

Agenda Item	7.2
Report No	PLN/040/23

HIGHLAND COUNCIL

Committee: North Planning Applications Committee

Date: 7 June 2023

Report Title: 22/01586/S42 : A&W Sinclair
Ruther Quarry, Watten, Wick

Report By: Area Planning Manager - North

Purpose/Executive Summary

Description: Section 42 application to amend condition 1 of planning permission 09/00129/FULCA - to extend operational life of quarry

Ward: 3 – Wick and East Caithness

Development category: Major Development

Reason referred to Committee: Major Development

All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

Recommendation

Members are asked to agree the recommendation to **GRANT** the application as set out in section 11 of the report

1. PROPOSED DEVELOPMENT

- 1.1 The application is made under Section 42 of the Town and Country Planning (Scotland) Act to extend the time limit which was attached to the most recent approval for the operation of a quarry extracting hard rock at the existing Ruther Quarry site in Watten. Information submitted in support of the application notes that maps from 1950 show the eastern end of the quarry was established since at least that point in time. The last permission on the site (09/00129/FULCA) was granted for the continued extraction of rock on 20 December 2011.

Condition 1 of 09/00129/FULCA specifies:

This permission shall endure for a period of ten years from the date of this consent by which time all working shall have ceased and the site shall be fully restored in accordance with condition 9 attached to this consent. Similarly, if working shall cease prior to the expiry of this permission, the site shall be restored in accordance with condition 9 within a period a period of two years of such cessation.

- 1.2 The ten year expiry date was 20 December 2021. The applicant is therefore seeking to regularise the current operation of the quarry and also apply to continue to extract material for a further 30 years. The Planning Authority has the opportunity to review the proposals and amend and update the conditions as necessary. This application runs alongside an application lodged under 22/01819/FUL which seeks to extend the working area of the quarry to the north and south, this is not a major development and is being handled under delegated authority.
- 1.3 Pre Application Consultation: None
- 1.4 Supporting Information: Supporting Statement
- 1.5 Variations: Applicant requested change in extension of time from 10 to 30 years.

2. SITE DESCRIPTION

- 2.1 The site is an existing operational rock quarry and is located toward the top of Hill of Watten and approximately 1.5km north east of Loch Watten, the area to the south between the quarry and Loch Watten comprises grazing land. The quarry takes access from an existing single track road which adjoins the B870 and B874 to the main A882 Wick to Watten road which joins into the A9. The existing access is at the east of the quarry. Within the quarry itself the south eastern side comprises the weighbridge, workshop and staff facilities. Surface water settlement ponds are located central to the quarry floor, plans denote these as being approx. 10m deep. Steep quarry faces with ramps surround. The most recently blasted area is located to the south east. Overburden is located to the north and eastern side of the quarry, as permitted under the earlier consent.
- 2.2 There are a number of residential properties and agricultural buildings in vicinity to the site. The property known as Heatherbell is located to the east of the site on the opposite side of the road and overburden area – the curtilage is approximately 70m away from the nearest point of the application site, although well separated and screened by the overburden. Aarondale is located approx. 280m to the north. There are 4 properties dispersed close to the eastern side of the site nearby the site access.

3. PLANNING HISTORY

- | | | | |
|-----|------------|---|--------------------------|
| 3.1 | n/a | 22/001819/FUL – Extension to quarry | PENDING
CONSIDERATION |
| 3.2 | 20.12.2011 | 09/00129/FULCA - Continuation and extension of the existing rock quarry | APPLICATION
PERMITTED |

4. PUBLIC PARTICIPATION

4.1 Advertised: Unknown Neighbour- John O' Groat Journal

Date Advertised: 29 April 2022

Representation deadline: 19 May 2022

Timeous representations: 0

Late representations: 0

5. CONSULTATIONS

5.1 **Watten Community Council** did not respond to the consultation request.

5.2 **Environmental Health** had no objections to the extension of the operational life of the quarry. The physical quarry extension area is referenced in the response and Environmental Health have commented on that application separately.

