

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

3 June 2013

Report of the Strategic Director – Environmental Services

- 1 PROPOSED EXTENSION OF TIME FOR THE SUBMISSION OF AN APPLICATION UNDER THE ENVIRONMENT ACT 1995 FOR APPROVAL OF CONDITIONS TO WHICH A PLANNING PERMISSION IS TO BE SUBJECT (PERIODIC REVIEW OF MINERAL PERMISSIONS) AT POTLOCKS HOUSE FARM, WILLINGTON**
APPLICANT: HANSON QUARRY PRODUCTS EUROPE LIMITED
CODE NO: CM9/695/28

9.922.2

Introductory Summary Hanson Quarry Products Europe Limited (Hanson UK), is the owner of Potlocks House Farm, a site which has permission to win and work sand and gravel at Willington. The company has asked for the agreement of the Mineral Planning Authority to an extension of time for 12 months on the due-date for an application for updating the conditions on the planning permission for the site. This report recommends the completion of an agreement which would extend the due-date accordingly.

(1) **Purpose of the Report** To enable the Committee to determine the request for an extension of time.

(2) **Information and Analysis** This report relates to a request for an extension of time for the submission of the Environment Act 1995 Review of Mineral Permissions ('ROMP') application at Potlocks House Farm, Willington. Hanson UK, the owner of Potlocks House Farm, has been served with a notice under the ROMP procedures stating a due-date for the submission of an application for new planning conditions subject to which the quarry would operate.

The Site and Surroundings

The Potlocks House Farm site, which has a surface area of approximately 35 hectares (ha), is to the east of the village of Willington and is off the A5132 (Twyford Road), which runs between Willington and Barrow-on-Trent. The site

is bounded by the former Willington Power Station to the west, to the north by Buckford Lane, which continues as Frizams Lane along the east boundary, and by the A5132 to the south. The site is used as grazing land.

Land to the east of Frizams Lane is a Scheduled Monument which contains remains of a cursus, a settlement site and associated enclosures. The area of the cursus continues to the west of Frizams Lane into the application site. Findern Primary School is 300 metres to the north-west and the nearest residential property adjoins the site boundary on Buckford Lane. The site is affected by the flood plain of the River Trent. A public footpath (Twyford and Stenson Public Footpath No 1 on the definitive map) runs to the east of Frizams Lane. There are no nature conservation designations in the site, although the Twyford Oxbow Number 1 Local Wildlife Site is 162 metres to the south.

Planning Background

Potlocks House Farm is subject to planning permission (Code No: CM9/695/28) to win and work 2.2 million tonnes of sand and gravel. Originally granted permission in the 1970s, a new permission with amended conditions (Code No: CM9/695/28) for the site was granted in 1995. This permission is now subject to the ROMP procedures. It requires that the restoration of the site following mineral working be by infilling to existing ground levels.

The ROMP was originally due to be submitted on or before 22 November 2010. Following a written request for an alternative later date for submission of the ROMP, due to the company's intention at the time to submit information in respect of the outstanding pre-commencement conditions in order to be able to commence the development and an application to extend the duration of the planning application, this Council agreed to a submission date of 22 November 2011 and then a further submission date of 30 June 2013.

Following a long period of inactivity, the planning permission was finally implemented in November 2010 following the approval of reserved matters submissions relating to, amongst other matters, the site access, a scheme of working, site restoration and the protection of trees, shrubs and hedgerows. Due to the archaeological sensitivity of the site, and concerns regarding the prospect of permanent loss of archaeological resource through the working of the site, Hanson entered into a legal agreement with Derbyshire County Council under Section 106 of the Town and Country Planning Act 1990. The legal agreement (at paragraph 7.1.1), includes a commitment by Hanson UK, as landowner, that:

'...until 30 June 2013 or the exhaustion of all commercially exploitable reserves at Shardlow Quarry, whichever shall be the earlier, not to work any minerals in, on or under the Land or otherwise carry out the Development except to the extent needed to carry out the Minerals Implementation Works'.

The legal agreement (paragraph 7.1.2) also includes provision to facilitate a revocation of the Potlocks permission in the event that an application for a planning permission extension to Shardlow Quarry is approved. Such an application (Code No: CM9/0811/53) ('the Weston extension') was submitted to the Council in August 2011 and is currently under consideration.

The Proposals

Schedule 14 of the Environment Act 1995 generally requires that persons with an interest in the land make an application for approval of (updated) conditions to which a mineral planning permission is to be subject (ROMP) not later than 15 years after the date of the grant of permission. In the case of Potlocks House Farm, following the written agreement of this Council, the due-date for such an application would now be on or before 30 June 2014. The consequence of not making an application by the due-date, or an agreed extension of it, is that the permission is effectively lost, except for any restoration or aftercare conditions.

Schedule 14 further provides, however, that the date for the making of an application may be extended with the approval of the Mineral Planning Authority. The provisions for this are referred to under the 'Legal Considerations' section below.

