



22 January 2013

Agenda Item: 6

REPORT OF GROUP MANAGER PLANNING

NEWARK AND SHERWOOD DISTRICT REF. NO: 3/12/00852/CMA

**PROPOSAL: VARIATION OF CONDITION 51 OF PLANNING PERMISSION
3/05/02813/CMA TO AMEND RESTORATION PLAN**

LOCATION: KILVINGTON QUARRY, KILVINGTON

APPLICANT: BRITISH GYPSUM LIMITED (BPB)

Purpose of Report

1. To consider a planning application for a Variation of Condition 51 of Planning Permission 3/05/02813/CMA at Kilvington Quarry, Kilvington, Newark, Nottinghamshire. The key issues relate to the provision of access to the rights of way network and also ecology and biodiversity considerations. The recommendation is to grant planning permission subject to the imposition of conditions.

The Site and Surroundings

2. The Kilvington former Opencast Gypsum Quarry lies 10km to the south of Newark-on-Trent. The villages of Kilvington and Staunton-in-the-Vale lie to the east and north east respectively and the villages of Alverton and Flawborough lie to the south and west respectively. Open agricultural fields lie to the west and north of the site (see Plan 1)
3. The southern boundary of the site is formed by Longhedge Lane which connects Alverton and Flawborough (known locally as Flawborough Road). The eastern boundary of the site is formed by C6 Grange Lane from which access to the site is gained. The nearest residential properties lie to the east of the site in the village of Kilvington, to the south of the site in the village of Alverton and Riverside Cottages to the north east.
4. A disused railway line bisects the site in a north to south direction, passing beneath Grange Lane mid way along the eastern boundary. The local rights of way network consists of the Kilvington Footpath (FP) No. 6 and Flawborough FP No. 7 along the northern boundary of the site, the Kilvington FP No. 3 along the eastern and southern boundary and the

Kilvington FP No. 5 and Flawborough FP No. 5 which crosses the site at the southern end of the railway to the north west corner of the site.

Relevant Planning Permission and History

5. Gypsum extraction at the site commenced in the 1940s when Interim Development Order (IDO) permissions were granted in respect of land adjacent to the northern end of the railway. Workings moved westwards away from the railway line when planning permission was granted in the 1950s and then back towards Kilvington under a permission granted in 1977. The site lay dormant between 1984 and 1995 at which time British Gypsum took over. The planning conditions attached to the 1977 permission were modernised in 1998 under the Minerals Review provisions in the Environment Act 1995. In 2000 a scheme of modern conditions was approved for that part of the site to the east of the railway line.
6. An application was later submitted to exploit the 2 hectares forming the dismantled railway line. That application was initially refused planning permission in 2000, partly on the grounds that the development would lead to the loss of a locally important wildlife corridor and probable destruction of a colony of a butterfly species – the Grizzled Skipper. The refusal was appealed, but was held in abeyance pending the outcome of a further application which provided additional ecological information to address the reasons for refusal. The scheme was approved subject to a Section 106 Agreement to secure long-term management of a re-created habitat for the Grizzled Skipper and is now governed by Planning Permission 3/05/02812/CMM.
7. The site totalled approximately 125ha and operated in three distinct areas, namely the western area and the eastern area separated by a third, the former dismantled railway line. The former railway line has now been worked, restored and entered into the extended period of aftercare and is separate to this application. The western area of the site has been worked and restored to agriculture and these agricultural areas are now out of aftercare. The remaining western areas and areas to the east of the railway line which have not completed aftercare have been worked and restored to a mixture of woodland, neutral grassland and conservation grassland.

Proposed Development

8. The application is being made as a Minor Material Amendment under Section 73 (variation of planning condition) to amend the final restoration scheme for the site. The application seeks a Minor Material Amendment to condition 51 of Planning Permission 3/05/02813/CMM.
9. The Minor Material Amendment was requested after it became apparent that the restoration scheme as originally approved could not be delivered due to a variety of onsite constraints. Whilst the bulk of the scheme has been delivered, the amendments are sufficiently 'material' to require such an application to be made.

10. The restoration scheme for which approval is sought, has responded in part to significantly fluctuating water levels in the main lake (Lake 1 – the Southern Lake). This has meant that the lake design has changed and the establishment of marginal planting has been patchy. The revisions therefore include a revised marginal planting scheme responding to a series of planting failures caused by these fluctuations.
11. The main change to the approved scheme is an alteration to the landscaping around the main lake margins. The restoration plan as currently approved (Drawing no. KQ5/1, attached as Plan 2) requires these areas to be returned to grassland following the final placement of restoration topsoil. The revised scheme addresses a lack of available topsoil on the site by proposing to leave these areas as unimproved species rich conservation grassland. The layout and orientation of the agricultural fields are revised including the associated hedgerow planting and fences, the proposed restoration scheme, Drawing no. 2373/P/06 Revision D is attached as Plan 3.
12. The application also seeks to review the provision of rights of way network across the site, which at the time of the grant of the original planning permission envisaged a connection to the Sustrans Cycle Network.