5.3 **SEPA** commented that the application falls under their threshold for consultation and reference the application for the extension of the physical extension to the quarry area, SEPA have commented on that application separately.

5.4 **Transport Planning** did not respond but commented on the application for the physical extension to the quarry area and recommended a condition to secure surfacing to the site access with the public road.

6. DEVELOPMENT PLAN POLICY

The following policies are relevant to the assessment of the application

6.1 National Planning Framework 4

Policy 1 - Tackling the climate and nature crisis

Policy 3 - Biodiversity

Policy 4 - Natural places

Policy 5 - Soils

Policy 6 - Forestry, woodland and trees

Policy 7 - Historic assets and places

Policy 18 - Infrastructure first

Policy 22 - Flood risk and water management

Policy 23 - Health and safety

Policy 33 - Minerals

6.2 Highland Wide Local Development Plan 2012

28 - Sustainable Design

29 - Design Quality and Place-making

31 - Developer Contributions

52 - Principle of Development in Woodland

53 - Minerals

54 - Mineral Wastes

- 55 - Peat and Soils
- 56 - Travel
- 57 - Natural, Built and Cultural Heritage
- 58 - Protected Species
- 61 - Landscape
- 63 - Water Environment
- 64 - Flood Risk
- 65 - Waste Water Treatment
- 66 - Surface Water Drainage
- 72 - Pollution
- 73 - Air Quality
- 77 - Public Access

6.3 Caithness and Sutherland Local Development Plan (2018):

No relevant site specific policies, refer to HwLDP/NPF4

6.4 Highland Council Supplementary Planning Policy Guidance

- Developer Contributions (March 2018)
- Flood Risk and Drainage Impact Assessment (Jan 2013)
- Highland Historic Environment Strategy (Jan 2013)
- Highland's Statutorily Protected Species (March 2013)

7. OTHER MATERIAL POLICY CONSIDERATIONS

7.1 Scottish Government Planning Policy and Guidance

- PAN 50 - Controlling the Effects of Surface Mineral Workings (1996)
- PAN 51 - Planning, Environmental Protection and Regulation (2006)
- PAN 60 - Planning for Natural Heritage (2000)
- PAN 63 - Waste Management Planning (2002)
- PAN 64 - Reclamation of Surface Mineral Workings (2002)
- PAN 79 - Water and Drainage (2006)
- PAN 1/2011 - Planning and Nosie (2011)
- PAN 2/2011 - Planning and Archaeology (2011)
- Guidance on the Management of Extractive Waste (Scotland) Regulations

8. PLANNING APPRAISAL

8.1 Section 25 of the Town and Country Planning (Scotland) Act 1997 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

Determining Issues

- 8.2 This means that the application requires to be assessed against all policies of the Development Plan relevant to the application, all national and local policy guidance and all other material considerations relevant to the application.

Planning Considerations

- 8.3 The key considerations in this case are:
- a) compliance with the development plan and other planning policy
 - b) access and transport
 - c) noise, vibrations and residential amenity
 - d) any other material considerations

Development plan/other planning policy

- 8.4 Since the consideration of the original application there have been a number of changes to Development Plan policy.
- 8.5 The key issue therefore is whether the amendment of the condition applied for would result in the development being incompatible with current Development Plan. The remainder of this report will consider the modification proposed and assess its compatibility with the Development Plan.
- 8.6 National Planning Framework 4 was adopted in February 2023, all proposals now require to be considered under NPF4 alongside the HwLDP and CasPlan as necessary. Policy 33 Minerals of NPF 4 in specific reference to part d) which relates to extraction of minerals states that development proposals for the sustainable extraction of minerals will only be supported where they:
- i. will not result in significant adverse impacts on biodiversity, geodiversity and the natural environment, sensitive habitats and the historic environment, as well as landscape and visual impacts;
 - ii. provide an adequate buffer zone between sites and settlements taking account of the specific circumstances of individual proposals, including size, duration, location, method of working, topography, and the characteristics of the various environmental effects likely to arise;
 - iii. can demonstrate that there are no significant adverse impacts (including cumulative impact) on any nearby homes, local communities and known sensitive receptors and designations;
 - iv. demonstrate acceptable levels (including cumulative impact) of noise, dust, vibration and potential pollution of land, air and water;
 - v. minimise transport impacts through the number and length of lorry trips and by using rail or water transport wherever practical;
 - vi. have appropriate mitigation plans in place for any adverse impacts;

