

DC/2015/01541

EXCAVATE 1,500 CU.M. OF STONE FOR BUILDING PURPOSES ONLY; STONE FOR CROPPING, DRY WALLING, FLAGSTONES, LINTELS AND QUOINS

CLEDD-Y-TAN WOOD, KILGWRRWG, NEWCHURCH, CHEPSTOW

RECOMMENDATION: APPROVE

Case Officer: Andrew Jones

Date Registered: 02/06/16

1.0 APPLICATION DETAILS

- 1.1 This application seeks consent to excavate 1500 cubic metres of building stone (old red sandstone). It is anticipated that a total of approximately 4500 tonnes of saleable material would be extracted over a period of 5 years. The only plant and machinery to be used for the extraction would be a 20 tonne modern excavator; this would work to a maximum depth of 8m. The operation would involve no form of blasting and activity is proposed as taking 25 days a calendar year, during which hours of operation are scheduled as 07:30-16:30 Monday to Friday. With regard to vehicle movements taking the material from site this is proposed as being one lorry carrying out four loads a day (75 tonnes per day) for 12 days a year. The material would be taken using 8 wheel 20 tonne lorries. They would access the site through the entrance at Wern-y-Cwm Wood car park.
- 1.2 The proposed works are within a site known as Cledd-y-Tan Wood. The site sits within a larch plantation extending from the western side of Wern-y-Cwm Wood. It is located within Newchurch which is to the south-west of the village of Devauden.

2.0 RELEVANT PLANNING HISTORY

None

3.0 LOCAL DEVELOPMENT PLAN POLICIES

Strategic Policies

S12 – Efficient Resource Use and Flood Risk
S13 – Landscape, Green Infrastructure and the Natural Environment
S15 – Minerals
S16 - Transport
S17 – Place Making and Design

Development Management Policies

DES1 – General Design Considerations
EP1 – Amenity and Environmental Protection
NE1- Nature Conservation and Development
EP2 – Protection of Water Sources and Water Environment
MV1 – Proposed Developments and Highway Considerations
M1 – Local Building and Walling Stone

4.0 REPRESENTATIONS

4.1 Consultations Replies

4.1.1 Devauden Community Council – Strongly recommend the application is refused. The reasons for this are given as the route that the quarry material would take before getting to the public highway is a material consideration. The application plan should include the track through NRW land and Certificate B should have been completed and a Section 27 notice served on NRW. Application incorrectly says that the applicant owns all the land.

The impact on wildlife, including protected species, and the environment. The environmental report does not include mention for instance of dormice which are known to be located in this area.

The impact of the quarrying and extraction operation, no hydrological report on the proposed extraction or noise levels throughout the normal day. Dust produced by large lorries and the potential damage to the local lanes that are already in poor state of repair. It would also see the blocking of a popular public footpath and bridle path for a period of 5 years plus the use of a hazardous junction onto the B4293.

4.1.2 Glamorgan Gwent Archaeological Trust – No objection to the positive determination of this application.

4.1.3 Welsh Water – There are no public sewers in this area. It appears the application does not propose to connect to the public sewer, and therefore Dwr Cymru Welsh Water has no further comments.

4.1.4 Environmental Health Officer - I have reviewed this application and met with the applicant on site. I would recommend to the planning authority that if planning permission is granted that the following conditions be added:

1. That there is a condition as to the type of machinery used on site. The application details a 20T Excavator only with no other machinery being needed for excavation.

2. That there is a condition as to the working hours i.e. 07:30-16:30 Monday –Friday. only.

Other conditions to consider could be the maximum amount of stone allowed to be excavated per annum and the number of days the excavation can occur. I would recommend that the number of days that the activity is taking place on site be confirmed as it says 25 days in the application initially and then goes on to say that the 1000T of stone per annum that is being applied for would take only 14 days to excavate.

