

EAST AYRSHIRE COUNCIL

NORTHERN AREA LOCAL PLANNING COMMITTEE: 29 OCTOBER 2004

**04/0681/FL: PROPOSED AMENDMENT TO CONDITION 1 OF PLANNING
CONSENT 01/0782/FL TO ALLOW CONTINUATION OF OPERATIONS
AT LOUDOUNHILL QUARRY, DARVEL
BY TARMAC NORTHERN LTD**

EXECUTIVE SUMMARY SHEET

1. DEVELOPMENT DESCRIPTION

1.1 Full planning consent is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 to undertake development of land without complying with a condition subject to which the previous planning permission was granted. Specifically, consent is sought to revise the terms of condition 1 of planning consent 01/0782/FL which required that all extraction workings shall cease by 01 November 2004 and thereafter that the site shall be restored in accordance with the requirements of Condition no.2, (of the consent), by 01 November 2005. Condition 2 of 01/0782/FL required submission of a restoration plan.

1.2 The applicants propose that extraction be authorised until 31 December 2007; (instead of 01 November 2004) and that restoration be completed by 31 December 2008; (instead of 01 November 2005).

1.3 Section 42 of the Act allows for the submission of applications to develop land without compliance with conditions previously attached. The planning authority shall only consider the question of the conditions subject to which planning permission should be granted. If it is considered that the development should continue subject to the same conditions attached to the previous permission, they should refuse the Section 42 application. If they decide that permission should be granted subject to differing conditions, then consent should be granted accordingly.

1.4 The proposed application relates to an area that has been quarried for sand and gravel for many years. Two justifications are presented in support of the application. The rate of extraction is market led and has resulted in there still being minerals to be worked at Allantonplains. The applicants indicate that an

extension of the time period offers them greater flexibility to exploit these materials. They also refer to the possibility of a future site addition, into South Lanarkshire, which would require the extended utilisation of infrastructure in Allantonplains and hence an extension of the existing time period.

1.5 Whilst it is appropriate to address the necessary time frame for working sand and gravel in Allantonplains to ensure that economically viable minerals are not sterilised, the extent to which consideration of this application should have regard to proposals not yet submitted is addressed in the report.

2. RECOMMENDATION

2.1 It is recommended that the application be approved subject to the conditions on the attached sheet.

3. CONCLUSIONS

3.1 As indicated in Section 5 of this report, it is considered that a period of extended working at the site would be consistent with the development plan and given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise. In this instance the consultations are supportive of the application and the proposal would not breach the terms of government guidance. The proposal has the benefit of avoiding sterilisation of an important resource that contributes to the required landbank for sand and gravel.

3.2 The applicants have sought what essentially is a three year time extension for operations on site. This is not considered to be justifiable given circumstances on site and a lesser two-year period would be more appropriate and would enable extraction of all unworked materials.

3.3 Restoration details were agreed by the Council in respect of the previous consent, 01/0782/FL. Given the extended time frame now sought, it would be appropriate to require by condition the submission of details clarifying the timing and phasing of their implementation and the nature of their future maintenance and aftercare. In all other respects it is considered that the grant of a period of extended operations would be acceptable.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee because it would not represent a significant departure from policy.

Alan Neish
Head of Planning and Building Control

Note: This document combines key sections of the associated report for quick reference and should not in itself be considered as having been the basis for recommendation preparation or decision making by the Planning Authority.

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Report by Head of Planning, Development and Building Standards

1. PURPOSE OF REPORT

1.1 The purpose of this report is to present for determination a full planning application which is to be considered by the Local Planning Committee in accordance with the scheme of delegation.

2. APPLICATION DETAILS

2.1 **Site Description:** The application site is located immediately north of the A71 at Loudounhill, east of Priestland. The application seeks to extend the period of extraction and subsequent final restoration within a site extending to 72.5 ha and covering The Leven and Allanton Plains areas.

2.2 **Proposed Development:** Full planning consent is sought under Section 42 of the Town and Country Planning (Scotland) Act 1997 to undertake development of land without complying with a condition subject to which the previous planning permission was granted. Specifically, consent is sought to revise the terms of condition 1 of planning consent 01/0782/FL which required that all extraction workings shall cease by 01 November 2004 and thereafter that the site shall be restored in accordance with the requirements of Condition no.2, (of the consent), by 01 November 2005. Condition 2 of 01/0782/FL required submission of a restoration plan.