Consultations

13. **Newark & Sherwood District Council** *raises no objection to the revised plans provided that Nottinghamshire County Council is satisfied that the proposal accords with the relevant policies.*
14. **Alverton & Kilvington Parish Meeting** *raises no objection to the change to landscape and ecological matters, but objects to impacts on the rights of way network for the following reasons;*
 - a) *Opposed to the dilution of the footpaths to be provided as part of the restoration;*
 - b) *Loss of valuable amenity through proposals to divert one of the footpaths (FP No. 5) so that it runs along the former railway. The creation of reinstatement of this path to a usable state should form part of the restoration;*
 - c) *A path has already been provided around the southern edge of the main lake (Lake 1). The Parish Meeting feel strongly that this should be made permanent by way of a s.106 agreement;*
 - d) *The original restoration scheme described a ‘Sustrans’ diversion. This no longer features and would be a valuable assets, but there is no explanation of why there should be a departure from the original restoration plan;*
 - e) *Dissatisfied with the legal status of the access to FP No. 3 at the south west corner of the site along Longhedge Lane. Understands that the provision of a footpath adjacent to the highway infers that access will be available from the highway. Disputes the position of NCC Countryside*

Access team that there has historically been no authorised access to the site at this point, but suggests there could be an established use right which should be resolved as part of this application.

15. **Environment Agency Midlands Region** raises no objection on the understanding that the provision of lakes and wetland still forms part of the restoration scheme.
16. **NCC (Countryside Access)** raises no objection, advising that the rights of way network is now accurately reflected on the restoration plan.
17. **NCC (Planning Policy)** does not consider the development to have any significant policy implications, aside from the general environmental protection policies set out in Chapter 3 of the Nottinghamshire Minerals Local Plan. No policy objection is raised subject to confirmation from the relevant teams within the County Council that there will be no adverse impacts on the environment from the changes.
18. **NCC (Landscape)** raises no objection to the proposal.
19. **NCC (Nature Conservation)** raises no objection and is now satisfied that additional compensatory measures are appropriate and an acceptable compromise.
20. **Nottinghamshire Wildlife Trust** objects to the application for the following reasons;
 - a) *Loss of two islands for safe wildfowl and wader breeding in Lake 1;*
 - b) *Loss of two extensive reedbeds and shallow water habitat, wet grassland and reed bed which are the three scarcest priority Biodiversity Action Plan wetland habitats;*
 - c) *Loss of the sinuous shape of the margins of Lakes 2 and 3;*
 - d) *Loss of some of the length of gently shelving edges, suitable for the establishment of marginal aquatic vegetation, reedbed and wet grassland, annotated as “shallow margins” on Plan KQ5/1;*
 - e) *The areas to be restored to commercial agriculture appear to be greater than on the approved scheme with Fields 1, 3 and 6 appearing to have expanded, at the expense of, for example, the grassland margin between Lake 1 and Field 6, which has completely disappeared;*
 - f) *The hedgerows and hedgerow trees between Fields 1, 2, 3 and 4 also seem to have disappeared, thus creating, in effect, an arable prairie land, rather than the pattern of already large fields that had been previously approved;*
 - g) *Proposals to leave the grassland areas to regenerate naturally, this may or may not be beneficial to biodiversity depending on: the nature of the*

substrate, the type of habitat that is hoped to be achieved and the aftercare of that habitat;

- h) The new scheme has resulted in significant deficit in the restoration of priority habitats;*
 - i) Concern about the precedent that this would set for applicants' taking this approach of not meeting their restoration requirement, which is a highly retrograde step.*
21. No response received from **Rushcliffe Borough Council, Flawborough Parish Meeting** and **Staunton Parish Meeting**. Any responses received will be orally reported.

Publicity

22. The application has been advertised by press notice and two site notices. Neighbour notification letters have also been dispatched in accordance with the County Council's Adopted Statement of Community Involvement. Three letters of objection have been received. The letters object to the proposal on the following grounds:
- a) The current condition of the ground appears very poor and scarred, large areas of the ground look dead. There are large swathes of bare ground which looks unsightly.
 - b) The dismantled railway remains blocked at both ends of the site.
 - c) The tree planting scheme appears to have had a disappointing success rate and no evidence of re-planting of failed trees.
 - d) The local community has had to put up with the impacts of quarrying so the owners could maximise returns. The proper restoration of the site was a condition of the grant of permission.
 - e) The variation releases the benefactor of the quarry from completing its restoration obligations.
 - f) Opposed to the dilution of the footpaths to be provided as part of the restoration.
 - g) Loss of valuable amenity through proposals to divert one of the footpaths (FP No. 5) so that it runs along the railway. The creation of reinstatement of this path to a usable state should form part of the restoration.
 - h) A path has already been provided around the southern edge of the main lake (Lake 1). Feel strongly that this should be made permanent by way of a s.106 agreement.
 - i) The original restoration scheme described a 'Sustrans' diversion. This no longer features and would be a valuable assets, but there is no

explanation of why there should be a departure from the original restoration plan.

