

**County Matter: Minerals**

**Teignbridge District: An application under Section 73a of Town and Country Planning Act 1990 for the continued temporary use of offices, workshop and storage detailed in planning permission 15/01695/DCC until 31<sup>st</sup> July 2018 at Whitecleave Quarry, Plymouth Road, Buckfastleigh, Devon TQ11 0DQ**

**Applicant: Sam Gilpin Demolition Ltd**

**Application No: 17/02879/DCC**

**Date application received by Devon County Council: 27 November 2017**

Report of the Chief Planner

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

**Recommendation: It is recommended that temporary planning permission be granted subject to conditions attached at Appendix I of this report (with any subsequent minor changes to the conditions being agreed in consultation with the Chair and Local Member).**

**1. Summary**

- 1.1 This report relates to a planning application for the continued use of land within Whitecleave Quarry, Buckfastleigh, for the storage of plant, vehicles and machinery; the use of the quarry office building; and the use of the quarry workshop for the maintenance of vehicles and machinery, all for activities associated with the company's demolition business.
- 1.2 It is considered the main material planning considerations in the determination of this application are planning policy issues; impact on nature conservation interests; impacts on the amenity of nearby residents; and landscape and visual impacts.
- 1.3 The planning application, representations received and consultation responses are available to view on the County Council website under reference DCC/4032/2017 or by clicking on the following link:  
<https://planning.devon.gov.uk/PlanDisp.aspx?AppNo=DCC/4032/2017>.

**2. The Proposal/Background**

- 2.1 Whitecleave Quarry has a site area of approximately 9ha and lies to the immediate south east of an elevated section of the A38, to the south east of Buckfastleigh. The site is accessed beneath the A38 from a junction between Strode Road and Plymouth Road, with the access being shared with an adjoining site used by a coach hire company. Plymouth Road and Strode Road form the boundary of Dartmoor National Park. The nearest residential dwellings are located on the northern side of Strode Road, and the western side of Plymouth Road, at a distance of approximately 40m from the site entrance.
- 2.2 The quarry works a dolerite intrusion and has the benefit of a number of planning permissions granted between 1950 and 1984. The conditions attached to the

planning permission were reviewed (as required by the Environment Act 1995) and new conditions were imposed on the quarry permission in 2002 (98/3304/32/9DCC). The minerals permission has an end date of 2042. In addition to this mineral use, the site has been used for the applicant's demolition business since 2014.

- 2.3 At the Development Management Committee meeting on 15 July 2014, Members considered report PTE/14/52 and resolved to grant conditional temporary planning permission for the use of land within Whitecleave Quarry for the storage of plant, vehicles and machinery, the additional use of the quarry office building and the quarry workshop for use in association with the Company's demolition business [minute \*63 refers].
- 2.4 Following the grant of this permission, the applicant sought to vary Condition 10 relating to the heights and location of equipment in the permitted storage areas as they considered this condition contradicted the approved Ecological Mitigation and Monitoring Plan. The application [report PTE/16/25] was considered by the Development Management Committee on 27 April 2016, when Members resolved to approve this application [minute \*5 refers].
- 2.5 The use of the quarry as permitted by the above permissions expired on 8 June 2017. This date reflected when the application for the first 15-year periodic review of the mineral planning conditions was due. This was to safeguard the requirements for restoration of the quarry. However, the first periodic review has since been delayed due to an administrative error by the Council; notice for the review was not given correctly. This error was rectified in July 2017, with a new notice being served giving a date for the first periodic review of 31 July 2018.
- 2.6 Prior to the expiration of the previous permissions (8 June 2017), the applicant was granted planning permission [17/00650/DCC] to relocate its demolition business from Whitecleave Quarry to John Acres Lane near Kingsteignton. Outstanding legal matters have delayed this relocation, but it is believed these have now been resolved.
- 2.7 This application seeks to continue the use of the storage areas, workshop and offices associated with the company's demolition business, within Whitecleave Quarry, until 31 July 2018. This date aligns with the first periodic review date and allows time for the company to vacate the site. While the planning application seeks to extend the time of the activities on site, it does not propose to alter any aspects of the activities already taking place, which include:
  - the use of five areas within the quarry to store the company's demolition business equipment, including containers, plant, equipment and machinery, trailers stability platforms and beams;
  - use of the existing office building (erected under quarry permitted development rights) in connection with the company's demolition business; and
  - use of the existing workshop to repair plant, equipment and machinery associated with the company's demolition business.
- 2.8 The applicant suggests that the expired planning conditions are adequate and, therefore, proposes the continuation of the previous planning conditions. The expired conditions include a restriction of working hours; no additional lighting; maintenance of landscaping proposals; ecological mitigation, management and monitoring; detailed restrictions on the height and locations of plant, equipment and machinery; the painting of containers and other plant at certain heights; and restricting the area in which maintenance of plant and machinery can take place.

