years to completion of landfill. This also concluded that there would be no impact notably from any leachate into ground water.

## 12.0 Representations

12.1 There is no obligation for the Council to carry out consultations in the same manner as for other planning applications. However these 'conditions' applications are administered in the same way as new applications. Adjoining owners, occupiers, and occupiers of residential property in the vicinity were notified of this application. The application was advertised in the press and the applicants requested to display a site notice.

12.2 A total of five letters were received in responses from occupiers of residential property. The responses can be summarised as follows

- i) Generally the quarry has operated without causing any harm to residential property.
- ii) Careful consideration should be given to this application to avoid this being the 'thin end of the wedge'.
- iii) Careful attention should be paid to securing controls on traffic so that all vehicles gain access and egress to Birch Lane via the A452 Chester Road so that quarry traffic does not travel past residential properties.

## 13.0 Consultations

13.1 The replies received from consultees can be summarised as follows

- i) Urban Wildlife Trust. The site is within the Green Belt and a Minerals Safeguarding Area. An EIA should be carried out. Issues raised by Condition 16 (aftercare) of the applicants proposed condition should be resolved prior to determination.
- ii) FRCA. According to the soil grade classification survey carried out prior to the grant of planning permission in 1985 the site was grade 3a Agricultural land and the FRCA will expect the higher standard of restoration required for agricultural use to be applied at this site. For agricultural after use it is preferable for the site to be restored to original levels. Whilst original soils have been stored at the site to achieve the depth of soils for the higher standard of restoration additional soil forming materials will be required. To achieve the standard of the original grade 3a, these materials will need to be chosen carefully. The method of restoration will also need to be chosen carefully. Draft conditions for use by the mineral planning authority to achieve the restoration standard for agricultural use are included. The Council draft conditions for determination on which the FRCA were consulted would achieve restoration to agriculture.

- iii) **Environmental Health and Consumer Services:** The schedule of conditions for approval has been drafted in consultation and with the full agreement of this decision.

#### **14.0 Observations**

14.1 There is one issue in this determination, in that the conditions must ensure that the development continues in a manner that achieves modern standards of operation followed by restoration to a beneficial after use. Within this the conditions must cover major issues relating to:-

1. Mineral extraction operations according to modern standards
2. Environmental Controls
3. Traffic
4. Restoration After Use
5. Aftercare.

The Conditions set out in the Appendix to this report are proposed for approval. These have been amended from those proposed by the applicants to cover the issues raised above.

14.2 The terms of the permission mean that conditions cover the mineral extraction and the means of restoration. Environmental controls on noise and dust and potential pollution are incorporated. Controls on traffic are included. It is not possible to condition this permission to secure traffic access only via the A452. It would be necessary to use other legislation to secure a vehicle routing agreement with all companies bringing vehicles to the site. This would be impractical as it would require separate legal agreements under separate legislation for each company or owner driver using the site. As a matter of practice this process has been carried out by the company with vehicles gaining access via the A452 during the life of the working. It is therefore proposed that a condition controlling direction of entry and exit for use of the access is imposed. This would be enforceable under planning legislation.

14.3 The proposed after use is agriculture. To meet the standard of restoration required by the FRCA additional soil forming material will need to be imported. Reinstatement of original contours will be the best form of achieving the high quality agricultural restoration. The only material likely to be available in sufficient quantities and within a reasonable timescale to achieve original conditions will be inert wastes such as may arise from the construction industry and