23. One letter of support has been received which comments that;
 - a) The landscaping has now reached a very satisfactory standard, especially since earlier mistakes with the position of the hedges and fences (which became drowned by rising water levels) have been put right.
 - b) The lakes, with their deep and shallow parts, make a valuable improvement to the visual amenity.
 - c) Understand that there have been requests for additional soil material to be spread around the lake margins. This would be detrimental for wildlife purposes, particularly ground nesting bird species.
 - d) Considers the applicant has made a good job of the restoration from various points of view including landscaping, wildlife habitats and also public access.
 - e) Considers that well over 95% of the required work has been carried out and any enforcement of further work could be unnecessary.
24. Councillors Martin Suthers OBE and Mrs Sue Saddington have been notified of the application.
25. The issues raised are considered in the Observations Section of this report.

Observations

26. Through the routine monitoring of the site during and after the completion of the restoration works it became apparent that the appearance of the site was unsatisfactory and materially different from the approved scheme. The applicant advised that this was because the scheme as originally approved could not be delivered in accordance with the approved details due to a variety of onsite constraints. The conditions attached to the previous planning permission are robust and have resulted in the submission of this application for a Minor Material Amendment.
27. The main development plan policies relevant to this application are as follows;
28. Nottinghamshire Minerals Local Plan Policy M4.3: 'Soil Conservation and Use of Soil Making Materials'. The relevant section of this policy states that where soils are absent or deficient, schemes should include measures to ensure that available vegetation cover can be established to achieve the required after use. Such measures may include:
 - (a) concentrating soils within areas where they will provide most benefit;
 - (b) Utilising on-site or imported soil-making materials which with suitable treatment are capable of supporting plant growth.

29. Nottinghamshire Minerals Local Plan Policy M4.8: 'Reclamation Proposals for Existing Sites'. This states that alternative reclamation proposals will be granted which would result in the satisfactory reclamation and after-use of mineral workings where:
- (a) current use and/ or appearance is unsatisfactory;
 - (b) the existing provisions for reclamation are unsatisfactory,
 - (c) inappropriate or absent;
 - (d) the proposals result in an improved environmental and/ or amenity after-use.
30. Nottinghamshire Minerals Local Plan Policy 4.9: 'Aftercare', states that aftercare conditions will be attached to all mineral planning permissions where reclamation is to agriculture, forestry or amenity.

Ecological Impact

31. The consultation process has identified the following issues in relation to the landscape and visual impact. These can be summarised as follows;
- a) Loss of two islands for safe wildfowl and wader breeding in Lake 1;
 - b) Loss of two extensive reedbeds and shallow water habitat, wet grassland and reed bed which are the three scarcest priority Biodiversity Action Plan wetland habitats;
 - c) Loss of two the sinuous shape of the margins of Lakes 2 and 3;
 - d) Loss of some of the length of gently shelving edges, suitable for the establishment of marginal aquatic vegetation, reedbed and wet grassland, annotated as "shallow margins" on Plan KQ5/1;
 - e) Proposals to leave the grassland areas to regenerate naturally may or may not be beneficial to biodiversity depending on the nature of the substrate, the type of habitat that is hoped to be achieved and the aftercare of that habitat.
32. The need to vary the approved restoration plan arose primarily through a lack of available topsoil needed to complete the final stages of the development. This has resulted in the lake margins and slopes appearing devoid of vegetation and has resulted in a change to the shape of the lake margins and extent of the shallow water habitat.
33. The scheme has responded to this lack of available soils by proposing to leave the bare areas as unimproved species rich conservation grassland, promoting natural regeneration. The provision of such areas is welcomed in biodiversity terms providing that the resultant natural regeneration is monitored to ensure that inappropriate species are removed and appropriate species are promoted.
34. Nottinghamshire Minerals Local Plan Policy M4.3 b) requires proposals to demonstrate that on-site soil-making materials with suitable treatment are

capable of supporting plant growth. Policy M4.8 requires that alternative reclamation proposals result in the satisfactory reclamation and after-use of mineral workings where the current appearance is unsatisfactory.