2.3 The applicants propose that extraction be authorised until 31 December 2007; (instead of 01 November 2004) and that restoration be completed by 31 December 2008; (instead of 01 November 2005).

2.4 Section 42 of the Act allows for the submission of applications to develop land without compliance with conditions previously attached. The planning authority shall only consider the question of the conditions subject to which planning permission should be granted. If it is considered that the development

should continue subject to the same conditions attached to the previous permission, they should refuse the Section 42 application. If they decide that permission should be granted subject to differing conditions, then consent should be granted accordingly.

2.5 The proposed application relates to an area that has been quarried for sand and gravel for many years. Two justifications are presented in support of the application. The rate of extraction is market led and has resulted in there still being minerals to be worked at Allantonplains. The applicants indicate that an extension of the time period offers them greater flexibility to exploit these materials. They also refer to the possibility of a future site addition, into South Lanarkshire, which would require the extended utilisation of infrastructure in Allantonplains and hence an extension of the existing time period.

2.6 Whilst it is appropriate to address the necessary time frame for working sand and gravel in Allantonplains to ensure that economically viable minerals are not sterilised, the extent to which consideration of this application should have regard to proposals not yet submitted is addressed later in the report.

3. CONSULTATIONS AND ISSUES RAISED

3.1 The Roads and Transportation Division have no objection to these proposals.

Noted.

3.2 Scottish Water has no comment to make on the application other than that any works affecting an existing sewer or water main must be notified to Scottish Water developer services.

Noted. The proposal does not introduce any additional land into the areas being.

3.3 Scottish Environment Protection Agency and Darvel and District Community Council have not replied to their consultations at the time of writing this report.

Noted.

3.4 South Lanarkshire Council raises no objections to the proposal on the basis of it being for the working of additional remaining reserves within an existing quarry, rather than for the development of a new site, and provided there is no overall increase in traffic generation.

The proposal relates to the working of materials from within an existing quarry complex and will not increase the traffic generated by the activity on site.

4. REPRESENTATIONS

4.1 There are no representations or objections in respect of the application.

5. ASSESSMENT AGAINST DEVELOPMENT PLAN

5.1 Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of this application the development plan comprises the Approved Ayrshire Joint Structure Plan and the Adopted East Ayrshire Local Plan (2003).

Ayrshire Joint Structure Plan

5.2 Under Policy E15 proposals to extend the supply of land with planning consent for the winning and working of aggregate minerals shall not conform to the Structure Plan except A] – at existing workings or B] - for special local need in the Rural Diversification Area.

The proposal to continue workings on the existing site would be in accordance with this Structure Plan policy.

East Ayrshire Local Plan

5.3 Policy M2 states that the Council will limit any extension to the existing supply of aggregate minerals to two specific types of location, these being:

- (i) development at existing workings; or
- (ii) other appropriate locations within the Rural Diversification Area, but only where the minerals are required to meet special local needs within that area.

As the development relates to an existing working, the proposal is acceptable in terms of policy M2(i)

5.4 Policy M3 requires all applicants for minerals developments to meet a series of nine stated requirements, as follows:

- (i) to submit detailed planning applications. Outline applications will not be acceptable;

The submitted application is a full detailed application in accord with stated policy.

- (ii) to demonstrate the need for the proposed development;

The applicant has demonstrated the need for the proposed development as being to enable full recovery of the mineral resource. More time is required to extract the minerals that remain within the existing consented site. This being the case, it would be unreasonable to demand restoration of the site while resources still remain within the consented application area. In a letter dated 11 October 2004, the applicant has stated that the time extension applied for exceeds the time period required to extract and restore the current consented reserves at the site. Whilst a degree of flexibility to accommodate market trends would be reasonable, any justification referring to a prospective extension to enable extraction of reserves located within South Lanarkshire would not be. No consent has yet been sought or obtained for this South Lanarkshire extension.

