



Appeal Decision

Hearing held on 15 November 2022

Site visit made on 15 November 2022

by C Beeby BA (Hons) MIPROW

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/M2460/W/22/3304137

Shawell Tile Works, Gibbet Lane, Shawell, Leicestershire, LE17 6AB

- 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Ian Gornall on behalf of BMI Group against the decision of Leicestershire County Council.
- The application Ref 2021/0895/03 (2021/VOCM/0062/LCC), dated 23 April 2021, was refused by notice dated 11 February 2022.
- The application sought planning permission for the extension of the period for the operation of the Shawell roof tile works to 31st December 2030 or one year after the permanent cessation of sand and gravel production at the adjacent Shawell quarry processing plant, whichever is sooner – Shawell Tileworks, Gibbet Lane, Shawell, Leicestershire, LE17 6AB (Harborough District) without complying with conditions attached to planning permission Ref 2017/1380/03 (2017/CM/0237/LCC), dated 18 October 2019.
- The conditions in dispute are Nos 1, 2, 4, 5, 6 and 8 which state that:
 1. This operation of the roof tile works is limited to the period expiring on 31st December 2030 or on the date one year after the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant or the cessation of tile manufacturing, whichever is the earlier. Within one year of the expiry of that period, all buildings, structures and hardstandings on the site shown edged red on plan 'Title Number LT461832' received 1st August 2019 and the whole of the site shall be restored in accordance with the scheme as approved by condition 8 (eight) of this planning permission.
 2. This permission shall relate to the temporary retention of all buildings and structures located on the site shown edged red on plan 'Title Number LT461832' received 1st August 2019 at the date of this permission.
 4. The number of heavy goods vehicle movements on the Highway generated by the development hereby permitted shall not exceed 240 in any week (i.e. 120 HGVs entering the site and 120 HGVs exiting the site). The operator shall keep a record of all heavy goods vehicles accessing and leaving the site. Back records shall be kept for a minimum of 12 months and access to these records shall be afforded to the Mineral Planning Authority on request.
 5. Notwithstanding condition 4 (four) above no heavy goods vehicles shall use the Highway to import sand (with the exception of silica sand) in to the site as shown edged red on plan 'Title Number LT461832' received 1st August 2019.
 6. All heavy good vehicles leaving the site shall turn right onto Gibbet Lane unless for the purposes of local tile delivery.
 8. No later than 31st December 2030 or within six months after the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant or six months after the cessation of tile manufacturing, whichever is the earlier a scheme of site clearance and reclamation of the site as shown edged

red on plan 'Title Number LT461832' received 1st August 2019 shall be submitted for the approval of the Minerals Planning Authority. Such a scheme shall include details of the demolition and removal of the buildings, structures and hardstandings, provisions for the replacement and/or restoration of soils, the retention and protection of the existing trees and hedgerow on the western boundary, the planting of appropriate vegetation to enable the site to be brought back into a beneficial afteruse (amenity, biodiversity, woodland, agriculture) and for a five year aftercare period, and the timescales for achieving all the details in the scheme. Works shall then be carried out in accordance with the approved scheme.

The reasons given for the conditions are:

1. The site is in a rural area where planning permission would not normally be granted for the erection of industrial or associated buildings. This permission is granted for a temporary period only and for a specific use having regard to the special circumstances relating to the close proximity to the source of aggregate raw material required in the manufacturing process. The Mineral Planning Authority is of the opinion that when that raw material is exhausted this and no other manufacturing process or storage use should be permitted on this site and the site should be restored in a timely manner to agricultural land or such other form as may be appropriate to the rural character of the locality.
 2. For the avoidance of doubt.
 4. In the interest of highway safety and the amenities of the area.
 5. To ensure that the relationship between the proposed use and existing activities at Shawell Quarry remains and for the amenities of the area.
 6. In the interest of the amenities of the area and to ensure that heavy goods vehicles do not make use of inappropriate roads.
 8. To provide for the restoration of the site in a satisfactory manner and timescale.
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Decision