### **3. Consultation Responses**

- 3.1 Teignbridge District Council (Planning) – No objections.
- 3.2 Teignbridge District Council (Environmental Health) – No objection subject to the existing conditions on planning permission 15/01695/DCC being applied and enforced.
- 3.3 Buckfastleigh Town Council – Objects to the application for the following reasons:
- the operator is on site beyond its legal permission and has failed to apply for an extension to its permission in reasonable time;
  - Government guidance indicates that it is rarely justifiable to grant a second temporary permission, and the operator has had ample time to relocate;
  - the operator has failed to comply with an existing planning condition to paint the storage containers green;
  - there is no local liaison committee, despite requests from the local community;
  - there is a great concern regarding unauthorised operations on the site, noise and damage to the internationally important ecological areas within the site.
  - there is no condition to protect the amenity of the town in the lapsed temporary permission;
  - any extension of time jeopardises the return of the site to nature conservation as currently set out in the extant ROMP permission;
  - the storage area, which is a designated greenfield site and, by definition cannot be considered as part of the quarry as it is used for a demolition business, has been identified in the emerging Buckfastleigh Neighbourhood Plan as an area which should not be industrialised, both permanently and temporarily. Under the Localism Act, DCC should take into account the views of the local community and reject the planning application, failure to do so would show an inherent disregard of planning policy and contrary to the objectives of the NPPF;
  - the Town Council consider the previous application, which has been withdrawn, to have been made under Section 73a of the Town and Country Planning Act 1990. Applicants only have one opportunity to submit an application under Section 73a. The Town Council consider an application under Section 73 more appropriate.
- 3.4 Natural England – No objection subject to appropriate mitigation being secured/delivered through appropriate planning conditions to secure the measures achieved through the previous permission. Without appropriate mitigation it is considered the application would have an adverse effect on the integrity of South Hams Special Area of Conservation.
- 3.5 Historic England – No comments.
- 3.6 Dartmoor National Park Authority – No response received (consulted on 28 November 2017).
- 3.7 Environment Agency – No response received (consulted on 28 November 2017).

### **4. Advertisement/Representations**

- 4.1 The application was advertised in accordance with the statutory publicity arrangements by means of a site notice, notice in the press and notification of

neighbours by letter. As a result of these procedures, 14 representations have been received, of these 8 objected to the application on the following grounds:

- the previous temporary planning permission has expired and therefore this is a retrospective application;
- the applicant has not complied with previous planning conditions covering the site e.g. to paint the containers, and this has resulted in public amenity concerns;
- the ecological impact assessments are deficient and conditions to protect the environment have expired with the previous permission;
- part of the SSSI has been destroyed;
- the site's natural ecology should be conserved and enhanced, any use to the site should be restricted to leisure;
- increased noise and traffic;
- any permission would prejudice the ROMP and normalises industrial activity on a site that would be allowed to return to nature with the expiry of the mineral permission;
- consider that the intended future of the site is for waste disposal;
- the application cannot be validated as unauthorised development has only one opportunity to submit a retrospective application;
- the past appeal decision rules that this site of special biodiversity should not be allowed to be turned into an industrial site;
- the site is becoming industrialised.

4.2 Two representations were made in support of the application highlighting that extending the time will have no impact upon ecology or traffic, which is impacted upon by different businesses and activities in the area, not the applicant.

4.3 Two further representations made comment on the lack of information available on the website.

4.4 A number of representations and responses have given personal opinions of the operator and other stakeholders, their actions and past activities. These are not a land use planning matter and have not been included or discussed in this report.

## **5. Planning Policy Considerations**

5.1 In considering this application the County Council, as County Planning Authority, is required to have regard to the provisions of the Development Plan insofar as they are material to the application, and to any other material considerations. 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 indicate otherwise. In this case, the Development Plan policies are listed below and the most relevant are referred to in more detail in Section 6 below.

