

For: PLANNING AND REGULATION COMMITTEE - 19 FEBRUARY 2018

By: DIRECTOR FOR PLANNING AND PLACE

Application to modify or discharge Section 106 Planning Obligations at Finmere Quarry
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Division Affected: Ploughley

Contact Officer: Mary Thompson **Tel:** 07393 001 257

Location: Finmere Quarry, Banbury Road, Finmere,
Oxfordshire, MK18 4AJ

Application No: MW.0110/17 **District Ref:** P18/V0023/CM

Applicant: AT Contracting & Plant Hire Limited

District Council Area: Cherwell

Date Received: 19 December 2017

Consultation Period: 21 December 2017 – 15 January 2018

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- Part 1 – Facts and Background
- Part 2 – Other Viewpoints
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Recommendation

The report recommends that the application (MW.0110/17) be refused but that the committee supports officers entering into separate negotiations with regard to releasing the hinterland provisions from the S106 legal agreements.

• Part 1 – Facts and Background

Location (see plan 1)

1. Finmere Quarry is in the north-east of Oxfordshire adjacent to the boundaries with Northamptonshire and Buckinghamshire. It is accessed off the A421 which runs north of the quarry site. Finmere village lies 450 metres north east of the edge of the site and Bicester lies 7.4 miles (12km) south west.

Site and Setting

2. Finmere Quarry comprises a non-hazardous landfill site and sand and gravel quarry. The application site is the area affected by seven legal agreements linked to planning permissions (Section 106 legal agreements). The application site area is smaller than the wider Finmere Quarry site and lies entirely to the east of a dismantled railway line running through the site. The surrounding area is predominantly agricultural rural countryside and the site is located within the North Ploughley Area of High Landscape Value as designated in the Cherwell Local Plan 1996. There is landfill gas utilisation plant on the southern flank of the landfill generating electricity and a Materials Recycling Facility (MRF) which is located 200 metres south of the landfilled area.
3. Land immediately west of the landfill has permission for sand and gravel working and inert landfill and land to the south east has permission for sand and gravel and clay extraction solely to be used as engineering material for the landfill and filling back with inert material from the existing quarry area.
4. The site as defined by the area of land subject to the relevant Section 106 legal agreements is bounded to the west by a dismantled railway line, part of which is proposed for the High Speed 2 rail project. A bridleway runs along part of the northern site boundary and part of the eastern site boundary. This was diverted in 2008 to avoid the MRF and in 2009 to avoid the quarry and it crosses the haul road. There are further planning permissions in the area to the west of the railway line, but these are not subject to the Section 106 provisions.
5. The nearest properties to the site include Foxley Field Farm Bungalow which lies just within the landfill site boundary on its eastern edge, Widmore Farm which lies approximately 250 metres west of the western site boundary formed by the dismantled railway line, on the site boundary of the wider site and Boundary Farm which lies approximately 250 metres east of the southern site boundary, immediately adjacent to the south east corner of the wider site.

Background and history

6. Permission was originally granted for sand and gravel working and inert waste infilling on appeal in 1993. Permission for commercial and industrial landfill was granted in 1998. In 2005 permission was given to increase the height of the landfill based on advice from the Environment Agency that it was necessary to ensure run off from the landfill. The operator tipped to levels higher than those permitted and an enforcement notice was served and upheld on appeal requiring the removal of over-tipped waste.
7. In accordance with the enforcement notice, an application was made in May 2008 to remove the over-tipped waste to other waste cells within the site. The Environment Agency objected as levels of hydrogen sulphide detected from the landfill were regarded as a risk to the health of people on and off the site. As a result, the application was refused. Permission was given for retaining the over-tipped waste in 2009.
8. Permissions for a MRF and for extraction of sand and gravel and clay and inert filling on adjacent land were granted on appeal in 2007. Permission was granted in 2009 to extend the life of the landfill and the MRF to 2020. Permission 10/00361/CM was granted in May 2010 for a variation to the MRF to include the provision of a ventilation stack.
9. Permission 10/01515/CM was granted in 2010 to extend the duration of the sand and gravel extraction and restoration in the south east of the site. In September 2017, an application (MW.0083/17) was made to further extend the time period for this development. This application was approved on 26 January 2018.
10. Permission 10/01516/CM was granted in 2010 to extend the duration of sand and gravel extraction in land to the west of the railway. This land is not the subject of the Section 106 agreements. The permission allowed until 31st December 2016 for mineral extraction. Other than an initial dig to implement the planning permission in 2013, no mineral extraction has taken place. An application (MW.0142/16) has been submitted to further extend the timescales to complete this development but has not yet been determined.
11. In January 2012 permission 11/00015/CM was granted for the change of use of the MRF to add bio-drying and gasification waste treatment technologies and associated power generation together with an extension to the operational life of the building until 2035.
12. In January 2012 permission 11/00026/CM was also granted for an extension of time for the life of the landfill site until 2035, to account for the slowdown in landfilling rates that would arise as a result of the improvements in the recycling process and gasification. The permission requires the site to be restored by 31 December 2036.

