County Matter: Waste Disposal
North Devon District: Application to vary planning permission NI 3234 in respect of Condition 1 (Approved Plans), and Condition 4 (Restriction of Working/Tipping Areas) granted under permission 02/27/26995/99 at Claypit Coverts, Fremington, Barnstaple
Applicant: Linden Homes
Application No: 54993
Date Application received by County Council: 21 November 2012

Report of the Head of Planning, Transportation and Environment

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation: It is recommended that:

(a) planning permission be granted subject to the conditions set out in Appendix III of this Report;
(b) the Applicant enter into a Section 106 agreement which precludes the extraction of clay from the relevant part of the existing planning permission area; and
(c) the District Council be advised of this reduction to the potential area to be worked from the underlying Planning Permission area, and therefore that the County Council, in its role as Mineral Planning Authority, no longer wishes to object to the potential sterilisation of clay deposits. However, the District Council is also advised that if it is minded to grant planning permission, then in its consideration of the subsequent detailed design, regard should be had to the possibility of mineral working recommencing in the remaining area at some time in the future.

1. Summary

1.1 This Report relates to an application that seeks to vary the original planning permission in respect of Condition 1 (Approved Plans) and Condition 4 (Restriction of Working/Tipping Areas), the scheme of conditions granted under the Review of Old Mineral Permissions (ROMPs), so as to exclude part of the permitted mineral working area from the land which is the subject of an outline application to North Devon District Council for residential development.

2. The Proposal/Background

2.1 The Authority was consulted as Mineral Planning Authority, in April 2012 by North Devon District Council on an outline planning application for 350 dwellings, a primary school, associated open space and infrastructure at land to the east of Tews Lane, Roundswell, Fremington. This proposal included part of the mineral working known as Claypit Coverts which was used for the extraction of pottery clay by the former Brannams Pottery, but has not been worked for several years.

2.2 An initial letter of objection was sent to the District Council in May 2012 (Appendix II) concerning the proposed non-mineral development on a mineral site and in the Mineral Consultation Area which might sterilise a clay deposit with planning
permission and inhibit future working of the mineral, contrary to the policies of the adopted Devon County Minerals Local Plan.

2.3 Planning permission for the extraction of clay was first granted in 1951 (NI.1146), and then in 1958 (NI.3234) for the extension of the site. An application relating to a revised scheme of conditions under the Review of Old Mineral Permissions (ROMP) was submitted and approved in 1999.

2.4 If no further application is made in respect of an updated scheme of conditions under the provisions of the Environment Act 1995 by the first review date (7 June 2014), each mineral permission relating to the site and identified in the original notice will cease to have effect, except in so far as it imposes a restoration and aftercare condition.

2.5 This application seeks to vary the approved plans so as to exclude the permitted mineral working area from the land the subject of application to North Devon District Council for outline residential development.

2.6 However, if there was a future demand for the clay, the proposed amendment to the working plans would still allow for the retention of part of the permitted site immediately adjacent to the last clay face that was worked. This would allow the potential for production within the existing annual output limit of 20 tonnes per year for over 50 years.

3. **Consultations**

3.1 North Devon District Council: comments that it is currently determining an outline planning application for up to 350 dwellings and school on land to the west of Tews Lane. This application site includes part of the land that benefits from an extant planning permission for minerals extraction, and is also to a significant degree within the associated ‘Buffer Zone’ identified within the Minerals Local Plan.

The District Council would therefore wish the Mineral Planning Authority to be confident that the proposed variations of conditions would not result in the loss of an important mineral reserve, and that the winning of any minerals would not adversely impact on the amenities of the proposed dwellings.

3.2 Fremington Parish Council: recommends refusal in that it considers that the removal of the existing conditions would:

1. constrain future mineral development;
2. safeguard mineral deposits which are, or may become, of economic importance from unnecessary sterilisation by surface development; and,
3. give rise to possible adverse impact on the adjoining Site of Special Scientific Interest (SSSI).

3.3 Natural England: comments that, given the nature of this proposal, it is satisfied that there is not likely to be an adverse effect on this Claypit Site of Special Scientific Interest (SSSI) as a result of the proposed variations to Conditions 1 and 4 as submitted. It therefore advises this Authority that this SSSI does not represent a constraint in determining this application.

It further understands that there are no plans to work the clay adjacent to the County Wildlife Site (CWS). However, if and when the area is worked, it would support a
programme of scientific investigation or access by relevant geological specialists to record and sample sections within the worked area.

