

PREFACE ITEM

APPLICATION NO. 17/0973/FULL

APPLICANT(S) NAME: Bryn Aggregates Ltd

PROPOSAL: Retain and formation of a repositioned approved earth bund, landscaping and associated works

LOCATION: Gelliargwelt Farm Gelligaer Road Gelligaer CF82 8FY

This application was reported to Planning Committee on 18 July 2018 with a recommendation for approval subject to conditions and a legal agreement. A copy of the report is attached as Appendix. Committee resolved that the application be deferred for a further report with reasons for refusal based on inadequate peat mitigation measures, and inadequate noise and dust mitigation measures given the distance between the quarry and the bund and the deviation from the original approved location.

For the reasons outlined in the officer's report, it remains the recommendation that the application be approved. The application is supported by an updated noise assessment (Hunter Acoustics October 2017). With the bund formed in the revised location, noise levels are predicted to increase marginally at receptors to the east and south but would remain within the parameters set by Minerals Technical Advice Note 1 Aggregates (MTAN1), paragraph 88, which states that daytime working noise levels should not exceed background noise levels by +10 dB(A) where background noise is less than 45 dB(A).

In terms of noise associated with bund construction, modelling indicates that worst case scenarios fall well below the 67 dB(A) threshold for temporary works of less than eight weeks duration a year in MTAN1 and below the World Health Organisation daytime garden noise criterion of 55 dB(A). The noise modelling has been assessed and found to be sound. For these reasons it is not considered that a reason for refusal based on noise would be successful at an appeal.

In terms of dust, an air quality impact assessment (carried out by Airshed) provided with the application indicates that baseline levels of PM10 and PM2.5 are predicted to be within acceptable levels at all sensitive receptors. Those terms refer to particulate matter (PM) 10 micrometres or less in diameter, and 2.5 micrometres or less in diameter respectively.

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The report has been assessed and found to be sound. Measures can be required by condition to minimise dust emissions beyond the boundary of the site. Therefore it is not considered that a reason for refusal based on dust emissions would be successful at appeal.

Based on the information provided the application demonstrates that the proposed bund is acceptable in landscape terms and that noise and dust would not increase to an unacceptable degree as a result of the repositioning of the bund. The distance of the bund from the quarry and the deviation from the original scheme are not, therefore, sound reasons for refusal as no harm has been demonstrated to result from the proposed amendments.

The peat resource is scarce within the county borough but the Waun Rhydd site of importance for nature conservation (SINC) has become degraded through the application of fertiliser and its management for agriculture (which the applicant as landowner is entitled to do). The designation of an area as a SINC does not in itself confer any statutory protection on that land, but it does allow its particular qualities to be material considerations in the determination of a planning application. That can in some cases justify a refusal of permission, but in other cases it can be used as a positive tool. The proposals offer the opportunity to establish a hydrological regime that ensures the SINC is maintained in a state that will enhance the features of interest and that it is managed for nature conservation instead of agriculture.

The recommendation is still to approve the proposed development because:

- The proposed bund offers landscape benefits in terms of a more natural profile and it is capable of being managed for agriculture
- The technical responses indicate that noise and dust would not increase significantly as a result of the revised location and noise would be within the limits set out in national guidance
- Any impacts during construction can be managed by appropriate planning conditions, including a dust mitigation scheme
- When complete the bund would screen the quarry and minimise noise and dust arising from the quarrying operations
- Any harm to the peat resource is offset by the opportunity to enhance Waun Rhydd SINC

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However, if Committee is still minded to refuse permission reasons for refusal based on the harm to the peat resource, and noise and dust are set out below.

RECOMMENDATION: That planning permission is GRANTED subject to the conditions contained in the original report and to a legal agreement to secure a financial guarantee.

However, if Members are minded to refuse the application, the following reasons are suggested:

1. The application fails to demonstrate adequately that the proposed development would not lead to further degradation of the features of interest in the Waun Rhydd site of importance for nature conservation (SINC) due to the impact of the proposed bund on the hydrology of the area. The development would therefore be contrary to policy CW4 in the Caerphilly County Borough Local Development Plan up to 2021 – Adopted November 2010.
2. Construction of the bund would adversely affect to an unacceptable degree residential properties in Penybryn and Gelligaer due to noise and dust emissions, contrary to policy CW2 in the Caerphilly County Borough Local Development Plan up to 2021 – Adopted November 2010.