13. In December 2013 permission 13/00973/CM was granted to vary the phasing of landfilling, and to extend the timescale for capping certain cells.
14. A Breach of Condition notice was served in June 2015 requiring compliance with conditions of permission 13/000973/CM regarding securing the completion of capping, soiling and seeding of cells 4, 5 & 8. These works have been completed.
15. In August 2015 permission 15/00245/OCC was granted for the MRF building as constructed along with some changes to the MRF as originally consented. In January 2016 permission (15/02059/OCC) was granted to vary this permission to vary the conditions to allow the storage of Refuse Derived Fuel (RDF) and Solid Recovered Fuel (SRF) outside the storage bay at the consented MRF to amend the operational hours of the MRF and to extend the acoustic barriers.
16. In July 2017 permission 17/01189/CM was granted to vary the conditions on permission 13/00973/CM for the landfill to extend the permitted time for restoration of certain cells and allow deposit of waste in the haul road. The end date for landfilling of waste is January 2028, in accordance with a condition attached to this consent which required the end date to be calculated on the basis of the remaining landfill void. This permission allows a further 4 years for restoration; therefore, the end date for restoration is January 2032.
17. In November 2017 permission 17/01719/CM was issued for a replacement site reception compound and related facilities at the landfill site.
18. The MRF has been damaged by fire and is not currently operational. The landfill is currently operational.
19. In December 2017, the new owner sought a Scoping Opinion for a proposal to extend the area approved for sand, gravel and clay extraction, extend the area to be restored through landfill with non-hazardous waste, use the mineral processing plant for the recovery of secondary aggregate and extend the operation of the MRF until landfilling is complete. It is anticipated that an application will be made for these developments in the future.
20. Permissions at the wider quarry and landfill site are subject to Section 106 legal agreements which include, amongst other things, a restricted hinterland for the importation of waste. The effect of the legal agreements is that no more than 25% of the waste received can be imported from outside the defined hinterland. The agreements also require a restoration bond to be held by Oxfordshire County Council and used for restoration should the owner be unable to meet their restoration obligations.
21. There is a total of seven agreements relating to the site containing provisions in relation to the waste catchment area and restoration bond. These are dated:

- 4 May 1993
- 18 March 1994
- 11 November 1997
- 4 May 2005
- 11 July 2005
- 1 May 2009
- 5 January 2012

There is a further agreement related to permission no. 15/00245/OCC dated 24 August 2015 but as it is less than five years since this was entered into, modifications to it cannot be sought under this section 106A application.

Details of the Application

22. This is an application made under Section 106A of the Town and Country Planning Act 1990 (as amended). This allows a person against whom a planning obligation is enforceable to apply to modify or discharge the obligations in a Section 106 agreement.
23. As the new owner of Finmere Quarry, the existing Section 106 agreements are enforceable against AT Contracting & Plant Hire Limited and they have applied to modify certain provisions of those agreements.
24. In this case, there are a total of seven Section 106 planning obligations which would need to be amended to achieve the changes sought by the applicant. The amendments could be secured by Oxfordshire County Council entering a deed of variation with the applicant.
25. The applicant is seeking to remove the obligation relating to the catchment area from which waste can be imported to the site. This would mean that there would be no restriction on the geographical source of waste. The current catchment area covers an oval shaped area including Northampton, Milton Keynes, Banbury, Oxford, High Wycombe and Luton. It does not include the whole of Oxfordshire.
26. The application is also seeking to remove the provisions relating to the restoration bond for the site. This comprises a sum of money which has been collected from the site operators over the years in order to fund the restoration of the site should the operator not be able to fund this when restoration is due to take place.