include schemes for a high standard of restoration and aftercare and commitment that such work is undertaken at the earliest opportunity. As a further safeguard a range of financial guaranteed options are available, and the most effective solution should be considered and agreed on a site-by-site basis. Solutions should provide assurance

and clarity over the amount and period of the guarantee and in particular, where it is a bond, the risks covered (including operator failure) and the triggers for calling in a bond, including payment terms.

8.7 In terms of the HwLDP Policy 53 – Minerals it is stated that the Council will support extensions to existing sites or operations, or the re-opening of dormant quarries before new sites are to be considered.

8.8 All minerals developments will have to provide information on pollution prevention, restoration, and mitigation proposals. Restoration should be carried out in parallel with excavation where possible. Otherwise, it should be completed in the shortest time practicable. Planning conditions will be applied to ensure that adequate provision is made for the restoration of workings. The Council will expect all minerals developments to avoid or satisfactorily mitigate any impacts on residential amenity, the natural, built, and cultural heritage, and infrastructure capacities. After uses should result in environmental improvement rather than just restoring a site to its original state. After uses should add to the cultural, recreational, or environmental assets of an area. A financial guarantee may be sought.

8.9 **Modification to Condition 1**

The applicant has sought to modify the wording of the condition to allow for the working of the quarry for a further 30 years. There are no technical concerns such as stability; impact on the water environment; or landscape impacts. In principle, the extension of time for working of the quarry is supported, as is the winning of further minerals from an existing quarry is supported by the relevant policies of NPF4 and the Highland-wide Local Development Plan. However, these modifications to the permission can only be supported if appropriate conditions exist to ensure appropriate environmental mitigation is in place and the site is satisfactorily restored.

8.10 It is worth highlighting that an application submitted under S42 of the Planning Act provides the Planning Authority with an opportunity, as part of the process in considering the proposed variation, to amend any, or each of the original conditions previously applied which it considers necessary to regulate the development proposed. Following consideration of the conditions attached to the extant planning permission, it is considered appropriate to revisit all the conditions attached to the original permission to ensure the wording is in line with current good practice and to ensure the conditions are suitable to regulate the proposed development. This is also reflected in the responses of consultees. In doing so, this has provided an opportunity to strengthen the terms of the conditions and provide greater clarity as to the requirements of these, including the information required to satisfy the conditions. As there is an application to extend the operational floor area of the quarry running in tandem with this one, the same conditions as recommended by consultees shall be attached to both to ensure that the existing and proposed operational areas are subject to the same conditions for the avoidance of doubt.

8.11 **Access and Transport**

The site is operational and Transport Planning, in consultation with the local area office confirmed that there are no known issues in terms of transportation. A condition was recommended under 22/01819/FUL to provide 12m of surfacing to the access as

it is noted that loose material is being brought from the site onto the public road. It is recommended that the condition is attached to this consent in order to mitigate what is an existing issue at the site.

8.12 Noise, Vibration and Residential Amenity

8.13 It was noted by Environmental Health that there are no known issues with the current operation of the quarry, while no specific comments have been offered on this application conditions have been recommended with regard to the quarry extension. It is recommended that these are applied to this current consent and updated as necessary for the avoidance of any doubt. These include measures to mitigate dust, noise and blasting within the site. The continued operation of the quarry is not considered to raise any significant issue in terms of residential amenity and no objections have been received.

8.14 Other material considerations

There are no other material considerations.

8.15 Non-material considerations

None.

