

Code No. and Date Received	Name and Address of Applicant	Description and Location of Proposed Development
P/97/0981 31.10.1997	Tarmac Heary Building Materials UK Ltd Millfields Road Ettingshall Wolverhampton	Undertake initial review of planning conditions under the Environment Act 1995 for resumption of quarrying Blaengwynlais Quarry Near Caerphilly CF83 1NG

**APPLICATION TYPE:** Minerals Application

**SITE AND DEVELOPMENT**

Location: Blaengwynlais Quarry is located on the northern edge of Cardiff with access from Rhiwbina Hill. The southern part of the quarry is within the administrative district of Cardiff but the northern part of the site is within Caerphilly county borough. The site lies approximately 12km north west of Cardiff town centre and 3km south west of Caerphilly town centre. Access to the site is via narrow country lanes with steep gradients either south to the A470 through residential areas in Rhiwbina or to the A469 2.5km to the north.

Site description: Blaengwynlais Quarry is a limestone quarry surrounded by agricultural land and woodland with several isolated houses and farms nearby. The quarry is a single unit based on three planning permissions. The southernmost and central sections of the quarry lie within Cardiff but the northern section falls within Caerphilly and contains the majority of the unworked reserves. Floor levels vary from 200m AOD at the northern end to 170m AOD adjacent to the site entrance.

The quarry is made up of exposed faces, benches and stripped areas with screening vegetation blocks on the periphery. The plant area contains a wheelwash, demountable office building, workshops and storage buildings. The area that has been quarried, amounting to around 12 hectares, has not been restored but there is some natural regeneration on the bare rock faces.

To the south and east of the quarry there is established beech woodland, part of the Cardiff Beechwoods SSSI and SAC. To the north and east are areas of mixed woodland and pasture. A network of footpaths exist within the woodland areas to the south and east.

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Development: The development proposed is the continuation of winning and working of minerals subject to updated conditions governing working, restoration and aftercare. Three phases are proposed; phase one would extend the quarry into the currently unworked north east corner of the permission boundary. Phase two would involve the sinking of two further 15 metre benches to 170m AOD. The final phase involves working between 170m AOD and 140m AOD with a further two sinkings of 15m benches, In addition, mineral would be won from a water lagoon system in the south of the quarry to provide storm water capacity and water for dust suppression within the site. The quarry development scheme was amended in 2010 to take account of environmental information gathered by the company. In order to make the review meaningful, the applicant company has assumed that quarrying will recommence, although the quarry is currently mothballed and the timescale for resumption of operations is unclear, as is the rate of output and the markets to be served. Mineral was last taken out of the site in the mid 1990s to supply a contract in Cardiff.

The applicant expects that overall the three phases of development would release up to 6 million tonnes of rock and would take place over a period of 20 years. An extraction rate of 300,000 tonnes per annum has been assumed, consistent with historic operations at the quarry. Future quarrying operations would utilise mobile plant for crushing and screening, which provides versatility to be relocated within the quarry to suit the ongoing development. The key focus is likely to be on producing 10mm and 20mm aggregate which can be used for a variety of purposes in the construction industry.

The quarry would continue to use the existing access onto Rhiwbina Hill and would be likely to generate approximately 55 loads a day or 110 HGV movements. It is likely that vehicles would travel both north and south from the access, although the ES considers a "worst case scenario" where all vehicles travelled in only one direction, and the actual directional split would depend on the markets served.

Dimensions: The site area within Caerphilly County Borough extends to 11.8 hectares.

### PLANNING HISTORY

CC.2386 Cardiff Rural District Council - Extension of quarrying rights - Approved 7 April 1961 subject to conditions

E.14596 Caerphilly Urban District Council - Extension - Approved 28 March 1961 subject to conditions

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CC3888 Cardiff Rural District Council - Vary conditions to allow increase in explosives weight - Approved 11 December 1963

0391 South Glamorgan County Council - Request to vary amount of explosive charge- Resolved to take no action to enforce previous restriction 26 October 1978

55/77/1270 tree planting screen - Approved 6 January 1978.

## POLICY

### LOCAL DEVELOPMENT PLAN

Site Allocation: The site is within a Special Landscape Area (SLA), a Limestone Safeguarding Area and partially within a Site of Importance for Nature Conservation (SINC).