1. The appeal is allowed and planning permission is granted for the extension of the period for the operation of the Shawell Roof Tile Works to 31st December 2030 or two years after the permanent cessation of sand and gravel production at the adjacent Shawell Quarry processing plant, whichever is sooner at Shawell Tileworks, Gibbet Lane, Shawell, Leicestershire, LE17 6AB in accordance with the application Ref 2021/0895/03 (2021/VOCM/0062/LCC) dated 23 April 2021, without compliance with condition numbers 1, 2, 4, 5, 6 and 8 previously imposed on planning permission Ref 2017/1380/03 (2017/CM/0237/LCC), dated 18 October 2019 and subject to the following conditions:
 - 1) This operation of the roof tile works is limited to the period expiring on 31st December 2030 or on the date two years after the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant or the cessation of tile manufacturing, whichever is the earlier. Within one year of the expiry of that period, all buildings, structures and hardstandings on the site shown edged red on plan 'Title Number LT461832' received 1st August 2019 and the whole of the site shall be restored in accordance with the scheme as approved by condition 8 (eight) of this planning permission.
 - 2) This permission shall relate to the temporary retention of all buildings and structures located on the site shown edged red on plan 'Title Number LT461832' received 1st August 2019 at the date of this permission, and that have been erected on the site under any other planning permission.
 - 3) The use of the buildings and site shall be restricted to the manufacture of roof tiles and associated operations, activities and uses.

- 4) Before the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant, the number of heavy goods vehicle movements on the highway generated by the development hereby permitted shall not exceed 480 in any week (i.e. 240 HGVs entering the site and 240 HGVs exiting the site). After the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant, the number of heavy goods vehicle movements on the highway generated by the development hereby permitted shall not exceed 600 in any week (i.e. 300 HGVs entering the site and 300 HGVs exiting the site). The operator shall keep a record of all heavy goods vehicles accessing and leaving the site. Back records shall be kept for a minimum of 12 months and access to these records shall be afforded to the Mineral Planning Authority on request.
- 5) Until the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant, notwithstanding condition 4 (four) above no heavy goods vehicles shall use the highway to import sand (with the exception of silica sand) into the site as shown edged red on plan 'Title Number LT461832' received 1st August 2019.
- 6) All heavy goods vehicles leaving the site shall turn left onto Gibbet Lane unless for the purposes of local tile delivery.
- 7) No trees or hedgerow shrubs on the western boundary shall be topped, lopped, cut down, uprooted or destroyed without the written approval of the Mineral Planning Authority. If any retained tree or hedgerow shrub dies, another tree or shrub shall be planted at the same place and that tree and shrub shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Mineral Planning Authority.
- 8) No later than 31st December 2030 or within 18 months after the permanent cessation of sand and gravel production at the adjacent Cotesbach-Shawell Quarry processing plant or six months after the cessation of tile manufacturing, whichever is the earlier, a scheme of site clearance and reclamation of the site as shown edged red on plan 'Title Number LT461832' received 1st August 2019 shall be submitted for the approval of the Minerals Planning Authority. Such a scheme shall include details of the demolition and removal of the buildings, structures and hardstandings, provisions for the replacement and/or restoration of soils, the retention and protection of the existing trees and hedgerow on the western boundary, the planting of appropriate vegetation to enable the site to be brought back into a beneficial afteruse (amenity, biodiversity, woodland, agriculture) and for a five year aftercare period, and the timescales for achieving all the details in the scheme. Works shall then be carried out in accordance with the approved scheme.

Preliminary Matters

2. In reaching my decision I have had regard to the judgments in the cases of *John Leslie Finney v Welsh Ministers & Carmarthenshire County Council* and *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107, which found that an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission, and that there is no direct or implied legal power to impose a time

limitation on a planning permission except by means of “temporary” condition, respectively.

3. However, the meaning of development according to the Town and Country Planning Act 1990 is the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. In this case the reference to a time limit (whether one year after cessation of production at the processing plant or 31st December 2030), which is attached to the description within permission 2017/1380/03 (2017/CM/0237/LCC), consequently does not form part of the description of development for which permission is granted.
4. Thus, notwithstanding the description of development taken from the relevant planning permission, the requested time limit variation in this case derives from the imposition of conditions and consequently does not alter the description of development. As a result, there is no conflict with the two cases in question. Nevertheless, in the interests of clarity, I have updated the time limits which derive from the conditions attached to this permission in my Decision at paragraph 1 above.
5. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the relevant planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Main Issues

6. The main issues are:
 - The effect that varying the conditions would have on the environment with regard to the location of the development; and
 - The effect that varying the conditions would have on the character and appearance of the area.