4. Advertisement/Representations

4.1 The application was advertised by means of notices on site and a notice in the press and no representations from members of the public have been received.

4.2 The Local Member, Councillor Cann, has indicated that he wishes the application to be referred to the Development Management Committee, for similar reasons cited by Fremington Parish Council.

5. Planning Policy Considerations

5.1 In considering this application, the County Council, as Mineral Planning Authority, is required to have regard to the provisions of the Development Plan. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that where regard is to be had to the Development Plan, the determination shall be in accordance with the Development Plan unless material considerations, which can include emerging policies, indicate otherwise. In this case, the relevant Development Plan policies are summarised in Appendix I to this Report and are discussed in Section 6 below.

6. Comments/Issues

6.1 The issues relating to this proposal are discussed below:

   Removal of conditions would constrain future mineral development

6.2 No working has taken place at Claypit Coverts in recent years. It is doubtful that the remaining permitted mineral resource is of current or potential economic importance as the specific business that utilised the clay no longer exists.

6.3 However, if there was a future demand for the clay, the proposed amendment to the working plans would still allow for the retention of part of the permitted site immediate adjacent to the last working face to be worked. This would allow the potential for production within the existing annual output limit of 20 tonnes per year for over 50 years. In the event of ROMP schemes being submitted in the future then the approved life of the site is until 22 February 2042. However, if no application is made in respect of a scheme of conditions under the provisions of the Environment Act 1995 before the first review date (7 June 2014), the mineral permissions relating to the site will cease to have effect, except in so far as it imposes a restoration and aftercare condition.

   The conditions safeguard mineral deposits which are, or may become, of economic importance from unnecessary sterilisation by surface development

6.4 Policy MP13 of the Minerals Local Plan generally presumes against development in Mineral Consultation Areas, and Policy MP14 identifies Claypit Coverts as such an area. However, Policy MP13 is qualified by reference to “the sterilisation of mineral deposits which are or may become, of economic importance”. As indicated above, the constraints in terms of tonnage restrictions, the closure of the pottery using this material, and the timescale of the existing permission would indicate that the deposit should not be considered of being of current economic importance.
Possible adverse impact on the adjoining Site of Special Scientific Interest (SSSI) of the removal of the existing conditions

6.5 This application is in close proximity to the SSSI which was designated for its geological interest. The working faces show Glacial Till deposited in the Quaternary period up to 2 million years ago when the local environment was dominated by ice age conditions and a glacial lake was formed in the wider area. However, given the nature of this proposal, Natural England is satisfied that there is not likely to be an adverse effect on this site as a result of the proposed variations to Conditions 1 and 4 as submitted.

6.6 It has requested that if the present working face is re-exposed and further extraction takes place, that it would support a programme of scientific investigation or access by relevant geological specialists to record and sample sections within the worked area. Winning of any minerals would not adversely impact on the amenities of the proposed dwellings

6.7 The District Council has expressed concern that the winning of minerals may have an adverse impact on any future residential development which may occur in close proximity to any future mineral working.

6.8 The method of extraction which was formerly used at the site was by method of a backactor excavator and a tipping lorry, working only over short periods of time. Furthermore, conditions imposed on the 1999 ROMP submission would further limit the adverse environmental impacts of mineral working in that there is a restriction on the amount of material extracted to 20 tonnes per annum, and such working can only take place between 0700-1800 hours on Mondays to Fridays (with no working on Saturdays, Sundays or Public Holidays). In addition, an environmental protection scheme requires, inter alia, the suppression of dust and sets standard noise limits.

6.9 The extracted clay was then deposited on the curing platform for six months to a year allowing it to weather in order to improve its elasticity before use in the pottery. At present the bottom of the existing working face is approximately 6m below the existing ground level. Due to the geology of the deposit this can be worked to a maximum of 14m below the existing ground level.

6.10 Furthermore, in the event of mineral extraction recommencing at the site, then the operator would need to ensure sufficient stand-off in order to prevent slippage, and any development adjoining the site should take this into account in relation to ground stability.

6.11 It is for the District Council to consider when it comes to a decision on the outline application before it if the location of the mineral site and any working within it would have an adverse effect on the amenity of any adjoining residential development, having taken advice from its Environment Health Officer. It maybe the case that the location of any public open space associated with a housing development could form part of a buffer zone between the two potentially conflicting land-uses.

7. Reasons for Recommendation/Alternative Options Considered

7.1 The Committee has the option of approving, refusing or deferring this planning application. It is recommended that planning permission to amend the relevant
Conditions (attached to Decision Notice NI 3234) to reduce the mineral working area be approved.