4.1.5 Highways Engineer - The applicant has submitted some detail in respect of trip rates and traffic types within the Minerals questionnaire, however no detail has been submitted in respect of site access and proposed transport routes. In light of the aforementioned we would request the applicant to submit details on site access for consideration together with a Construction Traffic Management Plan (CTMP) to provide in depth detail about the type and frequency of traffic and details of the proposed transport route to and from the site.

Following further information submitted it was advised that the comments made by the applicant are noted however this still needs to be supported by relevant drawings/plans demonstrating the access points and proposed routes. As specified in our highway comments we will require a CTMP to be submitted.

4.1.6 Biodiversity Officer - Based on the current objective survey and assessment available, we have enough ecological information to make a lawful planning decision.

Dormice

The proposal is located within a Plantation on Ancient Woodland Site (PAWS) whilst the area of quarrying is predominantly larch woodland there is an understorey of hazel, birch, rowan, holly and bramble. The above ecological assessment highlighted that there was potential for hibernating dormice within the development area.

Unfortunately the initial assessment failed to identify the potential impacts on dormice or provide adequate details on mitigation for this species. An objection was raised and further to discussion with the applicant a Hazel Dormice Conservation Strategy was submitted for consideration.

Whilst the submission of the strategy is welcomed there are still elements of the scheme that are unknown. For example there are no plans of the site, which should include, but not be limited to, detailing sensitive areas of the site (in terms of high, medium, low favourability for dormice - i.e. hibernation potential), illustrating the links from the site to adjacent habitat, location of site storage – e.g. wood, subsoil, machinery.

The methods of felling/understorey vegetation removal – should be described and in line with best practice guidance. It will also be necessary for the timings of removal of trees, vegetation and stumps to be revised taking into account the phasing of the proposal.

The submitted woodland management plan is welcomed and should be specifically referenced in the revised dormouse conservation strategy demonstrating how the restored woodland will be managed favourably for dormice.

NRW have provided comments on the proposal in light of the submitted conservation strategy and have no objections to the proposal subject to conditions being attached to the permission which require the applicant to present a revised dormouse conservation strategy and obtain a European Protected Species Licence prior to commencement of the permitted works. As a licence is required, the Local Planning Authority will need to consider the 'Three Tests' for European Protected Species. Please see our internal guidance note on consideration of the 'Three Tests' for licencing and report template.

Bats

The assessment found that the trees proposed for felling lacked any potential for roosting bats and as such no further survey is deemed necessary. Whilst it is likely that bats forage and commute over this area, the extent of clearance (15-20 trees) is unlikely to cause negative impacts to these species.

Nesting Birds

The site is likely to provide suitable nesting sites for a variety of bird species potentially including Schedule 1 species. As such a nesting bird's condition is appropriate.

Water management

It is noted within the ecological assessment that the proposal will involve the diversion of a stream which runs along the boundary of the development area. It is stated that the diversion will ensure the stream is protected from soil contaminants, however the submitted detail in the form of a silt buster does not fully satisfy NRW's concerns in terms of protection of the water environment. A further condition is requested which requires the applicant to submit a water management plan prior to any works commencing on site.

4.1.7 Natural Resources Wales – Fourth and final comments are as follows (three previous consultation responses are available on the Council's website).

We have considered the above submissions and we recommend that you should only grant planning permission if you attach the following conditions. These conditions would address significant concerns that we have identified and we would not object provided they are attached to any planning permission.

Condition 1: European Protected Species – Dormice

We have reviewed the dormouse conservation strategy entitled 'Proposed quarrying of stone within Cledd-y-Tan Wood plantation, Devauden. Hazel Dormouse Conservation Strategy' by Clark Webb Ecology Limited dated September 2016, submitted in support of the application for the above development. The broad principles of the Dormouse Conservation Strategy are acceptable, however we consider that it requires further development into a detailed document that will give it the flexibility to be delivered. Therefore, should you Authority be minded to grant permission, then the submission of a detailed dormouse conservation strategy should be secured through an appropriately worded condition on any planning permission granted.