### **5.2 Teignbridge Local Plan 2013-2033**

Policy S1A (Presumption in favour of Sustainable Development); Policy S1 (Sustainable Development Criteria); Policy S2 (Quality Development); Policy S3 (Land for Business, General Industry and Storage and Distribution); Policy S11 (Pollution); Policy S21A (Settlement Limits); Policy S22 (Countryside); Policy EC3 (Rural Employment); Policy EN2A (Landscape Protection and Enhancement); Policy EN8 (Biodiversity Protection and Enhancement); Policy EN9 (Important Habitats and Features); Policy EN10 (European Wildlife Sites); Policy EN11 (Legally Protected and Priority Species).

- 5.3 **Devon Minerals Plan 2011-2033**  
Policy M2 (Mineral Safeguarding Areas)

**6. Comments/Issues**

- 6.1 It is considered that the main material planning considerations in the determination of the proposed development are planning policy matters; impact on nature conservation interests; impacts on the amenity of local residents; and landscape and visual impacts. These have already been considered at length in reports PTE/14/52 and PTE/16/25 and, therefore, are summarised and updated as necessary below.

Planning Policy Considerations

- 6.2 There is policy support for employment land in appropriate areas. The Teignbridge Local Plan 2013-2033 supports business, general industry and storage development, in particular through Policy S3 (Land for Business, General Industry and Storage and Distribution) and Policy EC3 (Rural Employment). It is considered this proposal is in broad conformity with these policies. Teignbridge District Council has raised no objection to the proposal.
- 6.3 Concerns have been raised about the industrialisation of the site, with this proposal preventing the mineral site being restored. The application proposes the use of the site temporarily until 31 July 2018, reflecting the date of the first periodic review of the minerals consent, and the requirement for the site to be restored under the minerals permission remains extant.
- 6.4 Policy M2 (Mineral Safeguarding Areas) of the Devon Minerals Plan 2011-2033 seeks to protect minerals from sterilisation or constraint by non-mineral development. Land within Whitecleave Quarry is a Mineral Safeguarding Area and therefore, this proposal must meet one of the policy's criteria. Criterion (c) of the policy allows for non-mineral development of a temporary nature that can be completed and the site restored to a condition that does not inhibit extraction or operation within the timescale that the mineral resource is likely to be needed. It is considered the proposal would not conflict with the underlying mineral permission or compromise the restoration of the site given its temporary nature and is therefore in accordance with the above policy.
- 6.5 Buckfastleigh Town Council has referred to the fact the Buckfastleigh Neighbourhood Plan identifies the site as an area which should not be industrialised, both on a temporary or permanent basis. It is understood the neighbourhood plan is at an early stage, having not yet been submitted for examination, and accordingly can only carry limited weight in determining this application. In any case, the temporary use of the site does not conflict with achieving the final restoration of the mineral site, which is to return it to nature conservation.

Nature Conservation

- 6.6 Buckfastleigh Town Council have raised concerns regarding the destruction of internationally important ecological areas. Greater Horseshoe Bats use the site as a commuting route, with storage area SA1 being located adjacent to this route, and the potential impact on this bat species was a key consideration for previous applications. An Ecological Mitigation and Monitoring Plan (EMMP) was submitted as part of the previous applications and it required a number of monitoring and mitigation measures to take place throughout the duration of the past permission. Part of this required bat surveys and reports to be submitted to the Mineral Planning

Authority. These surveys show a clear commuting route and indicate that the proposed operations will not impede this flight line if the proposal is in accordance with the previous mitigation measures, which include parking and storage in designated areas and height and distance restrictions. It is proposed that these limits, and all other mitigation measures set out in the EMMP, are subject to new planning conditions.

- 6.7 The proposal has also been screened through the Habitats Regulations Assessment process. Provided that the development continues to be carried out in accordance with the EMMP dated May 2014, it has been concluded that this application will not have a likely significant effect on the Greater Horseshoe Bat population of the South Hams SAC or the Dartmoor SAC and will be in accordance with EN8 (Biodiversity Protection and Enhancement), EN9 (Important Habitats and Features) and EN10 (European Wildlife Sites) of the Teignbridge Local Plan 2013-2033. Natural England agrees with these conclusions.

