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## NORTH AYRSHIRE COUNCIL

4th November 2020

### Planning Committee

Locality	Kilwinning
Reference	20/00805/PP
Application Registered	16th September 2020
Decision Due	16th November 2020
Ward	Kilwinning

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<b>Recommendation</b>	Approved subject to Conditions
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<b>Location</b>	Hullerhill Sand Quarry Kilwinning Ayrshire KA13 7QN
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<b>Applicant</b>	Hugh King & Co.
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<b>Proposal</b>	Section 42 planning application to vary condition 1 of planning permission N/19/00542/PP to extend duration of consent
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### 1. Description

On 4th December 2019, the Planning Committee granted a temporary (12 month) planning permission for an amendment to condition 8 of the governing planning consent for mineral workings at Hullerhill Quarry (ref. 19/00542/PP). The condition, as approved, reads as follows:

*That no extraction, aggregate processing or despatch work shall be undertaken at the site outwith the hours of 0600 to 1900 Monday to Friday and 0600 to 1200 (noon) on Saturdays. The operation of the drying plant and mortar plant is permitted during the hours of 0600 to 2100 Monday to Friday, 0600 to 2000 on Saturdays and 0700 to 2000 on Sundays. Outwith these hours, activities shall be limited to maintenance, emergency works, dust suppression, pumping and testing of plant and equipment, all to the satisfaction of North Ayrshire Council as Planning Authority. This condition shall have effect for a temporary period of 1 year and shall expire on 4th December 2020, unless otherwise agreed in writing.*

As the temporary period of 1 year is due to expire within a month, the applicant is seeking planning permission to extend the time period under the terms of this condition until 21st February 2042 in order to align with the expiry date of the governing planning consent for quarry operations at Hullerhill.

It is therefore proposed to substitute the final sentence of the above condition with the following:

*This condition shall have effect for a temporary period and shall expire on 21st February 2042, unless otherwise agreed in writing”.*

(Note: this date is the current estimate for the planned closure of the quarry, based on projected rates of extraction).

Under the terms of permission ref. 14/00656/DCMS granted under the Review of Old Minerals Permissions (ROMP) process during 2014, Hullerhill Quarry had the right to undertake extraction, processing and despatch work between 0600 hours and 1900 hours on Mondays to Fridays, and 0600 hours to 1200 hours on Saturdays, with no Sunday working other than maintenance, emergency works, dust suppression, pumping and testing.

In 2019, the ownership of the quarry changed, and the new owners applied to make some changes to two of the 2014 planning conditions (ref. 19/00542/PP).

The effect of the changes approved by the Planning Committee on a temporary ‘trial’ basis in December 2019 enabled some types of working at the quarry to take place until 2100 hours on Mondays – Fridays and until 2000 hours on Saturdays. Whilst opening the site at 0600 hours remained in place for Monday – Saturdays, the later start time of 0700 hours was put in place for Sunday working.

The types of working permitted until 2100 hours on Mondays to Fridays is limited to extraction, aggregate processing or despatch work. The time limit for this type of working must cease at 2000 hours on Saturdays. Extraction, processing or despatch work is not permitted on Sundays.

The other types of work permitted under the condition relate to the operation of the drying plant and mortar plant. These facilities can be operated between 0600 hours and 2100 hours during Mondays to Fridays, with reduced hours at weekends (0600 to 2000 on Saturdays and 0700 to 2000 on Sundays).

The extension of working hours was subject to a further condition relating to the control of noise limits. Although the noise limit condition is not the subject of the current application, it was also subject to the expiry date of 4 December 2020. Accordingly, the noise limit condition also requires to be considered at this time in order to ensure proper controls remain in place after 4th December 2020.

A Supporting Statement has been submitted with the application which indicates that the site has operated under the new operating hours since December 2019. The site was temporarily closed due to the COVID-19 lockdown between 24th March and 11th May 2020, after which it re-opened to provide supplies to essential NHS projects. The Supporting Statement notes that, to date, there have been no complaints made to the Council since the revised hours were put in place.

Hullerhill Quarry is located approximately 1.6km northeast of Kilwinning. The mineral resource at Hullerhill is sand for the construction industry, as well as the production of refined sand for use in golf courses and the leisure sector.