Policies: NH1.5 (SLA), NH187 (SINC), Limestone safeguarding area, County wide policies CW2 - Amenity, CW3 - Highways, CW4 - Natural heritage protection, CW5 - Protection of water environment, CW6 - Tree/woodland protection, CW15 - General locational constraints.

NATIONAL POLICY Minerals Planning Policy Wales 2000, Minerals Technical Advice Note 1: Aggregates 2001, MPG 14 1995.

### ENVIRONMENTAL IMPACT ASSESSMENT

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

Was an EIA required? Yes.

### COAL MINING LEGACY

Is the site within an area where there are mining legacy issues? The site is outside the coalfield.

### CONSULTATION

Dwr Cymru - No objection.

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Natural Resources Wales - No objection in principle.

Western Power Distribution - No objection in principle.

Head Of Public Protection - No objection.

Transportation Engineering Manager - Traffic management difficulties are likely to be experienced due to narrow carriageway width on the route northwards via Heol Pen Y Bryn and Waunwaelod Way to Heol Cae Barra. There is a stretch of some 275 metres between passing places where there is also poor forward visibility due to carriageway alignment. A passing bay would be desirable along this stretch but would require land acquisition. Further stretches of road would also benefit from passing places where the fence line is set back from the edge of the carriageway.

The transport statement indicates that Blackbrook Road will not be used but a weight limit should be applied and signs erected as a reminder to drivers.

Health & Safety Executive – No comment.

Rhondda Cynon Taf Council - No objection subject to highway improvements being implemented; a condition survey of local roads being undertaken to inform compensation arrangements via a section 106 agreement and a restriction on HGVs before 09.00 and after 16.30 on weekdays and before 09.30 or after 13.00 on Saturdays in the interests of the free flow and safety of traffic.

Glam/Gwent Archaeological Trust - The supporting information in the EIA meets the current professional standards and details the wider archaeological resource as well as known features within the site boundary and included a site walk over. There is the potential for archaeological features to be encountered but they are unlikely to be of national significance. A condition should be attached in line with advice in WO circular 60/96 Section 22 to ensure that a watching brief takes place conducted by a qualified archaeologist to the standards of the Institute of Archaeologists.

### ADVERTISEMENT

Extent of advertisement: The application has been advertised on site and in the press and by individual notification to the nearest houses. The proposals were re-advertised in January 2012 in line with the requirements of the regulations, when the environmental statement and revised schedule of conditions were received.

Response: No representations were received.

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Summary of observations: Not applicable.

### 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? It is not considered that the proposed development will have a material effect on crime and disorder.

### EU HABITATS DIRECTIVE

Does the development affect any protected wildlife species? Yes

European protected species have been identified by a survey

The Local Authority must apply the following three tests to the planning application:

- (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.
- (ii) There is no satisfactory alternative.
- (iii) The derogation is not detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.

The three tests were applied and answered as follows:

- (i) Beneficial economic effects may result from resumed quarrying.
- (ii) Quarrying at the site has a valid permission expiring in 2042. Revoking the permission would have compensation implications which would not be in the public interest.
- (iii) If the mitigation measures are carried out in accordance with the application, the harm to protected species would not be detrimental to the maintenance of the species concerned at a favourable conservation status in their natural range.

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## ANALYSIS

Policies: Guidance in MPG 14: Environment Act 1995 sets out that the government sees the review as an important opportunity to secure improved operating and environmental standards but that for active sites the LPA should not need to impose conditions, other than restoration and aftercare conditions, which would restrict working rights to the extent that either the economic viability of operating the site or the asset value of the site would be prejudiced adversely to an unacceptable degree. Conditions dealing with measures to prevent dust and spillages on the highway will be appropriate to all sites and a working programme should be produced to ensure that operations are designed to protect areas of environmental and ecological importance. Working hours and noise conditions should be attached to permissions and aftercare can be used to bring the land to a required standard according to the intended after-use.

The proposed scheme of conditions meets those requirements and complies with national and local policy. A discussion of the particular issues is set out below.

Comments from Consultees: No objections have been received from statutory Consultees.

Rhondda Cynon Taf Council requests a restriction on HGVs before 09.00 and after 16.30 on weekdays and before 09.30 and after 13.00 on Saturdays in the interest of the free flow and safety of traffic. This would reduce the hours of operation by 2 hours on weekday mornings, two and a half hours on weekday evenings and two and a half hours on Saturday mornings. Such a restriction is considered to be unreasonable and likely to affect the economic viability of the site. Traffic and transportation issues are considered below.

