

Planning Reference No:	10/1149W
Application Address:	HOUGH MILL QUARRY, BACK LANE, WALGHERTON, NANTWICH
Proposal:	EXTENSION OF TIME TO COMPLETE RESTORATION WORKS FOR A PERIOD OF FIVE YEARS
Applicant:	ANTHONY CONSTRUCTION LTD
Application Type:	APPLICATION FOR REMOVAL OR VARIATION OF A CONDITION
Ward:	DODDINGTON

SUMMARY RECOMMENDATION:

Approve subject to entering into an appropriate Deed under s106 and subject to planning conditions.

MAIN ISSUES:

- Principal of the development
- Public Rights of Way
- Cumulative effect on neighbouring residential amenity
- Nature conservation
- Soils, land use, restoration and aftercare

REASON FOR REPORT

This application has been referred to the Strategic Planning Board under the Council's scheme of delegation as this constitutes a Major Waste application on a historical mineral site.

DESCRIPTION OF SITE AND CONTEXT

Hough Mill Quarry is a former sand and gravel quarry situated on the southern edge of Wybunbury, approximately 4 miles south and south east of Crewe and Nantwich respectively.

Access to the site is from the A51 London Road which forms the south western site boundary. Land to the east, south and west beyond A51 is in agricultural use, whilst Wybunbury village lies to the north of the site. Lea Forge Trout Farm is situated directly to the south east of the quarry, whilst a

commercial fishing lake borders the north eastern boundary of the site. A bridleway (Lea BR6) runs adjacent to the eastern edge of the site which would be unaffected by the development.

An order to divert Public Footpath Lea No.2 outside of the application site to accommodate the restoration activities was confirmed on 26th April 2012 and has been advertised.

The application site covers 27ha and includes the former quarry workings in the north east and north west, separated by Jerusalem Pool fishing lake, and Forge Brook, which flows through the centre of the site. The site also includes the former processing/stockpile areas, access road and land to the south of the access road.

Two Grade B Sites of Biological Importance are situated adjacent to the application site boundary: Jerusalem Wood on the northern boundary and Jericho Wood and Pasture situated adjacent to Jerusalem Pool. The site also lies within 1.6km of Wybunbury Moss, Ramsar Site, Special Area of Conservation, Site of Special Scientific Interest and National Nature Reserve.

A small number of residential and commercial properties lie in close proximity to the site, with the majority aligned along the western boundary. A derelict farm house lies adjacent to the western site boundary, whilst a further property is located adjacent to the trout farm.

RELEVANT SITE HISTORY

The extraction of sand and gravel at this quarry has been undertaken since the mid 1960's. The historical permission for the site approved a restoration to agriculture and nature conservation through the importation of inert material. The site was worked sporadically by a number of owners who left the land with significant open voids and in a poor, semi-restored state.

A time limited consent was granted in 2005 (ref 7/P05/0217) to fully restore the site to agriculture and nature conservation by April 2010, using inert fill material and top soil. The consent permitted the importation of 400,000 m³ of clean inert waste material to act as a 2m containment layer for the previously poorly restored surfaces, which was to be overlain by top soils and planted in accordance with the approved restoration scheme. The consent was subject to a section 106 legal agreement to provide for extended management and aftercare of the nature conservation and wetland area of the central portion of the site for a 15 year period in accordance with an agreed management plan.

The restoration of the site has progressed with the north western section being filled to permitted levels and re-seeded. The north eastern section is mid-restoration and requires further fill material, whilst work is yet to start on the central and southern sections. Due to the economic downturn and subsequent lack of available fill material for the scheme, a large proportion of the site remains un-restored.

DETAILS OF PROPOSAL

This is an application to vary condition 3 of consent 7/P05/0217 to permit a further 5 years to complete the restoration of the site (from the date of submission of the application). This would permit works to continue until March 2015. No other amendments are proposed to the approved development apart from minor modifications to the restoration scheme to incorporate mitigation proposed in the amphibian survey.