8.16 Matters to be secured by Legal Agreement / Upfront Payment

In order to ensure that the restoration is completed and that the Local Authority can pick up the costs of restoring the site in the event that the business ceases to operate at the site for any unexpected reason a financial guarantee will be required. This will be secured via legal agreement and will comprise:

Full details of a bond or other financial provision to be put in place to cover all of the decommissioning and site restoration measures.

Thereafter, the Quarry Operator will be required to:

- i. Ensure that the bond or other financial provision is maintained throughout the duration of this permission; and

Pay for the bond or other financial provision to be subject to a review five years after the commencement of development and every five years thereafter until such time as the quarry is decommissioned and the site is fully restored.

8.17 The applicant has four months from the date that the Council's solicitor writes to the Applicant/Applicant's solicitor indicating the terms of the legal agreement or other appropriate mechanism to secure mitigation for the impacts of the development agreed by the Planning Service, to deliver to the Council a signed legal agreement. Should an agreement or other appropriate mechanism to secure the mitigation agreed by the Planning Service not be delivered within four months, the application may be refused under delegated powers for the following reason:

The proposed application has failed to conclude a legal agreement required to secure a restoration bond. As such the Council has no certainty that the restoration of the quarry could be completed in the event the operator fails to undertake these works.

As such the application is contrary to the provisions of Policy 33 of NPF4 and Policy 54 of the Highland-wide Local Development Plan.

9. CONCLUSION

- 9.1 The extension of time for working the quarry with the originally consented parameters is considered to be acceptable. There will be no additional landscape, visual or amenity impacts arising from the continued operation within the originally consented parameters. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment or residential amenity.
- 9.2 All relevant matters have been taken into account when appraising this application. It is considered that the proposal accords with the principles and policies contained within the Development Plan and is acceptable in terms of all other applicable material considerations.

10. IMPLICATIONS

- 10.1 Resource: Not applicable
- 10.2 Legal: Not applicable
- 10.3 Community (Equality, Poverty and Rural): Not applicable
- 10.4 Climate Change/Carbon Clever: Not applicable
- 10.5 Risk: Not applicable
- 10.6 Gaelic: Not applicable

11. RECOMMENDATION

Action required before decision issued	Y
Notification to Scottish Ministers	N
Conclusion of Section 75 Obligation	Y
Revocation of previous permission	N

Subject to the above actions, it is recommended to

GRANT the application subject to the following conditions and reasons

1. Planning permission is hereby granted for a temporary period only and shall cease to have effect on 7 June 2053 (the 'cessation date') within which time all extractions and working and winning of aggregates shall have ceased, all plant, buildings and machinery shall have been removed and the site shall have been restored to the satisfaction of the Planning Authority. In the event that working ceases for a period of more than 6 months prior to the expiry of this permission then the site shall be restored

to the satisfaction of the Council within 12 months from the cessation of working, or in any case before the expiry of this permission.

Reason: In recognition of the temporary nature of the proposed development, to enable the Planning Authority to reassess the impact of the development after a given period of time and secure removal and restoration.

2. Within six months of the date of this decision the quarry access shall be fully surfaced in bound road stone for a minimum of 12m from the road verge into the site.

Reason: In order to ensure that the safety and operation of the public road is not compromised due to vehicles dragging loose chippings from the site onto the public road.

3. Except as otherwise provided by the terms of this permission, the developer shall continue to operate the development in accordance with the plans and supporting information approved under 09/00129/FULCA with no deviation therefrom unless otherwise approved in writing by the Planning Authority.

For the avoidance of doubt all quarry working, and formation of bunds shall be undertaken within the application area and the rate of extraction shall not exceed 30,000 tonnes per year.

Reason: To clarify and reinforce the terms of the permissions granted at this quarry.

4. There shall be no operation of the quarry outwith the hours of 7.00 am and 7.00pm Monday to Saturday and not at all on Sundays or public holidays except with the prior written approval of the Planning Authority.

Reason: In the interest of neighbouring residential amenity.

