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# Appeal Decision

Site visit made on 11 October 2016

**by B J Sims BSc(Hons) CEng MICE MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 November 2016**

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**Appeal Ref: APP/P1940/W/16/3153882**

**Denham Park Farm Quarry, Denham Way, Maple Cross  
Hertfordshire UB9 5DG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
  - The appeal is made by Harleyford Valley Limited against the decision of Three Rivers District Council.
  - The application Ref 16/0420/FUL, dated 24 February 2016, was refused by notice dated 27 April 2016.
  - The application sought planning permission for development described as "*Renewal of 09/1723/FUL: Application to extend the time limit for implementation for the creation of new access to A412 (Denham Way) to serve a proposed mineral workings site in Buckinghamshire following the grant of planning permission on 29<sup>th</sup> December 2006 (References: 05/1630/FUL & APP/P1940/A/06/2015886)*" without complying with a condition attached to planning permission Ref 12/2283/FUL, dated 13 December 2012.
  - The condition in dispute is No 16 which states that: "*Unless otherwise agreed in writing by the Local Planning Authority there shall be no more than 124 heavy goods vehicle (gross vehicle weight of 7.5 tonnes or more) movements (62 in and 62 out) along the access road hereby permitted to/from the associated use in any one day during Monday to Friday and no more than 60 heavy goods vehicle movements (30 in and 30 out) on Saturdays, and no heavy goods vehicle movements on Sundays, Bank Holidays or Public Holidays.*"
  - The reason given for the condition is: "*To meet the requirements of Policies CP1, CP10, CP11 and CP12 of the Core Strategy (adopted October 2011), Saved Policies GB1 and T7 of the Three Rivers Local Plan 1996-2011 and Policy DM2 and Appendix 2 of the Development Management Policies LDD (Proposed Submission Version).*"
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## Decision

1. The appeal is dismissed.

## Application for Costs

2. An application for costs was made by Harleyford Valley Limited against Three Rivers District Council. This application is the subject of a separate Decision.

## Procedural Matters

3. The reference number of the permission which includes the disputed Condition No 16 is incorrectly stated on the application form as '12/8823/FUL' but it is
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clear from the appeal form and the written representations that the correct reference number is 12/2283/FUL, as set out in the heading above.

4. The application was recommended for approval by Council officers, subject to conditions, but this decision is based upon an entirely fresh appraisal of the planning issues arising.

### **The Proposal in Context**

5. The proposal in this appeal is to increase the number of heavy goods vehicles (HGVs) permitted to use the access road from the A412 to Denham Farm Park Quarry (DFPQ) from 124 to 200 per day from Monday to Friday and 100 on Saturdays.
6. The stated purpose of this proposal is 'to avoid mineral sterilisation resulting from HS2'. In support of the application it is submitted, with reference to the proposals for the construction of the HS2 High Speed Railway, which will pass east of the Quarry, that one of the sand deposits within DFPQ will be sterilised from the end of December 2018 due to the area around the HS2 line being safeguarded.
7. DFPQ itself lies within the County of Buckinghamshire where an application has been made to Buckinghamshire County Council (BCC), as Mineral Planning Authority (MPA), to update the working programme and phasing of the progressive mineral extraction at DFPQ. This is also with the stated purpose of avoiding sterilisation of part of the mineral by the construction of HS2 and would result in increased HGV movements along the access road subject of this appeal up to a daily average of 160 but for a reduced period of 15 years compared with the currently permitted twenty year life of DFPQ.
8. It is further proposed in an application to Hertfordshire County Council (HCC), as neighbouring MPA, to undertake mineral extraction, processing and importation of sand and gravel and reclamation materials from DFPQ on land at Pynesfield, further to the east between the A412 and Tilehouse Lane. This proposal too is made with the stated aim of avoiding sterilisation by HS2 and is the subject of a concurrent appeal Ref APP/M1900/W/16/3153814. It is intended that the Pynesfield site would be worked out and restored by the end of 2018 and operated in conjunction with DFPQ, transporting both mineral and reclamation materials along the access road within the limits of the maximum 200 movements per day now proposed in this appeal.
9. There is no evidence to suggest that, if the DFPQ and Pynesfield permissions were granted, there would be any means of transporting the products and materials concerned, other than by the increased use of the access road proposed in this appeal.