The Strategy should be submitted to the LPA for approval prior to any works commencing on site and be implemented as agreed. The Strategy should address:

- i. The methods of vegetation clearance;
- ii. the working areas, including storage sites for machinery and felled material (Eg. where material from Phase 1 will be stored until it is required as backfill for the final phase);
- iii. how links will be maintained with surrounding habitat;
- iv. the individual quarrying areas and a schedule of works to detail the sequence of them being worked and the proposed timeframe; and
- v. the proposed site restoration plans.

Whilst we note that (v) above is included within the long-term woodland management plan for the wider land owned by the applicant, we advise that this element is specifically included in the dormouse conservation strategy.

EPS Licence

We advise that the applicant seeks a European Protected Species licence from Natural Resources Wales under Regulation 53(2)e of The Conservation of Habitats and Species Regulations 2010 before any works on site commence that may impact upon bats/dormice/great crested newts/otters. Please note that the granting of planning permission does not negate the need to obtain a licence.

Condition 2 – Water Management Plan

We welcome the proposal by the applicant to install a silt buster in the stream. However, this does not fully satisfy our concerns. The installation of a silt buster would only constitute part of a water management plan, other mitigation is required to protect the water environment. Therefore, the following condition is required.

Condition

The development hereby permitted shall not be commenced until such time as a water management plan has been submitted to, and approved in writing by the local planning authority. The water management plan should include:

- The proposed method of surface water discharge and any treatment proposed;
- The proposed method of diversion of the stream which runs through the site;
- Details of the management of the stream; and
- Details of proposed pollution prevention measures, particularly in relation to suspended solids, in order to prevent pollution of the stream.
- Details of storage of oils and fuels
- Details of the proposed method of working.

4.2 Neighbour Notification

Objections from seven households citing the following areas of concern:

- Road along which lorries from the proposed quarry would travel is a narrow county road quite unsuitable.
- Would create risk to all road users, including walkers, cyclists and horse riders.
- Huge impact on local wildlife.

- Noise and dust from machinery used for extraction.
- Adverse impact on local camping business.
- Contamination of the streams, used as drinking water for stock.
- Believe that some works have already taken place on site.
- The submitted application forms is incomplete.
- Questioned whether the predicted noise levels are realistic.
- Questioned whether the applicant have the necessary permission from NRW to use their forest tracks.
- The total number of movements to and from the site is not clear from the information submitted.
- Questioned whether the days per annum on site be in blocks or spread through the year.
- No details showing the method of extraction.
- Route for transporting materials shall be included where it passes through third party land, if this is the case then Certificate B should have been signed and notice served on NRW.

5.0 EVALUATION

5.1 Principle of the proposed development

5.1.1 As highlighted in the text supporting Strategic Policy S15, there is a sufficient landbank of permitted aggregate resource in the County for the duration of the LDP period. Should any planning application for new or extended minerals working be submitted then any such proposal would be considered under national policies contained in Minerals Planning Policy Wales and Minerals Technical Advice Note (Wales) 1: Aggregates. One such exception may occur when quarrying enables the provision of locally derived stone for use in restoration and new building work that reinforces the distinctiveness, character and identity of the County. Policy M1 enables this to take place, although advises that care will be needed to ensure that proposals are small-scale, do not have any harmful impact on the countryside and do not involve the use of extensive blasting or use of heavy vehicles.

5.1.2 Policy M1 sets out that *proposals for new or the re-opening of small-scale quarries for building and walling stone for local conservation and heritage projects or new build to meet any unmet need will be permitted, subject to national planning policy and detailed planning considerations.*

Furthermore the site lies outside defined Mineral Safeguarding Areas (Policy M2) and Mineral Site Buffer Zones (Policy M3); it is therefore considered that the proposal is acceptable in principle subject to detailed considerations to be addressed in the ensuing sections of this report.