35. The applicant has confirmed that two attempts have been made to hydraseed the exposed lake banks with a species rich grass seed and the application proposes to now allow natural regeneration to take place. The issues identified during the application queried the proposals to leave the grassland areas to regenerate naturally, stating that the overall benefit may not be realised unless the substrate was understood and details were provided of the type of habitat to be achieved and the aftercare of that habitat.
36. In order to address these concerns and to meet the requirements of Policy M4.3 and M4.8, a detailed aftercare scheme has been submitted by the applicant to ensure that unwanted and invasive plant species are identified and removed as part of the following year's management regime. This ensures that with suitable treatment, the soils can support plant growth thereby meeting the requirements of Policy M4.3 and ultimately provides for the satisfactory appearance of the site upon completion, as per the requirements of Policy M4.8. The requirement to implement the scheme can be attached as a condition, thereby complying with the requirements of MLP Policy 4.9.
37. The issues raised during the consultation process also relate to an apparent loss of shallow marginal habitats, noted as being of particular importance and priority BAP habitats and loss of reed bed habitats. Negotiations have been entered into with the applicant and NCC Nature Conservation and the Nottinghamshire Wildlife Trust in terms of guiding the creation of additional areas of habitat to compensate for the loss of shallow areas and areas of reed bed planting.
38. The original restoration concept scheme shows the creation of three additional ponds at the southern end of the site which were to become reed dominated wetland habitats. This was picked up in the consultation responses from the Nottinghamshire Wildlife Trust. Following a review of the planning history, it became apparent that these ponds were to be provided as part of a scheme to accommodate storm flows from Flawborough Road. However in the interim, the Flawborough Road Sewage Treatment Works were constructed meaning that the ponds never filled and are no longer required.
39. Policy M4.8 states that alternative reclamation proposals will be granted where existing proposals are inappropriate. The southern ponds, which have now become redundant because of the new Sewage Treatment Works, would now appear to be an inappropriate feature in the restoration since a dry reed bed habitat would be unsustainable. Due to the concern expressed at the loss of reed bed habitat in the overall scheme the applicant has agreed to carry out some further compensatory reed and marginal planting around the southern edge of the main lake in the approximate vicinity of these ponds. The absence of this inappropriate feature and the

compensation of this loss by additional reed bed planting are sufficient to meet the requirements of MLP Policy 4.8.

40. To allow a proper assessment of the revised scheme, the applicant carried out a habitat review and comparison against the scheme as originally approved. This identified an overall shortfall in the amount of shallow habitat being provided, but noted that there has been an increase in deep water habitat and the two would appear to be related. It has also been noted during routine monitoring over the past five years, that since the lakes were created, the water levels in the main lake (lake no. 1) have fluctuated significantly, with the mean high level above that originally anticipated. This has resulted in the submergence of hedgerows, fencing and the failure of marginal planting at times of high and low water.
41. Policy M4.8 again states that alternative reclamation proposals will be granted where existing proposals are inappropriate and the original scheme provided habitats based on an anticipated water level which could not be realised. The revised scheme responds to this increase by amending the high water level in the main lake to reflect conditions which have on average been present over the past few years. This increase in water level therefore corresponds with an increase in the amount of deep water and a decrease in the amount of shallow water habitat. This loss has been most notable in the main lake, where there has been a significant reduction in shallow margins provided. Whereas on the original scheme, these margins were proposed around the bulk of the lake edge, they are now restricted to the eastern and southern edges. The applicant has demonstrated through the habitat comparison and review that some of this loss has been compensated through the provision of shallow marginal habitat in lakes 2 and 3, which were not originally shown to be provided.
42. To address the concerns about the loss of the shallow water habitat, the applicant has proposed to carry out some further works to create additional areas of shallows in the main lake and these are shown on the latest revision to the restoration plan. Agreed in consultation with NCC Nature Conservation and Nottinghamshire Wildlife Trust, it is proposed to create an additional island in the north east corner of Lake 1, utilising material already present on the site in the form of a spit which enters the lake in the north east corner. This proposal responds to the concerns raised during the consultation process about the loss of the islands from the main lake. The original comments cited the loss of *two* islands, but this was an error on the restoration plan and was duly rectified.
43. The proposed works will see the central portion of the spit removed with the resultant material being spread around the remaining island feature and into the lake margins to further increase the shallow habitat areas. The works have been suggested to provide the greatest amount of benefit whilst ensuring that there is minimal disturbance to areas of the site already restored and not proposed to be altered. Policy M4.8 states that alternative reclamation proposals will be granted which result in an improved environmental and/ or amenity after-use. The creation of an additional island and associated areas of shallow water habitat ensure that a scheme rendered inappropriate by higher water levels, now provides an improved

amenity and environmental afteruse, and meets the requirements of MLP Policy M4.8.

44. The Nottinghamshire Wildlife Trust remains adamant that the shallow areas provided are not adequate and requested further works to be carried out including the creation of an additional 1ha of shallow areas. It is proposed that these works could be done under the supervision of NWT and NCC Nature Conservation whilst the plant and machinery is on site to construct the new island. It is recognised that these works would be entirely dependent on ground conditions at the time the works take place, but this calls into question the feasibility of sourcing material from areas of the site already restored; in practicality from the 'shoulders' of the restored lake edge slopes. Alternatively if this is not possible due to conditions on the site, it is suggested that scrapes could be created to provide wetland and ephemeral ponds.
45. In response to this request, the applicant has advised that they would not be willing to commit to these works since it would create a significant disturbance to restored areas and they would be agreeing to an unknown amount of work. Therefore having sought advice from NCC Nature Conservation it was confirmed that it would be very difficult to identify where this additional material could be reasonably sourced from.
46. Concern was expressed through the Parish and neighbour notification processes that efforts should be made to green over the site and make it visually attractive. Whilst the current appearance of the site was not raised as an issue by NCC Landscape Team, there are areas of the site which have now greened over and developed a good sward and the local population considers that the site should now be completed so that it can be enjoyed for amenity purposes.
47. MLP Policy M4.8 requires proposals to demonstrate that the current use and/ or appearance is unsatisfactory. Whilst there are some areas of the site which have a poor appearance, there are others which have been restored and have greened over. Therefore the request for additional works for further ecological benefits would require a large amount of disturbance to areas of the site already restored and satisfactory in appearance. These proposals are therefore not appropriate and would not meet the requirements of MLP Policy 4.8.