- Part 3 - Relevant Planning Documents

Relevant Development Plan and other policies (see Policy Annex attached)

27. This is not a planning application for new development and therefore does not need to be assessed against development plan policy in the same way as a planning application would. The test for this application is whether the relevant provisions continue to serve a useful purpose. However, a consideration of relevant planning policy can be helpful in making that assessment.
28. The Development Plan for this area comprises:
Oxfordshire Minerals and Waste Core Strategy 2031 (OMWCS)
Oxfordshire Minerals and Waste Local Plan (saved policies) (OMWLP).
Cherwell Local Plan 1996 (saved policies) (CLP 1996)
Cherwell Local Plan 2011-2031 Part 1 (CLP 2031)
29. Other documents that need to be considered in determining this development include:
- National Planning Policy Framework (NPPF);
 - Planning Practice Guidance (PPG)
 - National Policy for Waste (NPPW);
30. Cherwell District Council are preparing a Part 2 to the Adopted Cherwell Local Plan 2011-2031 which will contain non-strategic site allocations and development management policies. An issues consultation was held in early 2016. This plan is at an early stage and there are not yet draft policies to consider.

Relevant Policies

31. The relevant policies are:

Oxfordshire Minerals and Waste Core Strategy (OMWCS)
M10 – Restoration of mineral workings
W6 – Landfill
C5 – Local environment, amenity and economy

Oxfordshire Minerals and Waste Local Plan (OMWLP) 1996
There are no relevant saved policies.

Cherwell Local Plan 2011-2031 (CLP 2031)
There are no relevant policies.

The Cherwell Local Plan saved policies (CLP 1996)
There are no relevant saved policies.

32. Other material considerations:

National Planning Policy Framework (NPPF)
National Planning Policy for Waste (NPPW)
Planning Practice Guidance (PPG) – paragraphs 047, 048 and 049.

• **Part 2 – Other Viewpoints**

Representations

33. Two third party representations have been received. The first is an objection that expresses concern about the return of monies from the restoration bond and states that the NPPF applies from the date it was published and not retrospectively. It states that the bond does continue to serve a useful purpose as it ensures that the site can be appropriately restored in the event that the operator is unable to meet their obligations. The second letter is also an objection expressing concerns that the owner could leave the site unrestored and restoration costs would be with Oxfordshire County Council and Cherwell District Council. It also expresses concern about the history of the site.

Consultation Responses

34. Finmere Parish Council – Accept the guidelines that regard restoration as more suitably addressed by planning conditions. However, see the S106 as a legally binding obligation on the applicant that, should it be breached, can be promptly countered with legal action. This, provides a significant incentive for the obligation not to be breached, since there is obvious and immediate redress. We see a planning condition as an agreement between the two parties which both are expected to honour. The wider community has an expectation that it will be honoured. Sometimes that community is disappointed if a breach occurs. That disappointment can be further compounded if the offending party exploits the options available to offset the breach. For instance, in some cases, a new permission is sought which, if granted, now legitimises the breach. Irrespective of that, the time taken by the process to remedy a breach is protracted and the wider community feel that the offending party has gained an unfair advantage. There is no such latitude in the S106 and the wider community feel more assured that, should a breach occur, action will be taken to correct it. Our history with the site has not given us any confidence that operators can be compelled to promptly remedy breaches of conditions, and that a more rigorous means of regulation, such as the legally binding S106, is the only way to ensure conformity. Accordingly, we would resist any attempt to modify the obligations attached to the operators of the site.
35. County Councillor Ian Corkin – The community are rightly sensitive to the financial sustainability of the site, especially as the last owners went into administration. Under the circumstances, it is essential that the bond remains in place to protect the public in future.
36. Cherwell District Council Planning – No objections.