5.2 Visual Impact

5.2.1 The woodland is in part an ancient woodland site, the majority of which is now Plantation on Ancient Woodland (PAWS). The proposed works will affect less than 0.025 ha of larch plantation, require the felling of approximately 15-20 mature larch trees and removal of the underlying light under-storey of native shrubs. It is also noted that the site lies approximately 0.9 miles to the west of the Wye Valley Area of Outstanding Natural Beauty. LDP Policy LC4 sets out that *development proposals that are outside the AONB but would detract unacceptably from its setting will not be permitted.*

The applicant has submitted a Woodland Assessment and Management Plan in support of the proposal which identifies that the woodland lends itself to gradual (long term) restoration back to predominantly native broadleaves. Continuous Cover Forestry (CCF) approach is recommended, in order to maintain woodland cover and therefore retain the

habitat continuity and setting for other objectives. This will help to avoid unnecessary disturbance associated with clearfell and restocking (replanting) operations. Whilst the Management Plan is welcomed the Council's Biodiversity Officer has recommended that further restoration details are provided to ensure that this element is specifically included in the dormouse conservation strategy. The implementation of the Management Plan is to be controlled via appropriate planning condition.

5.2.2 It is therefore considered on balance that subject to complete restoration plans being agreed and implemented, given the life span of the proposal (5 years) that it would not cause unacceptable harm to the ancient woodland or the setting of the Wye Valley AONB.

5.3 Residential Amenity

5.3.1 The proposal is located approximately 120m to the north of the nearest residential property, known as Well Cottage. Accordingly the Council's Environmental Health Officer (EHO) has met with the applicant on site to consider potential impact on surrounding residential dwellings. The EHO does not consider that the proposal would cause such unacceptable harm to residential amenity so as to warrant refusal provided conditions are applied to manage operating hours, machinery used and the number of days operational per calendar year.

5.3.2 As detailed in section 1.1 of this report no blasting would be required to extract the stone which is the form of extraction that is more closely linked to issues of noise and dust. Therefore conditions are to be used to ensure that this method cannot be used.

5.3.4 The site is also afforded a degree of natural mitigation given its presence within a woodland, therefore for this reason and those referenced previously it is considered that the proposed stone extraction for a period of 5 years would meet the various criteria set out in Policy EP1 *Amenity and Environmental Protection*.

5.4 Highway Safety

5.4.1 As set out in section 1.1 access to the site would be through the entrance at Wern y Cwm Wood car park. One lorry (8 wheel 20 tonne) would carry four loads a day (75 tons per day) for 12 days a year.

The Council's Highway Engineer has requested further information in the form of a Traffic Management Plan to provide in depth detail about the type and frequency of traffic and details of the proposed transport route to and from the site. No objection in principle has been raised by the Engineer and therefore it is considered reasonable to condition that the requested Plan is submitted and agreed via planning condition.

5.4.2 It is noted that a number of objections have been received in relation to the local highway network is not suitable to accommodate the large lorries required in relation to the proposal. However, it must be noted that the site is already subject to occasional maintenance works by NRW which involves the use of large vehicles. Therefore subject the aforementioned condition it is felt that the proposal would not cause unacceptable harm to local highway safety.

5.5 Biodiversity

5.5.1 The application is supported by an appropriate level of information, including an Ecological Assessment and Hazel Dormice Conservation Strategy, to allow the LPA to make a lawful decision.

However, it is considered that the Conservation Strategy requires further development into a detailed document that will give it the flexibility to be delivered.

NRW have provided comments on the proposal taking into account the submitted conservation strategy and have no objections to the proposal subject to conditions being attached to any permission which require i) a revised dormouse conservation strategy and ii) to obtain a European Protected Species Licence prior to commencement of the permitted works. As a licence is required, the 'Three Tests' for European Protected Species will need to be considered.