Reasons

Background

7. The appeal site is a tile factory which lies between the Cotesbach-Shawell sand/gravel quarry and its processing plant. Many of the raw materials for the production of tiles are sourced from the quarry and are transported via an internal gateway between the two sites, providing benefits by the reduction of heavy goods vehicles using the highway for the import of materials.
8. The appeal site lies within a wider site which is subject to minerals planning permission¹, meaning that the land below the tile works has permission for mineral extraction, could be worked as an extension to the quarry and is subject to restoration requirements. Any temporary permission granted regarding surface land is considered subservient to the minerals permission. Therefore minerals planning policies are relevant to the appeal proposal.

¹ Local Planning Authority reference: 2004/1605/03

9. The application seeks the variation of the relevant conditions in order to extend the permitted period of operation of the tile works and to allow for the import of sand to it, in both cases following the closure of the adjacent processing plant. Other variations sought are ancillary to these two central aims, and the alternative time limit for the development of 31 December 2030 which applies to the extant permission would remain.

Location of development

10. The tile works is located within the countryside as defined by Policy GD3 of the Harborough Local Plan (2019) (the HLP). The policy sets out the types of development that are acceptable in such locations.
11. Policy M13 of the Leicestershire Minerals and Waste Local Plan (the LMWLP) states that planning permission for ancillary industrial development within or in close proximity to mineral sites will be granted provided that it is demonstrated that there is a close association with the mineral site and there are environmental benefits in providing a close link with the extraction site. Where permission is granted, the operation and retention of the development will be limited to the life of the permitted reserves.
12. The presence of the tile works adjacent to the quarry site consequently gained policy support for the duration of the quarry's operation. Condition 1 was imposed to capture the policy requirement to limit the development's operation to the life of the permitted reserves. Condition 5 was imposed to prevent heavy goods vehicles from using the highway to deliver sand to the appeal site, so that all sand (except silica sand) must be imported from the adjacent quarry, providing environmental benefits by minimising the journey distance associated with the development.
13. The appellant submits that the available space at the site would provide for sand stockpiles allowing for only two-three days of tile production. Although this is challenged in opposition, various credible issues in maintaining the quality of sand stored over a long period were referred to by the appellant and there is nothing before me to disprove these suggestions. It has consequently not been proven that a sufficient quantity of sand for production over more than a few days could be stored within the site, whilst maintaining the necessary sand quality. Thus, the combined effect of Conditions 1 and 5 is that, once the quarry's processing plant ceases production, the tile works would only be able to continue operation for as long as any existing sand stockpiles at its site last, which would amount to a few days.
14. The appellant consequently considers that the tile works would be required to close almost immediately following the end of production at the processing plant, negating the one-year period over which the tile works is permitted by Condition 1 to continue to operate and creating difficulties in planning for the transfer of the works to another site.
15. The appeal scheme includes the variation of Condition 1 to allow for production at the tile works to continue for up to two years (and not beyond December 2030) following the cessation of operations at the quarry processing plant. The appellant submits that this would allow sufficient time for a "wind-down period" over which the tile works would be closed at the site. The appeal consequently seeks to alter its permission from a one-year wind-down period without the import of most sand, to a two-year wind-down period during which the import

of such sand would be permitted. A project plan over at least two years sets out the series of actions necessary to close the tile works at the site, some of which could be carried out concurrently and several of which are dependent on other actions having been completed first. This is considered to facilitate the uninterrupted production of tiles by the company.