<i>Code No. and Date Received</i>	<i>Name and Address of Applicant</i>	<i>Description and Location of Proposed Development</i>
17/0973/FULL 13.11.2017	Bryn Aggregates Ltd C/o Barton Willmore Mr J Ayoubkhani Greyfrairs House Greyfrairs Road Cardiff CF10 3AL	Retain and formation of a repositioned approved earth bund, landscaping and associated works Gelliargwelt Farm Gelligaer Road Gelligaer CF82 8FY

APPLICATION TYPE: Full Application

SITE AND DEVELOPMENT

Location: The application site is located adjacent to Bryn quarry, approximately 225 metres south-west of Gelligaer and 515 metres north-west of Penybryn. Parc Penallta lies to the south-east and Nelson 1.75 kilometres to the south-west of the site. Bryn quarry is a small sandstone quarry within Gelliargwelt Uchaf farm, a dairy unit with land between Nelson, Gelligaer and Trelewis. The farm also contains a number of waste-related buildings and uses, including a materials recycling and recovery facility and an anaerobic digestion facility.

Site description: The site comprises former agricultural land on the edge of the quarry. The site is within the Mynydd Eglwysilian Special Landscape Area and the farmhouse and bee boles within the cluster of agricultural buildings to the west is a grade II listed building. Waun Rhydd Site of Importance for Nature Conservation adjoins the site boundary to the north.

Development: The application is partially retrospective and formation of the proposed bund has commenced. The application proposes a perimeter bund approximately 200 metres from the edge of the quarry. The extant permission for the site (12/0570) included a bund but sited immediately adjacent to the quarry bowl. The applicant states that when construction commenced on the bund in that location, it could not continue due to unforeseen instability. Boreholes carried out to inform the quarry extension and associated development missed an area of peat, which was not stable enough to take the loading of the approved bund.

The proposed bund runs in a north-west south-east direction then turns 90 degrees to run north-east to run north-east to south west and is located further to the north of the quarry than the approved location because of the prevailing ground conditions. No change is proposed to the mineral working approved in 2012.

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The purpose of the bund is to mitigate the visual impact of the quarry and to lessen the impacts of dust and noise on the residential areas of Penybryn and Gelligaer. It is designed so that the outer, gentler slope can be used for agriculture.

Dimensions: The site area extends to 18.8 hectares but this includes land between the quarry and the bund, which is the subject of a separate application (17/0971) for variation of the restoration scheme. The bund would rise from 219m AOD to a maximum height of 225m AOD. The maximum height above existing ground level would be 6.6 metres.

Materials: Not applicable.

Ancillary development, e.g. parking: None is proposed.

PLANNING HISTORY 2005 TO PRESENT

12/0570/FULL - Extend existing quarry operations including new drainage system and settlement ponds, landscape bunds and associated works - Granted 13.08.13.

17/0971/NCC - Vary condition 18 of planning permission reference 12/0570/FULL to enable the variation of the approved restoration scheme to reflect the repositioned earth bund and landscaping. - Not yet determined.

POLICY

LOCAL DEVELOPMENT PLAN

Site Allocation: The site is outside settlement boundaries identified in the adopted Local Development Plan.

Policies: The following policies in the Caerphilly County Borough Local Development Plan adopted November 2010 are relevant to the determination of this application: SP5, CW15 Locational Constraints, SP6 Place Making, SP8 Mineral Safeguarding, CW2 Amenity, CW3 Highways, CW4 Natural Heritage Protection, CW5 Water Environment, CW22 Mineral Safeguarding, CW23 Buffer Zones.

NATIONAL POLICY National policy is contained in Planning Policy Wales Edition 9 November 2016.

ENVIRONMENTAL IMPACT ASSESSMENT

Did the application have to be screened for an EIA? Yes.

Was an EIA required? No.

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COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? The site is within the coalfield but no built development is proposed.

CONSULTATION

Transportation Engineering Manager - No objection is raised.

Head Of Public Protection - Having reviewed the noise assessment and the air quality assessment submitted with the application, Head of Public Protection raises no objection subject to the implementation of a dust mitigation scheme during construction and conditions restricting hours of operation for the bund construction as well as a condition setting environmental noise limits at sensitive properties.

Countryside And Landscape Services - No objection is raised subject to the works being carried out in accordance with the landscape mitigation and planting strategy plan submitted with the application. Conditions should also be attached to require prior approval of certain details and to ensure a five-year maintenance plan and a ten-year landscape management plan are implemented.