Landscape and Visual Impact

48. The consultation process has identified the following issues in relation to the landscape and visual impact. These can be summarised as follows
 - a) The areas to be restored to commercial agriculture appear to be greater than on the approved scheme with Fields 1, 3 and 6 appearing to have expanded, at the expense of, for example, the grassland margin between Lake 1 and Field 6, which has completely disappeared;
 - b) The hedgerows and hedgerow trees between Fields 1, 2, 3 and 4 also seem to have disappeared, thus creating, in effect, an arable prairie land

rather than the pattern, of already large, fields that had been previously approved;

- c) The new scheme has resulted in significant deficit in the restoration of priority habitats. Concern about the precedent that this would set for applicants taking this approach of not meeting their restoration requirement, which is a highly retrograde step,
49. In response to the above issue arising from the increased water levels, the applicant has agreed to undertake some general aesthetic works including the removal and reinstatement of a fence line which had become submerged and encompassed within the main lake.
50. The comments raised by Nottinghamshire Wildlife Trust regarding the commercial agricultural restoration being greater than on the approved scheme and the disappearance of hedgerow trees between Fields 1, 2, 3 and 4 have been noted. MLP Policy 4.8 requires that alternative proposals result in the satisfactory reclamation and after-use of mineral workings. The agricultural areas are restored, out of aftercare and are actively being farmed and are therefore in a sustainable use. However in response to the concerns over the loss of hedgerows, the applicant has agreed to provide an additional 350m of hedgerows to the northern edge of Field 4 and between Fields 5, 6 and 7.

Public Rights of Way

51. The consultation process has identified the following issues in relation to public rights of way. These can be summarised as follows
- a) The dilution of the footpaths to be provided as part of the restoration;
 - b) Loss of valuable amenity through proposals to divert one of the footpaths (FP No. 5) so that it runs along the railway;
 - c) An existing path around the southern edge of the main lake (Lake 1) should be made permanent by way of a s.106 agreement;
 - d) The original restoration scheme described a 'Sustrans' diversion. This no longer features and would be a valuable asset;
 - e) Dissatisfaction with the legal status of the access to FP No. 3 at the south west corner of the site along Longhedge Road. Understood that the provision of a footpath adjacent to the highway infers that access will be available from the highway. Disputes the position of NCC Countryside Access team that there has historically been no authorised access to the site at this point, but suggests there could be an established use right which should be resolved as part of this application. The definitive and physical route of the footpaths is shown on Plan No. 4.
52. The initial planning permission for the quarry development required the temporary diversion of the rights of way across the site as per the requirements of MLP Policy M3.26. The original restoration proposals

included a comprehensive network of foot and cycle paths, linking in with a 'Sustrans' network which was envisaged at this time; this is shown on Plan No. 2

53. Kilvington Parish Meeting has expressed dismay that the routes now being proposed as part of the revised scheme were not as comprehensive as originally proposed. However, it was stressed that the proposals at the time of the original application were dependent on 'Sustrans' – a charity organisation, obtaining funding for these works which unfortunately never materialised.
54. In response to the concerns raised by Kilvington Parish Meeting, the applicant has agreed to reinstate the footpaths along their definitive line to overcome potential ambiguities with future diversions which were being negotiated at the time the application was made. The applicant updated the restoration plan to show the correct alignment of Footpath No.5 and has now taken steps to make this route available to use in consultation with NCC Countryside Access Team.
55. The other issue surrounded the route and status of a footpath around the southern side of Lake 1 which was proposed as part of the original restoration scheme and one which the Parish Meeting is very keen to see provided. The applicant has confirmed that this route has been formally dedicated and recorded on the Definitive Map, thereby securing its use beyond the period of aftercare. This therefore ensures that the revised restoration proposals accord with the requirements of MLP Policy M3.26.
56. Later during the course of the application, Kilvington Parish Meeting raised a query about the physical route of FP No. 3 and the route shown on the Definitive Map and the revised restoration plan. Inspections by NCC Countryside Access confirmed that route of the path is at the most 15m off the line shown on the plan, but is the only realistic usable route due to adverse ground conditions elsewhere. The rights of way team advised that although the physical line differs slightly from that shown on the Definitive Map and restoration plan, it is not considered to be an issue.
57. A query was also raised by the Kilvington Parish Meeting about the provision of access to Footpath No.3 at the south west corner of the site, where there is an existing vehicle gate on to the site from Longhedge Lane; the location is shown on Plan No. 4. The applicant has confirmed that there will be no permitted access to the footpath in this location, but has agreed to provide an informal link to this path in a memorial garden which was donated to the Parish by the applicant.
58. Kilvington Parish Meeting has queried the legitimacy of this decision not to allow access, suggesting that the proximity of a path to the road infers an intention to allow access from the highway. Advice has been sought from NCC Countryside Access Team on this matter. The response confirms that that the southern boundary path was a diversion for one which previously went across the middle of the site. There was certainly no access from the highway to the path along its original line. Therefore just because a path runs next to a gate onto a public road, it does not follow that public access is