16. No evidence that permission for a new quarry site in the vicinity has been obtained is before me. Moreover, as the new quarry would be developed by a separate company, the appellant would have little control over its timescales for implementation. There is consequently minimal assurance that an extension of the wind-down period by a year would provide any public benefits by aligning with any development of a new quarry.
17. I acknowledge that the scheme would not result in a lengthy extension of the operation of the tile works beyond that of the quarry processing plant, set against the substantial period over which the two have coexisted. Nevertheless, in allowing for a further year of operation it would double the one-year period already permitted. The supporting text to Policy M13 of the LMWLP sets out that the policy supports ancillary development where there are clear environmental benefits in providing a close link between the industrial activities and associated mineral operation. It further states that particular regard will be paid to matters including environmental effects. The environmental effects of the appeal scheme are consequently a primary matter for consideration in this decision, whereas the length of time over which the two developments have coexisted is not.
18. In extending its operation further beyond the closure of the quarry and seeking to import sand, the development would no longer be closely associated with the mineral site and consequently it would conflict with Policy M13 of the LMWLP. Furthermore, the environmental benefits gained by the close link with the quarry site would be lost following closure of the processing plant because the need to import sand would result in an increase in the number of HGV movements on the highway which are associated with the development.
19. Nevertheless, the requested amendment to Condition 4 to reflect the correct maximum number (480) of HGVs attending the site via the highway per week prior to the plant's closure is allowed, for the reasons set out below. The additional amendment of Condition 4 to allow for 600 such movements per week following the closure of the processing plant would consequently bring about a limited maximum permitted increase of HGV movements on the highway of approximately 25%, over the maximum two years of subsequent operation. The environmental harm which would result from this increase is unquantified and, in view of the temporary nature of the proposed extension to the development, it has not been demonstrated that such harm would be significant in scale.
20. Furthermore, variations in the estimates provided for the closure date of the quarry have resulted in uncertainty in planning the closure and relocation of the tile works. If the tile works closure programme were commenced too early the identified environmental benefits from the site's co-location with the quarry would be reduced. In allowing the tile works to operate at full capacity until the closure of the processing plant, prior to commencing its wind-down process, the appeal proposal would consequently maximise the environmental benefits

which result from the co-location of the two businesses, a matter which attracts some limited weight.

21. The environmental harm which would result from the proposal is consequently limited, in view of the above considerations.

Planning obligation

22. The appellant recognises that the additional HGV movements to import sand would result in carbon emissions through the combustion of fuel. A unilateral undertaking (UU) which seeks to provide a scheme of carbon offsetting for the duration of the wind-down period in the event of permission is consequently submitted by the appellant.
23. The UU additionally intends to require carbon offsetting in respect of HGV trips for customer collections and the supply of non-sand materials, which occur irrespective of the appeal scheme. The appellant submits that this additional offsetting forms a benefit of the scheme.
24. Obligations within the UU require the recording of the weight of imported sand using a weighbridge at the site, and of the travel distance of HGV arrivals. These fall within the scope of section 106(1) of the Town and Country Planning Act 1990 (the 1990 Act) because they require specific activities to be carried out on the land.
25. However, other obligations relate to the submission of records to the carbon offset provider to use in calculations, the provision of records to the Council and the payment of the carbon offset fee to the provider. These do not restrict the development, require specific activities to be carried out at it, require the land to be used in a certain way or require a sum to be paid to the Council. They consequently do not fall within the scope of section 106(1) of the 1990 Act.
26. Case law concerning an obligation to use funds at a site is referred to in support of the appellant's submission that the carbon offset payment provision within the UU falls within the scope of section 106(1) of the 1990 Act. The payment element of the undertaking in the case concerned is described by the appellant as having provided for specific operations to be carried out which were considered to fall within section 106(1)(b), namely building repair at the site.
27. The appeal UU seeks to require payments to an off-site carbon offset provider which would not be carrying out operations at the appeal site and hence the payments would not fall within section 106(1)(b). Furthermore, there is nothing before me to suggest that the payment element of the UU falls within subsections 106(1)(a), (c), or (d). Thus, the circumstances in this case differ from those described within the case law and hence it does not provide support for the appellant's submission.
28. Furthermore, an error in the definition of "other HGV movements" introduces uncertainty regarding the effect of the obligations in this regard.
29. As a result of the above concerns, I cannot be certain that the UU would be effective in securing the intended contributions. It would consequently fail to overcome the environmental harm arising from the additional HGV movements.

Furthermore, the proposed additional carbon offsetting consequently does not form a benefit of the scheme.