A new request, under paragraph 7 of Schedule 14 to the Environment Act 1995, has been received from Hanson UK, for an extension of the due-date for the ROMP submission by 12 months, until 30 June 2014. Hanson UK, in making the request, refers to:

- allowing sufficient time for the determination of the 'Weston extension' application at Shardlow Quarry which would make the effect of paragraph 7.1.2 of the Section 106 agreement clearer;
- the likely desire of this Authority to revoke the Potlocks House Farm permission as part of any approval of the 'Weston extension' application;
- the fact that, based on current production levels and recent decision by Hanson UK to mothball Shardlow Quarry during 2013, the reserves at Shardlow Quarry are likely to exhaust after 30 June 2014; and
- the fact that if the 'Weston extension' application were refused, a revised First Review Date of 30 June 2014 would still allow for the review of planning conditions at Potlocks House Farm to take place prior to mineral extraction activities recommencing at the site.

Consultations

Extensions of time, such as that requested here, are not subject to a requirement for consultation and publicity. The local Member of the County Council (Councillor Ford) has been informed of the request.

Planning Considerations

The planning permission identified by Hanson UK (CM9/695/28) was granted on 23 November 1995 and is the only permission at Potlocks House Farm. The permission is understood to have been implemented in November 2011 by some limited working in the site. The potential working area under the permission extends over the whole site.

The ROMP process seeks to ensure that all old mineral permissions are subject to a set of modern conditions and environmental controls. The process does not result in a new planning permission and there is no scope within it to review the grant of existing planning permissions. In the context of the Potlocks House Farm site, the principle of mineral extraction, was affirmed in 1995. Due to the extent of the archaeological resource, which covers a large part of the site, it is unlikely that this Authority would be able to secure its permanent protection through the ROMP process without significantly restricting the utility of the permission. In such circumstances, the Authority would be liable for a claim for compensation.

As detailed above, however, the site is subject to a legal agreement which prevents Hanson UK from working it until the reserves at Shardlow Quarry are exhausted or until 30 June 2013, whichever is the earlier. In considering the suggested timescale for extending the submission of the ROMP, I am satisfied that this extension would not be detrimental to public amenity provided that the protection of the archaeological resource from further working at the site under the legal agreement is extended until 30 September 2014. This should allow time for determination of a ROMP application submitted on or before 30 June 2013.

Therefore, my view is that the relatively short further extension of time that could be provided for through paragraph 7 of Schedule 14 of the Environment Act 1995, as requested by the applicant, can be acceded to, in conjunction with a suitable extension to the period of protection from further working under the legal agreement. I have recommended accordingly.

(3) **Financial Considerations** No fee is payable for the request for an extension of time.

(4) **Legal Considerations** This request falls to the County Council to determine as the Mineral Planning Authority. The requirement for the submission of an application for approval of new conditions for a mineral working site (ROMP) derives, in the case of later permissions from Schedule 14 of the Environment Act 1995. The submission of an application for a first review at a single permission must be made by a date 15 years from the date of the planning permission or such later date as may have been agreed with the Mineral Planning Authority.

Schedule 14 has two provisions for the extension of the due-date for submission. Under paragraph 5, an extension of time may be agreed by a postponement of the 'first review' date. This is possible only if the Mineral Planning Authority agrees that the existing conditions applying to the relevant planning permission(s) are satisfactory. Under paragraph 7, a later date for a ROMP application may be agreed in writing between the applicant and the Authority, and there is no corresponding limitation.

Government advice in Mineral Planning Guidance Note 14 (MPG14), the advice that accompanied the introduction of the ROMP provisions, is not explicit but it is clear that the applications for postponements under paragraph 5, which must be on the basis that existing conditions are satisfactory, should be for "*a reasonable number of years – eg 10 to 15 years*"; whereas applications for "*a small extension of time...can be agreed in writing between the applicant and the mpa without the formal procedure of a postponement application*"; such a provision for agreement is only available under paragraph 7.

Schedule 14 also provides that if an application is not made by the due-date, as set by the date of the planning permission or extended by agreement, the permission ceases to have effect on the following day, except insofar as it imposes any restoration or aftercare condition.

I do not consider that there would be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this request for extending the time in which the Environment Act 1995 ROMP application being authorised.

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Background Papers** File No 9.922.2.
Letter from Hanson UK dated 13 May 2013.

(6) **OFFICER'S RECOMMENDATION** That the Committee resolves to **authorise** the Director of Legal Services to proceed with the completion of an agreement or agreements between the Council and Hanson UK (as owner of the Potlocks Farm mineral permission site referred to in this report) that would:

(1) extend the due date for submission by Hanson UK of an application under paragraph 6 of schedule 14 of the Environment Act 1995 relating to the site (to include proposal of conditions for the mineral planning permission relating to the site, code reference CM9/695/28, to be subject

to) from 30 June 2013 until 30 June 2014, in conformity with paragraph 7 of that schedule, and

(2) modify the planning obligation under paragraph 7.1.1 of the agreement under section 106 of the Town and Country Planning Act 1990 referred to in this report by substitution of the date of 30 September 2014 in place of the date of 30 June 2013.

Ian Stephenson
Strategic Director – Environmental Services