Senior Engineer (Land Drainage) - Advice is provided for the developer and a condition is recommended to ensure that the development is served by an appropriate means of drainage.

Rights Of Way Officer - Two footpaths cross the site. The applicant should be reminded by means of an informative that access to the footpaths should be maintained and safety of users maintained at all times.

Natural Resources Wales - NRW made comments on the proposal at the pre-application consultation. That remains current and no further comments are made.

The pre-application advice dated 2 November 2017 raised no objection. Recommendation was made in respect of monitoring ditches and lagoons during construction to prevent sediment and suspended solids reaching surface waters and advice was given to the applicant on pollution control measures.

CADW - Cadw considers that the proposed development will not cause damage to the setting of any scheduled monuments and, therefore, raise no objections.

Ecologist - The comments are contained and addressed in the Analysis section of this report.

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Landscape Architect - No objection in principle subject to conditions to secure successful restoration and to secure compliance with the landscape mitigation and planting strategy submitted with the application.

ADVERTISEMENT

Extent of advertisement: The application has been advertised by site notices posted near the site and by letters to 144 properties in Penybryn and Gellgaer which face onto the site.

Response: Three letters of objection have been received together with a petition containing 69 signatures.

Summary of observations: The following issues are raised: Noise, dust, smell, the quarry is getting bigger and moving towards Penybryn and Gelligaer, Deposit of stone dust on perimeter of quarry, the retrospective nature of the application, measures are needed to improve road condition and to prevent out of hours vehicles, loss of wildlife, distance between quarry and bund, impact on SLA.

SECTION 17 CRIME AND DISORDER ACT

What is the likely effect of the determination of this application on the need for the Local Planning Authority to do all it reasonably can to prevent crime and disorder in its area?
The proposal is unlikely to have a significant impact on crime or disorder in the local area.

EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species? A survey was carried out and although it is unlikely to be a significant issue in this case, the standard WAG species licence condition will be imposed and an advisory note will be sent to the applicant as precautionary measures.

COMMUNITY INFRASTRUCTURE LEVY (CIL)

Is this development Community Infrastructure Levy liable? No, mineral working and ancillary development not creating floorspace is exempt.

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ANALYSIS

Policies: The application has been assessed in the context of national policy and the policies in the adopted local development plan. The main issues are as follows:

The principle of the development in the countryside (SP5, CW15)

The proposed development is associated with mineral working, which has to take place where the mineral resource is found. For that reason mineral working is one of the development types that may be permitted within the countryside. While the proposal itself is not for mineral extraction, the bund is necessary to enable the continuation of mineral extraction at the quarry.

Landscape and visual impact (SP6, CW4)

The site is within the Mynydd Eglwysilian SLA. A Landscape and Visual Impact assessment has been carried out by the applicant and assessed by the Council's Landscape Architect, who raises no objection subject to the imposition of conditions to secure compliance with the submitted landscape mitigation and planting strategy and measures to secure successful restoration. The impact of the proposed bund on the character and appearance of the surrounding special landscape area are not significantly greater than the impact associated with the approved bund and can be addressed by conditions.

Impact on ecology and nature conservation (CW4)

The site is adjacent to the Waun Rhydd Site of Importance for Nature Conservation designated for its marshy grassland indicator species, semi-improved acid grassland and scrub. Policy CW4 states that development proposals in close proximity to SINC's will be permitted where they conserve and if appropriate enhance the distinctive and characteristic features of the SINC or where the need for the development outweighs the ecological importance of the site and where the harm is minimised by mitigation measures and offset by compensation measures to ensure that there is no reduction in the overall value of the site.

The proposals involve the removal of a significant quantity of peat, which is a scarce resource within the county borough. The applicant has estimated that of the 315,000 cubic metres of peat within the application site boundary 146,000m³ would be lost due to compaction beneath the bund and through the removal of peat on the approved alignment of the bund. However, two peat cells would be created within the proposed bund, together with another area to the north east of the application site amounting to 27,000m³ of peat in mitigation. The net loss would, therefore, be 119,000m³.

Peat is a mineral resource that is relatively rare in the county borough, and is a finite natural resource. It provides an important function in both water catchment management, acting as a sponge during periods of high rainfall, helping to reduce downstream flooding, and also acts as a carbon sink.