37. OCC Ecology Officer – No comments.

• **Part 4 – Analysis and Conclusions**

Comments of the Director for Planning and Place

Background

38. This is not a planning application for new development and therefore the relevant considerations are different. The test on a Section 106A application is whether the relevant provisions continue to serve a useful purpose. This is not necessarily the same as being fully compliant with current development plan policy.

Waste Catchment Area

39. The waste catchment area was first introduced through the legal agreement dated 11 November 1997. This provision ensures that the development is carried out in a sustainable manner by preventing waste being transported to the site over long distances.

40. The applicant has argued that planning policy does not support the restriction on the geographical source of waste. They point to government guidance, including NPPW paragraph 4, which states that planning authorities should recognise that new facilities will need to serve catchment areas large enough to secure the economic viability of the plant. The applicant also references appeal cases where local authorities have been unsuccessful in attempting to impose catchment areas on waste plants, including the Ardley Energy Recovery Facility (ERF) in Oxfordshire.

41. The OMWCS, adopted in September 2017, does not provide any specific support for imposing catchment areas on waste plants. The supporting text (paragraph 5.13) acknowledges that Oxfordshire receives substantial quantities of waste from other areas and this is anticipated to continue for as long as the landfills in Oxfordshire operate. Policy W6 states that provision will be made for the disposal of waste from other areas (including London and Berkshire) at existing non-hazardous landfill facilities.

42. The existing planning obligations do not seek to limit imported waste to only that arising without the county of Oxfordshire. The existing waste catchment plan allows waste to be imported from a number of different local authority areas, including Buckinghamshire, Bedfordshire, and Northamptonshire in addition to parts of Oxfordshire. In addition, under the existing terms of the agreements up to 25% of the waste imported can be sourced from anywhere outside the defined catchment area. Therefore, OMWCS policy stating that provision will be made for the deposit of waste from outside Oxfordshire does not lend any specific support for the proposal to end the waste catchment provisions at Finmere, as these already provided for waste from outside the County.

43. The unsuccessful attempt to impose a hinterland on the Ardley ERF is not considered directly comparable to the hinterland agreement for Finmere. At Ardley it was proposed to impose a condition requiring waste processed at the plant to be from within Oxfordshire and stating that waste from adjoining counties could also be imported only if there was residual capacity. The inspector noted that the site was in the north of Oxfordshire and close to the M40 and it would be more sustainable and consistent with the proximity principle to accept waste from close to the Oxfordshire boundary, albeit outside the county, if the facility would be the one which was the nearest. In the case of Finmere, the existing hinterland does not limit the source of waste to administrative boundaries, but to a radius around the site. However, it is acknowledged that it is unusual for inspectors to support hinterland provisions on facilities taking commercial and industrial waste.
44. The Parish Council have not provided any comment in relation to the hinterland provisions.
45. It must be considered whether the hinterland restrictions serve a useful planning purpose. It is understood that the original purpose of the hinterland provisions was to ensure that waste was managed at one of the nearest suitable locations and waste did not travel large distances as this would not be a sustainable approach. It is considered that the costs of transporting waste to the landfill and MRF would act to prevent waste from travelling large distances for disposal and recovery. In addition, it is considered that, given the history of this site, it would be of benefit to the local community for the site to be filled and restored as soon as possible. Restrictions on the areas from which waste can be imported from would potentially delay the completion of infilling and restoration, particularly should suitable waste material be scarce.
46. Overall, and in the context of the Parish Council having no comments to make on this provision, it is considered that the hinterland restrictions are no longer required to achieve sustainable transportation at this site.

Restoration Bond

47. Currently £245,664.82 is held by Oxfordshire County Council as a restoration bond. There are no payments left outstanding. The agreements make provision for the bond to be reduced upon application to the Council, as the developer discharges their liabilities. Under the 2005 agreement money is to be returned if the fund exceeds the estimated cost of the restoration works, as calculated by Oxfordshire County Council. The 2005 agreement also includes a provision that no further monthly payments are due once the fund reaches £250,000.

