

The application is for the variation of condition 6 of planning permission 18/00299/FUL to allow a longer period of time to complete the agricultural track, granted on the 9th November 2018.

The site lies within the North Staffordshire Green Belt, within the Rural Area, and within an Area of Active Landscape Conservation, as indicated on the Local Development Framework Proposals Map.

The application has been called in to Committee by two Councillors on the grounds that the time applied for to complete the works is unacceptable given the current poor conditions on the site with mud and soil conditions. There are also concerns about the impact of the farm animals using this area, which they do frequently and the environmental impact.

The 8 week period for the determination of this application expires on the 5th May 2021.

RECOMMENDATION

PERMIT the variation of Condition 6 of planning permission reference 18/00299/FUL so that it reads as follows:

The importation of all material associated with the construction and completion of the track shall cease by the 1st November 2021.

In addition condition 5 should be varied as follows:

No more than a further 6000 tonnes of appropriate and relevant inert material shall be imported onto the site from the date of this permission.

and subject to the imposition of all other conditions attached to planning permission 18/00299/FUL that remain relevant at this time.

Reason for Recommendation

Whilst the application seeks to extend the period for further works to complete the track to November 2022, a revised set of program sheets have been submitted which indicate that the works can be completed by October 2021. Therefore, the variation of condition is agreed for a further 6 months on the basis that the works need to be completed in a prompt manner. All other conditions of the previous application are necessary to make the development acceptable and in accordance with Policies ASP6, CSP1 and CSP4 of the Core Spatial Strategy, Policies S3, N17 and N18 of the Local Plan and the guidance and requirements of the NPPF.

Statement as to how the Local Planning Authority has worked with the applicant in a positive and proactive manner in dealing with this application

Whilst unauthorised works have been carried out the LPA has taken responsive action to limit the impact of the works and encouraged the submission of the application and the provision of additional information during the application process. Subject to conditions the development is considered acceptable and in accordance with local and national planning policy.

KEY ISSUES

The application is for the variation of condition 6 of planning permission 18/00299/FUL to allow a longer period of time to complete the agricultural track, granted on the 9th November 2018.

Condition 6 of the planning permission set out that;

6. *The importation of all material associated with the construction and completion of the track shall cease within 24 months from the date of the decision.*

Reason: To safeguard the residential amenity levels of neighbouring residential properties and to meet the guidance and requirements of the National Planning Policy Framework 2018.

The effect of a grant of permission upon an application to vary or remove a condition is to create a new planning permission. Accordingly, unless there have been other material changes, such a permission should also make reference to the other conditions of the original planning permission where they remain relevant.

The PPG sets out that *“Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.”*

The works for the completion of the track should have stopped in November 2020 but they have not and the Local Planning Authority has served a Temporary Stop Notice due to the unauthorised works being carried out.

This application seeks to resolve the matter and allow the applicant to carry out works to complete the track until November 2022.

The applicant is also in breach of a number of other conditions of the planning permission but it is acknowledged that this is because the track has not been completed as yet.

The partially constructed track accesses onto Waybutt Lane, which is within the boundary of Cheshire East Council. An application for the part of the track that falls within their administrative area and the access onto Waybutt Lane was permitted by Cheshire East Council prior to the previous planning application within this borough.

The site is located within the North Staffordshire Green Belt, the Rural Area and within an Area of Active Landscape Conservation, as indicated on the Local Development Framework Proposals Map.

As with the previous planning application, it is considered that the main issues for consideration are as follows:

- Is the development appropriate within the Green Belt?
- Is there any conflict with policies on development in the countryside and is the impact of development on the landscape acceptable?
- The Impact on Betley Mere Site of Special Scientific Interest (SSSI)
- The impact on highway safety and residential amenity?
- If inappropriate development in Green Belt terms, do the required very special circumstances exist to justify acceptance of the use?
- Enforcement matters

Is the development appropriate within the Green Belt?

Paragraph 134 of the NPPF indicates that the Green Belt serves five purposes, one of which is to assist in safeguarding the countryside from encroachment.

Paragraph 143 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Paragraph 145 states that other than in the case of a number of specified exceptions the construction of new buildings should be regarded as inappropriate in the Green Belt. Whilst one of the exceptions listed relates to buildings for agriculture and forestry, and although the development is said to be for agricultural purposes, as it is not a building this exception does not apply.

Paragraphs 146 of the NPPF indicates that certain other forms of development are also not inappropriate in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. This includes engineering operations.

The previous application concluded that the works involved in the formation of the track were an engineering operation which were considered to have no adverse impact on the openness of the Green Belt and do not conflict with any of the five purposes that the Green Belt serves. Therefore, the works were considered to be appropriate development in the Green Belt and very special circumstances were not required. It is considered that the same conclusion can also be reached for this application.

