

Committee Planning Application Report and Report of Handling as required by Schedule 2 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 relative to applications for Planning Permission or Planning Permission in Principle

Reference No: 19/00879/PP
Planning Hierarchy: Local
Applicant: MacLeod Construction Ltd
Proposal: Variation of condition 8 (noise levels) relative to planning permission 18/02399/MIN - Periodic Review of Mineral Planning Permission (Determination of conditions to which Mineral Permission is to be subject - ROMP First Review) for Sand and Gravel Extraction Works - Previous References:- AG/86/DM4 and AG/89/1256
Site Address: Kilmartin Quarry, Upper Largie, Kilmartin

DECISION ROUTE

Local Government Scotland Act 1973

(A) THE APPLICATION

(i) Development Requiring Express Planning Permission

- Variation of condition 8 (noise levels) relative to planning permission 18/02399/MIN (approved under ROMP)

(ii) Other specified operations

- None
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(B) RECOMMENDATION:

It is recommended that the application is approved subject to the variation of condition 8 wording attached below.

(C) CONSULTATIONS:

ABC Environmental Health, 5/6/19 – No objection subject to the re-worded condition requiring a maximum noise limit of 45dB.

(D) HISTORY:

89/01256/MIN001 – Extraction of sand and gravel at Upper Largie, Kilmartin – Approved

AG/86/DM4 – Extraction of sand and gravel over an area of 3.9ha – Approved

AG/89/1256 – Extraction of sand and gravel over an area of 5.8ha – Approved

18/02399/MIN - Periodic Review of Mineral Planning Permission (Determination of conditions to which Mineral Permission is to be subject - ROMP First Review) for Sand and Gravel Extraction Works - Previous References:- AG/86/DM4 and AG/89/1256. - Approved

Adjacent site:

15/02114/MIN - Extension to existing quarry site – Approved

(E) PUBLICITY:

Regulation 20 advert expiry 7/6/19
Neighbour notification expiry 27/5/19

(F) REPRESENTATIONS:

(i) Representations received from:

There have been 21 objections received to this application but three have not provided postal addresses. The details of these can be found in Appendix B whilst the issues raised are summarised and responded to below.

(ii) Summary of issues raised:

- The noise level is already too high and is louder than the passing traffic noise and this is not in keeping with the character of Kilmartin Glen. The applicant should install baffling on the machinery to reduce current levels.
Comment: The quarry will not be inaudible and it is not realistic to expect it to be so. Noise monitoring by the council has provided a background noise level of 34dB and the quarry is currently operating within the 3dB noise limit.
- An increase in noise levels could discourage visitors to the area and from exploring the wider Kilmartin area.
Comment: The quarry won't be any louder than it currently is. The request would allow for the occasional noisier activity such as crushing of pebbles regularly found in sand deposits without there being a breach of planning control.
- There is no record of independent regular sound monitoring.
Comment: The council's Environmental Health officers have undertaken noise recording at the site.
- Residents have previously voice concerns regarding noise.
Comment: The planning authority do not have any record of noise complaints emanating from the quarry.

- Although the area might be classed as rural the quarry is very close to Kilmartin village.
Comment: The quarry has been worked since the 1980s and deposits can only be worked where they are found. The area is classified as rural even with the presence of the village as per the definition in the planning advice note.
- The quarry is now noisier than it has been for the past seven years.
Comment: The quarry is still operating within the noise limits imposed since the previous permission was granted. It is likely that any additional noise is emanating from the extension site which is not subject of this application.
- The quarry employs a single full time operative whilst the tourism industry employs about twelve. The proposal would have a negative impact on tourism in the area.
Comment: The council is bound by Scottish Planning Policy (SPP) to provide a 10 year supply of building aggregate and Kilmartin Quarry forms part of this requirement. Kilmartin is a very important historic area but equally rural employment opportunities should not be constrained without justification.
- The council should seek to reduce the noise levels from the quarry and promote the area as a UNESCO world heritage site.
Comment: The council is seeking to control levels to an acceptable volume. It is not realistic to expect the quarry to be inaudible and it has been worked since the 1980s.
- Given the level of concern amongst residents there should be a public hearing to determine the application.
Comment: Given the relatively simple application and the singular issue to hand it is not considered necessary to hold a public hearing. The question of the quarry is not up for debate but rather whether or not there should be an acceptable increase in permissible noise levels. This is a technical assessment undertaken by council officers and it is not considered that a hearing would add value to the determination process.