#### Amenity of Local Residents

- 6.8 Objections have been raised regarding increased noise and traffic. The proposed storage and office use will not result in increased noise levels as the storage is static, except when it is required by the company for use offsite. It is considered that any noise from the movement and maintenance of this machinery and the workshop can be controlled by imposing a restriction on hours of working to ensure that operations do not take place outside of normal working hours. The Environmental Health Officer has no objections to this proposal subject to the previous conditions, which include hours of working, being in place. The site has permission for mineral extraction and the generation of noise from that operation is controlled by existing conditions.
- 6.9 There are no changes proposed that suggest there will be an increase in traffic from the previously consented operations.
- 6.10 Given these circumstances, it is considered the proposal is in accordance with Policy S11 (Pollution) and Policy S1 (Sustainable Development Criteria) of the Teignbridge Local Plan 2013-2033 and will not adversely impact residential amenity.

#### Landscape and Visual Impacts

- 6.11 A Landscape and Visual Assessment (LVA) was prepared in January 2016, and submitted as part of the previous application, to assess the impacts of the storage areas from key publicly accessible impacts. This was based on a worst-case scenario, i.e. in the winter months when there are no leaves on the trees which provide screening into the site.
- 6.12 Although the LVA stated that storage area SA1 is largely screened from Buckfastleigh by the A38 infrastructure and the site boundary vegetation, it recommended that the storage containers were painted in a more natural colour to make them less visually intrusive. This was previously required by condition and the containers were meant to be painted with a non-reflective paint by 4 August 2016. This has not been carried out and has been highlighted by some objections.
- 6.13 Given the time of year and the length of time requested for the continued use of the site, it is considered the containers will remain effectively screened by the existing vegetation for the remainder of this consent. A planning condition to paint these containers in the lifetime of this permission to July 2018 would not, therefore, be justified. The proposal is considered to conserve the setting of Dartmoor National

Park as required by Policy EN2A (Landscape Protection and Enhancement) of the Teignbridge Local Plan 2013-2033.

#### Other Matters

- 6.14 Buckfastleigh Town Council and another objector contend that the application has not been properly made. They consider that the applicant has submitted two applications for the same proposal under the same section [S73a] of the Town and Country Planning Act 1990, but the applicant only has one opportunity. A previous application was submitted under Section 73 of the Act for variation of conditions, but the existing planning permission and its conditions had expired, meaning they could not be extended, and that application was therefore withdrawn. The current application has been made under Section 73a of the Act which allows for development already carried out. Planning Practice Guidance states that a person who has undertaken unauthorised development only has one opportunity to obtain planning permission by means of a retrospective application under Section 73a, but it is considered that the application has been properly made as only one application has been submitted under Section 73a.
- 6.15 Buckfastleigh Town Council also contends that granting a second temporary planning permission is rarely justifiable, and that further permissions should normally be granted permanently or refused. In this case, a permanent permission has previously been considered inappropriate due to the long-term requirement to restore the site. In addition, as the impacts of the development can be adequately controlled by planning condition, there are no reasons to refuse the development. A further short-term temporary permission is considered justifiable in this instance.
- 6.16 A number of representations raise concerns about historic non-compliance with planning conditions. Devon County Council investigates any issues regarding non-compliance in accordance with its Local Enforcement Monitoring Plan and will take enforcement action where it is considered expedient and in the public interest to do so.

#### **7. Reasons for Recommendation/Alternatives Options Considered**

- 7.1 The Committee has the option of approving, deferring or refusing this planning application.
- 7.2 In conclusion, it is considered that use of the site for a further four months by a local business will not result in any additional impacts on the local environment and that any impacts, particularly on Greater Horseshoe bats and the local community, can be adequately controlled by planning condition. Taking these material considerations into account, it is considered appropriate to grant temporary planning permission in accordance with the recommendation to this report.
- 7.3 The alternative option would be to refuse this application, however, for the reasons given above, this is not considered to be appropriate.

