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# Appeal Decision

by **Graham Wraight BA(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 23 March 2022**

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**Appeal Ref: APP/X1355/W/21/3287972**

**Eldon Quarry, Eldon, Old Eldon, County Durham DL14 8EA**

- 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 carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Cherry (FalconsOne Ltd) against the decision of Durham County Council.
  - The application Ref DM/20/00604/VOCMW, dated 28 February 2020, was refused by notice dated 8 October 2021.
  - The application sought planning permission for extension to existing brickshale quarry to continue supply of brick making materials to Eldon Brickworks, Eldon Quarry, Bishop Auckland without complying with conditions attached to planning permission Ref 7/2007/0524CM, dated 5 December 2008.
  - The conditions in dispute are Nos 10, 13 & 24 which state that:  
*(10) "All operations, except for coal transport, authorised by this consent shall be restricted to the following periods unless otherwise agreed, in writing, with the Minerals Planning Authority:  
07:00 to 19:00 Monday to Friday  
07:00 to 13:00 Saturday  
Coal transport from the site be restricted to:  
07:00 to 17:30 Monday to Friday  
07:00 to 13:00 Saturday  
No operations including the maintenance of vehicles and plant or working shall take place outside these hours or at any time on Sundays, Bank, or other public holidays, save in case of emergency when life, limb or property are in danger. The Minerals Planning Authority shall be notified as soon as is practicable after the occurrence of any such operations or working.*  
*(13) The total number of coal laden heavy goods vehicles leaving the quarry site shall not exceed 25 on any weekday (averaged over a week) and 13 on Saturdays, unless otherwise agreed in advance in writing with the Minerals Planning Authority. A record of all laden heavy goods vehicles leaving the site shall be maintained by the operator and a certified copy of this record shall be provided to the Minerals Planning Authority within 2 working days of such a request.*  
*(24) Only coal and brick making materials shall be exported from the site (except as allowed by condition 49) and the brick making materials shall only be exported to the adjacent Eldon Brickworks.*
  - The reasons given for the conditions are:  
*(10) In the interests of residential amenity. (Adopted County Durham Minerals Local Plan (December 2000) Policies M36 Protecting local amenity, M43 Road traffic).*  
*(13) In the interests of residential amenity. (Adopted County Durham Minerals Local Plan (December 2000) Policies M36 Protecting local amenity, M43 Road traffic). In the interests of highway safety (Adopted County Durham Minerals Local Plan (December 2000) Policies M35 Recreational areas and PROW, M43 Road Traffic).*  
*(24) To ensure the development is carried out in accordance with the approved documents. In the interests of nature conservation. (Adopted County Durham Minerals Local Plan (December 2000) Policy M29 Nature Conservation).*
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## **Decision**

1. The appeal is dismissed.

## **Reasons**

2. The proposal to vary conditions 10, 13 and 24 would collectively allow for brick making materials to be exported from the appeal site to any location. Conditions 10 and 13 refer to the export of coal only and, as currently worded, condition 24 allows solely for brick making materials to be exported to the adjacent Eldon Brickworks. This is consistent with the description of development set out on the original 2008 planning permission, which permitted an extension to the existing brickshale quarry to continue the supply of brick making materials to Eldon Brickworks.
3. The proposed variation of the conditions would create a scenario where the description of development permitted in 2008 would refer to the supply of brick making materials to Eldon Brickworks, whereas the varied conditions would instead allow for the supply of brick making materials to locations other than the brickworks. This would result in a clear conflict between the description of development set out in the 2008 permission and what would be allowed under the terms of the varied conditions.
4. In the case of *Finney*<sup>1</sup>, the Courts established that an application under section 73 of The Town and Country Planning Act may not be used to obtain a permission that would require a variation to the terms of the “operative” part of the planning permission, that is, the description of the development for which the original permission was granted. For the above reasons, to permit the variations proposed under this appeal would fail to accord with the principles set out in *Finney*. The appeal must therefore be dismissed on that ground, and without any consideration of the substantive planning matters that arise.
5. It is presently permitted to export coal from the site and the proposed variations do not seek a substantial alteration to the times during which material could be transported, nor an increase in the permitted number of heavy goods vehicles leaving per day. Furthermore, Eldon Brickworks is no longer operational and it has suffered a fire, meaning it is not likely to ever reopen. This has left a situation where brickshale can be quarried but has no outlet. However, these considerations do not overcome, or address, the conflict with the *Finney* principles that I have identified.

## **Other Matters**

6. Had I been minded to allow the appeal, I would have had to consider whether an assessment under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 would have been required. However, in the circumstances I have outlined, such a consideration is not necessary.

## **Conclusion**

7. For the reasons given above, I conclude that the appeal should be dismissed.

*Graham Wraight* INSPECTOR

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<sup>1</sup> John Leslie Finney v Welsh Ministers, Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868