The applicant has estimated that 80,000 m³ of restoration material is required to complete the operations which would enable a 2m thick layer of inert material to be placed across the site to achieve the approved restoration profile. No changes are proposed to the permitted working arrangements on site. These allow inert material to be screened and processed using mobile plant on site to produce sufficient soil making material for the project; with any remaining oversized/unsuitable material processed and exported to the local construction sector as a secondary aggregate. The hours of operation remain unchanged at 0730 – 1800 hours Monday to Friday 08.00 – 12.30 Saturday with no operations on Sunday or public holidays. Plant maintenance is permitted between the hours of 07.30 – 19.00 Monday to Saturday. Likewise no additional vehicle movements are proposed over consented movements of 72 vehicle movements in a day (36 in and 36 out).

POLICIES

The relevant Development Plan Policies are:

Local Plan Policy

Cheshire Replacement Waste Local Plan (CRWLP)

- Policy 1: Sustainable Waste Management
- Policy 2: The Need for Waste Management Facilities
- Policy 12: Impact of Development Proposals
- Policy 14: Landscape
- Policy 17: Natural Environment
- Policy 18: Water Resource Protection and Flood Risk
- Policy 20: Public Rights of Way
- Policy 23: Noise
- Policy 24: Air Pollution; Air Emissions Including Dust
- Policy 27: Sustainable Transportation of Waste and Waste Derived Materials
- Policy 28: Highways
- Policy 29: Hours of Operation
- Policy 32: Reclamation

Cheshire Replacement Minerals Local Plan (CRMLP)

- Policy 9: Planning Applications
- Policy 41: Restoration
- Policy 42: Aftercare

Borough of Crewe and Nantwich Adopted Local Plan 2011

- BE.1: Amenity
- BE.4: Drainage, Utilities and Resources

NE.2: Open Countryside
NE.5: Nature Conservation and Habitats
NE.8: Sites of Local Importance for Nature Conservation
NE.9: Protected Species
NE.12: Agricultural Land Quality
NE.17: Pollution Control
RT.9: Footpaths and Bridleways

National Planning Policy Framework

Planning Policy Statement 10: Planning for Sustainable Waste Management

Other Material Considerations

Government Review of Waste Policy in England 2011
Cheshire East and Cheshire West and Chester Councils Waste Needs Assessment Report May 2011
Consultation paper on PPS10: Planning for Sustainable Waste Management and its practice guide 2013

CONSULTATIONS (External to Planning)

The Strategic Highways and Transport Manager raises no objections.

The Borough Council's Landscape Officer does not object to this application as long as the conditions attached to the existing planning consent are adhered to.

Natural England

Initial response: 13th May 2010

NE consider that the proposed development in its current form should not have a significant effect on the Wybunbury Moss site, either alone or in combination with other plans or projects. They are also satisfied that the proposal would not have any significant impacts upon National Trails, Access Land, or the areas of search for new national landscape designations.

NE have requested that the recommendations made in the Extended Phase 1 Habitat Survey and Restoration Proposals document be included as planning conditions in any planning permission. They confirm that the proposals do not appear to raise any significant soil resource protection or reclamation issues and broadly support the outline aftercare strategy. They do however recommend that the proposals set out in the Section 106 Management Plan be extended across the whole site.

In respect of protected species they note that the proposals may affect Great Crested Newts, Bats, Badgers, Barn Owls, Breeding Birds, Reptiles, Water Voles, White Clawed Crayfish and Otters.

Bats - the Phase 1 survey notes the potential for the presence of bats within the derelict buildings at Lea Forge Farm. They concur with the recommendation of the ecological report which suggests that a full bat survey should be conducted, however this must take in to consideration both the buildings at Lea Forge Farm, and also any other areas on the site which may provide suitable habitat for roosting/foraging bats in order to ascertain the potential impact on the protected species.

Badgers - The Phase 1 Habitat Survey notes that Badgers are likely to be present on the site. The document notes that the 2005 survey is out-of-date and that there are indications of additional badger activity (new setts have been established). An updated badger survey is therefore required, and appropriate mitigation in light of the findings may be necessary.

Barn Owls - A survey may be necessary if there are any proposals to undertake development on Lea Forge Farm.

Breeding Birds - If building works are undertaken during the bird breeding season, a check for any active nest sites should be undertaken by a suitably qualified ecologist. If breeding birds are found during this survey, the nest should not be disturbed and works should be delayed until nesting is complete and any young birds have fledged.

