



Appeal Decision

Site visit made on 7 March 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2023

Appeal Ref: APP/N4720/W/22/3307793

Hawksworth Quarry, Odda Lane, Hawksworth, Leeds LS20 8NZ

- 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 Whitelock Plant Limited against the decision of Leeds City Council.
 - The application Ref 21/07664/FU, dated 14 September 2021, was refused by notice dated 31 March 2022.
 - The application sought planning permission for the Continuation of Existing Stone Quarrying and the Erection of Buildings without complying with a condition attached to planning permission Ref 28/96/93/FU, dated 26 January 1996.
 - The condition in dispute is No 18 which states that: *The site shall not be used for the storage of more than 500 tonnes of stone brought from elsewhere and no stone or other material shall be brought to the site for crushing and/or screening.*
 - The reason given for the condition is: *In the interests of the free and safe use of the highway.*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application form makes reference to both conditions 18 and 20 on planning permission reference 28/96/93/FU. However, it is evident that with respect to condition 20 the intention was to submit a scheme for compliance with the condition and not to vary or delete it. The considerations with respect to discharging condition 20 cannot fall to be determined under an appeal made under Section 78 of the Town and Country Planning Act 1990, which is made for the development of land without complying with conditions subject to which a previous planning permission was granted. Therefore, I shall restrict my determination of this appeal to the matter of condition 18 only.

Reasons

3. Planning permission 28/96/93/FU permits the *continuation of existing stone quarrying and the erection of buildings*. Condition 18 of the permission allows for the storage of no more than 500 tonnes of stone brought from elsewhere and prevents any stone or other materials being brought to the site for crushing and/or screening. The reason given for the condition being imposed is *in the interests of the free and safe use of the highway*, although neither the appellant nor the Council have specifically acknowledged that reasoning in their submissions in relation to the intended variation of condition 18.

4. The proposal to vary condition 18 would allow for the importation of construction, demolition and excavation waste to the quarry. These materials would be processed on site using the existing plant that serves the longstanding quarrying operation. The supporting statement submitted by the appellant with the planning application advises that it is envisaged that the throughput of the imported waste would be up to 110,000 tonnes per annum. Of this, it is stated that 65,000 tonnes would be used in the restoration of the quarry, with 45,000 tonnes of the waste likely to be processed and recycled for secondary aggregate as washed hard material and grit sand. This would then be taken from the site and sold back to the construction market. It is also proposed that up to 30,000 tonnes of the imported material would be allowed to be stored on the site.
5. The pertinent question arises from reason for refusal 1 on the decision notice for 21/07664/FU. This is whether what is proposed under the variation of condition 18 would fall within the scope of development approved under 28/93/93/FU or whether it would instead be a separate use, and not one that could be said to be ancillary or incidental to the stone quarrying that was permitted. Whilst it is clear that material would have to be imported onto the appeal site in order to allow for quarry restoration to take place, with such a high proportion of the imported waste then likely to be taken from the site and resold to the market, the operation far exceeds what is needed to be used in the quarry restoration. Processing of waste is also itself not related to either quarrying or to restoration. For those reasons, as a matter of fact and degree the proposal would not represent a use ancillary or incidental to the approved quarry use or its restoration. The variation of the condition would instead allow for the creation of a mixed use on the appeal site.
6. I acknowledge that the appellant has put forward a detailed case that outlines that the existing washplant and other facilities on the site that serve the quarry would be used for the processing of the imported waste. There would therefore be no need for additional plant. This in turn means that there should be no increase in noise generation from the site as compared to the existing situation, and as a result no material difference in terms of the impact on the living conditions of the occupiers of nearby properties. I also note that the number of lorry movements is restricted under the terms of other planning permissions on the wider quarry site and that the appellant intends to utilise lorries that would otherwise travel to and from the site empty to transport the imported material. Whilst I note that the Council has its reservations on the practicalities of this, in theory these factors collectively should ensure there would be no increase in lorry movement.
7. Furthermore, restoration is a requirement of the planning permissions that have been granted. Planning conditions relating to other permissions on the site refer to the possibility that such a restoration scheme may require the importation of inert waste materials. The conditions also set out that details are required of pre-acceptance analysis of incoming wastes and details of the management of wastes brought to the site which are unsuitable for disposal at the site. Whilst this outlines an expectation that there may be some imported waste that would be unsuitable and would have to therefore be exported, there is no suggestion that such waste would be processed on the site or that a high proportion of it would be exported. Therefore, I am not persuaded that the conditions to which the appellant refers envisage a scenario similar to what is proposed by the variation of condition 18.

8. In conclusion, there are matters put forward by the appellant, in particular those relating to noise and lorry movements, that are of relevance to an assessment of what would be undertaken if condition 18 was to be varied as proposed. But these considerations do not overcome my finding that the operation would extend beyond a continuation of the existing stone quarrying. In the case of *Finney*¹, 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.
9. The appellant considers that the appeal site would be a good location on which to undertake the recycling of waste material. There would be a likely benefit in terms of fewer trips being needed to transport the waste material than if it were to be taken to a third party site, and benefits in that there would be material for the restoration of the quarry and recycled materials that would be reused for other construction work. It is also stated that it would be possible to extract more stone from the quarry if engineered fill is placed against the quarry faces. However, these considerations do not overcome, or address, the conflict with the *Finney* principles that I have identified. In summary, on the basis of my findings above, the submission of a S73 application to vary planning condition 18 in the manner proposed is a route that procedurally cannot be pursued.

Conclusion

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

Graham Wraight

INSPECTOR

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