In terms of the adopted Local Development Plan (LDP), Hullerhill Quarry is located within the countryside where Strategic Policy 'The Countryside Objective' applies. Consideration of applications relating to mineral extraction is covered under Policy 33 - 'Responsible Extraction of Mineral Resources'. The Placemaking Policy applies to all applications for planning permission.

## **Relevant Development Plan Policies**

### **SP1 - The Countryside Objective**

We recognise that our countryside areas play an important role in providing homes, employment and leisure opportunities for our rural communities. We need to protect our valuable environmental assets in the countryside while promoting sustainable development which can result in positive social and economic outcomes.

We want to encourage opportunities for our existing rural communities and businesses to grow, particularly on Arran and Cumbrae, and to support these areas so that they flourish.

We also recognise that, in general, countryside areas are less well suited to unplanned residential and other developments because of their lack of access to services, employment and established communities. We will seek to protect our prime and locally important agricultural land from development except where proposals align with this spatial strategy. In principle, we will support proposals outwith our identified towns and villages for:

- a) expansions to existing rural businesses and uses such as expansions to the brewery and distillery based enterprises in the area.
- b) ancillary development for existing rural businesses and uses, including housing for workers engaged in agriculture or forestry.
- c) developments with a demonstrable specific locational need including developments for renewable energy production i.e. wind turbines, hydroelectric schemes and solar farms.
- d) tourism and leisure uses, where they would promote economic activity, diversification and sustainable development, particularly where they develop our coastal tourism offer/ infrastructure.
- e) developments which result in the reuse or rehabilitation of derelict land or buildings (as recognised by the Vacant and Derelict Land Survey) for uses which contribute to the Green and Blue Network such as habitat creation, new forestry, paths and cycle networks.
- f) sensitive infilling of gap sites consolidating existing developments where it would define/provide a defensible boundary for further expansion.
- g) small-scale expansion of settlements on Arran and Cumbrae for community led proposals for housing for people employed on the island, where a delivery plan is included, and infrastructure capacity is sufficient or can be addressed by the development and where the proposal meets an identified deficiency in the housing stock and is required at that location. All proposals will be expected to demonstrate the identified housing need cannot be met from the existing housing land supply.
- h) new housing in the countryside where it is a replacement or converted building or it is a house of exceptional design quality.
- i) sympathetic additions to existing well-defined nucleated groups of four or more houses (including conversions) in close proximity to one another and visually identifiable as a group with some common feature e.g. shared access. Additions will be limited to 50% of dwellings existing in that group as of January 2005 up to a maximum of four new housing units (rounded down where applicable).

### **Strategic Policy 2 - Placemaking**

Our Placemaking policy will ensure we are meeting LOIP priorities to make North Ayrshire safer and healthier by ensuring that all development contributes to making quality places. The policy also safeguards, and where possible enhances environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. We expect that all applications for planning permission meet the six qualities of successful places,

contained in this policy. This is in addition to establishing the principle of development in accordance with Strategic Policy 1: Spatial Strategy. These detailed criteria are generally not repeated in the detailed policies section of the LDP. They will apply, as appropriate, to all developments.

## Six qualities of a successful place

### Distinctive

The proposal draws upon the positive characteristics of the surrounding area including landscapes, topography, ecology, skylines, spaces and scales, street and building forms, and materials to create places with a sense of identity.

### Welcoming

The proposal considers the future users of the site and helps people to find their way around, for example, by accentuating existing landmarks to create or improve views (including sea views), locating a distinctive work of art in a notable place or making the most of gateway features to and from the development. It should also ensure that appropriate signage and lighting is used to improve safety and illuminate attractive buildings.

### Safe and Pleasant

The proposal creates attractive places by providing a sense of security, including by encouraging activity, considering crime rates, providing a clear distinction between private and public space, creating active frontages and considering the benefits of natural surveillance for streets, paths and open spaces.

The proposal creates a pleasant, positive sense of place by promoting visual quality, encouraging social and economic interaction and activity, and by considering the place before vehicle movement.

The proposal respects the amenity of existing and future users in terms of noise, privacy, sunlight/daylight, smells, vibrations, glare, traffic generation, and parking. The proposal sufficiently investigates and responds to any issues of ground instability.

### Adaptable

The proposal considers future users of the site and ensures that the design is adaptable to their needs. This includes consideration of future changes of use that may involve a mix of densities, tenures, and typologies to ensure that future diverse but compatible uses can be integrated including the provision of versatile multi-functional greenspace.