30. Thus, the appeal proposal would cause limited harm to the environment with regard to the location of the development. It consequently conflicts with Policy DM1 of the LMWLP, which states that proposals should contribute to the three dimensions (economic, environmental and social) of sustainable development, as well as providing clear evidence of how they would make a positive contribution to reducing its effects on climate change. Further conflict exists with Policy M13 of the LMWLP, which sets out that planning permission for ancillary industrial development within or in close proximity to mineral sites will be granted provided that it is demonstrated that there is a close association with the mineral site and there are environmental benefits in providing a close link with the extraction site. Where permission is granted, the operation and retention of the development will be limited to the life of the permitted reserves. Additional conflict exists with Policy GD3 of the HLP, which states that development in such locations will only be permitted where it is required for certain purposes, of which the appeal scheme is not one.

Character and appearance

31. The appeal scheme would extend the maximum period allowed for restoration of the appeal site following closure of the tile works. As a result, there would be a limited extension of the period over which the site would have an industrial appearance within its countryside setting. The Council's concerns in this regard relate mainly to views from Gibbet Lane. The parish meeting raises concerns regarding the effect on the appearance of the area from a nearby meadow of restored land, which has some public access.
32. Nevertheless, views of the tile works when passing on Gibbet Lane are relatively brief due to the site's linear layout. The topography of the surrounding landscape is such that the site was not particularly visible within views from surrounding vantage points at my site visit. A limited proportion of the structures at the tile works could be seen from the restored land, however intervening woodland screened the majority of the works. The visibility of the appeal site from the surrounding landscape is consequently relatively limited.
33. Furthermore, the condition with regard to trees and hedgerow along the site's western boundary allows for some screening of the site. Moreover, as the periods set out for the removal and restoration of the adjacent processing plant following its closure are similar to those currently proposed for the tile works, it is likely that the plant would be undergoing restoration for the majority of the proposed additional tile works restoration time and hence that the immediate area would have an inevitable industrial appearance during that time, irrespective of the appeal proposal.
34. As a result of these considerations, the relatively limited visibility of the tile works from the two main areas of concern would cause limited harm to the character and appearance of the area by its presence for the additional temporary period sought.
35. Thus, the proposal conflicts with Policy DM5 of the LMWLP, which states that permission will be granted for minerals and waste development where it is demonstrated that the proposal is well designed and contributes positively to the character and quality of the area. Further conflict exists with Policy GD3 of

the HLP, which states that development will be permitted where it is required for, amongst other matters, the continuation of an existing enterprise that is compatible with its setting in the countryside. Additional conflict exists with Policy DM12 of the LMWLP, which sets out that permission will be granted for temporary minerals and waste development where satisfactory provision has been made to ensure high quality, progressive restoration of the site. Further conflict exists with paragraph 211e) of the National Planning Policy Framework (2021) (the Framework), which states that in considering proposals for mineral extraction, restoration and aftercare should be provided for at the earliest opportunity.

Other Matters

36. Whilst I sympathise with the suggested indirect effects arising from additional non-HGV traffic through Shawell village due to congestion at the Gibbet roundabout, referred to by Shawell Parish Meeting, there is minimal substantive evidence before me on the matter, or on the proposal's effect on users of a nearby public right of way. Furthermore, I give weight to the Transport Statement's findings that there are no transport reasons for refusing permission, and to the lack of objection of the local highway authority and National Highways to the proposal. Thus, it has not been demonstrated that the appeal proposal would result in unacceptable harm in these regards.
37. Newton and Biggin Parish Council requests the imposition of three conditions in the event of permission for the proposal. These would seek to require an undertaking from the appellant that they would not seek further extensions to the temporary permission, the restriction of vehicle movements to and from the site to Gibbet Lane only, and a planning obligation to secure improvements to the surrounding highways.
38. However, it has not been demonstrated that these conditions would be necessary, reasonable and relevant to the development, and consequently that they pass the six tests set out at paragraph 56 of the Framework and within the PPG. Thus, I have not imposed the three requested conditions.
39. The parish meeting and surrounding residents have raised concerns regarding the effect of lighting at the site on living conditions. Nevertheless, any nuisance arising in this regard could be dealt with under other regulatory regimes, and the evidence before me does not demonstrate that a condition is necessary.
40. The Council refers to potential conflict with Policies BE1 and BE3 of the HLP, which concern employment areas. However, any harm which is considered to arise from this is not demonstrated and furthermore I have not identified unacceptable harm to result.