Should the Council agree to give an extension to the existing operations, this can only be justified in so far as the extended time period relates to the already consented development within East Ayrshire. No account should be taken of the proposed extension into South Lanarkshire. This is a matter for South Lanarkshire Council to determine at the appropriate time. Should that Council be of a mind to approve such an application, the applicant can always make a new application to East Ayrshire Council for a further one years extension to the site, if required.

- (iii) to submit formal Environmental Assessments in association with the application;

It is not considered that an Environmental Assessment is required for this particular application, the application pertaining only to an extension of the authorised extraction period and not to any areas that have not already been assessed in terms of their impact when worked.

- (iv) to lodge appropriate Restoration and Aftercare Bonds to a value agreed by the Planning Authority;

As indicated in paragraphs 2.3 and 2.4 above, the application addresses a specific time limiting condition attached to the previous consent. That condition required restoration by 01 November 2005 and in accordance with an approved plan agreed subsequent to a second condition on the consent. There is no Restoration / Aftercare bond in place, this not being required by the current consent. Notwithstanding the above, Tarmac have been approached to agree to such bonds being addressed by a legal agreement under Section 75 of the Town and Country Planning (Scotland) Act 1997. Tarmac has, however, declined to enter into such an agreement on the basis of this application being under Section 42 of the Act and not a fresh proposal for extraction at a new site.

- (v) to upgrade, maintain and repair at their own expense, roads damage shown to have been caused by vehicles serving their developments;

There is a condition on the original consent which addresses the condition of the A71 where accessed from the site.

- (vi) to strictly observe an appropriate separation distance between the operative site and nearby settlements and dwellings;

This aspect is not considered pertinent to the current application which does not alter the site boundary.

- (vii) to submit regular monitoring reports and annual 'Mining Progress Plans' and 'Environmental Audits' to the Council in respect of their proposals;

The proposal is to seek extension of the relevant time limiting condition. Whilst the applicants seek a three year extension of the periods conditioned, it is considered that the justifications available would suggest a lesser period. Consequently the benefits of an annual review process will be limited because of the short timeframe involved. However, in the interests of confirming compliance with conditions and securing appropriate completion of the restoration proposals agreed further to the previous consent, (01/0782/FL), it is considered that the applicants should submit an annual review document. This should detail operations undertaken during the preceding year and a programme for restoration works over the ensuing year. The review document would be considered jointly by the operators and the planning authority with the landowner in attendance if required.

- (viii) to establish Liaison Committees with local representatives, to act as a forum through which relevant operational and associated issues can be discussed and addressed; and

This aspect is not considered pertinent to the current application, there having being no such Committee in place for the life of the site thus far.

- (ix) to service the extraction site, if feasible and appropriate, by rail.

This aspect is not considered pertinent to the current application, there having been no utilisation of rail haulage over the life of the site thus far and the proposal not being in respect of any physical extension to the area being worked.

5.5 Policy M4 states that the Council will assess all applications for new mineral workings, including the extension of mineral working at existing sites, against a set of seven criteria, as follows:

- (i) the impact of the development on the amenity of nearby residents and the residents of properties located along agreed haulage routes to and from the site;

Comprising an extension of mineral working in terms of duration of extraction operations, any approval of the application will extend any adverse impact of the existing operations to nearby residents and the residents of properties located along agreed haulage routes to and from the site, over the extended period of operations. The proposal will not increase, but will sustain, haulage from the site at approximately 80 lorry loads per day. It is considered that the nature of these impacts over the period of a short extension would be acceptable.

- (ii) the impact of the development on the natural and built heritage, historic gardens and designed landscapes, the visual amenity and the landscape character of the area;

It is not considered that the proposed time extension for extraction will impact adversely on the natural and built heritage or the visual amenity and the landscape character of the area over and above the level that these aspects are already affected by the current ongoing operations. There are no Historic Gardens or Designed Landscapes affected by the existing or proposed operations.

- (iii) operational details, restoration proposals and after-use of the development site;

The application will extend the period of operations and delay any restoration of the site accordingly.

- (iv) any cumulative impact of the development either concurrently or successively in association with other similar developments in the vicinity of the site;

There are no other similar developments within the vicinity of the site.