Provision of artificial nest sites at selected points within the development should be made to provide alternative nesting sites and to compensate for the loss of nesting sites.

Reptiles - They note that there are a number of areas within the site that may provide a habitat for reptiles, in particular the common lizard, grass-snake and slow-worm. They concur with the recommendation of the Phase 1 Habitat Survey, which suggests that a full reptile survey should be undertaken.

Water Voles - The Phase 1 Habitat survey suggests that there will be no direct intervention or disturbance of the [Forge] brook so no further actions are required. However, if any restoration activity is likely to have an impact on habitats which may support the species, further surveys will be required.

White Clawed Crayfish - They note that it is possible that the species may be present within Forge Brook. The survey suggests that the proposed restoration has the potential to enhance the habitat potential for the species. However if the restoration process is likely to have a detrimental impact upon the brook, additional surveys for white-clawed crayfish will be necessary.

Otters - The Phase 1 survey makes reference to the recording of an otter in Forge Brook in 2000. Otters may potentially be present within the site, and therefore further surveys may be required if any habitat likely to support otters will be affected by the restoration process.

Sand Martin - They note that sand martins are known to use the site, and that there is a colony in the middle of the sandpit restoration area (p.21). The

Phase One Habitat survey indicates that a portion of remnant exposed sand-face will be preserved in an area at the north east of the site to enable the establishment of a new colony. Any work which may affect the colony site(s) should be conducted outside of the nesting/breeding season.

Response to updated ecological surveys

The updated protected species survey has identified that Great Crested Newts, a European protected species may be affected by this application. This information provided indicates that the two ponds scores are in the 'Average' assessment for overall great crested newt suitability.

Natural England (NE) refers to its Standing Advice with respect to Great Crested Newts. As standing advice, it is a material consideration in the determination of applications.

All competent authorities, when exercising their functions must have regard to the requirements of the Habitats Directive (See Regulation 9(5) of the 2010 Habitats Regulations). Planning authorities are competent authorities and are exercising a function in deciding whether or not to grant planning permission. In this instance, Cheshire East Council is the competent authority and it is for you to assess the proposal and determine whether or not to grant planning permission. Natural England has provided advice in the form of standing advice (see above link).

The judgement in the recent case of *Morge (FC) (Appellant) v Hampshire County Council* [2011] UKSC 2 considered the application of this duty. It came to the conclusion that, if the Planning Authority concludes that the carrying out of the development for which permission has been applied for even if it were to be conditioned, would be likely to offend Article 12(1), by say causing the disturbance of a species with which that Article is concerned, then it must consider the likelihood of a licence being granted. The licensing authority is Natural England. When considering the likelihood of a licence being granted it may be helpful for local authorities to view the guidance on how Natural England applies the 3 tests when considering licence applications.

Cheshire Wildlife Trust:

Although we found the GCN survey methodology, results and risk assessment acceptable we do have the following comments.

- The area to be 'left undisturbed to create invertebrate habitat mound' (GCN Report Phasing Plan) should be included, if possible, in the Section 106 Agreement area in order to ensure that the recommendations of the GCN report are fully implemented (in the interests of the protected species)
- It is unclear why there is a specification for a seed mix included in the MP. There are no recommendations for re-seeding of any areas in the Section 106 Agreement Land Management Plan and CWT would strongly endorse this approach. Natural regeneration is preferred over

any introduced grassland mixes. Limited tree and shrub planting would however be acceptable.

Nature Conservation Officer:

Reptiles

The submitted survey is acceptable. As no evidence of reptile species was recorded no further action is required.

Badgers

Two Badger setts were recorded during the updated survey; however these are some distance from the proposed works. Reasonable Avoidance Measures are suggested by the submitted report. I advise that no adverse impact on badgers is likely to result from the proposed development.

Bats

A number of features were recorded with potential to support roosting bats none of which appear likely to be affected by the proposed development. No further action is therefore required in respect of this species group.

Breeding Birds

Breeding Birds are present and so the following two conditions should be attached to any permission granted:

Prior to any commencement of works between 1st March and 31st August in any year, a detailed survey is required to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone to be left around the nest until breeding is complete. Completion of nesting should be confirmed by a suitably qualified person and a report submitted to the Council.

Reason:- to safeguard protected species in accordance with PPS9.