Planning Balance

41. The appeal proposal would cause limited harm to the environment with regard to the location of the development. It would additionally cause limited harm to the character and appearance of the area.
42. However, the tile works contributes to the delivery of housing and to the local and national economy by the supply of roofing materials. The proposal would enable the continued production of tiles by allowing the business to plan with greater certainty. Resulting benefits would be additional job security for a

considerable number of employees and greater stability in the business's contribution to the construction industry.

43. The Framework states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. It sets out that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. I consider that these circumstances arise in this case and that the identified economic benefits consequently attract significant weight and outweigh the harm associated with the proposal.

Conditions

44. I am satisfied that Conditions 1 and 8, as set out above, provide for the full clearance and reclamation of the site. As a result, the suggested variation of Condition 1 to refer to the demolition and removal of buildings and other structures erected on the site under any other planning permission is not necessary and hence I have not altered the condition in this regard. It follows, therefore, that the appeal scheme's suggested landscape and remediation benefits by the removal of additional buildings at the site during restoration would not arise.
45. Conditions 1 and 3 are imposed because the site is in a rural area where permission would not usually be granted for the erection of industrial or associated buildings. The permission is consequently for a temporary period only.
46. I have altered Condition 2 by the addition of a reference to include buildings or structures erected under any other planning permission as the wording of that condition means that the alteration is necessary in the interests of clarity. I have additionally amended the suggested wording slightly, for the same reason. The condition is necessary to clarify the temporary nature of the development.
47. The requested variation to the first sentence of Condition 4 seeks to correct a suggested mistake in the number of permitted HGV movements to and from the site prior to its closure. The appellant submits that the error was notified to the Council at a meeting three months after permission was granted, providing meeting notes which support this. Furthermore, the submitted Transport Statement records 336 weekly average total HGV movements to the site for 2019 (the year of the permission), a significantly greater number than those shown in the existing Condition 4. Thus, and in the absence of dispute from the Council in this regard or any substantive evidence to the contrary, it is consequently likely that the variation to the first sentence of Condition 4 seeks to correctly reflect the existing number of HGV movements to and from the site. As a result, this element of the proposal is necessary and acceptable. The condition is imposed in the interest of highway safety and the amenity of the area.
48. The variation of Condition 5 is necessary in order to clarify the point from which the import of sand via the highway is permitted. The condition is imposed to safeguard the co-location benefits of the tile works and processing plant.
49. The proposed variation of Condition 6 is considered by the Council to rectify a drafting error and in the absence of evidence of harm resulting from this

amendment, I have varied the condition as requested. The condition is imposed to protect the amenity of the area and in the interests of highway safety.

50. Condition 7 is imposed in the interests of biodiversity and the character and appearance of the area.
51. The requested variation of Condition 8 would extend the period for the submission of the scheme of clearance and reclamation for approval by one year. The demolition and removal of all buildings, structures and hardstandings at the tile works site within three years of the cessation of production at the quarry processing plant would be required by the operation of Condition 1. As I have allowed the appeal in respect of Condition 1, the requested variation of Condition 8 would not function to delay the restoration of the site in itself. I have identified no unacceptable harm which would arise by the extension of the period for submission of the restoration scheme and consequently the requested variation of Condition 8 is additionally allowed. The condition is imposed to provide for the restoration of the site in a satisfactory manner and timescale.
52. As set out above, Conditions 1, 2, 4, 5, 6 and 8 are necessary but should be modified.

Conclusion

53. For the reasons given above, I conclude that the appeal should be allowed.

C Beeby

INSPECTOR

APPEARANCES

For the Appellant:

Mr Paul Brown	Counsel for the appellant
Mr Neil Gregory	Operations Director, BMI
Mr Richard Heath	BMI Group
Mr David Neale	DTA Transport
Mr Andrew Somerville	Nexus
Mr Dominic Veasey	Nexus

For the Council:

Ms Amelia Mistry	Planning Officer
Mr Brian O'Donovan	Case Officer

Also in opposition:

Mr Howard Jones	Chair, Shawell Parish Meeting
Ms Alison Traversoni	Nature Now or Never

Documents:

Judgment of I'm Your Man Ltd v SSE & North Somerset DC [1999] 4 PLR 107

Judgment of John Leslie Finney v Welsh Ministers & Carmarthenshire County Council [2019] EWCA Civ 1868, 2019 WL 05699117

Land Registry copy of title plan LT461832

Leicestershire County Council Development Management Policies DM11 and DM12