Dave Black  
Head of Planning, Transportation and Environment

**Electoral Division: Ashburton & Buckfastleigh**

Local Government Act 1972: List of Background Papers

Contact for enquiries: Emily Harper

Room No: AB2, Lucombe House, County Hall

Tel No: 01392 383000

**Background Paper**

Casework File

**Date**

Current

**File Ref.**

DCC/4032/2017

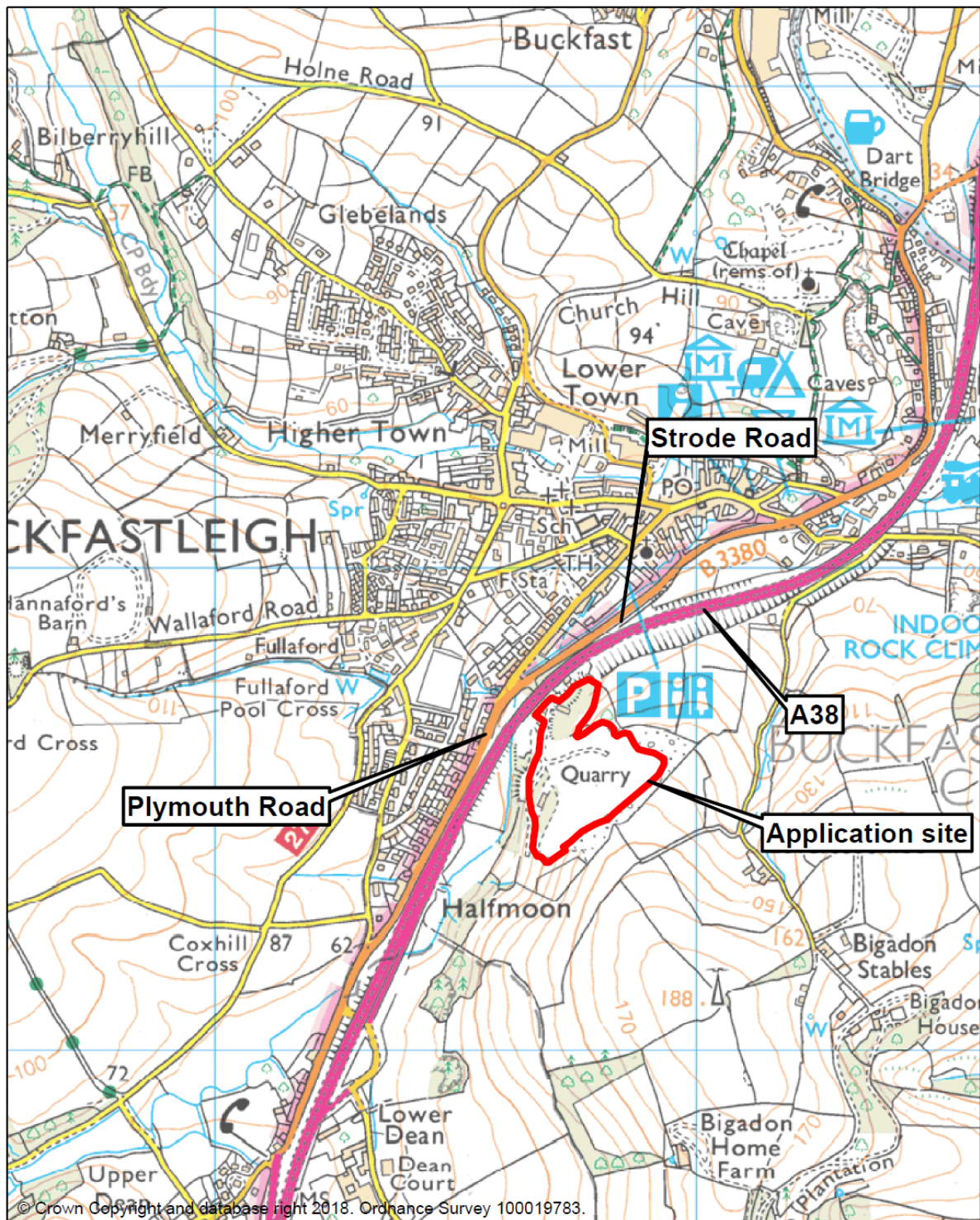
eh200218dma

sc/cr/continued temporary use of offices workshop and storage Whitecleave Quarry Buckfastleigh