NRW originally objected to the proposal, and has made detailed comments on the application in correspondence dated 8 February 2012, 1 August 2012, 14 October 2013 and 10 December 2013. The comments related to protected species, including bats and dormice, protected sites including Fforest Ganol and Cwm Nofydd SSSI and other matters. The applicant has worked with NRW to reach an agreed position and on 29 July 2014 NRW confirmed that the revised bat mitigation strategy (30 April 2014) now addressed its original concerns. The wording of several conditions was also revised, culminating in a schedule of conditions dated 10 December 2013, which the applicant saw as being its final position.

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NRW has not maintained an objection to that schedule of conditions although it wished to incorporate wording in condition 30 to clarify that mitigation may necessitate the permanent or temporary cessation of pumping. The condition requires an annual ecological survey of Forest Ganol and Cwm Nofydd SSSI to inform any mitigation measures that may be required and it is considered that this could include cessation of pumping on either a temporary or permanent basis if necessary. There is, therefore, no need to include the additional wording.

Comments from public: None.

Other material considerations:

#### History

Quarrying commenced on a small scale at the beginning of the twentieth century to supply construction material for local needs and limestone for lime burning. Production reached approximately 120,000 tonnes a year in 1970 but then quarrying became an intermittent operation. The first permission was granted in 1948 under the Interim Development Order legislation and further permissions were granted in 1961. A tree planting scheme for land on the eastern boundary of the quarry was approved in 1978. The quarry was last worked in 1996 when limestone was excavated to supply a major contract in Cardiff. The stone was processed using mobile plant. The unworked reserves remaining in the quarry, mostly within Caerphilly county borough, are estimated by the applicant to amount to six million tonnes of limestone.

#### Legislative background

This application is for the review of the conditions attached to an existing, valid permission for quarrying operations at Blaengwynlais Quarry. Although it is a temporary use of land mineral working can last for many years during which time the impact of the operation can change and the standards and expectations of society may also change. Acting on recommendations in the report of the Stevens Committee (1976) the government introduced new provisions for reviewing permissions in the Town and Country Planning (Minerals) Act 1982 and it was intended that the industry should bear reasonable costs arising from the modernisation of old permissions. However, the provisions of the 1981 Act did not work as well as intended and the government sought to improve them, initially through the Planning and Compensation Act 1991, which dealt with permissions granted between 1943 and 1948. The Environment Act 1995 introduced new requirements for an initial review and updating of old mineral planning permissions granted after 1948 and for the periodic review of all mineral planning permissions thereafter.

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Blaengwynlais Quarry was a phase 1 active site for the purposes of the review because the substantive permission was granted between 30 June 1948 and 1 April 1969 and minerals development had been carried out at the site between 22 February 1982 and 6 June 1995.

The procedure is that the mineral operator submits to the planning authority a schedule of modern conditions for working, restoration and aftercare and the Local Planning Authority (LPA) may modify, add to or replace those conditions. New conditions should be necessary, relevant to planning, relevant to the development, enforceable, precise and reasonable in all other respects. Applicants have a right of appeal to the secretary of state if different conditions are imposed to those submitted in their application if they consider the condition to be unreasonable. The LPA is required to consider whether the conditions imposed would adversely affect to an unacceptable degree either the asset value of the site or the economic viability of operating it and if they do a liability for compensation will arise. The exception to this rule is restoration and aftercare conditions. At the time of submission of the application, a decision had to be made within three months unless the applicant agreed to an extension of time otherwise the applicant's submitted conditions took effect.

After the submission date in October 1997, case law (*R v. North Yorkshire County Council ex parte Brown and Cartwright*) 1999 established that ROMP applications were "development consents" for the purposes of the 1985 EEC directive on environmental impact assessment and that the directive had not been properly transposed into UK law. As a result the EIA regulations were amended in 2000 so that ROMP applications received after 15 November 2000 were subject to consideration of the need for EIA in the same way as an application for planning permission. However, the regulations could not be applied retrospectively. Welsh Government guidance issued in 1998 urged operators and local planning authorities to voluntarily apply the principles of the EIA regulations as amended to ROMP applications received before the regulations came into force. It was generally accepted that the directive had direct effect and, therefore, any application determined without an EIA where the development was likely to have significant environmental effects could be challenged.