Prior to the commencement of development the applicant to submit detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds. Such proposals to be agreed by the LPA. The proposals shall be permanently installed in accordance with approved details.

Reason: To secure an enhancement for biodiversity in accordance with PPS9

Great Crested Newts:

Initial advice:

The GCN survey has revived the presence of the species at one of the former Quarry settling ponds. Four survey visits were undertaken which is adequate to establish presence/absence however a further two survey rounds should have been undertaken to establish the population size in accordance with the Natural England guidelines. In this instance however, as only two adult newts were recorded I am satisfied that the population is very unlikely to be anything but 'small'.

To avoid any disturbance of potential GCN habitat the submitted survey report recommends that 'Phase 4' of the restoration is allowed to re-vegetate naturally. This approach is acceptable in purely ecological terms. Phase 2a is also awaiting landfill and subsequent restoration, however I am satisfied that this part of the site is far enough away from the identified breeding pond that great crested newts are not reasonable likely to be affected.

Comments in respect of further species surveys:

A number of protected species surveys have been undertaken at the site. Significant impacts on any protected species are unlikely with the exception of Great Crested Newts which could be affected by restoration works in close proximity to the identified breeding pond. To avoid any adverse impact on Great Crested Newts the applicant is proposing to allow 'Phase 4' of the restoration works to vegetate naturally. This approach is acceptable to avoid any adverse impact on GCN however the area that is intended to be allowed naturally re-vegetated should be clearly shown on the restoration plan.

Advice in respect of the pond identified within 250m of the application site:

The submitted information relating to the Habitat Suitability Assessment of the pond to the south of the site is limited so there is no way of knowing if fish are present in these ponds or if large numbers of wildfowl are present. Both of these factors would affect the likelihood of great crested newts being present. However the 'average' HSI score that has been calculated would in my view indicate that breeding GCN are reasonable likely to be present at these two ponds.

However, the ponds surveyed are 230m from the nearest disturbing development. The area of proposed works that falls within 250m of the pond is consequently small in area. Additionally there appears to be suitable terrestrial habitat located closer to the pond to the south/east of the pond.

In my view, whilst GCN are reasonable likely to be present at this pond the proposed development is not reasonable likely to have a significant impact on any population present. I therefore advise that there is insufficient justification for requesting a more detailed GCN survey of this pond prior to the grant of consent. I confirm that allowing the small area of land within the site which falls within 250m of the un-surveyed pond to regenerate naturally with possible some tree planting is an appropriate strategy to mitigate any potential impacts of the restoration works on great crested newts which may occur at this pond.

I am satisfied with their assessment that GCN will not be affected by the works as long as they have identified all of the parts of the site where there is remaining works to take place.

The Borough Council's Environmental Protection Officer raises no objection but recommends that current conditions with respect to the mitigation of noise and dust are replicated to ensure that there are no nuisance issues.

Cheshire Archaeology Planning Advisory Service does not object to the application. Archaeological issues surrounding this application in 2005 were addressed in Condition 38 in the 7/P05/0217 planning consent. The conditions attached to the planning consent have been included in Appendix 1 of the documentation submitted in support of the present application and as long as Condition 38 is adhered to this will address the archaeological issues.

The Public Rights of Way Unit An application to divert Public Footpath Lea No.2 was confirmed on the 26th April 2012. No objections have been received by PRow Unit.

The Mid-Cheshire Footpath Society notes that Lea Footpath 2 has not been diverted onto the line shown on the plans and their agreement with the previous applicant was that the line should remain essentially the same and be diverted away from the farm, over the stream and exit close to the quarry exit. They ask that the applicant be made aware of his obligations to keep Lea footpath 2 open and walkable at all times until a new route is agreed.

The Environment Agency does not object to this application but requests an informative in relation to the Water Resource Act 1991 to be included on any decision notice should planning permission be granted.