5. Operations for which noise is audible at the boundary of the site shall only be carried out between 0800 hours and 1900 hours Monday to Friday, between 0800 hours and 1300 hours on Saturday and at no time on a Sunday or public holiday. Noise arising from the quarry shall not exceed 45dB LAeq 1hr.

Noise levels during the permitted operational hours may exceed the above limits during certain operations namely; soil stripping, mound construction and landscaping. Noise levels during such operations shall not exceed 70 dB LAeq 1hr. Such operations shall not take place in more than eight weeks of any calendar year and no such operations shall commence without the prior written approval of the Planning Authority.

All the above limits shall be applied at the curtilage of any noise sensitive property during permitted operating hours. Works which require to be carried out with these time shall only commence with the prior written agreement of the Planning Authority.

Reason: In order to safeguard the amenity of the properties in the area.

6. Within six months of the date of this decision the developer shall submit a blasting method statement prepared by a suitably qualified and competent person in

accordance with PAN 50 Annex D: The Control of Blasting at Surface Mineral Workings.

The method statement shall include but it not limited to the following:

- i. The best practicable measures to be taken to reduce the impact of air overpressure and vibration at sensitive properties.
- ii. The approximate number of blasts on a weekly or annual basis and the periods of the day when blasting will be carried out.
- iii. The methods for providing the public with advance warning of blasting

For the avoidance of any doubt ground vibrations as a result of the blasting operations shall not exceed a peak particle velocity of 6mms-1 in 95% of all blasts within any 6 month period. No individual blast shall exceed a peak particle velocity of 12mms-1 as measured at noise sensitive properties. The measurement shall be the maximum of three mutually perpendicular directions taken at ground surface at any vibration sensitive building.

Reason: In the interests of amenity and public safety

7. Stockpiles of topsoil, subsoil, overburden and stored aggregate shall not exceed 6 metres in height to prevent excessive compaction and shall be evenly graded (where necessary) in such a manner as to ensure they do not appear alien features in the landscape. Topsoil and overburden shall be seeded in grass.

Reason: To reduce the visual impact of the development.

8. The operator of the quarry hereby approved shall submit an annual statement and illustrative drawings to the Planning Authority by 28 February each year following the commencement of this permission. The annual statement will present an audit of the workings undertaken in the preceding calendar year, illustrating: -

- i. The rates of extraction against the projected operations
- ii. Areas of final restoration delivered on site
- iii. The results of monitoring from the mitigation actions as presented in the application, the Site Environmental Management Plan and or in compliance with the conditions attached to this planning permission

The results of ongoing groundwater monitoring to sufficiently demonstrate a seasonably high ground water level

Reason: To ensure the Planning Authority can monitor the workings undertaken and retain effective control over the dry quarry operations.

9. Throughout the period of work, restoration and aftercare, the applicant shall protect and maintain or divert any ditch, stream, watercourse or culvert passing through the site so as to not impair the flow, nor render less effective drainage onto and from adjoining land.

Reason: In order to prevent pollution of the water environment.

10. Notwithstanding the provisions of Classes 53, 54, 55, 56, 57 or 63 of the Town & Country Planning (General Permitted Development) (Scotland) Order 1992 (or as amended), the written approval of the Planning Authority shall be required for any development within these Classes.

Reason: To allow the Planning Authority to retain effective control over operations at the site.

11. Any stripped overburden shall require to be stored within the site unless otherwise approved in writing by the Planning Authority

Reason: To ensure proper reinstatement of the site.

REASON FOR DECISION

The extension of time for working the quarry with the originally consented parameters is acceptable. Subject to the application of appropriate conditions, the development is unlikely to have a significant adverse impact on the environment or residential amenity.

INFORMATIVES

Initiation and Completion Notices

The Town and Country Planning (Scotland) Act 1997 (as amended) requires all developers to submit notices to the Planning Authority prior to, and upon completion of, development. These are in addition to any other similar requirements (such as Building Warrant completion notices) and failure to comply represents a breach of planning control and may result in formal enforcement action.