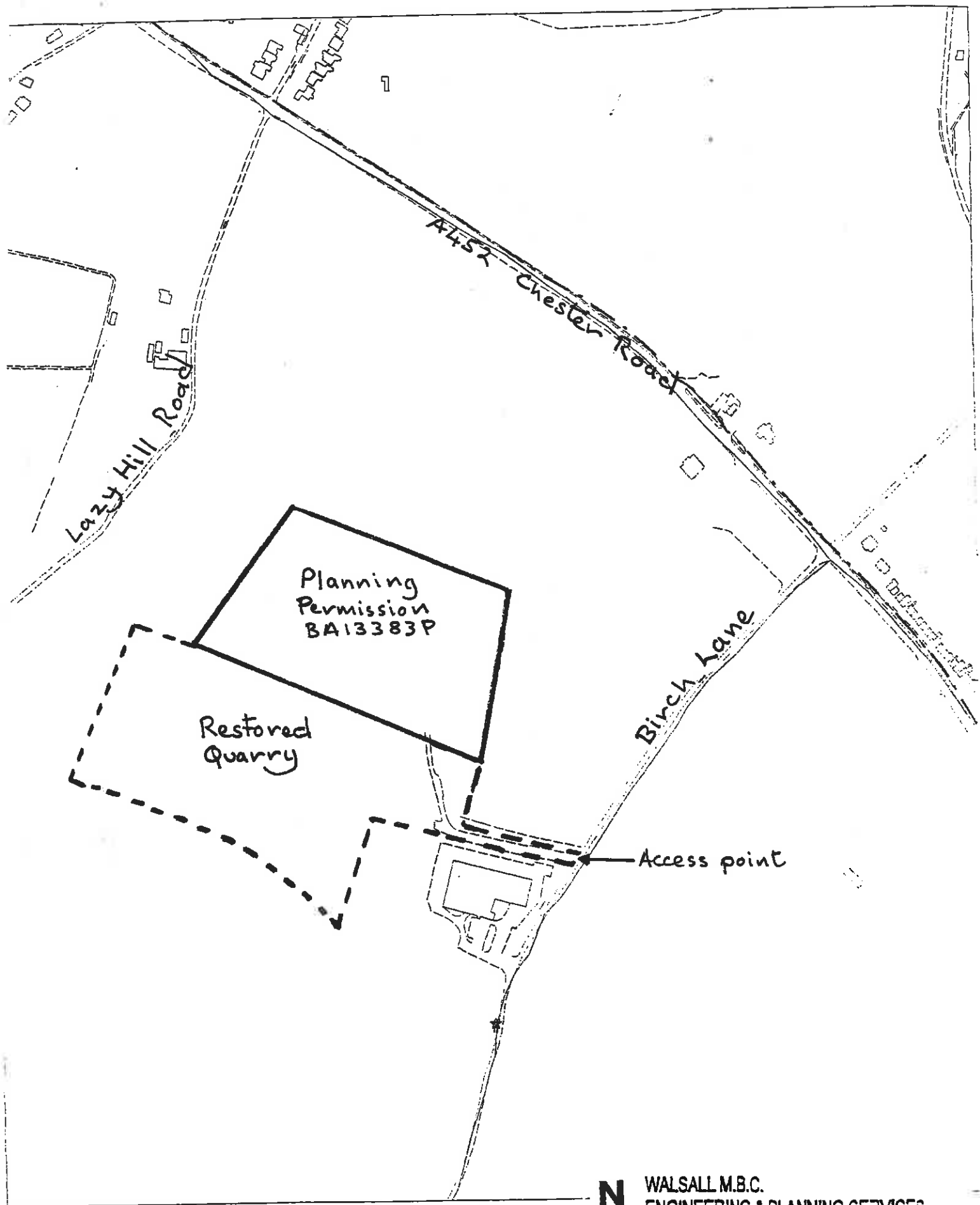
redevelopment projects. Conditions are drafted to control the types of wastes. This is a reflection of the original permission and conditions.

- 14.4 The issue of whether or not a mineral working permission allows for landfill is often the subject of debate with applicants. Landfill with waste is not essential to achieve some form of beneficial after use at this site. The quarry void is small, isolated and has already had some screen planting established for a number of years. Any implied consent for landfill is contained within the conditions approved in 1985. Minerals Planning Guidance Note 14 states that where conditions have a requirement for landfill with non mineral waste then conditions on the mineral working permission may impose new or alter existing conditions relating to the landfill element. This process has been adopted for the conditions set out in the Appendix 2. This guidance note also advises that where an implied consent for landfill is incorporated within the description of development then this should be covered by restoration conditions, thereby subordinating this element to be a restoration requirement. The site operator and the landowner have requested that the site is restored to agriculture. The FRCA have advised as to the means of achieving this after use. The conditions put forward for the Committees approval incorporate a restriction that any waste materials used for restoration are solid and inert free of contamination or free of any material that may hinder restoration or have a potential to pollute.
- 14.5 This quarry has operated for a number of years without any complaint having been made about any adverse environmental impact either from operations or from traffic on Birch Lane. There are very limited reserves of sand remaining at the site. It is to be expected that restoration would be commenced in the near future and according to forecasts put forward by the applicant infill completed within six years.
- 14.6 Accordingly the schedule of conditions attached to this report as Appendix 2 is recommended for the Committees approval to secure the earliest practicable restoration of the site.