to be provided. Public access might become established through unchallenged use of the gate, but it is not currently known if that has happened.

59. The response from Kilvington Parish Meeting requested that this matter be cleared up as part of this application. However, the Parish's response suggests that there may be a claim for established rights of access through this gate and onto the southern boundary path. Having again sought advice on this matter, it has been confirmed that this dispute is not something to be resolved as part of this application; this matter would be best resolved separately by NCC Countryside Access Team. This means that the issue is not relevant to this application and does not need to be assessed under the provisions of MLP Policy M3.26.

Other Material Considerations

60. The bulk of the policies contained in Chapter 3 of the Nottinghamshire Minerals Local Plan (adopted December 2005), (with the exception of those identified specifically above) control the environmental impacts at the pre or during the development phases rather than on completion and during restoration. Therefore the environmental policy considerations in MLP Chapter 3, which were relevant to the original quarrying permission such as noise, dust and blasting and are not relevant to this application.
61. There may be very limited highway impacts from the development in terms of trafficking material out of the site following the completion of the remaining earthworks, although the NCC Highways Team has not raised an objection to the proposals. Whilst these works are not of a scope likely to cause issue and thus go so far as to require the provision of a wheel wash, it would be prudent to retain some ability to require a sweeper if there is a problem with debris on the road. Therefore a suitably worded condition is suggested to ensure compliance with MLP Policy M3.12.

Conclusion

62. The application was submitted as an amendment to a scheme which could no longer be delivered, due primarily to a higher than anticipated water level and an absence of top soil material in the final stages of the development. MLP Policy 4.8 looks to address circumstances where mineral sites exhibit an unsatisfactory use or appearance, or where the current provisions for reclamation are unsatisfactory.
63. The application has raised concerns from conservation organisations about the reduction in valuable ecological habitats against that originally approved. However, further works have been negotiated through the course of the application to suitably mitigate some of these losses and these works are acceptable to NCC Nature Conservation and NCC Landscape Teams.
64. There is clearly a dispute remaining as to the scope of these works particularly whether they go far enough to compensate the apparent loss of these habitats. However, the impacts on local amenity weight the decision

towards a balance between local amenity and the desire to maximise ecological benefits. The works negotiated and now proposed to be carried out as part of this application will provide for the maximum return in terms of biodiversity, whilst having the minimal impact in terms of disturbing areas of the site already restored.

65. Further works which were suggested by the Nottinghamshire Wildlife Trust would require significant disturbance of restored land and this is not acceptable in consideration of MLP Policy 4.8 which seeks to remedy mineral sites with a poor or unsatisfactory appearance. The impact on local amenity during the operational phase of the development has already been significant; therefore in balancing local amenity and biodiversity gains, it is considered appropriate to now grant planning permission for the development proposed.
66. In terms of the outstanding footpath issues, Policy M3.26 requires footpaths which are affected by a development to be replaced or reinstated in an equal or better position. Footpath No.3 which lies at the heart of this issue, or at least access to it, was diverted along a new line as part of the original quarrying development. It follows therefore that the new line was a consequence of the development and therefore meets the requirements of this policy. The issues which have been raised do not relate to the disruption of a right of way, only a disputed means of access to the footpath from the highway. It can be concluded therefore that this matter is not relevant to the consideration of this application and should not be taken into consideration.

Other Options Considered

67. The County Council has considered initiating enforcement action against the failure to comply with the restoration scheme originally approved. However it was considered expedient to request a planning application to be submitted to regularise the changes, principally because there was a reasonable chance that the application could be approved.

Statutory and Policy Implications

68. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Rights Implications

69. The relevant issues arising out of consideration of the Human Rights Act have been assessed in accordance with the Council's adopted protocol. Rights under Article 8 and Article 1 of the First Protocol are those to be considered. In this case, however, there are no impacts of any substance on

individuals and therefore no interference with rights safeguarded under these articles.