(G) SUPPORTING INFORMATION

Has the application been the subject of:

- | | | |
|--------------|---|----|
| (i) | Environmental Statement: | No |
| (ii) | An appropriate assessment under the Conservation (Natural Habitats) Regulations 1994: | No |
| (iii) | A design or design/access statement: | No |
| (iv) | A report on the impact of the proposed development eg. Retail impact, transport impact, noise impact, flood risk, drainage impact etc: | No |

(H) PLANNING OBLIGATIONS

Is a Section 75 agreement required: No

(I) Has a Direction been issued by Scottish Ministers in terms of Regulation 30, 31 or 32: No

(J) Section 25 of the Act; Development Plan and any other material considerations over and above those listed above which have been taken into account in the assessment of the application

(i) List of all Development Plan Policy considerations taken into account in assessment of the application.

Argyll and Bute Local Development Plan (March 2015)

LDP STRAT 1 – Sustainable Development

LDP DM 1 – Development within the Development Management Zones

LDP 3 – Supporting the Protection Conservation and Enhancement of our Environment

LDP 5 – Supporting the Sustainable Growth of our Economy

LDP 8 – Supporting the Strength of our Communities

LDP 9 – Development Setting, Layout and Design

LDP 10 – Maximising our Resources and Reducing our Consumption

LDP 11 – Improving our Connectivity and Infrastructure

Supplementary Guidance

SG LDP BAD 1 - Bad Neighbour Development

SG LDP BUS 2 - Business and Industry Proposals in the Countryside Development

SG LDP CC 1 - Climate Change and Sustainable Development

SG LDP ENV 1 - Development Impact on Habitats, Species and our Biodiversity (i.e. biological diversity)

SG LDP ENV 7 - Water Quality and the Environment

SG LDP ENV 11 - Protection of Soil and Peat Resources

SG LDP ENV 14 - Landscape

SG LDP ENV 20 - Development Impact on Sites of Archaeological Importance

SG LDP MIN 2 - Mineral Extraction

SG LDP TRAN 1 - Access to the Outdoors

SG LDP TRAN 4 - New And Existing, Public Roads And Private Access Regimes

(ii) List of all other material planning considerations taken into account in the assessment of the application, having due regard to Annex A of Circular 3/2013.

Scottish Planning Policy (2014)

Planning Advice Note 50 – Controlling the Effects of Surface Mineral Workings (October 1996)

Planning Advice Note 51 – Planning, Environmental Protection and

Regulation (October 2006)
Planning Advice Note 1/2013 Environmental Impact Assessment (2013)
Circular 1/2017 – Town and Country Planning (Environmental Impact
Assessment) Regulation 2017

(K) Is the proposal a Schedule 2 Development not requiring an Environmental Impact Assessment: No

(L) Has the application been the subject of statutory pre-application consultation (PAC): No

(M) Has a sustainability check list been submitted: No

(N) Does the Council have an interest in the site: No

(O) Requirement for a hearing: No

Given the relatively simple nature of the application and the singular issue to hand it is not considered necessary to hold a discretionary hearing. The question of the quarry is not up for debate but rather whether or not there should be an acceptable increase in permissible noise levels. This is a technical assessment undertaken by council officers and it is not considered that a hearing would add value to the determination process.

(P) Assessment and summary of determining issues and material considerations

The site is the existing Kilmartin Quarry which has been worked for a significant period of time with permissions extending back to 1986. The portion of the site to which this permission relates has been worked with the processing equipment still in situ. Permission has been granted for an extension to the west. Access is taken via the A846 main road off a single track to a point just north of the centre of Kilmartin village.

The submission is a follow up to a previous approval under schedule 10 of the Town and Country Planning (Scotland) Act 1997 (as amended) commonly referred to as Review of Old Minerals Permission (ROMP). The purpose of the ROMP was not to review the status of the permission but rather to review the conditions to ensure they are up to date and fit for purpose in respect of the continuing working of the quarry. This is a process that is undertaken every fifteen years regardless of the length of the permission. Following the approval of the updated ROMP conditions the applicant has requested that condition 8 (noise levels) is varied by means of an application under S.42 of the Town and Country Planning (Scotland) Act 1997 to allow for a higher noise limit than that already approved. This is not to say that the quarry will be inherently louder at all times it is just to allow the developer some additional 'head room' for operations such as crushing large pebbles rather than moving them off site. This is an infrequent operation occurring once or twice annually under special dispensation to prevent double handling of material.