Background Papers: All published.

Contact Officer: Mr N.A. Long. Ext: 2486

**Peter Field, General Manager - Planning Services**



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**WALSALL M.B.C.**  
**ENGINEERING & PLANNING SERVICES**  
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Conditions To Be Applied To Existing Mineral Working Permission  
BA13383P At Birch Lane Quarry, Aldridge Pursuant To Schedule 14  
Of The Environment Act 1995, As Permission BC61247P.

Terms Of Permission.

1. The permission is not for development other than the extraction of minerals, the deposit of mining waste and for restoration of the site to agricultural after use using imported inert materials.
2. Any conditions approved pursuant to this determination shall not be applicable to any land other than the land covered by permission BA13383P and any ancillary land occupied for access in connection with exercise of this permission at the time of final determination of these conditions.

Mineral Extraction

3. Mineral extraction and restoration shall not be carried out under the terms of this permission except in accordance with the conditions and any associated plans hereby approved as permission BC61247P, or any amended plans or conditions that may subsequently have been approved in writing by the mineral planning authority prior to the implementation of any such amendments.
4. Mineral extraction and 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 21st February 2042.

Environmental Controls

Noise

5. Except at such locations and for such periods that may be agreed in writing by the mineral planning authority, the level of noise generated by any site operations shall not exceed a 1 hour continuous equivalent A-weighted sound level, of 55dBL<sub>Aeq (1hour)</sub> (free field) at the curtilage of or on any noise sensitive development as measured at a height above ground level of between 1.2 and 1.5 metres and at least 3.5 metres from any significant sound reflecting structure.



6. A proposed strategy of noise measurements shall be submitted to for approval in writing by the mineral planning authority not later than six months from the date of final approval of these conditions and the approved scheme thereafter implemented.

7. Except at such locations and for such periods that may be agreed in writing by the mineral planning authority and subject to Condition 5, free field noise levels attributable to the operation of plant, machinery or other equipment on the development of the site during temporary activities including soil stripping, soil spreading, soil cultivation and construction and removal of baffle mounds shall not exceed a continuous A- weighted sound level of 65dBL<sub>Aeq (1hour)</sub> as measured at the curtilage of any noise sensitive development, measured at a height above ground level of between 1.2 and 1.5 metres and at least 3.5 metres from any significant sound reflecting structure. No such operations shall take place for longer than a maximum cumulative period of eight weeks in any 52 week period.

8. No plant and machinery shall be operated on the site unless fitted with exhaust silencers which are maintained in good working order in accordance with manufacturers and/or suppliers instructions. No plant or machinery shall be operated with any covers or panels open or removed except for maintenance during permitted working hours.

#### Dust

9. At no time during the conduct of any permitted operations shall any operations take place which despite the use of dust control measures would give rise to dust levels sufficient to give rise to airborne dust levels sufficient to cause visible airborne dust beyond the site boundary.

10. If at any time the methods used to suppress dust are ineffective then the operations that cause the dust shall cease until such time as dust suppression becomes effective.

#### Hours Of Operation

11. Except where previously approved in writing by the mineral planning authority no operation shall be carried out at the site or on any other land used in connection with the development except between the hours of 0700-1800 Mondays to Fridays and 0700-1300 Saturdays and not at all on Sundays, and Bank or other public holidays. In the event of emergency works being carried out outside these permitted hours the mineral planning authority shall be notified in writing within seven days of such activity commencing.

## Protection Of Groundwater.

12. No excavation of any material shall take place within 3 metres of the natural water table the level of which in relation to Ordnance Datum levels shall be established through a programme of investigation previously approved in writing by the mineral planning authority, and the results of the investigation shall be deposited with the mineral planning authority not later than twelve months from commencement of investigation.

13. No oil fuel lubricants or any other potentially polluting liquids shall be stored within the site or any other ancillary land within ELR/2720/56 used in connection with the development permitted except in tanks set on an impervious base and within a bund with a capacity of not less than 110% of the combined volume of any tank or tanks. Any fill and draw valves and sight glasses shall be located within the bund.

14. Throughout the period of mineral extraction restoration and aftercare the operator shall take all necessary steps to ensure that drainage to and from areas adjoining the site is not impaired or rendered less efficient by any of the permitted operations. The operator shall implement all works required by the mineral planning authority to prevent damage by erosion silting or flooding and to provide for the management and discharge of all water entering, arising within or leaving the site.

