

TO: PLANNING & REGULATORY COMMITTEE **DATE:** 2 September 2015
BY: PLANNING DEVELOPMENT TEAM MANAGER
DISTRICT(S) SPELTHORNE BOROUGH COUNCIL **ELECTORAL DIVISION(S):**
Laleham & Shepperton
Mr Walsh

PURPOSE: FOR DECISION **GRID REF:** 505948 169817

TITLE: MINERALS/WASTE SP13/01003/SCC

SUMMARY REPORT

Land at Queen Mary Quarry, Ashford Road, Laleham, Surrey TW18 1QF

The siting and use of a conveyor to transport mineral extracted from Manor Farm to the mineral processing plant at Queen Mary Quarry as an alternative to the conveyor proposed in planning application ref: SP12/01132.

The proposal is interdependent with the planning application ref SP2012/01132 for mineral extraction from Manor Farm and processing in the Queen Mary Quarry processing plant (Manor Farm application). As such this report needs to be read in conjunction with the Manor Farm application which is reported as Item 7 on this committee agenda. The Manor Farm planning application included a conveyor route enabling the transfer of mineral for processing at the adjoining site of Queen Mary Quarry (QMQ), however due to ecological constraints (habitat protection) an alternative route for part of the conveyor was proposed under this application.

Both applications were considered by the Planning and Regulatory Committee on 7 January 2015 (Items 7 and 8). The committee resolved that subject to the subject to planning permission being granted to the Manor Farm planning application ref. SP2012/01132, that this application be permitted subject to conditions and informatives, for the reasons set out in the report.

The s106 legal agreement for the Manor Farm SP2012/01132 has been prepared and the draft agreement is nearing completion which would enable the decision notices to be issued. In line with the Kides protocol planning officers have assessed whether new factors have emerged between the 7 January 2015 resolution, and if they have, whether the factors could rationally be regarded as material to the consideration of the application such that the application should be referred back to the Planning and Regulatory Committee, for reconsideration in the light of the new factor. The assessment included asking statutory and non statutory consultees and parish/town councils and amenity groups notified about the planning application, the Member in whose area the application site falls, and the adjoining Member, whether they are aware of any issues.

After the 7 January 2015 committee meeting planning officers become aware of case law to do with Green Belt policy and the approach to applications for development involving development which is partly inappropriate development and partly appropriate in the Green Belt, which officers consider is a new factor in connection with the Manor Farm application. Having reviewed the approach taken in respect of that planning application as set out in the officer report to committee (Item 7), and taken legal advice, planning officers decided the Green Belt case law was a new matter which is material to the consideration of the SP2012/01132 Manor Farm planning application, and therefore that application should be referred back to the Planning and Regulatory Committee.

As this proposal is interdependent with the Manor Farm planning application it is being reported back as well. No other new material issues have been identified.

The consideration and assessment of the conveyor belt development proposal against Green Belt policy is set out in the report to the 7 January 2015 meeting (Annex A to this report) and has been reviewed in light of the reassessment of the Manor Farm proposal. Officers conclude no changes are required to the advice or conclusions reached.

No new issues have arisen which are material to the consideration of this application and having reviewed the assessment and conclusion reached on Green Belt in light of the reassessment of the Manor Farm proposal officers do not consider any change is necessary to the overall conclusions set out in paragraphs 86 to 89, or recommendation, of the January report.

The recommendation is subject to planning permission being granted to planning application ref. SP2012/01132 for the extraction of mineral from Manor Farm to PERMIT subject to the conditions and informatives set out in the recommendation in the report (Item 8) to the Planning and Regulatory Committee on 7 January 2015.

APPLICATION DETAILS

Applicant

Brett Aggregates Ltd

Date application valid

13 June 2013

Period for Determination

3 October 2013

Amending Documents

Letter dated 1 November 2013 from Richard Kevan, Wardell Armstrong with accompanying annotated copy of Drawing No EIA9.8 Conveyor Route Details date March 2012 email dated 22 November 2013 from Richard Kevan, Wardell Armstrong and Overhead Power Cables above Proposed Conveyor drawing ref QMQ 016 (Dwg file) and Overhead Power Cables above Proposed Conveyor drawing ref. QMQ 016 date 19/11/2013, email dated 22 July 2015 from Mike Davies, Davies Planning with sketch drawing ref SK12377/SK1 Floodplain Compensation and Causeway Drainage Proposal date 04/11/13.