Is there any conflict with policies on development in the countryside and is the impact of development on the landscape acceptable?

The site is within an Area of Active Conservation. Policy N17 of the Local Plan (NLP) states that development should be informed by and be sympathetic to landscape character and quality and should contribute, as appropriate, to the regeneration, restoration, enhancement, maintenance or active conservation of the landscape likely to be affected. NLP Policy N18 states that

“Within these areas the Council will support, subject to other plan policies, proposals that will help to conserve the high quality and distinctive character of the area’s landscape. Development that will harm the quality and character of the landscape will not be permitted. Within these areas particular consideration will be given to the siting, design, scale, materials and landscaping of all development to ensure that it is appropriate to the character of the area.”

Members will be aware that the application site has a history of enforcement action related to extensive engineering operations carried out and high volumes of material imported onto the site. Landscape remodelling has occurred and this has resulted in a change to the topography of the land and the appearance of the landscape.

The works associated with the construction of the track are nearing completion and the previous planning application secured a number of landscape enhancements via planning condition. In particular, a detailed landscaping plan and associated method statement were submitted and considered acceptable. It was also acknowledged that the track would follow the natural contours and flow of hedges and trees on the land and on completion the track will be fenced off with stock fencing. It is also intended to plant new hedgerows to gap fill existing depleted hedges.

These landscape enhancements have not been carried out and the applicant is therefore in breach of the conditions.

It is assumed that the landscaping enhancements have not occurred because the track has not been completed. Your officers are satisfied that the landscape works should only be completed once the track is completed or works to the track have finished.

The reasons set out by the applicant, for the works not being completed, are;

- the implications and restrictions of COVID-19,
- the implications and restrictions of gas mains and the requirement to have separate agreements from the gas provider,
- wet weather and soft ground, and
- the implications of positive TB tests and the restriction of cattle movement to fund the works.

The reasons set out by the applicant are considered to represent justification for the delay. However, it is appropriate to consider whether the requested period for the completion of the track, to November 2022, is appropriate and justified or not.

The Parish Council advises that the applicant has had ample time to complete the works but if the LPA do not agree then only a further 6 months should be allowed and only the minimum material necessary should be allowed to be imported.

It is acknowledged that the land gets very wet during the winter months of the year and the documents submitted with the application demonstrate that very little work has been undertaken from mid-October to March. In this respect, your officers observed the difficulties experienced during a site visit in late October 2020.

The applicant has also advised that the remaining works would require an additional 6000 tonnes of material to complete the track.

Condition 5 of the previous planning permission restricted the amount of material to be imported onto the site to 6000 tonnes. This amount of material was based on information submitted by the applicant who stated within the submission that *“approximately 10,317 tonnes of crushed concrete has been imported and laid to track and it is anticipated that a further 5,000-6,000 tonnes will be required.”*

Condition 7 of the planning permission also prevents the type of material being brought onto the site following concerns regarding the type and amount of material that has been brought onto the site. This has resulted in the Environment Agency raising serious concerns.

The Environment Agency, who regulate such activities, have been consulted on the application and their comments are awaited.

The County Council, as Minerals and Waste Planning Authority, have raised no objections to the variation of condition 6 to allow more time to complete the track but have identified that condition 5 of the original permission would need to be varied to allow more material to be brought on to the site to complete the track, whilst limiting the volume again.

Your officers are content that the reasons set out above are acceptable and there is a justified reason for a further 6 month period to be granted in the interests of supporting the operation of this agricultural enterprise whilst also protecting the appearance of the landscape. A limit of a further 6000 tonnes of inert material to be imported is also necessary. The development therefore accords with policies N17 and N18 of the local plan and the requirements of the NPPF.

The Impact on Betley Mere Site of Special Scientific Interest (SSSI)

Paragraph 175 of the National Planning Policy Framework (NPPF) sets out that development on land within or outside a Site of Special Scientific Interest (SSSI) which is likely to have an adverse effect on a SSSI should not normally be permitted. An exception should only be made where the benefits of the development clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSIs. Ramsar sites are afforded the same protection.

Policy CSP4 of the Core Spatial Strategy indicates that the quality and quantity of the plan area's natural assets will be protected, maintained and enhanced through a number of identified measures.

The application site is within close proximity to Betley Mere Site of Special Scientific Interest (SSSI) and the works to complete the track were considered and assessed during the determination of the previous planning application. As part of the application an impact assessment was submitted by the applicant which acknowledged the impact that the development will cause but it went on to state that the proposed mitigation and enhancement measures are likely to significantly increase ecological value and biodiversity in the long term.