## Temporary Cessation Of Operations

15. If the mineral extraction operations permitted are for any reason suspended for a period exceeding twelve months the mineral planning authority shall be notified of the suspension not later than 14 days from the expiry of the twelve month period of suspension. Within 28 days of such notification pursuant to this condition a scheme specifying the steps that have been taken or are proposed to be taken for the protection of the environment in order to preserve the amenities of the area, to protect the area from damage and to prevent the deterioration of the land during the suspension period and including any necessary revised programme and timetable for completion of the development shall be submitted for the approval of the mineral planning authority and the approved scheme shall thereafter be implemented.

## Access Traffic And Protection Of the Public Highway.

16. Unless an alternative means of access is approved by the mineral planning authority after final determination of these conditions, then for the duration of mineral extraction and restoration operations there shall be no means of vehicular access and egress to and from the site other than from the area granted planning permission under ELR/2720/56, and no vehicles other than employees and visitors private motor vehicles shall be permitted to use this access except by entering the site by turning right from Birch Lane or to leave the site except by turning left onto Birch Lane.

17. From the date of final determination of these conditions and for the duration of mineral extraction and restoration operations no vehicles other than employees and visitors private motor vehicles shall be permitted to leave the site without first having passed through a wheelwash installed in the site and this wheelwash or any replacement shall be maintained in an effective operational condition throughout the lifetime of the site including restoration, unless an exception to this has been previously agreed in writing by the mineral planning authority.

18. Haul and access roads within the site and used on ancillary land in ELR/2720/56, shall be evenly graded and consolidated. Such roads shall be kept clear of material likely to generate dust to the extent that the emission of dust to air caused by the passage of plant equipment and vehicles is minimised. No vehicles entering, leaving or operated within the site shall be equipped with downwards pointing exhausts.

19. Unless otherwise previously approved in writing by the mineral planning authority land within ELR/2720/56 and used for access or any other purpose in connection with the permitted development shall at the appropriate time be incorporated within a restoration scheme to be approved by the mineral planning authority, which shall include along with any other matters required by the mineral planning authority the removal of plant, buildings and structures used in connection with the development permitted.

#### Soil Management And Storage.

20. No topsoil subsoil or overburden originating from within the site as a consequence of mineral working shall be removed from the site but shall be retained for use in restoration of the site. None of the existing soil stockpiles identified within the site shall be moved until required for use in restoration.

21. No soils shall be moved within the site for any purpose except between the months of March to November inclusive and then only when they are in a suitable dry and friable condition.

## Restoration

22. Restoration of the site shall only take place for the after use of Agriculture and which after final deposition of topsoil achieves the levels and contours on plan P1/133/13/1 approved with this permission.

23. No waste materials shall be deposited within the site to achieve the final restoration contours for the approved after use under the provisions of Conditions 1 and 22 with this permission unless a working plan for infill operations has been previously approved in writing by the mineral planning authority that shows:

- a) That the waste materials used will be solid inert wastes free of any deleterious material or compounds that carry any potential to cause ground, water or air pollution within or outside the site, or that would detract from the quality of the soils required for the use of the site for agriculture, by reason of ground contamination, ground water movements and gas or leachate generation;
- b) The method of infilling;
- c) The final levels contours and treatment of infilled areas prior to spreading of any subsoils and topsoils;
- d) The means of controlling infill operations to ensure compliance with all conditions on this permission;
- 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 applicants letter dated 23rd August 2000 as anticipated for commencement and completion of infill, unless these materials are soil forming materials required to achieve the standard of restoration to agriculture ;
- f) That no waste material will be treated, processed, sorted, stored or removed from the site after being imported for deposition;
- g) The removal of any buildings, structures, plant and machinery after cessation of infill operations.

The infill operations shall thereafter only be carried out in accordance with the approved working plan and not less than seven days advance notice shall be given in writing to the mineral planning authority of the date of commencement of the deposit of materials used for infill.

24. Prior to spreading of topsoil, subsoil or of any other materials used to achieve restoration the upper 300mm of the surface shall be prepared so that:

- (i). It does not contain material injurious to plant growth;
- (ii). It has been ripped at a spacing of 500mm or closer to remove rock, stone boulder, wire, rope, cable or other foreign objects or compacted layers capable of impeding normal agricultural land drainage operations including mole ploughing or subsoiling;
- (iii) Stones materials and objects which exceed 200mm in any dimension and occur on the surface of the ripped and loosened ground shall be removed from the site or buried at a depth of not less than 2 metres below final contours.