01 200218



## Location Plan



Head of Planning,  
Transportation  
and Environment

Development Management Committee

County Matter: Minerals

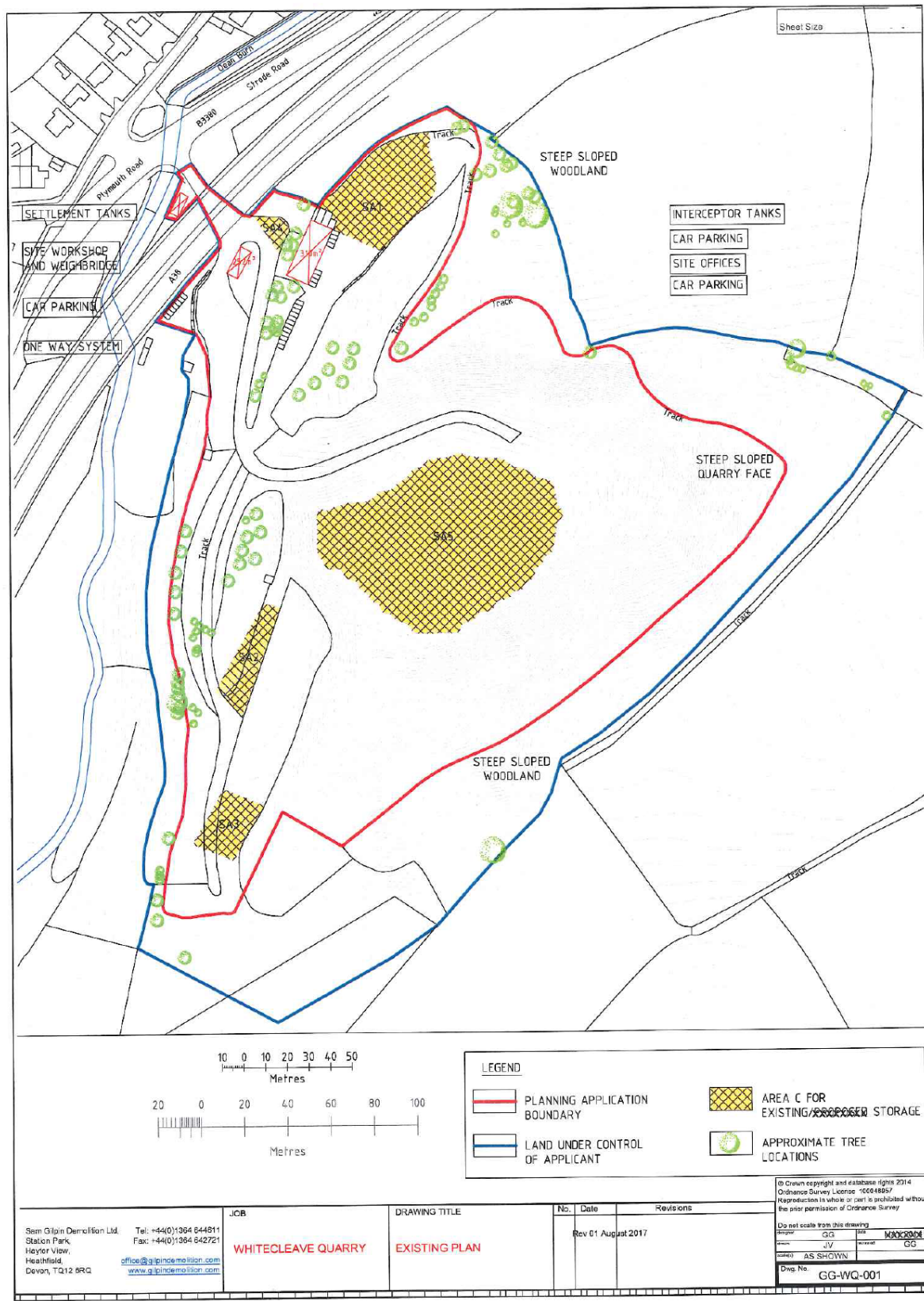
An application under Section 73a of Town and Country Planning Act 1990 for the continued temporary use of offices, workshop and storage detailed in planning permission 15/01695/DCC located at Whitecleave Quarry, Plymouth Road, Buckfastleigh, Devon, TQ11 0DQ until 31st July 2018

date  
March 2018

scale  
1:10,000

Application No:  
17/02879/DCC

# Site Plan



**Planning Conditions**

1. The use hereby permitted shall be discontinued on or before 31 July 2018. In the event that the use ceases prior to that date, notification of the cessation date shall be provided to the Mineral Planning Authority within one week of cessation.

Reason: To enable a review of the permission as part of the 1st Periodic Review of ROMP 98/3304/32/9DCC in order to safeguard the requirements for restoration of the quarry.

2. The development shall be carried out in strict accordance with the details shown on drawings and documents approved pursuant to condition 2 of consent 2013/3520/COU numbered GG-WQ-002; GG-WQ-003 and CG-WQ-004, and the Ecological Mitigation and Monitoring Plan (May 2014), except as may be varied by the conditions below.