- (v) the extent of directly related community and environmental benefits to be afforded to the area as a result of the development;

The current operations on site are undertaken without involvement of a legal agreement addressing community or environmental benefits. In that the application, under Section 42 of the Act, is to revise the terms of a condition, it is not appropriate to require the securing of benefit by legal means. Community benefit will continue in respect of the employment available on site.

- (vi) methods of transportation of material, volumes of traffic generated and proposed haulage routes; and

The transportation of materials from the application site, volumes of traffic generated etc. over the extended operational period will be commensurate with those already in operation.

- (vii) the impact of the development on existing alternative economic initiatives and employment in the vicinity of the site e.g. tourism facilities, etc

Any impact of the development on existing alternative economic initiatives and employment in the vicinity of the site e.g. tourism facilities will remain as currently consented.

The policy also states that where an application relates to a new aggregate mineral working within the Rural Diversification Area, the proposal will also be assessed against the requirement of the mineral to meet special local needs.

The application does not relate to a site in the Rural Diversification Area.

It is considered that a period of extended working at the site would be consistent with the development plan, although not to the extent proposed by the applicants.

6. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

6.1 The principal material considerations relevant to the determination of the application are SSPI The Planning System; NPPG 4 Land for Mineral Working, PAN 64 Reclamation of Surface Mineral Workings and PAN 50 controlling the Effects of Surface Mineral Workings, the consultations and planning history.

Government Guidance

6.2 This proposal is for a continuation of an existing operation (for 3 years), justified by reference to the need for flexibility in extracting the materials remaining within the site and the possible future extension of the site into South Lanarkshire. Whilst variability in market demand is acknowledged as impacting on extraction rates and meriting a period of extended working, the possibility of there being an application to extend the area of the quarry is not a material consideration at this time. South Lanarkshire would determine such an application and, at the time of writing, none has been lodged with them.

6.3 Government guidance is provided by a number of Planning Advice Notes and National Planning Policy Guidelines. These documents recognise the importance of providing the raw materials that sustain the construction and development industries and thereby underpin the economy of the country. However, very clear guidance is given in respect of the identification of extraction sites and the amelioration of their impacts when in operation. With regard to the current proposal, it:-

- provides for the complete exploitation of an important resource thereby avoiding unnecessary sterilisation of that resource;
- contributes to the required 10 year supply of this resource;
- minimises impact by adhering to previously agreed working operations and extraction rates which have attracted no significant complaints.

Consultations

6.4 The consultation responses are all supportive of the proposal.

Planning History

6.5 Sand and gravel extraction has taken place at Loudounhill since the 1940's. The first record of planning consents in the area were at Allantonplains under consents granted in the 1960s. Subsequently, a large number of historical consents apply to this site. Extraction currently occurs under the detailed terms of planning consents KL/E/FL/94/288A and 99/0581/FL, both of which were given extended life as below.

6.6 Planning consent for extraction of minerals at Allantonplains, (KL/E/FL/94/288A), was granted on 09 May 1995. On 01 February 2002 permission was granted to amend the conditions relating to the period of consent and site restoration, (01/0782/FL). That extended period for working of materials was granted until 01 November 2004. The application now before Committee seeks to extend that timeframe until 31 December 2007 with restoration completed by 31 December 2008.

6.7 Planning consent was granted on 01 September 2000 for a very small site between the A71 and Allantonplains to extract minerals and amend the approved restoration plan, (99/0581/FL). On 01 February 2002 permission was granted to amend the condition relating to the time period of the consent and site restoration, (01/0781/FL). No further extension of operations on that site is being sought by the current application resulting in extraction being authorised until 01 November 2004 and restoration to be concluded by 01 November 2005.

6.8 Members will be aware that a public local inquiry, (PLI), has recently considered the refusal by the Council of a sizeable extension, (Laigh Newton), to the quarry at Loudounhill and also the refusal of two separate "time extension" applications, (02/0524/FL and 02/0525/FL). These sought to extend the period of operations at Allantonplains by a similar amount to the application now before the Committee, that is until 01 November 2007 for extraction and 01 November 2008 for restoration. Tarmac is concerned that the passage of time prior to issue of the findings of the PLI will result in the quarry operating without a valid consent. Hence, they have submitted the current application. Legal advice has confirmed that it is appropriate for the Committee to determine the current application against this background.