The current level allows for a 3dB above background noise limits whereas the applicant is seeking 10dB above background. This would be consistent with the advice contained in PAN 50.

Officers recommend that, when considering PAN 50 and the advice from Environmental Health officers, that the application is approved and the condition amended to reflect a higher noise limit but below that requested by the applicant.

(Q) Is the proposal consistent with the Development Plan: Yes

(R) Reasons why Planning Permission or Planning Permission in Principle Should be Granted:

PAN 50 indicates that a minimum fixed limit of 45dB(A) due to quarry operations is appropriate in quiet rural areas. Given the restrictions on the existing permission would not allow for minor variations on the site such as a change in wind direction or the temporary use of mobile plant it is considered appropriate to agree to an increase in acceptable limits. However, the applicant has requested a change of 10dB Noise Rating Level at any third party property whereas PAN 50 sets a maximum of 45dB in exceptional quiet areas. In this instance it is considered appropriate to allow a variation of condition to that advised in the Scottish Government's PAN 50. This would be consistent with the requirements of policy SG LDP MIN 2.

(S) Reasoned justification for a departure to the provisions of the Development Plan

N/A

(T) Need for notification to Scottish Ministers or Historic Environment Scotland:
No

Author of Report: David Love **Date:** 26/7/19

Reviewing Officer: Peter Bain **Date:** 2/8/19

Fergus Murray
Head of Development and Economic Growth

CONDITIONS AND REASONS RELATIVE TO APPLICATION REF. NO. 19/00879/PP

Life Span / Length of Consent

1. Reinstatement works shall be completed within 9 months after the completed extraction of material or should the quarry remain unworked for a continuous period of 18 months whichever is sooner.

Reason: To ensure the site is worked as per the approved and to ensure that the restoration works are carried out as per the approved details.

Extraction Programme

2. The extraction of minerals from the application site shall be limited to the excavation shown on the plans hereby approved. The site operator shall maintain a record of outgoings from the site for inspection on request by the planning authority.

Reason: For the avoidance of doubt and to ensure an appropriate monitoring mechanism for volume of extraction.

Hours of Operation

3. With the exception of the servicing, maintenance and testing of plant, water management and other environmental controls, no extraction or processing of minerals or other operations shall take place within the site other than between the hours of 8am to 6pm Monday to Saturday with no works unless for operational and / or maintenance reasons occurring on Sundays and Public Holidays unless the Planning Authority has agreed in writing in advance to a temporary variation of any of these normally permitted hours of operation, pursuant to the requirements of these conditions.

Reason: In order to safeguard the amenity of the locale.

4. In instances where there is a requirement to work outside the hours of operation specified in this permission, other than in emergency situations necessary to safeguard health and safety, the operator shall confirm in advance in writing to the Planning Authority the type of operation proposed to take place, the hours proposed to be worked, and the duration of the proposed deviation from the permitted hours of operation. Requests for deviation from normally permitted hours shall be assessed by the Planning Authority in terms of the likely consequences for the surrounding environment, and shall not be unreasonably withheld. In the event that the operator has not received a response from the Mineral Planning Authority within ten working days of notification of their request having been received, it shall be taken that the request has deemed approval from that date.

Reason: In order to provide for flexibility in the event of unforeseen circumstances.

Vehicle Sheeting

5. No loaded lorries shall leave the site un-sheeted except those only carrying stone in excess of 20mm diameter.

Reason: In the interests of road safety and amenity.

Control of Dust From Extraction And Processing

6. The operator shall employ best practicable means to minimise the arising and propagation of air-borne dust from extraction, crushing and screening equipment. Drilling rigs and processing plant shall not be operated without efficient dust control enclosures or other appropriate controls being in place.

Reason: To minimise dust emission in the interests of amenity.