### **The Scope of this Appeal**

10. BCC has agreed to approve the updated working programme and phasing of DFPQ, but only subject to the Pynesfield proposal being approved by HCC and a planning obligation to regulate the total number of lorry movements from DFPQ and the Pynesfield site being provided. Be that as it may, the application to BCC is clearly not a matter for consideration in this appeal and the scope of this decision is limited to its individual planning merits. This appeal is also considered independently of the Pynesfield mineral extraction appeal.

## **Main Issues**

### **11. The main issues are:**

- 11.1 whether the increased use of the access road proposed would amount to inappropriate development affecting the openness of the surrounding Green Belt, such that very special circumstances would be required to justify the new permission sought in the appeal,
- 11.2 the effect the proposed increased use of the access road would have on the character and appearance of the landscape within the Colne Valley Park and the amenity of users of the nearby Rickmansworth Bridleway 004, and
- 11.3 the degree of need for the proposed development in connection with mineral extraction, with particular respect to the potential for the sterilisation of mineral reserves by the forthcoming HS2 High Speed Rail line and whether the proposed increased use of the access road could properly be controlled by planning conditions.

## **Reasons**

### *Policy*

- 12. This appeal is required to be determined in accordance with the development plan unless material considerations indicate otherwise. The relevant statutory provisions are contained within Core Policies (CP) of the Three Rivers District Core Strategy, adopted in October 2011, and Development Management (DM) Policies, adopted in July 2013.
- 13. These policies are to be applied with respect to their degree of consistency with the National Planning Policy Framework (NPPF) and in the light of its presumption in favour of sustainable development in its triple environmental and socio-economic role.
- 14. The NPPF sets down five purposes for including land in the Green Belt, including checking urban sprawl and safeguarding the countryside. With regard to deciding planning proposals, NPPF paragraph 80 provides that inappropriate development in the Green Belt should not be approved except in very special circumstances. NPPF paragraph 90 states that certain forms of development, including mineral extraction, can be regarded as 'not inappropriate', provided they preserve the openness of the Green Belt and do not conflict with its purposes. At paragraph 144, the NPPF gives great weight to the benefits of mineral extraction, including to the economy.
- 15. CP11 and DM2 are consistent with the NPPF in maintaining, in similar terms, a general presumption against inappropriate development in the Green Belt.
- 16. Policies CP1, CP9, CP12 and DM7 are also consistent with the NPPF in promulgating sustainable development which protects the natural environment, leisure facilities, amenity, the landscape and green infrastructure including, in this case, the Colne Valley Park.

### *Green Belt*

- 17. The proposed increase in usage of the access road is specifically related to separate, albeit as yet undecided, proposals for mineral development. As

such it would not be inappropriate in the Green Belt, provided it would preserve its openness. That is on the strict basis that any increase over its already permitted use could be made subject to a planning condition that the increase must not commence unless or until those separate mineral developments are allowed.

18. It is noted that this approach is in line with previous appeal decisions on the access road cited by both the Appellant and the Council, in particular that under Ref APP/P1940/A/06/2015886 whereby the access road was originally permitted in 2006 but only subject to conditions limiting its use to the number of HGV trips necessary to the associated mineral development then proposed. However, the present appeal is decided strictly on its own merits with reference to current national and local planning policy and considering the effect of the proposed greater number of HGV trips along the access road.
19. Clearly, the original creation of the access road will have had a negative impact on openness. The mere increase in its use now proposed, however, would not exacerbate any reduction of openness due to the road itself, which would remain in its now established form. Nor would it contribute to urban sprawl or otherwise conflict with the purposes of the Green Belt. Only the additional HGV trips along the route might result in an impression that openness were further reduced. However, that concern is more closely related to issue of local character, discussed below.
20. For the purposes of this decision it is reasonable to regard the proposed increase in the use of the access road in connection with future new mineral permissions as 'not inappropriate' in its Green Belt setting, in terms of national and adopted local planning policy. It is accordingly not necessary for very special circumstances to be demonstrated in order to justify the new permission now sought.