7.2 It is further recommended that the District Council be advised of this reduction to the potential area to be worked from the underlying Planning Permission area, and therefore that the County Council, in its role as Mineral Planning Authority, no longer wishes to object to the potential sterilisation of clay deposits. However, the District Council is also advised that if it is minded to grant planning permission, then in its consideration of the subsequent detailed design, regard should be had to the possibility of mineral working recommencing in the remaining area at some time in the future.

Dave Black
Head of Planning, Transportation and Environment

Electoral Division: Fremington Rural

Local Government Act 1972

List of Background Papers

Contact for enquiries: Andy Bowman
Tel No: 01392 382967
Room No: ABG Lucombe House

<table>
<thead>
<tr>
<th>Background Paper</th>
<th>Date</th>
<th>File Ref</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning Permission</td>
<td>1951</td>
<td>NI1146</td>
</tr>
<tr>
<td>Planning Permission</td>
<td>1958</td>
<td>NI3234</td>
</tr>
<tr>
<td>ROMP Scheme of Conditions</td>
<td>7/6/1999</td>
<td>02/27/26995/99</td>
</tr>
<tr>
<td>Strategic Consultation</td>
<td>July 2011</td>
<td>SCR/9203/2012</td>
</tr>
<tr>
<td>Current Application</td>
<td>26/11/2011</td>
<td>DCC/3466/2012 [54993]</td>
</tr>
</tbody>
</table>

ab040113dma
sc/cr/claypit coverts Fremington Barnstaple
05 hq 150113
Planning Policy Considerations

Devon County Minerals Local Plan (Adopted June 2004): Policies MP03 (SSSIs and NNRs); MP10 (Maintenance of the County's Nature Conservation Resource); MP13 (Development in Mineral Consultation Areas); MP14 (Mineral Consultation Areas); and MP16 (Non-mineral Development in Buffer Zones).
Consultation with Strategic Planning Authority: Outline application for residential development comprising 350 dwellings, a primary school and associated public open space and infrastructure at Land west of Tews Lane, Roundswell. Barnstaple

Development Plan

The applicant’s Design & Access Statement and Planning Statement are both flawed in their definition of the ‘Development Plan’ as they do not include the saved policies of the Minerals and Waste Local Plans, and do not refer to all relevant elements of the Devon Structure Plan or NPPF (National Planning Policy Framework).

Policy MP14 of the Devon County Minerals Local Plan defines a Mineral Consultation Area for Claypit Coverts which covers the whole of the site other than the north-westernmost field. Within this MCA, Policy MP16 defines Buffer Zones that cover much of the site other than the southern portion. Policy MP13 presumes against non-mineral development that would sterilise mineral resources of existing or potential economic importance, and Policy MP16 opposes non-mineral development that would constrain existing or future mineral development.

While Structure Plan policies are reviewed, no mention is made of Policy MN1 (Safeguarding Mineral Resources). Reference is also made to the NPPF as a material consideration, but the applicant overlooks paragraph 144 that states "When determining planning applications, local planning authorities should...not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes".

Safeguarding the Mineral Resource

While the application site appears to exclude the area most recently worked for clay, together with the storage/loading area and site access, it does include the remainder of the area with planning permission for mineral extraction to the north of the area most recently worked, which is identified on the illustrative masterplan for housing development. Other parts of the Buffer Zone to the north of the planning permission, which are likely to be underlain by further resources of clay, are proposed for housing, school and open space.

Claypit Coverts is the only recent source of pottery clay in Devon, and the only one with planning permission. When operational, it has supplied the local North Devon pottery industry and the availability of clays from the site should be maintained for future use. While there is likely to be scope for some development within the Mineral Consultation Area, the land with the extant planning permission should be avoided, together with a suitable buffer to maintain longer term supply and avoid future housing constraining mineral operations. It would be appropriate for public open space associated with a housing development to form part of this buffer.

Based on the site boundary and illustrative masterplan included with the planning application, it is recommended that permission be refused due to the sterilisation of mineral resources of local importance and failure to have proper regard to the provisions of the Development Plan.
Scheme of Conditions

1. The development hereby permitted shall be carried out in strict accordance with the approved plans referenced BRAN 1 - 4 other than the area crosshatched in green on drawing number 20620/13O/001 be excluded from the permitted working area as shown on plan reference BARN 3 as previously approved in permission NI.3234 and 02/27/26995/99.

2. All other conditions relation to this development contained in planning permission 02/27/26995/99 are still in force.