

Agenda Item No. 4.1

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

8 August 2016

Report of the Strategic Director – Economy, Transport and Communities

- 1 PROPOSED EXTENSION OF TIME FOR THE SUBMISSION OF AN APPLICATION UNDER THE ENVIRONMENT ACT 1995 (SCHEDULE 14) FOR APPROVAL OF CONDITIONS TO WHICH A PLANNING PERMISSION IS TO BE SUBJECT (FIRST PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS OR ‘ROMP’ APPLICATION) AT WAINGROVES QUARRY, WAINGROVES, NEAR RIPLEY (PLANNING PERMISSION CODE NUMBERS RIP/1248/6 (WINNING AND WORKING OF MINERALS), RIP/356/7 (WINNING AND WORKING OF MINERALS), RIP/1160/5 (WINNING AND WORKING OF MINERALS) AND RIP/1261/6 (WINNING AND WORKING OF MINERALS))**
APPLICANT: FORTERRA BUILDING PRODUCTS LTD

6.835.R1

Introductory Summary Forterra Building Products Ltd, the owner and operator of Waingroves Quarry (a brick clay quarry near Ripley), has asked for the agreement of Derbyshire County Council, as Mineral Planning Authority (MPA), to postpone the date by which an application must be made to determine a new scheme of conditions to which the above permissions relate, from 1 July 2017 until 1 July 2022.

I consider that the current conditions, reviewed and updated by the Initial Review under the 1995 Act in 2002, would continue to be capable of providing a robust set of controls for operations at the site to 2022. I therefore recommend that the Council agrees to the request.

This report considers this request and the potential consequences of such an extension of time.

(1) Purpose of Report To enable the Committee to authorise an extension of time for a ‘RoMP’ application.

(2) Information and Analysis This report relates to a request to agree an extension of time for the submission of the Environment Act 1995 first

periodic Review of Mineral Permission (RoMP) application at Waingroves Quarry, near Ripley.

Forterra Building Products Ltd, the owner of Waingroves Quarry, has been served with Notice under the RoMP procedures stating a due date of 1 July 2017 for a submission of an application for new planning conditions subject to which the quarry would operate.

The Site and Surroundings

Waingroves Quarry lies approximately 1.5km south-east of Ripley town centre and is bordered on three sides by the residential areas of Greenhillocks and Marehay to the west, Peasehill, Waingroves and Codnor to the north and north-east, and Codnor and Crosshill to the east. The extraction of clay, to be used for the purposes of brickmaking, has taken place at the site at least since the beginning of the 20th century, pre-dating the current planning system.

The quarry complex has a surface area of 68.4ha and comprises three distinct areas of development. These can briefly be described as the western area, which is now restored (Phase 1 of the previously approved working scheme) and which is adjacent to the residential areas of Marehay and Greenhillocks, the southern and eastern areas, which form the existing operational quarry and stockpiling areas (phases 2 and 3 of the approved scheme), and the northern area, which currently comprises a series of agricultural fields, bounded by hedgerows and trees, where extraction has not yet commenced (Phase 4). This area is currently used for the storage of overburden from Phase 2.

Planning Background

The quarry has four planning permissions for mineral extraction. Planning permission RIP/1248/6 (June 1949), to extend the then existing clay and shale workings; permission RIP/356/7 (June 1956) for a further extension to the quarry for the winning and working of clay, shale and coal; permission RIP/1160/5 (February 1961) for the winning and working of clay and permission RIP/1261/6 (March 1962) for the recovery of clay required for brickmaking purposes. These permissions were subject to Initial Review in 1998 with a new schedule of conditions for the remaining permitted mineral development approved in July 2002.

Schedule 14 of the Environment Act 1995 provides a system whereby persons with an interest in the land maybe required to make an application for the periodic review and update of conditions not later than 15 years after either the grant of planning permission or the approval of a previous RoMP.

The Environment Act 1995 further provides, however, that the date for the making of an application may be extended with the approval of the MPA. There are two separate provisions for this, under paragraphs 5 and 7, as

explained under 'Legal Considerations' Section below. The consequence of not making an application by the due date, or an agreed extension to it, is that the permission is effectively lost; it becomes invalid, except for any restoration and aftercare conditions.