7. The operator shall employ best practicable means to minimise the arising and propagation of air-borne dust and during periods of dry weather a water bowser be maintained on the site with spraying taking place as necessary to minimise dust emissions from haul roads and stockpiles.

Reason: To minimise dust emissions in the interest of amenity.

Noise

8. The Noise Rating Level attributable to the operation of the approved development shall not exceed 45dB(A) at any residential property measured and assessed in accordance with BS4142:2014.

Reason: In order to protect the amenities of the area from noise nuisance

Pollution Control

9. Any oil, fuel or other potential pollutant shall be handled on site in such a manner as to prevent spillage or pollution. In the case of oil and fuel, this shall include storage in either double skinned tanks, or properly constructed containment consisting of an impervious base and impervious bund walls. The size of the bund compound shall be equivalent to 110% of the capacity of the stored liquids with all fill and draw pipes contained by the bunded area.

Reason: In order to avoid contamination of water or soils.

Soil Management

10. Any stripping, transport and deposition of topsoil and subsoil shall be undertaken only when ground and weather conditions enable the operator to secure best practice to cause least damage to the soil structure. The position and design of any soil storage mounds shall be agreed in writing in advance with the Planning Authority and no soil shall be removed from the site or shall be stored on the site other than in the duly approved locations.

Reason: In the interests of soil management and site restoration.

Archaeology

11. No ground breaking works shall commence within each phase of extraction until a method statement for an archaeological watching brief has been submitted to and approved in writing by the Planning Authority in consultation with West of Scotland Archaeology Service (WoSAS). The method statement shall be prepared by a suitably qualified person and shall provide for the recording, recovery and reporting of items of interest or finds within the application site. Thereafter the development shall be

implemented in accordance with the duly approved details with the suitably qualified person being afforded access at all reasonable times during ground disturbance works.

Reason: In the interests of archaeological recording and compliance with SPP.

12. On the completion of the archaeological work for each phase of the quarry development, the applicant shall seek clarification in writing from the Planning Authority before each phase shall be released for quarrying operations.

Reason: In the interests of archaeological recording, to ensure suitable control over the development to protect archaeological finds and ensure suitable recording has been carried out.

Importation of Material

13. The operator shall not be entitled to import materials onto the site other than those required in connection with the operation of the roadstone coating plant. No waste materials or any other material for use in the restoration of the quarry void or any other restoration works shall be imported into the permitted site without the prior written approval of the Planning Authority.

Reason: For the avoidance of doubt.

Invasive Non-Native Species Control

14. Within 1 month of the date of this permission the site operator shall submit a detailed eradication plan for the control, treatment and removal of Japanese Knotweed from the site. This plan should also update the restoration method statement. This shall be submitted to the planning authority for its approval in consultation with their Biodiversity Officer.

Reason: In the interests of biodiversity enhancement and protection and to prevent the spread of Japanese Knotweed.

Access

15. The existing footpaths which crosses the site, path references C297 and C314(a), shall be retained on its present alignment and retained free from obstruction unless alternative provision has been implemented with the prior written approval of the Planning Authority in consultation with the Council's Access Officer.

Reason: To ensure the continued access arrangements put in place by the core paths networks.

Final Removal of Buildings and Plant

16. All plant and buildings shall be removed from the permitted site within 1 month of the permanent cessation of quarrying activities.

Reason: To ensure that redundant structures are removed in the interests of amenity.

Restoration Bond

17. Within 1 month from the date of this consent the developer shall provide the Planning Authority with details of the bond or other financial provision which it proposes to put

in place to cover all decommissioning and site restoration costs on the expiry of this permission. No further work shall commence on the site until the developer has provided documentary evidence that the proposed bond or other financial provision is in place and written confirmation has been given by the Planning Authority that the proposed bond or other financial provision is satisfactory. The developer shall ensure that the approved bond or other financial provision is maintained throughout the duration of this permission.

Reason: To guarantee the restoration of the site following cessation of the development.

Restoration and Aftercare

18. The entire site shall be reinstated in full should the quarry remain unworked for a continuous period of 18 months or upon completion of the extraction as per the approved plans.

Reason: To ensure timeous implementation of the restoration scheme as per drawing reference 'Restorations Proposals – Figure 1, Oct 2018'.