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With regards to ecological interests associated with the application, the peat in the vicinity of the proposed bund has been agriculturally improved through the regular application of fertilizers resulting in the sward now comprising of relatively few grass species, and is currently of low ecological value. However, it should be noted that due to the very wet nature of the site this would quickly revert to a more diverse sward if a less intensive management regime were to be introduced. As this area forms part of a relatively intensively farmed land, the likelihood of reversion to a less intensive regime, is unlikely unless agricultural policies change following Brexit.

Noise impact (CW2)

A noise impact assessment has been prepared by the applicant and assessed by the Head of Public Protection. No objection is raised subject to the imposition of conditions setting noise limits for the construction phase and day-time noise limits at residential properties.

Dust and air quality (CW2)

An air quality impact assessment has been carried out by the applicant and assessed by the Head of Public Protection. No objection is raised subject to a dust mitigation scheme being implemented throughout the construction phase of the development.

Impact on water environment (CW5)

The application site is within an area liable to surface and groundwater flooding and is within 20 metres of a watercourse. Natural Resources Wales raises no objection in principle. The council's land drainage engineer recommends that a condition be attached to any consent granted to require the submission of a scheme of land and surface water drainage.

Mineral site buffer zone (SP8, CW23)

Policy CW23 aims to prevent conflict between mineral working and sensitive development. The application site is within the buffer zone for Bryn Quarry and the bund encroaches on sensitive residential development in Gelligaer and Penybryn. Determination of the application should have regard to the effect of the proposed development on the residential areas.

Mineral safeguarding area (CW22)

Within mineral safeguarding areas permanent development that would sterilise the mineral resource will be resisted. The site is within an area of sandstone resource and coal resources. The sandstone resource is important nationally as the sandstones of the Coal Measures have qualities which make them suitable for skid resistant road surfacing. Such resources are limited in extent across the UK, although they are extensive within the south Wales coalfield. The proposed development would facilitate the extraction of sandstone at the adjacent quarry in accordance with a permission granted in 2012 and it does not, therefore, conflict with policy CW22.

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Coal has been worked in the local area in the past but there is no indication that any remaining resource is commercially viable. The resource lies to the south of the farm buildings and waste development, some 400 metres from the application site.

Comments from consultees: The comments are summarised above and addressed in the analysis section of this report.

Comments from public: The comments are summarised above and are addressed in the report above.

Other material considerations:

The duty to improve the economic, social, environmental and cultural well-being of Wales, has been considered in accordance with the sustainable development principle, under section 3 of the Well-Being of Future Generations (Wales) Act 2015. In reaching the recommendation below, the ways of working set out at section 5 of that Act have been taken into account, and it is considered that the recommendation is consistent with the sustainable development principle as required by section 8 of that Act.

CONCLUSION

The principle of the quarry and associated development has been established by permission reference 12/0570. The current application seeks to construct a bund in a revised form to the north of the approved site. The footprint of the proposed bund is larger but it is approximately the same height. The bund would have a steeper inner face and a gentler outer face to facilitate its use for agriculture.

It is unfortunate that the application is partly retrospective. The applicant claims this was due to the need to react to the unexpected instability of the ground immediately adjacent to the quarry due to the peat resource, which made the ground unsafe for construction vehicles and would have reduced the stability of the landform. Delaying the bund construction work while the issue was resolved could have had repercussions for production at the quarry. The application falls to be determined on the planning merits of the case and any unauthorised work is carried out at the applicant's own risk.

The bund would screen the quarry from the residential areas in Penybryn and Gelligaer and would assist in minimising noise and dust impact at residential properties near the site. The effects of the bund, including the effect on the Mynydd Eglwysilian SLA and the Waun Rhydd SINC, are not significantly greater than those associated with the approved bund and the impacts can be addressed by the imposition of suitable conditions.

The proposal would result in the loss of a substantial area of degraded peat resource. To compensate for the loss, the applicant proposes management of the remaining areas to prevent further degradation. This can be secured by condition.

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On balance the harm caused by the loss of the peat resource does not outweigh the benefits offered by the proposal in terms of a more natural landform, mitigation of the effects of quarrying and in enabling the quarry to continue to supply High Specification Aggregate which is limited in occurrence across the UK.

However, a legal agreement is required in order to secure the proposed peat mitigation measures, to secure monitoring of water levels within the SINC and to set trigger levels for further mitigation to protect the characteristic features of the SINC. This may include financial measures, for example a bond, to ensure that the peat mitigation measures can be completed if, for some reason, the operator fails to comply.