ILLUSTRATIVE MATERIAL

Site Plan – Plan 1 Location Plan

Aerial Photographs

Aerial 1

Aerial 2

Site Photographs

- Figure 1 View of land and vegetation at Queen Mary Quarry within the application site adjacent to the B377 Ashford Road.
- Figure 2 View looking east towards the Ashford Road of land in the southern part of Queen Mary Quarry showing proposed conveyor route and existing vegetation and habitat
- Figure 3 View looking in the direction of the processing plant site of part of the application site showing the existing access road within Queen Mary Quarry.
- Figure 4 Application Area (Applicant Drawing No.ST13443-PA2)

BACKGROUND

- 1 Reports on the above application and a related application, ref SP2012/01132 (Manor Farm application) for extraction of sand and gravel from land at Manor Farm, transport of the mineral by conveyor to the existing Queen Mary Quarry mineral processing plant and erection of a concrete batching plant and aggregate bagging plant at QMQ were considered by the Planning and Regulatory Committee on 7 January 2015 (Items 8 and 7 respectively).
- 2 The Manor Farm planning application included a conveyor route enabling the transfer of mineral for processing at the adjoining site of Queen Mary Quarry (QMQ), however due to ecological constraints (habitat protection) an alternative route for part of the conveyor was proposed under this application (QMQ conveyor application). An overarching Environmental Statement (ES) relates to both planning applications.
- 3 The committee resolved that subject to planning permission being granted to planning application ref. SP2012/01132 for the extraction of mineral from Manor Farm the committee resolved to PERMIT this application subject to conditions and informatives set out in the report. The committee report is attached as Annex A with the Minutes of the meeting (including update sheet) attached as Annex B.
- 4 The s106 legal agreement for the Manor Farm application has been prepared and has reached the stage where it is nearing completion, which would enable the decision notices on both applications to be issued.

The Kides protocol

- 5 As time has elapsed since the committee considered the planning application the protocol (known as Kides protocol) adopted by the Planning and Regulatory Committee on 12 November 2003 applies. The protocol was adopted following the judicial review decision in November 2002 to quash the committee resolution to grant planning permission for the Capel Energy From Waste planning application (ref MO00/0913) which had referred to the October 2002 Kides v South Cambridgeshire District Council and others Court of Appeal judgement (*R (on the application of Kides) v South Cams DC [2002] EWCA Civ 1370*). The Kides judgement makes clear the importance of the committee, and not just officers, having regard to all material considerations before any planning permission is granted pursuant to an earlier resolution taken by committee. In paragraphs 125 and 126 of the judgement the Court observed:

“On the other hand, where the delegated officer who is about to sign the decision notice becomes aware (or ought reasonably to have become aware) of a new material consideration, section 70(2) requires that the authority have regard to that consideration before finally determining the application. In such a situation, therefore the authority of the delegated officer must be such as to require him to refer the matter back to*

committee for reconsideration in the light of the new consideration. If he fails to do so, the authority will be in breach of its statutory duty.

In practical terms, therefore, where since the passing of the resolution some new factor has arisen which the delegated officer is aware, and which might rationally be regarded as a 'material consideration' for the purposes of section 70(2), it must be counsel of prudence for the delegated officer to err on the side of caution and refer the application back to the authority for specific reconsideration in the light of that new factor. In such circumstances the delegated officer can only safely proceed to issue the decision notice if he is satisfied (a) that the authority is aware of the new factor, (b) that it has considered it with the application in mind, and (c) that on a reconsideration the authority would reach (not might reach) the same decision."*

*of the Town Country Planning Act 1990, as amended.

- 6 A more recent judgement in October 2010 *Dry, R (on the application of) v West Oxfordshire District Council [2010] EWCA Civ 1143* refers to the Kides case and need to apply the guidance in Kides with "common sense, and with regards to the facts of the particular case."
- 7 The Kides protocol requires planning officers to assess whether new factors have arisen in the time since a resolution to grant planning permission has been taken and the issuing of the decision notice, and if they have, apply the "Kides test, by following the process outlined on the flow chart at Annex C. The Kides test involves assessing whether any new factors which have emerged could rationally be regarded as material to the consideration of the application such that the application should be referred back to the decision maker, in this case the Planning and Regulatory Committee, for reconsideration in the light of the new factor.

Kides consultation process

- 8 In June once negotiations on the Manor Farm s106 legal agreement had progressed to the stage a final draft was nearing agreement, planning officers wrote to Spelthorne Borough Council, the Consultees (Statutory and Non-Statutory) and Parish/Town Council and Amenity Groups set out in paragraphs 46 to 74 of the January committee report (Annex A), the Local Member and adjoining Member, to ask if they were aware of any factors, changes/updates or issues which had emerged since 7 January 2015 which could reasonably be described as material to the consideration of the application.
- 9 Officers received responses from the following, none of whom were aware of any changes or new factors:
 - Spelthorne Borough Council – Planning
 - Heathrow Airport Safeguarding
 - Natural England
 - Highway Authority (Transportation Development Planning Group)
 - County Noise Consultant (CNC)
 - County Landscape Consultant
 - County Geotechnical Consultant
 - County Air Quality Consultant
 - County Heritage Conservation Team – Archaeological Officer
 - Environment Agency
 - Health and Safety Executive
 - Rights of Way
 - Thames Water
 - Affinity Water
 - Royal Society for the Protection of Birds (RSPB)
 - Surbiton & District Bird Watching Society

- 10 The CLAG2 (Community Against Gravel Laleham) action group and the Spelthorne Natural History Society both considered there were changes and new factors. These are set out in the Kides Protocol Assessment at Annex C, together with any issues raised in representations from local residents received since 7 January 2015, and considered as part of the assessment. Since the application was considered at the January meeting three representations have been received, none from people who have written in previously; in total 47 written representations have now been received on this application.