19. The level of the quarry floor on reinstatement shall not be lower than 32.75m AOD and the remainder of the detailed reinstatement as shown on the plans hereby approved.

Reason: For the avoidance of doubt and to ensure protection of the ground water environment.

20. Topsoil for reinstatement purposes shall be stored in mounds no higher than 2.0m and shall be kept weed free throughout storage period. Topsoil is to be stored within the confines of the quarry floor.

Reason: In the interests of restoration.

21. No plant or machinery shall be relocated without prior written approved of the planning authority.

Reason: In the interests of restoration of the site.

22. All stonedyke walls in the vicinity of the quarry shall be retained intact and maintained.

Reason: To ensure a suitable level of restoration and in the interests of visual amenity of the area.

23. No signage associated with the quarry (with the single exception of safety signage) to be erected without the prior written approval of the planning authority.

Reason: In the interests of visual amenity of the wider area.

24. Any planting undertaken in accordance with the requirements of these conditions shall be maintained in accordance with good horticultural practice in order to ensure successful establishment, including control of weeds, exotics and bracken, and grazing by animals. Any plants which within the first 5 years of planting die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species unless otherwise agreed in writing in advance by the Planning Authority.

Reason: To ensure that the permitted site is adequately restored in accordance with the permitted scheme.

25. No machinery / plant associated with the quarry shall protrude above the height of the embankment or be visible from the A816.

Reason: In the interests of visual amenity of the wider area.

26. No topsoil / spoil material shall be stockpiled above the height of the plateau or outwith the site boundary.

Reason: In the interests of visual amenity of the wider area.

NOTE TO APPLICANT

- In order to comply with Section 27B(1) of the Town and Country Planning (Scotland) Act 1997 it is the responsibility of the developer to submit the attached 'Notice of Completion' to the Planning Authority specifying the date upon which the development was completed.
- For avoidance of doubt this Section 42 permission relates to the terms of planning permission AG/89/1256 as amended by ROMP reference 18/02399/MIN. All plans and details should be read in conjunction planning permission 18/02399/MIN - Periodic Review of Mineral Planning Permission (Determination of conditions to which Mineral Permission is to be subject - ROMP First Review) for Sand and Gravel Extraction Works
- Previous References:- AG/86/DM4 and AG/89/1256

APPENDIX A – RELATIVE TO APPLICATION NUMBER: 19/00879/PP

PLANNING LAND USE AND POLICY ASSESSMENT

A. Settlement Strategy

The site is allocated as a minerals allocation in the adopted Local Development Plan (LDP) 2015 under reference MIN AL 12-2. It forms part of the required minerals land bank as per the demands of Scottish Planning Policy (SPP). The operation extracts sands and gravels and provides for the wider area given the nearest such resources are located at Benderloch and Langa. It also forms a resource used by MacLeod Construction Ltd. The site originally received consent in 1986 and has been worked ever since.

Under schedule 10 of Town and Country Planning (Scotland) Act 1997 (as amended) the conditions controlling minerals sites are required to be reviewed every 15 years. This is because the lifespan of such consents are likely to be considerably longer and it is necessary to review conditions to ensure they remain fit for purpose given the ever changing face of legislation. This review process is commonly referred to as a Review of Old Mineral Permissions, or ROMP.

In this instance a Review of Minerals Permission (ROMP) request was submitted on 8/11/18 and, after consultation and assessment, approved on 27/2/19. However, despite sending a copy of the proposed conditions to the agent for review the issue of the noise limit was never commented upon. Upon post approval assessment the applicant has however requested that, despite being consistent with the current noise limits, they would wish to allow for additional leeway from 3dB above background to 10dB above background.

When considering ROMP the principle of the permission is not under question or for review. It is simply a case of whether the conditions remain fit for purpose.

B. Location, Nature and Design of Proposed Development

The site is an existing sand and gravel quarry located to the north of Kilmartin. There is a history of permissions dating from 1986 and there is little evidence of upheld complaints from SEPA or the planning authority. Permission exists for an extension to the site further north whilst there are unworked deposits to the east.

The site is screened from view by a large well grassed bund to the south. Access is taken from a minor road in the middle of village adjacent the commercial vehicular garage. This access also forms part of the core path network.