1. The developer must submit a Notice of Initiation of Development in accordance with Section 27A of the Act to the Planning Authority prior to work commencing on site.
2. On completion of the development, the developer must submit a Notice of Completion in accordance with Section 27B of the Act to the Planning Authority.

Copies of the notices referred to are attached to this decision notice for your convenience.

Flood Risk

It is important to note that the granting of planning permission does not imply there is an unconditional absence of flood risk relating to (or emanating from) the application site. Granting of planning permission does not remove the liability position of developers or owners in relation to flood risk.

Scottish Water

You are advised that a supply and connection to Scottish Water infrastructure is dependent on sufficient spare capacity at the time of the application for connection to Scottish Water. The granting of planning permission does not guarantee a connection. Any enquiries with regards to sewerage connection and/or water supply should be directed to Scottish Water on 0845 601 8855.

Local Roads Authority Consent

In addition to planning permission, you may require one or more separate consents (such as road construction consent, dropped kerb consent, a road openings permit, occupation of the road permit etc.) from the Area Roads Team prior to work commencing. These consents

may require additional work and/or introduce additional specifications and you are therefore advised to contact your local Area Roads office for further guidance at the earliest opportunity.

Failure to comply with access, parking and drainage infrastructure requirements may endanger road users, affect the safety and free-flow of traffic and is likely to result in enforcement action being taken against you under both the Town and Country Planning (Scotland) Act 1997 and the Roads (Scotland) Act 1984.

Further information on the Council's roads standards can be found at: <http://www.highland.gov.uk/yourenvironment/roadsandtransport>

Application forms and guidance notes for access-related consents can be downloaded from: http://www.highland.gov.uk/info/20005/roads_and_pavements/101/permits_for_working_on_public_roads/2

Mud and Debris on Road

Please note that it is an offence under Section 95 of the Roads (Scotland) Act 1984 to allow mud or any other material to be deposited, and thereafter remain, on a public road from any vehicle or development site. You must, therefore, put in place a strategy for dealing with any material deposited on the public road network and maintain this until development is complete.

Construction Hours and Noise-Generating Activities

You are advised that construction work associated with the approved development (incl. the loading/unloading of delivery vehicles, plant or other machinery), for which noise is audible at the boundary of the application site, should not normally take place outwith the hours of 08:00 and 19:00 Monday to Friday, 08:00 and 13:00 on Saturdays or at any time on a Sunday or Bank Holiday in Scotland, as prescribed in Schedule 1 of the Banking and Financial Dealings Act 1971 (as amended).

Work falling outwith these hours which gives rise to amenity concerns, or noise at any time which exceeds acceptable levels, may result in the service of a notice under Section 60 of the Control of Pollution Act 1974 (as amended). Breaching a Section 60 notice constitutes an offence and is likely to result in court action.

If you wish formal consent to work at specific times or on specific days, you may apply to the Council's Environmental Health Officer under Section 61 of the 1974 Act. Any such application should be submitted after you have obtained your Building Warrant, if required, and will be considered on its merits. Any decision taken will reflect the nature of the development, the site's location and the proximity of noise sensitive premises. Please contact env.health@highland.gov.uk for more information.

Protected Species – Halting of Work

You are advised that work on site must stop immediately, and NatureScot must be contacted, if evidence of any protected species or nesting/breeding sites, not previously detected during the course of the application and provided for in this permission, are found on site. For the avoidance of doubt, it is an offence to deliberately or recklessly kill, injure or disturb protected species or to damage or destroy the breeding site of a protected species. These sites are protected even if the animal is not there at the time of discovery. Further information regarding protected species and developer responsibilities is available from

NatureScot: <https://www.nature.scot/professional-advice/protected-areas-and-species/protected-species>

Signature:

Designation: Area Planning Manager - North

Author: Laura Stewart

Background Papers: Documents referred to in report and in case file.

Relevant Plans: Plan 1 - 4100-07 REV B – Location Plan

Plan 2 - 4100-08 – Site Layout Plan

Plan 3 - Aerial Photograph