48. NPPG paragraph 047¹ states that mineral planning authorities should address any concerns about the funding of site restoration principally through appropriately worded planning conditions.
49. NPPG paragraph 048² states that a financial guarantee to cover restoration and aftercare costs at mineral workings will normally only be justified in exceptional cases. It provides the following examples of exceptional cases:
- very long-term new projects where progressive reclamation is not practicable, such as an extremely large limestone quarry;
 - where a novel approach or technique is to be used,
 - where there is reliable evidence of the likelihood of either financial or technical failure
- It goes on to state that where an operator is contributing to an established mutual funding scheme it should not be necessary for a minerals planning authority to seek a guarantee against possible financial failure, even in exceptional circumstances.
50. NPPG paragraph 049³ states that mineral planning authorities should seek to meet any justifiable and reasonable concerns about financial liabilities relating to the restoration of the site through agreeing a planning obligation or voluntary agreement at the time a planning permission is given. This is what was done in this case.
51. The applicant has not suggested that they are a contributing member of an established mutual funding scheme. Therefore, under current policy guidance a restoration bond could be sought as a financial guarantee against financial failure, although normally only if this was considered to be an exceptional case. However, the application does not need to be assessed against current policy and guidance; the relevant consideration is whether the provision continues to serve a useful purpose.
52. The Parish Council have provided comments on the restoration bond. They would prefer to see restoration secured through the Section 106 legal agreements, rather than conditions because they perceive legal agreements as being more enforceable. In general, there are methods for enforcing planning conditions. However, in the case of large scale restoration of a mineral working there can be concerns that financial problems might leave an operator unable to comply with conditions due to the expense involved. The expense of final restoration would often come after the site has finished being economically productive. The advantage of a Section 106 agreement in this case is that it allows the funds for the restoration to be collected whilst the site is making money and held securely to be used in restoration. This would not be possible through planning condition.

¹ Reference ID: 27-047-20140306

² Reference ID: 27-048-20140306

³ Reference ID: 27-049-20140306

53. The site has a complicated history including a number of past operators experiencing financial difficulties. This has led to past breaches of planning control, for example the landfill was overtipped prior to 2005 because the operator could not keep up with the necessary new cell construction due to financial problems and overtipped existing cells instead. A change of ownership occurred in 2005 but further over tipping followed. In 2007 there were three planning appeals related to mineral extraction, landfilling and the development of a MRF at the site. The operator at the time argued that the company would fail financially and be unable to meet obligations on the site, unless the appeal was allowed and permission granted.
54. Oxfordshire County Council's Scrutiny Committee reviewed enforcement action taken at Finmere Quarry in December 2008, following the over-tipping at the landfill and the limitations in securing revised contours due to Health and Safety concerns regarding gas emissions. One of the recommendations of the Scrutiny Committee was that the County Council should pursue the use of bonds in the development of future planning policy. The recently adopted OMWCS does not mention the use of bonds, which would not be compliant with National Policy Guidance for new applications. However, the recommendation does suggest that the Scrutiny Committee considered the bond at Finmere Quarry to be appropriate and useful in the context of that site.
55. There has been a history of financial failure of previous operators. The company which had operated the site since 2005 became insolvent in 2013 and another company took over. However, the Material Recovery Facility (MRF) at the site was seriously damaged by fire in February 2016, and the new operator went into administration. The current operators have owned the site for less than a year, since April 2017, and whilst operations to date appear to be progressing generally satisfactorily in accordance with the requirements of the planning permissions, it is considered that it is still too early to be assured that the required restoration of the site in the longer term will be achieved without the council and the local community having the comfort of being able to call on the restoration bond if necessary.
56. The current date for final restoration for the landfill site is January 2032, therefore it is still a number of years before restoration will be complete and it is unknown what might happen in that time. It is considered that the restoration bond still has a useful planning purpose as it provides a guarantee that the site can be restored at the end of the temporary minerals and waste activities, regardless of future changes in ownership or adverse market conditions.
57. OMWCS policy M10 states that mineral workings shall be restored to a high standard and in a timely and phased manner. OMWCS policy C5 states that proposals for minerals development shall demonstrate that they will not have an unacceptable adverse impact on the local environment, human health and safety and residential amenity. If this site was left unrestored or only partially restored there could be an adverse impact on the environment, health and safety and amenity. It must be considered

whether the bond is still necessary to achieve a high standard of restoration that does not risk an adverse impact on the environment, amenity or health and safety.