In the case of Waingroves Quarry, the current due date for the first periodic review requires a RoMP submission to be made on or before 1 July 2017.

Request for Extension of Due Date

A request has been received from Forterra Building Products Ltd for a postponement of the due date for the RoMP submission by five years, that is, from 1 July 2017 to 1 July 2022.

The reasons for making this request are as follows:

- the Initial Review conditions imposed by existing planning permissions RIP/1248/6, RIP/356/7, RIP/1160/5, RIP/1261/6 (collectively referenced as R6/0698/6) remain satisfactory to monitor and control all aspects of the operation of the permitted development;
- the approval of submitted schemes under conditions 42 (landscape management scheme), 43 (advance planting) and 45 (restoration of Area B) to be considered and approved by the MPA which will provide fully up-to-date schemes relevant to those conditions; and
- there are no planned changes to the method of working as was previously approved under the Initial Review permission in 2002.

Consultations

Extensions of time, such as requested here, are not subject to a requirement for consultation and publicity. However, the local Member of the County Council, Councillor Freeborne, has been notified.

Planning Considerations

The RoMP process seeks to ensure that all mineral permissions are subject to a set of modern conditions and environmental controls. The process does not result in a new planning permission and neither is there scope within it to amend the terms of existing planning permissions. In the context of Waingroves Quarry, the first periodic review would allow the schedule of conditions, approved as a result of the 1998 Initial Review, to be revisited and, if necessary, revised and updated.

I consider that the conditions relating to environmental impacts, such as noise, dust, blast vibrations, etc, approved in 2002, are still robust and that they would allow the current mineral extraction and processing operations at the site to be controlled to acceptable modern standards. In addition, the recent approval, of the submissions under conditions 42 (landscape management),

43 (advance planting) and 45 (restoration of area B) of the approved 2002 conditions ensure that those aspects of the development are fully up-to-date. Indeed, further to a recent site visit, I am satisfied that the advance planting previously undertaken is well established, in good condition and providing valuable visual screening into and from the site, as was originally envisaged. In my view, such mitigations would generally provide sufficient and appropriate control over all matters of environmental concern.

The recent sale of parts of the overall quarry complex to third parties, including, I understand, a housing developer, gives rise to concerns regarding the likelihood of all the remaining permitted reserves being worked and the complex being developed in accordance with the previously approved working scheme. The request to postpone the submission of the first periodic review until 2022 would also allow for any consequential alterations in the overall working of the site to be reviewed and the details of the phased working scheme to be amended appropriately.

In light of the above, I do not foresee any immediate threat to the environment which would call for a more urgent reconsideration of the schedule of conditions approved in 2002 than would be the case with the RoMP due date being extended to 1 July 2022, as requested and have recommended accordingly.

(3) **Financial Considerations** No fee is payable for the request of 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 mining 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 periodic review at a mining site where the site consists of an aggregate of two or more permissions, must be made by a date 15 years from the date that the Initial Review schedule of conditions were approved or such later date as may have been agreed with the MPA.

Under Schedule 14 Paragraph 7, a later date for a RoMP application may be agreed in writing between the applicant and the Authority.

Schedule 14 also provides that if an application is not made by the due date (either as originally set or as 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 permission being granted subject to the conditions referred to in the Officer's Recommendation.

(5) **Environmental and Health Considerations** As indicated in the report.

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

(6) **Background Papers** File No. 6.835.R1
Letter from Forterra Building Products Ltd dated 17 June 2016.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves to **authorise** the Strategic Director – Economy, Transport and Communities to agree in writing to the due date for the submission of an application under Paragraph 6 of Schedule 14 of the Environment Act 1995, for approval of new conditions with the planning conditions to which planning permissions RIP/1248/6, RIP/356/7, RIP/1160/5 and RIP/1261/6 at Waingroves Quarry are to be subject, being 1 July 2022.

Signed.....Date.....

Mike Ashworth
Strategic Director – Economy, Transport and Communities