6.9 The history of operations at the site is a material consideration in the determination of the application.

7. FINANCIAL AND LEGAL IMPLICATIONS

7.1 There are no financial or legal implications for the Council in the determination of this application.

8. CONCLUSIONS

8.1 As indicated in Section 5 of this report, it is considered that a period of extended working at the site would be consistent with the development plan and given the terms of Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 the application should be approved unless material considerations indicate otherwise. In this instance the consultations are supportive of the application and the proposal would not breach the terms of government guidance. The proposal has the benefit of avoiding sterilisation of an important resource that contributes to the required landbank for sand and gravel.

8.2 The applicants have sought what essentially is a three year time extension for operations on site. This is not considered to be justifiable given circumstances on site and a lesser two-year period would be more appropriate and would enable extraction of all unworked materials.

8.3 Restoration details were agreed by the Council in respect of the previous consent, 01/0782/FL. Given the extended time frame now sought, it would be appropriate to require by condition the submission of details clarifying the timing and phasing of their implementation and the nature of their future maintenance and aftercare. In all other respects it is considered that the grant of a period of extended operations would be acceptable.

9. RECOMMENDATION

9.1 It is recommended that the application be approved subject to the conditions on the attached sheet.

CONTRARY DECISION NOTE

Should the Committee agree that the application be refused contrary to the recommendation of the Head of Planning, Development and Building Standards, the application will not require to be referred to the Development Services Committee because it would not represent a significant departure from policy.

Alan Neish
Head of Planning, Development and Building Standards
(DVM/IMB)

19 October 2004

FV/DVM

LIST OF BACKGROUND PAPERS

1. Application Form/Plans.
2. Statutory Notice/Certificates.
3. Adopted East Ayrshire Local Plan.
4. Approved Ayrshire Joint Structure Plan.
5. Planning Advice Notes and National Planning Policy Guidelines
6. Previous Planning Consents

Anyone wishing to inspect the above papers please contact Dave Morris on 01563 576753.

Implementation Officer: Dave Morris

EAST AYRSHIRE COUNCIL

TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997

04/0681/FL

Site of Proposal:	Loudounhill Quarry Strathaven Road DARVEL
Nature of Proposal:	Proposed Amendment to Condition No. 1 of Planning Consent 01/0782/FL to allow continuation of operations
Name & Address of Applicant:	Tarmac Ltd Millfields Road Ettingshall Wolverhampton WV4 6JP
Name & Address of Agent:	Tarmac Northern Limited Unit 20 Old Edinburgh Road Newhouse ML1 5RY

DPOs Reference: DVM/IMB

The above FULL application should be granted subject to the following conditions:-

1. Permission is hereby granted for a limited period. Notwithstanding the terms of planning consent 01/0782/FL, all extraction workings shall cease by 31 December 2006 and thereafter the site shall be restored by 31 December 2007 in accordance with the site restoration plan agreed further to condition 2 of 01/0782/FL.

REASON To enable the planning authority to retain control over the working and restoration of the site in the interests of visual and residential amenity.

2. Notwithstanding this revision of the authorised extraction and restoration time periods, the operational activities on site shall otherwise be undertaken in accordance with the terms of planning consent KL/E/FL/94/288A.

REASON To ensure that the development is implemented in a manner consistent with the planning consent further to which it is authorised.

3. Within three months of the date of this consent, the applicants shall have submitted to, for approval by, the planning authority full details of their maintenance and aftercare proposals for the restored site. Such details shall thereafter be implemented on site as approved.

REASON To ensure that the site as restored is satisfactorily maintained.

4. The applicants shall facilitate an annual review of the activities on site to consider all the operations that have taken place over the preceding year, to confirm the programme for the ensuing year and to consider the extent of compliance with conditions. Two weeks prior to a review meeting, the applicants shall submit to the planning authority an updated progress plan and a report indicating progress on site and the programme of works for the year ahead. The review meeting shall be attended by the operators, the planning authority and, if required, the landowner and shall be arranged by the operators at a date convenient to all parties.

REASON To assist the planning authority in monitoring the progress of operations on site.

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