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In 2001, Tarmac asked the LPAs whether EIA screening had taken place and the two authorities responded that it had not but that further consideration needed to be given to the need for additional environmental information because of the potential impacts of deeper quarry extraction on Cardiff Beechwoods SAC, Cwm Nofydd SSSI and Blaengwynlais Meadows SINC, which had features that could be adversely affected by changes in groundwater levels. When the application was submitted in 1997 the Environment Agency (now NRW) initially objected to the proposed conditions because of the potential groundwater impact. The company indicated its willingness to undertake a water environment protection study to assess what mitigation measures may be necessary but progress was slow due to ongoing discussions relating to the scope and implementation of the study.

In effect, any determination of the application was not sound without environmental information but the LPA could not require its submission and the quarry could re-open at any time working under the old conditions, which were not in line with modern standards. In 2009 the Welsh Government, recognising that there were several sites throughout Wales where progress on updating conditions had stalled, introduced new legislation in the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009 to set a statutory timeframe for determining the applications. Sanctions, in the form of an automatic suspension of minerals development, were also introduced where any step of the new procedure was missed. Once suspended nothing other than the compliance with every requirement of the regulations had been complied with and only the final determination of conditions allowed mineral development to proceed. If the permission remained suspended for more than two years the LPA was required to consider whether to make a Prohibition Order preventing the resumption of minerals development.

The regulations provided that all development that was the subject of a stalled ROMP application was deemed to be EIA development, subject to a three week period when the applicant could apply to Welsh ministers for a screening direction. Tarmac chose not to apply for a screening direction which meant that the LPAs were required to adopt a scoping opinion within 8 weeks of the regulations coming into force. Caerphilly County Borough Council adopted a scoping decision on 22 June 2010. A draft ES was submitted on 8 November 2011 and CCBC confirmed on 28 November 2011 that the ES was consistent with the scoping opinion. The environmental statement was submitted on 2 December 2011, together with an updated schedule of conditions reflecting the recommendations for mitigation set out in the ES and replacing the conditions submitted in 1997.

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The conditions that are presented for approval are set out in the appendix to this report.

The main issues are considered below:

#### Landscape

The quarry is well screened by peripheral vegetation and by the surrounding undulating landform. The area to the south of the quarry is an important local and national site comprising ancient woodland and contains some of the most westerley beech woodland in the country. This area is designated as Cardiff Beech Woods SAC. Within Caerphilly county borough, the area to the north of the site is designated as a Special Landscape Area and a SINC, both local designations. Overall the ES assessed that the future development of the quarry would have a neutral impact on the landscape character of the surrounding impact zones compared to the baseline situation. There were both beneficial and adverse impacts on local landscape receptors but the fully restored landscape would have a negligible/slight beneficial impact through the reduction of visible rock faces.

The council's landscape architect is in general agreement with the findings of the Landscape and Visual Impact Assessment and believes that the adverse impacts of the proposed development are predominantly localised within the Zone of Visual Influence and can largely be mitigated by the proposals contained within the restoration plan. He raises no objection to the proposal.

#### Cultural Heritage

Two areas of old quarry workings dating from the 18th - 19th century exist within the application boundary. One will not be affected but the other may be removed. It is considered to be of minor importance and GGAT has not raised objection to the proposals. Condition 46 provides for a watching brief to be carried out by a competent archaeological contractor during soil stripping in the unworked area and for the recording of any features of interest.

#### Environmental effects

Noise, dust, air quality and blast vibration have been considered in the environmental statement and the results used to inform the proposed conditions. The limits proposed in the conditions are consistent with guidance in MPG14 and TAN1: Aggregates. The Head of Public Protection has been consulted and has not raised any objection to the proposed conditions.

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### Traffic

The quarry is served by a network of minor rural roads. Depending on the markets served, lorries would travel south via Rhiwbina Hill to the A470 or north via Heol Pen Y Bryn towards the A469. South of the junction with Blackbrook Road to a point approximately 150m south of the entrance to Mountain Lakes Golf Club, the road lies within the administrative district of Rhondda Cynon Taf council. The transport statement indicates that Blackbrook Road will not be used. However, the remaining routes have varying carriageway widths and are, in places, less than the 5.5m necessary for lorries travelling in opposite directions to pass one another. While the road has constraints both to the north and south and is not ideal to carry traffic generated by the quarrying operation, there is only one highway serving the site and the company have no alternative but to utilise the routes that are available in order to implement the permission.