Natural England (NE) were consulted on the previous application and they raised no objections subject to conditions advised by the Minerals and Waste Planning Authority in their consultation response for that application regarding the quantity of construction material yet to be delivered to the site and the exact destination of that material. They also advised a Construction and Environmental Management Plan is required in the interests of maintaining water quality in the watercourse in the vicinity of the proposed track to avoid unforeseen adverse impacts downstream of the construction site. They supported the biodiversity enhancements subject to the design allowing sufficient 'stand-off' between the proposed new hedgerow plants and the accompanying stock fencing to allow the

hedgerow to become established free from browsing by livestock and to allow access for machinery (e.g. side arm mower/flail) when necessary.

Natural England have advised that the proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

On the basis of the consultation responses received at the time of the previous application and subject to a number of conditions it was accepted that no significant and long term harmful impact on the identified designated sites would be caused. These conditions are still considered appropriate in the absence of any comments from key consultees that suggest otherwise.

The comments of the Environment Agency are awaited and if received will be reported.

The impact on highway safety and residential amenity

The access arrangements for construction vehicles will be the same as the original permission and will be via Waybutt Lane.

Condition 8 of the original permission sets out that no more than 16 HGV shall enter the site per day and any such vehicles shall use the Waybutt Lane access point only. This condition is still necessary, along with conditions 11 and 13 which secured measures to prevent and control mud on the highway and dust.

Therefore, subject to the re-imposition of the advised planning conditions it is accepted that there is no basis upon which it could be concluded that the development has an unacceptable impact on highway safety.

Enforcement matters

Paragraph 58 of the NPPF states that "Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

The application site has a history of unauthorised work and the recent Temporary Stop Notice that was served is a further example of breaches of planning control by the applicant requiring action by the Council.

Should the recommendation be accepted then the unauthorised works that are the subject of the Temporary Stop Notice, which will cease to have effect on 30 April 2021, will retrospectively be granted planning permission subject to conditions. As such there will be no justification for further enforcement action at that time.

Waste importation is regulated by the Environment Agency and the County Council, as the Waste Authority. Therefore, they may prevent further material being brought onto the site due to the previous activities and level of material already imported.

APPENDIX

Policies and Proposals in the approved Development Plan relevant to this decision:-

[Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)

Policy ASP6: Rural area Spatial Policy
Policy CSP1: Design Quality
Policy CSP3: Sustainability and Climate Change
Policy CSP4: Natural Assets

[Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy S3: Development in the Green Belt
Policy N17: Landscape Character – General Considerations
Policy N18: Areas of Active Landscape Conservation

Other Material Considerations

[National Planning Policy Framework](#) (February 2019)

[Planning Practice Guidance](#) (March 2014, as updated)

Relevant Planning History

10/00704/AGR Erection of a building for storage of machinery Deemed Permitted

14/00610/FUL Retention of water reservoir, formation of hardstandings and repairs to the existing track Permit (decision 03.12.2015)

18/00299/FUL The retention and completion of a partially constructed agricultural track Permitted

Views of Consultees

Betley, Balterley and Winehill Parish Council objects to the application on the grounds that the applicant has had ample time to complete the works and that sufficient evidence has not been supplied to justify the extension sought.

However, they advise that if the Local Planning Authority is minded to approve the application any extension of the time limit for work to be completed should be subject to the following conditions:

- a) that the extension be limited to six months from the date of the grant of permission;
- b) that the weight of materials to be used in the completion of the works be limited to the minimum necessary, to be set by the Local Planning Authority and strictly enforced.

The justification for such conditions to be as set out in Conditions 6 and 5 respectively in the grant of permission under 18/00299/FUL.

The **Staffordshire County Council Mineral and Waste Planning Authority** raises no objections subject to the LPA being satisfied that the additional time is reasonable to complete the works to the track in accordance with the requirements of the original planning permission and whether it is necessary to also vary condition 5 of the permission to limit the amount of material still to be imported.

Natural England advises that the proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal. However, they also state that should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again.

Staffordshire County Council Flood Risk Team (LLFA) advise that they can offer no comment because the condition on the original planning application (ref no. 18/00299/FUL), to which this application relates was not recommended by the Flood Team

Comments were also invited and are awaited from **the Environment Agency, Cadent Gas (National Grid), Environmental Health Division, the Highways Authority, Landscape Development Section and Cheshire East Council.**

Representations

One anonymous objection has been received primarily raising matters that are not material to the determination of this planning application.

Applicant/agent's submission

The application is supported by the following documents;

- A supporting statement,
- A monitoring plan,
- Monitoring sheets,
- Programme of works sheet,
- Track location plan

These documents are available for inspection the website page that can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/21/00286/FUL>

The documents of the previous application, 18/00299/FUL, are also still relevant and can be accessed by following this link <http://publicaccess.newcastle-staffs.gov.uk/online-applications/PLAN/18/00299/FUL>

Background Papers

Planning files referred to
Planning Documents referred to

Date report prepared

16th April 2021