#### *Character, Appearance, Amenity*

21. That is not to say that any impact by the addition of up to 60 HGV movements per day would necessarily be acceptable. On the contrary, it is essential that the effects of the development, without compliance with Condition 16, on the character, appearance and amenity of the locality are fully assessed.
22. An increase in HGV movements along the access road by over 60 per cent, as proposed, would be noticeable, especially to leisure users of the adjacent section of bridleway, as a lorry could pass them potentially every 3 minutes, on average, during the working day. That is compared with a frequency of about every 4.5 minutes under Condition 16. The physical presence and, more particularly, the noise of passing HGVs would have an increased adverse impact upon the appearance, character and amenity of the immediate area, as well as the wider landscape within the Colne Valley Park.
23. It is accepted that this effect would be mitigated, to some extent, by the belt of planting between the road and the bridleway, which could continue to be maintained in compliance with a further planning condition. Speed control humps and the metalled surface of the road, also subject to conditions, would limit vehicle speeds and noise levels, whilst dust suppression would continue to be secured by planning another condition. It is a material factor that the overall permitted duration of the use of the access road would be reduced from twenty to fifteen years. However, fifteen years remains a considerable

time for its effects to be felt and this consideration attracts little weight in favour of the appeal.

24. Overall, there would be additional adverse impact on the character, appearance and amenity of the area, contrary to the aims of CP1, 9 and 12 and DP7.
25. The proposed development should not therefore be allowed, and the disputed Condition 16 should remain in place without variation, unless there is a proven need for the proposed increased use of the access road.

#### *Need*

26. The degree of need for the proposal in this appeal for an increase in the use of the access road in connection with mineral development, is inextricably linked to separate judgements related to the need to recover the minerals concerned, and the timing of such operations in relation to any question of mineral sterilisation by HS2. The timing and extent of the HS2 project, as it affects either of the related pending mineral proposals is not yet certain as the HS2 project is not finalised.
27. If there were, at some future time, found to be a proven, overriding need to justify the related permissions, it follows, as a matter of judgement in this case, that there would be an equivalent need for the increased use of the access road, as the only evident means of transporting the mineral produced and the restoration materials required.
28. Considered properly on its current planning merit, however, there is no evidence in this appeal of a need for increased use of the access road to support the mineral operations it was created to serve. Moreover, it is by no means established that such a need will arise in practice, whether from DPFQ or Pynesfield or both.
29. It is presently the case, therefore, that the environmental harm to the surrounding area, due to the proposed increased use of the access road, would not be significantly and demonstrably outweighed by the socio-economic benefit of any necessary mineral extraction. The great weight accorded such benefit by the NPPF would be a matter for separate decisions on those proposed developments but it does not bear directly upon the determination of this proposal, which cannot be regarded as sustainable development in terms of the NPPF and CP1.
30. In the circumstances, a condition, as suggested without prejudice by the Council, to make the increased use of the access road contingent upon the uncertain future approval of separate mineral development would not meet the advice on the use of negative conditions or tests of necessity, relevance and reasonableness contained in the national Planning Practice Guidance.

#### *Other Considerations*

31. There is evident local concern that an additional 60 HGV trips per day will exacerbate existing congestion on the A412, especially given understandable uncertainty regarding the effect of the future HS2 works in the area. However, these fears are not borne out by detailed technical evidence. On the contrary, it is the evidence of the highway authority that the additional

traffic movements would amount to only a small percentage rise in total traffic flows, which does not warrant objection on grounds of highway congestion.

32. Equally, there is no substantive objection in relation to impacts on ecology, pollution levels or flood risk.

*Conclusion*

33. In conclusion overall, for the reasons explained above, the proposed increase in the use of the access road should not be permitted. Condition 16 should therefore remain in force, in order to maintain the current limits on HGV movements in connection with mineral development currently permitted. This appeal should therefore be dismissed.

*B J Sims*

Inspector