25. No plant or vehicle shall be operated so as to cross any area of replaced and loosened ground, topsoil, subsoil or soil materials except where essential and unavoidable for carrying out ripping, stone picking or beneficially treating such areas. Only low ground pressure machines shall be permitted to work on prepared ground. Soils shall only be placed in position and levelled using equipment that is not standing on re-laid topsoil or subsoil.

26. Subsoil or similar material shall not be laid except in separate layers not exceeding 450mm in thickness and levelled to provide an even depth across the relaid area.

27. Each subsoil layer shall be ripped or cross ripped using a wing tine implement to remove compaction in accordance with a scheme previously approved in writing by the mineral planning authority and restoration shall not commence before 6 months has expired from such approval being given. The restoration scheme to be approved shall not be carried out unless the scheme has demonstrated that soil compaction can be removed to the full depth of the restored soil profile and that any non soil material or object greater than 200mm in any dimension shall be removed and disposed of off site or buried at a depth of not less than 2 metres below final contours.

#### Aftercare

28. All parts of the site restored to agriculture shall undergo aftercare management for a 5 year period. The aftercare period shall not commence until the date that the mineral planning authority has given approval in writing to the restoration carried out under the approvals in these conditions.

29. No spreading of subsoil shall commence unless the mineral planning authority has approved in writing an outline strategy for

such spreading. The strategy shall make provision for the steps to be taken to bring the land to the required standard by outlining the steps to be taken to bring the land to the required standard so that the physical characteristics are restored as far as is practicable to do so, to what they were when the land was last used for agriculture and as described by the Ministry of Agriculture Fisheries and Food in the statement of physical characteristics supplied to the mineral planning authority which is the standard that satisfies the requirements of Paragraph 3(1) of Schedule 5 of the Town & Country Planning Act 1990. The aftercare scheme shall include provision for a field drainage system and an annual meeting with the operator and the mineral planning authority.

30. The aftercare scheme submitted for the approval of the mineral planning authority shall make provision for a detailed annual programme that includes:

- (i) Proposals for managing the land in accordance with the rules of good husbandry including planting, cultivating seeding fertilising, draining or otherwise treating the land for the twelve month periods within the five year aftercare programme;
- (ii) A record of aftercare operations carried out on the land in any twelve month period.

31. Aftercare shall not be carried out except in accordance with the approved scheme, unless approval to any variation has been previously given in writing by the mineral planning authority.

### Reasons for Conditions

1. To define the terms of the permission and the means of restoration.
2. To define the land affected by the conditions to enable continued access to the site.
3. To define the terms under which the permission shall continue to be exercised.
4. Pursuant to the requirements of the Town & Country Planning Act 1990 and the Environment Act 1995.
5. To ensure that there is no adverse impact on the amenity of any sensitive properties by reason of dust arising from site operations.
6. Reason as for Condition 5.
7. Reason as for Condition 5.

8. Reason as for Condition 5.
9. To ensure that there is no adverse impact on any sensitive properties from dust arising from site operations.
10. Reason as for Condition 9.
11. To ensure that there is no adverse impact on any sensitive properties arising from the hours during which the site is operated.
12. To ensure that there is no potential for any incident of ground or water pollution during site operations.
13. Reason as for Condition 12.
14. Reason as for Condition 12.
15. To ensure that there is no potential for any adverse impact on the surrounding area arising from the temporary cessation of operations.
16. To ensure that there is no adverse impact on the public highway from any operations carried out at the site.
17. To prevent any deleterious material being carried onto the public highway
18. To minimise any risk of dust generation from access and haul roads.
19. To secure the restoration of areas used for access to the mineral extraction area.
20. To ensure that soil is retained for use in restoration of the site.
21. To safeguard the structure and condition of soils used for restoration.
22. To define the after use approved for the site.
23. To enable the site to be restored to the approved after 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 is no adverse impact on the site and surrounding land arising from the wastes deposited.

24. To ensure that the standard of restoration required for the approved after use is achieved by all operations carried out during restoration operations.

25. Reason as for Condition 24.

26. Reason as for Condition 24.

27. Reason as for Condition 24.

28. To ensure that the site is maintained in a condition suitable for implementation of the approved after use.

29. Reason as for Condition 28.

30. Reason as for Condition 28.

31. Reason as for Condition 28.