C. Built Environment

In order to provide a detailed assessment of the proposals Environmental Health officers undertook a number of measurements and observations around the site to gain a picture of the overall noise environment. As the residential property Cherbin is closest to the site that is where the majority of measurements were conducted. The property is approximately 375m from the screening plant, i.e. equipment that sorts and washes the sand and gravels from raw material into product.

Fortunately the screening plant was not in operation when the first readings were taken and there was no discernible noise from the site. Background noise was dominated by intermittent traffic on the A816 with some birdsong and the odd overflying aircraft.

Subsequent readings were taken with the plant operating which allowed the specific sound level of the site operations to be calculated. Observation confirmed that the screening plant was the dominant site noise although a front loader and backhoe were both in operation within the old quarry void. During periods when there was no traffic on the road, the noise from the screening plant was clearly audible and with virtually no variation in level. It is evident that the noise from the screening plant and mobile plant in the quarry is attenuated by the topography acting as a barrier.

The measurements taken were assessed using the broad principles of the BS4142 methodology. The calculated Noise Level Rating close to the nearest sensitive receptor is 36dB which is less than the 3dB above background sound level included in the existing limit. Noise Rating Levels measured at more distance properties would invariably be lower due to the greater distance attenuation whilst background noise would be higher close to the road due to the influence of road traffic. Compliance with the existing condition at the monitoring site was thus established by this exercise but with little headroom despite the Noise Rating Level being very low.

PAN 50 indicates that a minimum fixed limit of 45dB(A) due to quarry operations is appropriate in quiet rural areas. The applicant suggests that a condition is attached requiring that the Noise Rating Level does not exceed the background noise by 10dB at any residential property. However, the noise survey reveals that the background is dominated by road traffic on the A816 and that if a Noise Rating Level of 10d above background was adopted as a limit then potentially the allowable noise limit could exceed 45db(A) by some margin at properties close to the road. It should be noted that compliance with the proposed condition does not guarantee inaudibility particularly when existing background noise levels may be significantly lower due to an absence of road traffic. However, the condition is in accordance with the guidance offered in PAN 50 in situation considered to be 'exceptionally quiet rural areas'.

Appendix B – List of contributors

1. Stephen Carter, Tormod, Kilmartin, PA31 8RQ (14/5/19)
2. Robert Sweetman, Taigh Mohir, Laggan Wood, Kilmartin, PA31 8RQ (20/5/19)
3. David Bracken, The Old Manse, Kilmartin, PA31 8RQ (21/5/19)
4. Alan Steele, Tigh Na Altruim, Kilmartin, PA31 8RQ (23/5/19)
5. Ben Rusden, 7 Castle Park, Kilmartin, PA31 8RW (22/5/19)
6. Sarah Nixon, 3 Castle Park, Kilmartin, PA31 8RW (21/5/19)
7. Thomas Campbell, Airdh Skeodnish, Kilmartin, P31 8RQ (21/5/19)
8. Phil Nilsson, 3 Castle Park, Kilmartin, PA31 8RW (21/5/19)
9. Sarah Lavender, 1 Dail Charnaig, Kilmartin, PA31 8RQ (24/5/19)
10. Claire Dangerfield-Snaith, 6 Barmore View, Kilmartin, PA31 8UH (24/5/19)
11. Simon Snaith, 6 Barmore View, Kilmartin, PA31 8UH (24/5/19)
12. Walter Ritchie, 7 Barr Mor View, Kilmartin, PA31 8UN (25/5/19)
13. Andrew Heaton, 36 Barmor View, Kilmartin, PA31 8UN (25/5/19)
14. Anne Heaton, 36 Barmor View, Kilmartin, PA31 8UN (25/5/19)
15. Lesley Sweetman, Taigh Mohir, Laggan Wood, Kilmartin, PA31 8RQ (26/5/19)
16. Brian Rattray, Rowan Cottage, Kilmartin, PA31 8RQ (24/5/19)
17. Douglas Philand (Councillor), Oriago, 32 Fernoch Crescent, Lochgilphead PA31 8AE (28/5/19)
18. Richard Adair, 8 Castle Park, Kilmartin (27/5/19)

No postal address supplied

1. Janet Jardine, Kilmartin via email (18/5/19)
2. Caroline Waterhouse, via email (24/5/19)
3. Isobel Allan, via email (23/5/19)