Crime and Disorder Implications

70. There are no crime and disorder implications arising from the proposal.

Implications for Sustainability and the Environment

71. The application has been considered against the Nottinghamshire Minerals Local Plan and the National Planning Policy Framework, both of which are underpinned by the objective of achieving sustainable development. The proposals involve modifications to the approved restoration scheme whilst adhering to similar design principles. Although site restoration was complete at the time the application was made, further environmental benefits have been negotiated through the course of the application which seek to enhance ecological gains whilst minimising further disruptive earthworks. The status of footpaths has largely been resolved with existing routes reinstated or new appropriate routes dedicated. The outstanding footpath issue, relating to the status of an access to an existing route, is not considered to be relevant to this application.

Conclusions and Statement of reasons for the decision

72. The Nottinghamshire Minerals Local Plan Policy M3.17 requires planning applications to demonstrate that there will be no detrimental impact on biological resources unless an equivalent habitat or feature can be provided. The impacts on such resources were assessed as part of the original application and a scheme drawn up to reflect the issues. However not all of the approved features were able to be provided, hence the application to vary the approved scheme. The applicant has demonstrated however that the restoration scheme has already offered sufficient replacement biological resources but has committed to carry out further works to further enhance these features. This therefore satisfies the requirements of Policy M3.17.
73. MLP Policy M3.26 requires that where permission is granted which temporarily or permanently disrupts a public right of way, an alternative route should be chosen which aims to offer equivalent interest and quality. The original application was assessed against the requirements of MLP Policy M3.26 as it required the temporary diversion of rights of way. The original restoration scheme for the site offered improvements on completion. Due to a reliance on third party involvement, these routes could not be delivered. rights of way issues have now been clarified and new routes secured to make the application acceptable in planning terms. The development therefore meets the requirements of MLP Policy M3.26.
74. Policy M4.3 of the MLP identifies the role of soil conservation and use of soil making materials. It recognises that where soils are absent or deficient, schemes should include measures to ensure that available vegetation cover can be established to achieve the after use. The scheme was amended due to a lack of topsoil material in the final stages of the development. A change was sought therefore to prepare areas of the site for natural regeneration

with appropriate targeted aftercare to ensure that species suitable for the local area survived and thrived. Through the imposition of conditions requiring adherence to agreed schemes, the application has ensured that appropriate and valuable vegetation cover is established on a site where poor soils are present. This therefore meets the requirements of MLP Policy M4.3

75. Policy M4.8 of the MLP concerns reclamation proposals of existing sites, advising that alternative reclamation proposals will be granted which would result in the satisfactory reclamation and after use of mineral workings. The scheme has responded to a variety of onsite constraints which have prevented the final restoration of a site in accordance with the approved scheme. The restoration of the site is now complete but additional works negotiated to mitigate losses from the original scheme. Through the imposition of conditions requiring adherence to the submitted scheme, the application has ensured that additional habitat mitigation is provided in accordance with the requirements of MLP Policy M4.8
76. The County Council is of the opinion that the proposed development is in accordance with Policies M3.26: Public Access, which seeks to ensure that the network of public rights of way are maintained; Policy M4.3 Soil Conservation and Use of Soil Making Materials, which seeks to ensure the conservation of soils and appropriate restoration of sites; and Policy M4.8 Reclamation Proposals for Existing Sites, which seeks to ensure alternative restoration proposals are satisfactory. There are no material considerations that indicate that the decision should be made otherwise. The County Council considers that any potential harm as a result of the proposed development would reasonably be mitigated by the imposition of the attached conditions.

Statement of Positive and Proactive Engagement

77. In determining this application the Minerals Planning Authority has worked positively and proactively with the applicant by entering into pre-application discussion; assessing the proposals against relevant Development Plan policies; all material considerations; consultation responses and any valid representations that may have been received. Issues of concern have been raised with the applicant and addressed through negotiation and acceptable amendments to the proposals. The Minerals Planning Authority has successfully negotiated landscape and ecological improvements and resolved outstanding issues relating to the rights of way network. This approach has been in accordance with the requirement set out in the National Planning Policy Framework.

RECOMMENDATIONS

78. It is RECOMMENDED that planning permission be granted subject to the conditions set out in Appendix 1. Members need to consider the issues, including the Human Rights Act issues, set out in the report and resolve accordingly.

SALLY GILL

Group Manager (Planning)

Constitutional Comments

'Committee have power to decide the Recommendation' [SHB 07.01.2013].

Comments of the Service Director - Finance

'The contents of this report are duly noted; there are no financial implications' [DJK 04.01.2013].

Background Papers Available for Inspection

The application file available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Division(s) and Member(s) Affected

Bingham – Councillor Martin Suthers OBE

Farndon and Muskham - Mrs Sue Saddington

Report Author/Case Officer

Julian Hawley

0115 9696504

For any enquiries about this report, please contact the report author.

v/2596 – DLGS REFERENCE

PSP.JH/PAB/EP5359/ W00165– COMMITTEE REPORT FOLDER REFERENCE

9.1.2013

RECOMMENDED PLANNING CONDITIONS

1. The development hereby permitted is part retrospective; those elements of the development which have yet to be commenced shall be begun within 4 months of the date of this permission.