Material considerations Kides test

- 11 Under the Kides protocol planning officers have to be satisfied that the Planning and Regulatory Committee is aware of any new factor(s) that have arisen since the application was considered which might rationally be regarded as a material consideration. If officers are either satisfied the committee were aware of the new factor and considered it with this application in mind, but not would reach the same decision; or satisfied the committee were not aware of the new factor, the application should be referred back to the committee to be reconsidered in view of the new factor.
- 12 The Kides Protocol Assessment at Annex C sets out the assessment and consideration by officers and in applying the Kides test of whether factors have emerged since 7 January 2015 which could rationally be regarded as a material consideration by a third party. The matters covered in the assessment are drawn from the planning considerations section of the report and discussion during the consideration of the application at the meeting and documents referred to in the committee report (and update sheet) at Annex A and B.
- 13 The assessment includes considering relevant case law officers have become aware of. In this case since 7 January 2015 planning officers have become aware of case law relating to Green Belt in *Kemnal Manor Memorial Gardens Ltd. v The First Secretary of State & Anor [2005] EWCA Civ 835 (14 June 2005)* and *Timmins & Anor, R (On the Application Of) v Gelding Borough Council [2015] EWCA Civ 10 (22 January 2015)*. The case law concerns the approach to applications for development which involves elements which are inappropriate development and elements which are appropriate in the Green Belt and held that the correct approach is to consider and assess the whole of the development as inappropriate development.
- 14 Planning officers reviewed the approach taken in respect of the Manor Farm SP2012/01132 planning application as set out in the officer report to committee, and in consultation with Legal Services and advice from Counsel, concluded the Green Belt case law they were now aware of was a new matter which was material to the consideration of the Manor Farm planning application and in the circumstances that application should be referred back to the Planning and Regulatory Committee to be reconsidered in light of this new factor. This involves the whole of the Manor Farm development being assessed as inappropriate development in the Green Belt.
- 15 The conveyor belt development proposed in this application is ancillary to and dependent on the mineral extraction proposed at Manor Farm being permitted. Having reassessed the Manor Farm SP2012/01132 planning application as inappropriate development in the Green Belt, and reassessed the proposal in light of a new issue which had arisen regarding birdstrike risk which had also been identified as a new factor material to the consideration of that application, officers are satisfied that there are factors which amount to very special circumstances, which clearly outweigh the harm to Green Belt by reason of inappropriateness and any other harm, to justify the development. As such they concluded that temporary planning permission can be granted in that case as an exception to Green Belt policy.

GREEN BELT

- 16 The consideration and assessment of the conveyor belt development proposal against Green Belt policy is set out in the Summary report, Green Belt Section (paragraphs 76 to 83) and conclusion (paragraphs 86 to 89) of the report to the 7 January 2015 meeting (Item 8) (Annex A). Having reviewed these in light of the reassessment of the Manor Farm proposal as set out in the report at Item 7 of this agenda officers conclude the no changes are required to the advice or conclusions on this application.

CONCLUSION

- 17 Apart from the Green Belt consideration on the Manor Farm application, no new issues have arisen which are material to the consideration of this application. Having reviewed the assessment and conclusion reached on Green Belt in light of the reassessment of the Manor Farm proposal, Officers do not consider any change is necessary to the overall conclusions set out in paragraphs 86 to 89, or recommendation, of the January report at Annex A.

RECOMMENDATION

The recommendation is subject to planning permission being granted to planning application ref. SP2012/01132 for the extraction of mineral from Manor Farm to PERMIT subject to the conditions and informatives set out in the recommendation in the report (Item 8) to the Planning and Regulatory Committee on 7 January 2015.

CONTACT

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BACKGROUND PAPERS

The deposited application documents and plans, including those amending or clarifying the proposal, responses to consultations and representations received as referred to in the report and included in the application file, and the following:

Kides Assessment for application SP13/01003 including consultation responses and documents and websites referred to in the Kides Assessment.

ANNEXES

- A** Officer report to 7 January 2015 Planning and Regulatory Committee on application ref SP13/01003 (Item 8).
- B** Minutes of the 7 January 2015 meeting of the Planning and Regulatory Committee including Update Sheet to Item 8.
- C** Kides Protocol Assessment considering whether new material considerations have emerged since 7 January 2015.