### Resource Efficient

The proposal maximises the efficient use of resources. This can be achieved by re-using or sharing existing resources and by minimising their future depletion. This includes consideration of technological and natural means such as flood drainage systems, heat networks, solar gain, renewable energy and waste recycling as well as use of green and blue networks.

### Easy to Move Around and Beyond

The proposal considers the connectedness of the site for people before the movement of motor vehicles, by prioritising sustainable and active travel choices, such as walking, cycling and public transport and ensuring layouts reflect likely desire lines, through routes and future expansions.

### **Detailed Policy 33 - Responsible Extraction of Mineral Resources**

Proposals for the conventional extraction of mineral resources, including extraction of sand, gravel, coal and peat, will be supported provided that:

- i) a need can be demonstrated for the mineral which cannot be met from existing worked deposits or renewable, recycled or secondary sources; and
- ii) It has been demonstrated, for example through the submission of a waste management plan (as per the Management of Extractive Waste (Scotland) Regulations 2010), that any adverse impacts (including cumulatively) on local communities, individual houses, economic sectors, natural and historic environment (including recreational users) and sensitive receptors, can be satisfactorily mitigated, including by taking into account:
  - a. transportation/road traffic generation;
  - b. disturbance, disruption, blasting, vibration, pollution of land, air and water environment; and
- iii) there is a restoration and aftercare plan that includes for example, progressive restoration over the lifetime of the operation, remediation of dereliction, stabilisation actions, creation of natural habitat, new opportunities for recreational use, the long term monitoring of the water environment and an ongoing maintenance plan.

Development proposals for the exploration, appraisal and extraction of coal bed methane, underground coal gasification, shale gas, and other forms of hydrocarbons, which are extracted using unconventional means will not be supported. For new or extended proposals, a financial guarantee or bond may be required to ensure appropriate restoration, enhancement and aftercare following extraction of minerals. Development proposals for the extraction of peat will also be subject to the provisions of Policy 34: Protecting Peatland and Carbon Rich Soils.

## **2. Consultations and Representations**

The application was subject to the statutory neighbour notification procedures, which included the publication of a notice in a local newspaper. One letter of representation has been received. The points raised have been summarised below:

1. The main disturbance is the dramatic increase in noise early in the morning. Sleep is disturbed nearby every working day (six days per week) between 0545 and 0630. There is a significant increase in traffic accessing the quarry from 0540, (up to 13 vehicles have been noted). The plant is then started at 0600 and shortly after a number of lorries exit the quarry.

*Response: Noted. However, this matter has already been referred to the quarry operator during September 2020 for their response and action. The current application does not seek to change the time that the quarry can open at in the morning.*

2. There has been a steady increase in lorry movements throughout the day, with lorries 'importing' sand from other sites for processing.

*Response: Noted. This matter will require to be investigated separately since it is outwith the scope of the current application.*

3. It is stated in the supporting information and in the Environmental Health consultation response (below) that no complaints have been made about the temporary change to working hours granted in December 2019. However, a complaint made during September 2020 resulted in the quarry being contacted for a response rather than Environmental Health.

*Response: The noise limits recommended by Environmental Health would continue to be the subject of a planning condition, as set out below.*

4. Other neighbours to the quarry have a range of complaints including noise and light disturbance, contaminated water run-off and blowing sand.

*Response: To date, these matters have not been the subject of complaints and are outwith the scope of the current application.*

## **Consultations**

**NAC Active Travel & Transport** - no objection.

*Response: Noted.*

**NAC Environmental Health** - no objections to the proposed time extension to 21st February 2042, subject to continued compliance with the following condition:

1. The rated noise level, as defined in BS 4142:2014+A1:2019, from the operation of the plant and equipment, must not exceed the background noise level by 10dB(A) or more at the curtilage of any noise sensitive property over a reference period of 1 hour during the hours to which this application relates (1900-2100 hours Monday to Friday, 1200-2000 hours on Saturday and 0700-2000 hours on Sunday).

The applicant had previously commissioned an appropriate background noise assessment to be undertaken and its results demonstrate that the above noise limit will be complied with during the proposed hours outlined in the proposed condition. No complaints have been received by Environmental Health.

*Response: Noted. The above condition is due to expire on 4th December 2020 and would require to be re-imposed. See Analysis.*

## **3. Analysis**

Section 42 of the Town and Country Planning (Scotland) Act 1997 is a mechanism which allows for the submission of a planning application for the development of land without complying with condition(s) subject to which a previous permission was granted. Section 42 of the Act stipulates that in this type of application the "planning authority shall consider only the question of the conditions subject to which permission should be granted."