Reason *To comply with the requirements of Section 91 (as amended) of the Town and Country Planning Act 1990.*

2. This permission is for an amendment to the restoration scheme approved under Planning Permission Reference 3/05/02813/CM, including the carrying out of additional restoration earthworks, planting and revised aftercare.

Reason: *To define the scope of the permission and for the avoidance of doubt.*

3. The Minerals Planning Authority (MPA) shall be notified in writing of the date of commencement of the remaining restoration works at least 7 days, but not more than 14 days prior to the commencement of the development hereby permitted.

Reason: *To assist with the monitoring of conditions attached to the planning permission and for the avoidance of doubt.*

4. The development shall be carried out in accordance with the following plans and documents:

- a) Planning Application forms and supporting letter dated 14 May 2012, received by the MPA on 24 May 2012, as amended by letter from the applicant dated 31 May 2012, received by the MPA on 1 June 2012.

- b) Letter from the applicant dated 8 November 2012, received by the MPA on 8 November 2012

- c) Document titled 'Application to amend the approved restoration scheme at Kilvington Quarry, Alverton, Nottinghamshire' dated November 2012, received by the MPA on 8 November 2012

- d) Drawing no. 2373 / P / 06 Revision D received by the Minerals Planning Authority on 8 November 2012, as amended by the email from the applicant dated 11 December 2012, received 11 December 2012.

Reason: *For the avoidance of doubt and to ensure the satisfactory restoration of the site.*

Restoration

5. The site shall be fully restored in accordance with the details shown on Drawing no. 2373 / P / 06 Revision D received by the Minerals Planning Authority on 8 November 2012.

Reason: To ensure the satisfactory restoration of the site and to accord with Policy M4.3 of the Nottinghamshire Minerals Local Plan.

6. All remaining restoration works subject to this amendment, as detailed under Condition 5 above shall be completed within 5 months of the date of this permission.

Reason: To ensure the timely restoration of the site and to accord with Policy M4.3 of the Nottinghamshire Minerals Local Plan.

7. All landscape planting and fencing works as detailed on Drawing no. 2373 / P / 06 Revision D received by the MPA on 8 November 2012, as amended by the email from the applicant dated 11 December 2012, received 11 December 2012, shall be completed within the first available planting season following the completion of the remaining restoration earthworks, the date of which shall be notified to the MPA within 7 days of its completion.

Reason: To ensure the timely restoration of the site and to accord with Policy M4.3 of the Nottinghamshire Minerals Local Plan.

Mud on the Road

8. Measures shall be employed to prevent the deposit of mud and other deleterious materials upon the public highway. Where necessary, these measures shall include the sweeping and cleaning of the access and public highway.

Reason: To minimise mud and other deleterious materials entering the public highway in accordance with Policy W3.12 of the Nottinghamshire Minerals Local Plan.

Rights of Way

9. An application for the dedication of the footpath along the southern side of Lake 1, as detailed in the letter from the applicant dated 08 November 2012, received by the MPA on 8 November 2012 and shown on Drawing no. 2373 / P / 06 Revision D received by the MPA on 8 November 2012, shall be made within 3 months of the date of this permission.

Reason: For the avoidance of doubt and to ensure the satisfactory provision of Public Access in accordance with Policy M3.26 of the Nottinghamshire Minerals Local Plan

Aftercare

10. The aftercare for the areas shown edged Blue on Drawing no. 2373 / P/ 07 received by the MPA on 8 November 2012, shall be carried out for a period of 5 years following the completion of the remaining restoration works, the date of which shall be agreed in writing with the MPA following the completion of these works. The aftercare shall be carried out in accordance with section 2.6 (including 2.6.1 and 2.6.2) of the Aftercare Strategy included in the submission titled 'Application to amend the approved restoration scheme at Kilvington Quarry, Alverton, Nottinghamshire' dated November 2012, received by the MPA on 8 November 2012.

Reason: To ensure the satisfactory restoration of the site and to accord with Policy M4.3 of the Nottinghamshire Minerals Local Plan.

NOTES TO APPLICANT

1. The development hereby permitted must be carried out in accordance with the conditions attached to this planning permission and any approved plans and details. Failure to implement the permission in accordance with the planning conditions and approved details may render the development unlawful and could lead to enforcement action and prosecution.

If, at any stage, it becomes necessary to vary any of the approved plans or details you should contact the Waste Planning Authority in advance implementing and changes to ascertain whether the proposed changes require and further planning approval.

Where appropriate there is a fee payable currently £97 where a written request is made for the discharge of one or more conditions on the same permission or for confirmation that condition(s) on each permission have been complied with. The fee is payable for each request and not for each condition. When submitted a fee, please provide the planning application reference number making cheques payable to Nottinghamshire County Council and send them to the Planning Support Officer in the Planning Group at Nottinghamshire County Council, County Hall, West Bridgford, Nottingham, NG2 7QP.