For the avoidance of the doubt, and unless otherwise agreed in writing by the Mineral Planning Authority, the outside storage areas identified on the application plans shall be used only for the storage of plant, machinery and equipment associated with the applicant's demolition business as detailed below:

- 40yd metal containers;
- Plant, equipment and machinery such as diggers, excavators, forklifts etc;
- Associated attachments for the above equipment such as buckets and hammers;
- Baskets and cages used for men and equipment accessing heights;
- Trailers;
- Stability platforms metal and polystyrene;
- Wooden beams;
- Other such similar and associated items.

Reason: To ensure that the development is carried out in accordance with the approved details.

3. With the exception of bona fide emergency out of hours access as specified in condition 4 or relevant ecological surveys that need to be undertaken out of hours, the site shall be open to site personnel only during the hours 07.30 to 18.30 Monday to Friday and 07.30 to 13.00 Saturday. All operational activity on the site shall be confined to the hours 08.00 to 18.00 (Monday to Friday) and 08.00 to 13.00 on Saturdays. There shall be no operational activity on Sundays or Bank Holidays except for the emergency out of hours operations aforementioned.

Reason: To reduce noise and disturbance from the site during quiet periods in the interests of residential amenity



4. Notwithstanding the provisions of Condition 3 above, the site shall be open to site personnel for access outside of the permitted hours to collect equipment for bona fide unplanned emergency demolition contracts. This shall not include out of hours deliveries or return of equipment and a log shall be kept recording each instance of such emergency access including the hours the site was open, the number of vehicles attending and any subsequent complaints about such access. This log shall be made available to the Mineral Planning Authority on request. If the emergency access outside the above permitted hours in Condition 3 leads to substantive complaint, the operator shall within one month of receiving a written request from the Mineral Planning Authority submit a scheme containing details of proposed measures to reduce noise and disturbance during times of emergency access. Such Scheme shall be implemented in full upon approval by the Mineral Planning Authority.

Reason: To enable the operator to access the site for equipment needed to carry out emergency works without causing disturbance to neighbours or protected species

5. The pollution control measures approved pursuant to Condition 5 of permission 2013/03520/COU shall be operated at all times unless an alternative scheme is agreed in writing by the Mineral Planning Authority.

Reason: In the interests of the amenity of the area and in order to prevent pollution to the local water environment.

6. No lighting other than that approved under ROMP 98/3304/32/9DCC shall be erected.

Reason: To prevent adverse effects on the bat flight corridor through the site.

7. The development shall be carried out in accordance with the Ecological Mitigation and Monitoring Plan (EMMP) (Final Report) dated May 2014. Within one month of cessation of the use of the site hereby approved, a report and plan detailing the enhancement measures that have taken place since commencement of this use (approved through planning permissions 2013/03520/COU, 15/01695/DCC and 17/02879/DCC) and the results and details of the most recent monitoring activity shall be submitted to the Mineral Planning Authority for approval in writing.

Reason: To make appropriate provision for natural habitat within the approved development in the interests of biodiversity and to ensure a baseline condition is provided for the future consideration of the restoration of the site.

8. The landscaping provided pursuant to condition 8 of consent 2013/3520/COU shall be maintained for a minimum period of five years. Any trees, shrubs or planted carried out that is removed, uprooted, destroyed or dies within five years of the date of planting shall be replaced with the same or similar species in the same location.

Reason: To make appropriate provision for natural habitat within the approved development in the interests of biodiversity and to enhance the visual amenity of the site.

9. The detailed monitoring programme approved pursuant to condition 9 of consent 2013/3520/COU shall be implemented and adhered to throughout the duration of the development.

Reason: To ensure that the ecological monitoring and mitigation identifies and responds to emerging issues in the interests of protecting species and habitats, and to monitor success of the mitigation measures and identify amendments to the monitoring requirements or additional mitigation to protect species and habitats.

10. In designated area SA2, no plant or equipment shall be stored which exceed 3m in height.

Reason: To protect the visual amenity of the site in the interests of local amenity.

11. There shall be no storage of plant, equipment or machinery within 1 metre of the foot of the embankment to the east of storage area SA1. There shall be no storage of plant, equipment or machinery above a height of 4 metres for a distance of 11m measured from the foot of the bank. Outside of these restricted areas no plant shall be stored at a height above 5.5 metres

Reason: In the interests of nature conservation and visual amenity.

12. No maintenance of plant or machinery shall occur outside of the immediate confines of the existing workshop.

Reason: To control noise in the interests of the local amenity.