Circular 4/1998 sets out the tests for planning conditions, as follows:

- Need for a Condition

- Relevance to Planning
- Relevance to the Development to be Permitted
- Ability to Enforce
- Precision
- Reasonableness

The determining issue in this case is whether the proposed modifications to the condition attached to the previous grant of consent would accord with the relevant LDP policies.

In terms of the adopted LDP, the Countryside Objective seeks to "encourage opportunities for our existing rural communities and businesses to grow" whilst protecting the countryside and promoting sustainable development. The proposed variation to two planning conditions which govern the operation of Hullerhill would enable a long-established quarry business to grow and provide certainty over the next two decades, in alignment with the ROMP consent granted by the Council in 2014. As such, the proposal would accord with the Countryside Objective.

Policy 33 'Responsible Extraction of Mineral Resources' supports the conventional extraction of sand, gravel, coal and peat, subject to meeting a range of criteria. As Hullerhill Quarry has been established for the past 100 years or more, there is no requirement to justify the principle of development in this case. There is already a suite of planning conditions in place, approved by the Council in 2014, which provide the basis for the regulation of day to day operations in accordance with modern working practices as well as a site restoration and aftercare plan.

Following a trial period of evening working for much of 2020, during which no complaints were received by the Council, it is considered that the proposed time extension at Hullerhill Quarry be permitted on a more permanent footing.

The Placemaking Policy aims to safeguard, and where possible enhance environmental quality through the avoidance of unacceptable adverse environmental or amenity impacts. Whilst the hours of operation would be permanently extended into late evening hours, there would be no working after 2100. Subject to adherence to the previously approved condition on noise limits, unacceptable adverse noise impacts on local residents could be avoided. It is considered that this outcome would result in an appropriate balance between the need to ensure the economic viability of the quarry and the protection of residential amenity in the rural area around Hullerhill.

In applying the Circular 4/1998 tests for conditions to the proposal, it is considered that the proposed variations would meet all six tests.

There are no other material considerations. Accordingly, it is considered that planning permission could be granted for the extended working hours on a permanent basis, subject to the additional condition as required by Environmental Health. Following the expiry of the temporary period in December 2020, this would extend the opportunity to undertake evening working at Hullerhill until 21<sup>st</sup> February 2042.

#### **4. Full Recommendation**

Approved subject to Conditions

#### **Reasons for Decision**

The proposal complies with the relevant provisions of the current adopted Local Development Plan and there are no other material considerations that indicate otherwise. This is determined following an assessment which has had regard to the provisions of the

development plan, so far as material to the application, and to any other material considerations.

**Condition**

1. That no extraction, aggregate processing or despatch work shall be undertaken at the site outwith the hours of 06.00 to 19.00 Monday to Friday and 06.00 to 12.00 noon on Saturdays. The operation of the drying plant and mortar plant is permitted during the hours of 06.00 to 21.00 Monday to Friday, 06.00 to 20.00 on Saturdays and 07.00 to 20.00 on Sundays. Outwith these hours, activities shall be limited to maintenance, emergency works, dust suppression, pumping and testing of plant and equipment, all to the satisfaction of North Ayrshire Council as Planning Authority. This condition shall have effect for a temporary period and shall expire on 21st February 2042, unless otherwise agreed in writing.

**Reason**

To safeguard the amenity of the surrounding area.

**Condition**

2. That noise from the development during the hours 06.00 to 19.00 Monday to Friday and 06.00 to 16.00 on Saturdays shall not exceed 55dB LAeq, 1 hour (free field) at any noise-sensitive premises, except noise from soil stripping or landscape operations. Noise from the development during the hours 19.00 to 21.00 on Mondays to Fridays, 12.00 - 20.00 on Saturdays and 07.00 to 20.00 on Sundays shall not exceed 45dB LAeq, 1 hour (free field) at any noise-sensitive premises, all to the satisfaction of North Ayrshire Council as Planning Authority.

**Reason**

To limit the impact of noise on neighbouring properties.

Russell McCutcheon  
Executive Director (Place)

For further information please contact **Mr A Hume Senior Development Management Officer** on **01294 324 318**.

## Appendix 1 – Location Plan

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