RECOMMENDATION (A) that the application is DEFERRED to allow the applicants to enter into a Section 106 Agreement on the basis set out in the report. On completion of the Agreement (B) that Permission be GRANTED.

This permission is subject to the following condition(s)

- 01) The development hereby permitted shall be carried out only in accordance with the following plans and other submitted details except where modified by the conditions that follow:
 - Application dated 13 November 2017;
 - Planning Statement dated November 2017;
 - Drawing Number AJA.2229.01 Landscape mitigation and planting strategy received 13 November 2017;
 - Drawing number BAL-NSB-2916-012revA Proposed bund and restoration received 13 November 2018;
 - Drawing Number BAL-NSB-2016-003revG Proposed bund sections 13 November 2018;
 - Drawing Number BAL-NSB-2016-009revA Proposed bund phase 1 received 13 November 2018;
 - Drawing Number BAL-NSB-2016-010revA Proposed bund phase 2 received 13 November 2018;
 - Drawing Number BAL-NSB-2016-011revA Proposed bund phase 3 13 November 2018;
 - Drawing Number BAL-NSB-2016-013revA Site location plan received 13 November 2018;
 - Drawing Number BAL-NSB-2016-002revQ Proposed bund received 24 May 2018;
 - Drawing Number BAL-NSB-2016-016 Peat for habitat creation received 24 May 2018;
 - Letter dated 24 May 2018 - Peat quantities appraisal.
- REASON: To ensure that the development is carried out only as approved by the Local Planning Authority.

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- 02) Within three months of the date of this permission an aftercare scheme detailing and timetabling the tasks associated with the 5-year maintenance and defects plan and schedule of maintenance operations shall be submitted for the approval of the Local Planning Authority. The scheme shall include a written detailed medium and long term landscape management plan, covering a 15 year period plus, to ensure the scheme becomes successfully matured, including areas of peat translocation and to ensure that the proposed landscaping successfully mitigates the adverse effects. The scheme shall be implemented as approved.
REASON: To ensure appropriate standards of aftercare.
- 03) A scheme of land and surface water drainage within the site shall be submitted to and approved by the Local Planning Authority within two months of the date of this permission. Thereafter the development shall be carried out in accordance with the approved details.
REASON: To ensure the development is served by an appropriate means of drainage.
- 04) A detailed planting plan and written specification (following the Landscape and Mitigation and Planting Strategy, drawing number AJA.2229.01rev3), shall be submitted for the approval of the Local Planning Authority within three months of the date of this permission. The plan shall include details of:
Ground preparation, planting numbers, wildflower and grass seed mixes and sowing rates;
Location and type of stockproof fencing to protect proposed woodland, wildflower grassland and hedgerows;
Detailed timetable highlighting the phasing of all operations during the construction period of the earth bund, including a timetable for seeding, peat excavation and planting.
Once approved, the plan shall be implemented in full throughout the proposed operations.
REASON: To protect the amenity of the local area.
- 05) Construction work on the bund shall not take place except between the hours of:
Monday to Friday 08:00-18:00;
Saturday 09:00 - 13:00.
No operations shall be carried out on the bund on Sundays or bank holidays.
REASON: To Protect the amenity of local residents.

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- 06) Within one month of the date of this permission a scheme and programme of measures for the suppression of dust, shall be submitted for the approval of the Mineral Planning Authority. The scheme shall include:
- (a) The suppression of dust caused by the moving and storage of soil and overburden, stone and other materials within the site;
 - (b) The fitting of drilling rigs with efficient dust control measures;
 - (c) Dust suppression on haul roads, including speed limits;
 - (d) The provision of dust collection and storage facilities;
 - (e) Provision for monitoring and review of the scheme;
- Such scheme shall be implemented and complied with at all times during the construction of the bund.
- REASON: To protect the amenities of the locality from the effects of any dust arising from the development.

Advisory Note(s)

Please find attached the comments of Natural Resources Wales, Rights of Way Officer and Senior Engineer (Land Drainage) that are brought to the applicant's attention.

The following policy(ies) of the Caerphilly County Borough Local Development Plan up to 2021 - Adopted November 2010 is/are relevant to the conditions of this permission: SP5, CW15, SP6, SP8, CW2, CW4, CW%, CW22 and CW23.