VIEWS OF THE PARISH / TOWN COUNCIL

Wybunbury Parish Council:

- The former Cheshire County Council's 2005 restoration approval in content shall not be altered but may be added to for the extension of time.
- All original time scales from the 2005 approval document should be extended by five years from the new approval date.
- The Parish Councils for Wybunbury, Walgherton and Hatherton as well as Doddington should be involved with the annual management of the site review along with Cheshire East Council.
- That 12 months prior to the final completion of the total restoration of the quarry, a meeting of all interested parties be held to discuss the future use of the quarry after the completion of the restoration works.
- Time scales for the section 106 agreements also be extended by five years.
- Once the restoration has been completed, a new public right of way be designated to connect the circular path from Back Lane to continue around Jerusalem Wood via the Jerusalem fishing pool and to cross the brook and skirt Jericho Wood and then join up with the restored Public Footpath Lea No.2 right of way. This new right of way would open up the area creating a most impressive walk with great views of the land, woods, lake and river side walk, then lead back to Wybunbury a long Public Footpath Lea No.2.
- That no further applications of time should or would be considered for this quarry.

If the above comments were taken strongly into consideration when approval of the application is considered, Wybunbury Parish Council would offer no objection to an extension of time.

Hatherton and Walgherton Parish Council made no comments on the application.

OTHER REPRESENTATIONS

There have been no letters of representation received in relation to this proposal from local residents or other third parties.

APPLICANT'S SUPPORTING INFORMATION

Planning Supporting Statement dated March 2010 prepared by Hallette Environmental;

Planning Drawings;

Vehicle load figures 2006 – 2009;

Dust Assessment February 2010

Contaminated Land Assessment March 2010;

Noise Update Assessment March 2010;

Transportation Assessment March 2010;

Section 106 Area Management Plan June 2012;

Archaeological Assessment;

Draft section 106 agreement; and

Waste Management Exemption.

Extended Phase 1 Ecological Survey revision 3 November 2011

Great Crested Newt Survey and Risk Assessment version 2 July 2011

OFFICER APPRAISAL

Principal of the development

The proposed variation is required to avoid the site being left partially restored and unfit for any beneficial purpose, as has been the case in the past. The scheme also allows for the continued long term management of the ecological and nature conservation assets on the site including the SBI at Jericho Woodland and Pasture, Jerusalem Wood and Jerusalem Pool.

The original timescales for the project were calculated on the basis of achieving average monthly loads of approximately 1200. Following the prolonged economic downturn, the operator has struggled to obtain sources of suitable inert fill. Average monthly loads in 2010 were approximately 300, and whilst they have been slowly improving (averaging 500 in 2011/2012) there still remains an estimated 80,000 m³ of restoration material required to complete the works. Should works on site cease before the scheme is completed, this would leave land partially restored with an unsympathetic landform and which lacks appropriate landscape treatment. It would also make the aftercare arrangements difficult to implement.

In addition, it is noted that the inert subsoils used for the restoration of this site enable a sustainable means of diverting Construction, Demolition and Excavation waste (CD&E) from landfill which is one of Cheshire East's largest

waste streams (49% of the overall waste arisings). This helps to meet the requirements of the revised waste framework directive, targets in the Waste (England and Wales) Regulations 2011, and the planning objectives of PPS10 and the CRWLP. It is also noted that there are few similar facilities in the south of the authority able to provide an outlet for CD&E waste arisings and the scheme also accords with the approach of NPPF which requires minerals sites to achieve high quality restoration and aftercare schemes.

On this basis, it is considered that the proposal is in accordance with the overall objectives of CRWLP and PPS10, and supports the approach of PPS10 and NPPF.

Ecology and Nature Conservation

The site has potential to support protected species habitats including great crested newts (GCN), badgers, reptiles, water voles, otters and white clawed crayfish.

The EC Habitats Directive 1992 requires the UK to maintain a system of strict protection for protected species and their habitats. The Directive only allows disturbance, or deterioration or destruction of breeding sites or resting places where:

(a) it is in the interest of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment, and provided that there is:

(b) No satisfactory alternative; and

(c) No detriment to the maintenance of the species population at favourable conservation status in their natural range.

The UK has implemented the Directive in the Conservation (Natural Habitats etc) Regulations 2010 (as amended) which contain two layers of protection (i) a requirement on Local Planning Authorities ("LPAs") to have regard to the Directive's requirements above, and (ii) a licensing system administered by Natural England and supported by criminal sanctions.