58. This is a relatively large site, with a relatively long time still to run until restoration is due with a history of financial problems and changes of ownership. It is considered that it would be short-sighted to return funds intended to ensure that restoration takes place to the current owner and operator who has owned the site for only a short time and has not yet proved that they can operate the site as an operational and financial success. Alternative methods of securing restoration do not offer the same level of security as the bond. The applicant has stated that conditions could be used, however it could be very difficult to enforce restoration conditions requiring a considerable expense in certain circumstances, for example should the current or any future owner go into administration without having restored the site at a point when the commercial opportunities of the site have been exhausted.
59. The approved afteruse is to agriculture and woodland, which is not a high value land use. Therefore, there would be limited opportunities for Oxfordshire County Council to recoup funds spent on completing restoration, should the current or any future operator abandon the site without completing the restoration.
60. It is considered that the restoration bond continues to serve a useful purpose, to ensure that the site is restored to a high standard and in a timely and phased manner, in accordance with OMWCS policies M10 and C5, given the context of the financial history of past operators at this site. Therefore, it is not recommended that a deed of variation is entered into to release the applicant from these obligations.

Conclusions

61. The restoration bond continues to serve a useful purpose, to ensure that the site is restored to a high standard and in a timely and phased manner in accordance with OMWCS policies C5 and M10. However, the waste catchment area restrictions are no longer required to achieve sustainable transportation at this site. The provisions of section 106A do not allow for an application of this nature to be partially approved and partially refused therefore if members are minded that the restoration bond provisions should be retained then the application must be refused. However, S106 legal agreements can in any instance be modified if all parties are minded to do so and so if the committee is minded to support the removal of the hinterland provision then this can still be negotiated separately with the applicant and any other parties to the legal agreements.

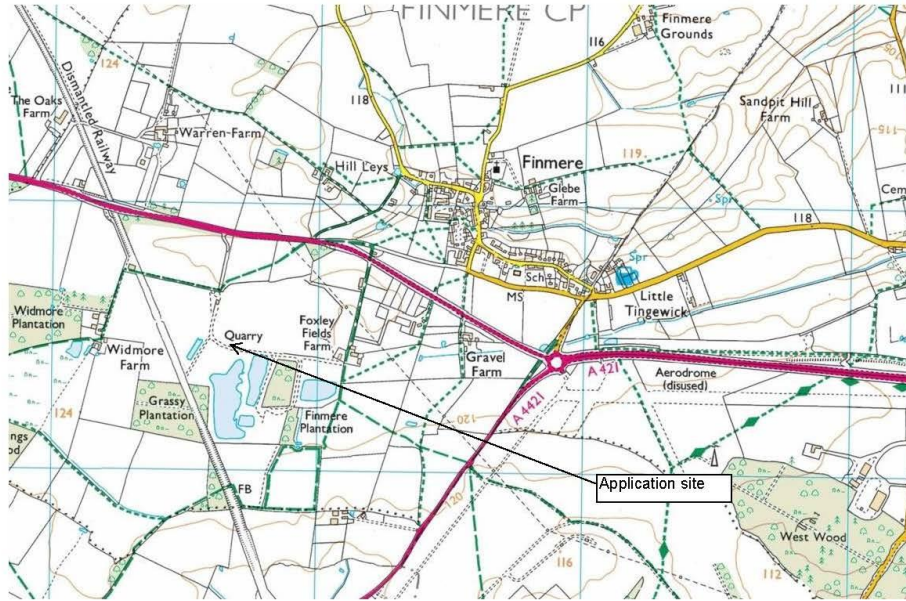
RECOMMENDATION

62. **It is RECOMMENDED that:**

1. **Oxfordshire County Council do not enter into a deed of variation to amend the existing Section106 legal agreements with regards to the bond provisions, as applied for in application MW.0110/17 and that the S106 legal agreements continue to have effect without modification.**
2. **The committee supports the removal of the hinterland provision from the S106 legal agreements and authorises the Director for Planning and Place to enter into negotiations with the applicant and any other parties to the legal agreements with regard to entering into a deed of variation to remove this requirement.**

SUSAN HALLIWELL
Director for Planning and Place

February 2018



Plan 1
MW.0110/17 Finmere Quarry

PN6



Plan 2