5.5.2 European Protected Species – Three Tests

In consideration of this application, European Protected Species (including dormice) will be affected by the development and it has been established that a derogation licence from Natural Resources Wales will be required to implement the consent. Monmouthshire County Council as Local Planning Authority is required to have regard to the Conservation of Species & Habitat Regulations 2010 (as amended) and to the fact that derogations are only allowed where the three tests set out in Article 16 of the Habitats Directive are met. The three tests have been considered in consultation with NRW / Council Biodiversity and Ecology Officers as follows:

(i) The derogation is in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment.

Development Management Comment: The extracted stone will help to provide locally derived stone for use in restoration and new building work that reinforces the distinctiveness, character and identity of the County.

(ii) There is no satisfactory alternative

Development Management Comment: Owing to the nature of the works there are no readily available alternative sites, the resource has been discovered in this location and therefore dictates where the works take place.

(iii) The derogation is not detrimental to the maintenance of the population of the species concerned at a favourable conservation status (FCS) in their natural range.

Development Management Comment: NRW have not objected to the proposal subject to suggested conditions. These will demonstrate that the development and future management of the site will not be detrimental to FCS and would also inform their licence application.

In the light of the circumstances outlined above which demonstrate that the three tests would be met, and having regard for the advice of Natural Resources Wales and the Council's own Biodiversity Officers, it is recommended that planning conditions (see section 6) are used. However, as the EPS licence would be considered by Welsh Government in conjunction with NRW, there would be no need to condition that this is provided before works commence as this would needlessly duplicate other legislation and would not meet the tests set out in WG Circular 016/2014: 'The Use of Planning Conditions for Development Management'.

5.6 Water Management

5.6.1 The proposal would involve the diversion of a stream which runs along the boundary of the development area and it is stated that the diversion will ensure the stream is protected from soil contaminants. Whilst NRW have welcomed the proposal by the applicant to install a silt buster in the stream, this does not fully satisfy their concerns. The installation of a silt buster would only constitute part of a water management plan, other mitigation is required to protect the water environment. As such. A water

management plan is therefore recommended to be conditioned in line with advice from the Council's own Biodiversity Officer as well as NRW.

5.8 Other issues raised

5.8.1 Some local residents as well as the Community Council have concerns that the proposed development would lead to the obstruction of a bridle way and public footpath. Whilst right of way 357/48/1 does run through the site it does not cross the identified area for stone extraction. An information note is to be attached advising the applicant of their responsibility not to obstruct or block a right of way.

5.8.2 In addition it has been also noted that access to the area of excavation crosses over third party land (NRW) and as such Certificate B should have been signed and issued rather than Certificate A. The applicant has been contacted and the corrected notice is to be issued.

5.8.3 Finally concerns have been raised in regard to whether the total number of days on site per calendar year (25 days) is to be grouped together or if they would be spread across the period. It is considered unacceptably onerous to condition the pattern of days that are worked on site given variables including weather, driver availability etc.

6.0 **RECOMMENDATION: APPROVE**

Conditions/Reasons

1. This development shall be begun within 5 years from the date of this permission.
Reason: To comply with Section 91 of the Town and Country Planning Act 1990.
2. The development shall be carried out in accordance with the list of approved plans set out in the table below.
Reason: For the avoidance of doubt.
3. No development, vegetation/tree clearance, earth moving shall take place or material or machinery brought onto the site until a revised Dormouse Conservation Strategy has been submitted to and approved in writing by the local planning authority. The content of the strategy shall include:
 - i. The methods of vegetation clearance;
 - ii. the working areas, including storage sites for machinery and felled material (Eg. where material from Phase 1 will be stored until it is required as backfill for the final phase);
 - iii. how links will be maintained with surrounding habitat;
 - iv. the individual quarrying areas and a schedule of works to detail the sequence of them being worked and the proposed timeframe; and
 - v. The proposed site restoration plans.Whilst we note that (v) above is included within the long-term woodland management plan for the wider land owned by the applicant, we advise that this element is specifically included in the dormouse conservation strategy. The development shall be carried out strictly in accordance with the approved details.
Reason: To safeguard individuals and the resting place / breeding site of a European Protected Species in accordance with the Conservation of Habitats and Species Regulations 2010.
4. No removal of hedgerows, trees or shrubs brambles, ivy and other climbing plants that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed

check for active birds' nests immediately before the works commence and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

Reason: To ensure that breeding birds including Schedule 1 birds are protected. All British birds, their nests and eggs (with certain limited exceptions) are protected by law under Section 1 of the Wildlife and Countryside Act 1981 (as amended).