Cheshire Replacement Minerals Local Plan Policy 9 requires an application to be accompanied by an evaluation of the proposed development and its likely effects, direct and indirect. Where adverse effects are identified, a description of the proposed measures to avoid, reduce or remedy the effects should be provided where appropriate, as well as monitoring/management arrangements should permission be granted.

Crewe and Nantwich Borough Adopted Replacement Local Plan Policy NE.9 states that development will not be permitted which would have an adverse impact upon species specifically protected under Schedules 1, 5, or 8 of the Wildlife and Countryside Act 1981 (as amended) or their habitats. Where

development is permitted that would affect these species, or their places of shelter or breeding, conditions and/or planning obligations will be used to:

- Facilitate the survival of individual members of the species;
- Reduce disturbance to a minimum;
- Provide adequate alternative habitats to sustain the current levels of population

Circular 6/2005 advises LPAs to give due weight to the presence of protected species on a development site to reflect EC requirements. *“This may potentially justify a refusal of planning permission.”*

The NPPF advises LPAs to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided or adequately mitigated (through locating on an alternative site with less harmful impacts) or, as a last resort, compensated for, planning permission should be refused.

Natural England’s standing advice is that, if a (conditioned) development appears to fail the three tests in the Habitats Directive, then LPAs should consider whether Natural England is likely to grant a licence. If it is unlikely, then the LPA should refuse permission. If it is likely, then the LPA can conclude that no impediment to planning permission arises under the Directive and Regulations.

Great Crested Newts

The Nature Conservation Officer has assessed the application and relevant supporting ecological documentation and raises no objection to the proposed development. The surveys identified a small population of Great Crested Newts, smooth newts, as well as a frog and common toad at one of the former settling ponds which lies directly adjacent to, and outside of the application boundary. The adjacent woodland, scrub and grass surrounding the pond are identified as providing any ideal habitat for newts. These areas remain outside of the planning application boundary and would be unaffected by the scheme. A further pond to the south east of the site, beyond the application boundary but within 250m of the proposed development, is also identified as being suitable for Great Crested Newt habitat.

To avoid any adverse impacts on this species, the restoration proposals have been revised to ensure those areas of the site in close proximity to the Great Crested Newt habitat are excluded from any infilling and are left to re-vegetate naturally in accordance with the recommendations of the survey. In addition, as a further mitigation, the updated restoration proposals also provide for the creation of an invertebrate habitat mound adjacent to the former settling ponds. The survey identifies that, following the implementation of this mitigation, there is no reasonable likelihood of harm to individual Great Crested Newts at the site and no Natural England European Protected Species Licence will be necessary.

On this basis, the Nature Conservation Officer is satisfied that the revisions proposed present an appropriate strategy to mitigate any potential adverse impacts on Great Crested Newts or their habitat arising from this scheme.

Badgers

The survey recorded 2 active badger setts (one main breeding sett and one annex sett) close to the application site. Given that all setts lie well outside the working areas of the site, the survey does not envisage any direct impacts upon badgers or their setts. Indeed, all important feeding areas will remain unaffected. Once restoration is complete, the site will offer enhanced foraging value of the site for badgers. Periodical badger monitoring is recommended, along with making site users aware of badgers and their movement, and restricting the movement of machinery within the vicinity of active setts.

A number of reasonable avoidance measures are also recommended to ensure there is no detrimental harm to badgers or their habitat which can be secured by planning condition. The Nature Conservation Officer advises that no adverse impact on badgers is likely to result from the proposed development.

Barn Owls and Bats

Whilst Natural England highlighted the potential impact of the development on Bats and Barn Owls, the proposal would not affect the derelict farm buildings on site or propose any felling of trees. As such, it is not considered that surveys for the presence of these species would be necessary. The Nature Conservation Officer advises that no further mitigation is therefore required in respect of these species.

Reptiles

Two working areas of the site were identified to be potentially suitable habitat for reptiles. Following a survey of the site, no species of reptile were observed. On the basis of these findings, the Nature Conservation Officer advises that no further mitigation is required.

Breeding Birds

The extended phase 1 survey identified the site as having great potential for nesting birds which are fully legally protected from disturbance or harm whilst nesting. This includes a number of birds listed as high conservation concern due to declining UK population. Sand Martins have previously been recorded as nesting in the cliff faces of the north eastern worked area, although no signs of activity were recorded in the most recent survey. During the intervening time, the weather, vegetation growth, cattle, rabbits and badgers might have destroyed all signs of these holes.