5. The development hereby permitted shall not be commenced until such time as a water management plan has been submitted to, and approved in writing by the local planning authority. The water management plan should include:
 - i. The proposed method of surface water discharge and any treatment proposed;
 - ii. The proposed method of diversion of the stream which runs through the site;
 - iii. Details of the management of the stream; and
 - iv. Details of proposed pollution prevention measures, particularly in relation to suspended solids, in order to prevent pollution of the stream.
 - v. Details of storage of oils and fuels
 - vi. Details of the proposed method of working

The development shall be carried out strictly in accordance with the approved details.
Reason: To protect the water environment.

6. No development shall take place until such time as a Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include detail about the type and frequency of traffic and details of the proposed transport route to and from the site. The development shall be carried out strictly in accordance with the approved details.

Reason: In the interests of highway safety.

7. The use hereby permitted shall be ceased within 5 years of the date of this permission and the land restored in accordance with details to be agreed as part of the site restoration plans required by condition 4. The restoration shall be implemented within a timetable agreed as part of the approved restoration plan.

Reason: Planning permission is granted for a temporary period only and in the interests of visual amenity.

8. No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times 07:30-16:30 Monday to Friday. In addition no activities connected to the approved use shall be carried out on site any more than 25 times in 1 calendar year.

Reason: To protect the amenities of the nearby residential properties from noise and general disturbance.

9. The extraction of material on the site shall be carried out only by a 20 tonne modern excavator.

Reason: To protect the amenities of the nearby residential properties from noise and general disturbance.

Informatives

1. Bats – Please note that Bats are protected under The Conservation of Habitats and Species (Amendment) Regulations 2012 and the Wildlife and Countryside Act 1981 (as amended). This protection includes bats and places used as bat roosts, whether a bat is present at the time or not.
2. We advise that the applicant seeks a European Protected Species licence from NRW under Regulation 53(2) e) of The Conservation of Habitats and Species (Amendment)

Regulations 2012 before any works on site commence that may impact upon a European protected Species (EPS). Please note that the granting of planning permission does not negate the need to obtain a licence.

3. Nesting Birds – Please note that all birds are protected by the Wildlife and Countryside Act 1981. The protection also covers their nests and eggs.
To avoid breaking the law, do not carry out work on trees, hedgerows or buildings where birds are nesting. The nesting season for most bird species is between March and September.
3. The applicant should be made aware of the private water supply abstraction from the stream on the western boundary. An acceptable water management plan should demonstrate how the excavation will not impact on the abstraction.
We recommend the applicant reviews the following guidance in relation to the proposed development: Pollution Prevention Guidance:
<http://www.netregs.org.uk/environmental-topics/pollution-prevention-guidelines-ppgs-and-replacement-series/guidance-for-pollution-prevention-gpps-full-list/>
Discharges to surface water and groundwater Guidance:
<https://naturalresources.wales/apply-for-a-permit/water-discharges/discharges-to-surface-water-and-groundwater/?lang=en>
4. The applicant is advised that there are public rights of way in the vicinity of the development. The grant of planning permission does not give permission to close, divert or obstruct a public right of way. Obstructing a public right of way is a criminal offence for which you may be prosecuted. You should contact the Public Rights of Way Officer, Monmouthshire County Council (Tel 01633 644860/644862) for advice on procedure should you need to close or divert a public right of way.