The extended phase 1 survey recommends any works in this area to be undertaken outside of the bird nesting season and the provision of an alternative sand martin colony in the north west corner of the sandpit to compensate for loss of any existing colony through the restoration activities. Both of these can be secured through planning conditions.

Other protected species

The extended phase 1 survey did not identify field signs of any other protected species, although some habitats on site offer some potential for some species. Forge Brook has potential for the white-clawed crayfish. However, the survey acknowledges that the adoption of Environment Agency Pollution Prevention Guidelines will protect the watercourse. Equally, this watercourse and its adjacent wetland area also have potential to support water voles and otters. For both species, given that this area lies outside of the application boundary and no direct intervention or disturbance is proposed during restoration, no further action is considered necessary for this species.

Having regards to the above, it is considered that the proposal would have an acceptable impact on nature conservation interests and would comply with Policies 12 and 17 of the CRWLP, Policies NE.2 and NE.9 of the CNLP; along with paragraphs 109, 118 and 144 of NPPF and the approach of PPS10.

Restoration and Aftercare

No amendments are proposed to the approved site restoration scheme aside from minor modifications to incorporate recommendations of the amphibian survey. This requires:

- a small strip of the land on the southern boundary to be left free from infilling to regenerate naturally,
- an area adjacent to the former settling ponds to be left undisturbed for the creation of an invertebrate habitat mound, and
- a larger area adjacent to the former settling pond left free from any infilling to secure a buffer of retained habitat for great crested newts.

Accordingly, the approved restoration plans have been amended to reflect these provisions and are considered acceptable by the Landscape and Nature Conservation Officer.

The existing consent was subject to a s106 legal agreement to secure a 15 year period of habitat management for those areas of the site identified to be of nature conservation value that are not subject to direct restoration works. This includes Jerusalem Pool fishing lake, Jericho Wood and Pasture SBI and the section of Forge Brook passing through the site. The legal agreement ensures that these nature conservation habitats are appropriately managed until December 2020, in accordance with an approved habitat management plan which was agreed in conjunction with the Nature Conservation Officer, Environment Agency and Natural England. Should planning permission be granted, it is proposed that this requirement will continue to be secured on any further consent by means of an appropriate Deed under s106.

Whilst Natural England has suggested that the s106 legal agreement should be extended across the entire site, it would be unreasonable to tie the landowner into an extended aftercare arrangement for other areas of the site which are of limited nature conservation significance. On the basis that such a requirement would not be necessary to make the development acceptable, it is not considered that this would meet the relevant 'tests' within the CIL

Regulations. It is also noted that the current planning conditions would be replicated on any new consent which includes a requirement for standard 5 year aftercare for these areas to ensure the land is made reasonably fit for agriculture.

As the broad restoration proposals and aftercare arrangements remain as per previously approved, the scheme is considered to accord with policies 41 and 42 of CRMLP, policy 14 of CRWLP and paragraph 143 of NPPF.

Residential Amenity; traffic, noise and dust

The current consent restricts vehicle movements to 72 a day (36 in and 36 out) to ensure there is no impact from excessive traffic movements. No amendment is proposed to this figure and no objections are raised by the Strategic Highways and Transportation Manager. As such, the proposal accords with Policies 12 and 28 of the CRWLP and Policy BE.1 Amenity of the CNLP, and the approach of NPPF.

NPPF and policies 12, 23, 24 of the CRWLP require that the impacts of noise and dust emissions are suitably assessed and controlled in accordance with Government guidelines.

The updated noise assessment concludes that the noise generated by site operations remain below established noise levels, controlled by condition on the existing consent.

The updated dust assessment identifies that the current dust emissions are considered negligible. The only potential source of significant dust emissions are those associated with the movement of vehicles on the internal haul road and the site operates in accordance with an approved dust mitigation scheme.

With the continuation of existing mitigation procedures the level of impact is considered to be negligible and regular monitoring ensures that noise and dust levels generated by operations at the site accord with current environmental standards. There is no history of complaints during the restoration phase and the Environmental Health Officer does not object to this application.

On the basis that the current mitigation procedures will remain in place, it is considered that the scheme will not generate any significant detrimental noise or dust impacts that would impact on human health or the natural environment. As such, it accords with NPPF paragraphs 17, 123 and 144, Policies 12, 23 and 24 of the CRWLP, along with paragraphs 29 of PPS10 and NPPF paragraphs 120 and 123.

Liaison Committee

Wybunbury Parish Council have expressed their interest in becoming involved with the annual review of site management and in establishing dialogue with the site owners to explore future options for the site. It is recommended that a liaison meeting is established (and secured by planning condition) to

facilitate dialogue between the operator and local community. This would accord with Policy 43 of CRMLP.

Impact on Public Rights of Way

An order to divert Public Footpath Lea No.2 was confirmed on 26th April 2012 and has been advertised. The diversion realigns the footpath along the western boundary of phase 3. As such, with the standard informative with regards to the operator's obligation towards the footpath added to any decision notice, it is considered that the proposal accords with Policy 20 of the CRWLP, Policy RT.9 of the CNLP and paragraph 75 of NPPF.

It is noted that Wybunbury Parish Council have requested that a new public right of way be created on completion of the development which would connect Back Lane with the reinstated footpath Lea No.2 via Jerusalem Wood SBI, Jerusalem fishing pool and Jericho Wood SBI. This does not form part of the proposals and Public Rights of Way unit have not indicated any requirement for further enhancements of the public rights of way on this site. It is considered that any future requirements for further public rights of way would more appropriately be progressed separately with the Public Rights of Way unit, in conjunction with the landowner, on completion of the restoration works proposed (when the future landuse for the site is known). It is also noted that the provision of the route requested by the Parish Council would include crossing two sites of biological importance and the area of land specifically set aside and managed under the s106 for nature conservation interests. As such the full nature conservation impacts of this would need to be appropriately assessed.

CONCLUSIONS AND REASON(S) FOR THE DECISION

This section 73 application seeks to vary the condition that covers the completion date of the restoration of the quarry, thereby enabling consented levels to be reached and the desired and consented restoration achieved. It is important to recognise that this application does not seek to increase the consented levels of the site or bring any additional inert materials in addition to that already approved by the previous consent.

The proposed extension of time would enable the restoration of a former sand quarry which has been worked and abandoned without restoration to a suitable standard, leaving areas of open voids and un-restored land. The application proposes to continue to import and process inert waste materials to achieve sensitive restoration for agricultural use.

Whilst a time extension would prolong associated impacts on residential amenity, these would be limited due to the topography of the site and nature of the proposal. There has been no history of complaints during the restoration of this development. Current planning conditions to aid the mitigation of noise, dust, would be continued to ensure that there are no nuisance issues. The applicant proposes no increase in consented vehicle

movements, which were significantly less vehicle movements from that originally permitted when it was an active quarry.

The proposal would be beneficial in terms of visual amenity as it would result in a significant improvement in the visual amenity of the site, with partially restored areas being completed, voids filled and machinery removed. The proposal would provide significant nature conservation benefits derived from the implementation of appropriate habitat management to enhance existing areas of ecological value.

The failure to grant planning permission would result in failure to remedy the original problem of restoring the site. Overall, there appear to be no significant planning reasons to warrant refusal of this application. It is considered that the proposed development, subject to appropriate conditions, and an appropriate Deed under s106, would not have an unacceptable impact on any other material planning consideration. As such, planning permission should be granted.

RECOMMENDATION:

That the application be APPROVED subject to the following:

(1) An appropriate Deed under s106 to continue the management of nature conservation land in accordance with an approved habitats and fisheries management plan for a period until 12th December 2020.

(2) Planning conditions covering in particular: -

All the conditions attached to permission 7/P05/0217 unless amended by those below;

Approved plans;

Completion of the restoration works by March 2015; and

Establishment of a Liaison Committee

Implementation of the mitigation identified in the ecological surveys

Protection of breeding birds

In order to give proper effect to the Committee's intentions and without changing the substance of the decision, authority is delegated to the Planning and Place Shaping Manager in consultation with the Chair (or in his absence the Vice Chair of Strategic Planning Committee) to correct any technical slip or omission in the wording of the resolution, between approval of the minutes and issue of the decision notice