The traffic data was reviewed as part of the environmental assessment and based on a worse case scenario where all the traffic from the quarry travels either north or south, the additional traffic (10 movements an hour) falls within the day to day variations during the peak hours of the network when the capacity is most limited.

Conditions 9 - 11 provide for wheel cleaning and off site highway improvements.

### Ecology

An extended phase 1 habitat survey of the quarry and adjacent areas has been undertaken and the site was inspected for its potential to support notable protected or rare species of flora and fauna. Specialist surveys were conducted for bats, hazel dormouse, reptiles, schedule 1 birds, great crested newts and badger.

To compensate for the removal of vegetation within Blaengwynlais Meadows SINC, the applicant proposes an ecological mitigation area (EMA) extending to nearly 2ha. The EMA would be created in advance of the impacts occurring and would provide a similar habitat mix of bare rock, scree, calcareous grassland, scrub and woodland. The ecological assessment also concluded that there was a potential for dewatering to have a detrimental effect on flushes within Cwm Nofydd and Fforest Ganol SSSIs and measures are proposed to mitigate against such impacts, including pumping water into a trench to ensure the features of interest do not dry out. Detailed ecological monitoring of the flushes would take place to ensure the mitigation was working.

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The removal of habitat within Blaengwynlais Meadows SINC would have a negative effect on protected species, namely hazel dormice, foraging bats, reptiles and breeding birds and in order to comply with the legislative protection afforded to those species the applicant proposes to create alternative habitats in advance of any vegetation removal.

The EMA has been carefully designed to reflect the habitats currently present. Reptiles would be translocated to the EMA, while dormice would be encouraged by making the habitats within the quarry boundary less suitable and providing a better alternative. Quarrying would result in a short term, temporary disturbance to bats roosting in a small cave until the quarrying activities moved away from the cave. Measures to protect the bats are proposed, including the installation of a grill and careful monitoring of the use of the cave by bats.

Peregrine Falcons are unlikely to be adversely affected as the ledges they use will remain and this species has proved adaptable and able to co-exist with quarry operations. Annual surveys would ensure that the presence of the birds is taken into account when quarrying activities were planned.

The restoration scheme would create a new water body and areas of calcareous grassland, which would contribute to the Caerphilly BAP.

NRW has been consulted on the application and does not object to the proposed conditions.

#### Hydrology and hydrogeology

The proposed development involves working to a depth of 140m AOD, which would require pumping. This has the potential to cause changes to the water environment in the surrounding area and could cause drier conditions in Blaengwynlais Meadows SINC, as well as the SSSI and SAC in Cardiff if they were found to be reliant on groundwater. The applicant, while accepting that in limestone areas there is always an element of uncertainty about the scale of impacts associated with quarry dewatering, considers that, due to re-infiltration and direct discharge of pumped water locally, there will be no net effect on the water balance of the springs and seepages in the area. Dewatering requires a discharge consent from NRW.

The ES has considered the potential risk of groundwater pollution, derogation of springs to the east feeding the Nant Cwmnofydd and of increased flow in the Nant y Fforest and has proposed monitoring of the effects and mitigation measures to be implemented if identified trigger levels are reached. NRW has reviewed the mitigation measures and has not objected.

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### Restoration and aftercare

The proposed conditions include provisions for the submission of a detailed restoration and aftercare scheme to be submitted for approval when quarrying ceases, based on the concept restoration plan B111/15 showing the site restored with a nature conservation bias. Aftercare would be provided for five years. The concept restoration scheme is designed to create a bio-diverse environment, including deciduous woodland, acidic grassland, open water bodies, ephemeral wetland, scree slopes and areas of natural regeneration on bare quarry floor. Geological features and remnant quarry faces would be preserved and the scheme promotes ecological enhancements on additional land to the north east of the quarry.

The current planning permissions do not incorporate restoration or aftercare conditions.

### Duration of development

The permissions for the site are not time limited. The proposed conditions introduce an expiry date of 21 February 2042 in line with the provisions introduced in the Town and Country Planning (Minerals) Act 1981. Any attempt to bring forward the expiry date is likely to restrict working rights. There is also some uncertainty as to the legal position. In *Earthline v. Secretary of State and West Berkshire Council* the High Court held that a review of an Interim Development Order permission under the Planning and Compensation Act 1991 could not introduce an earlier end date than 22 February 2042. However, for reviews under the Environment Act 1995 it has been held on appeal that the *Earthline* decision was not applicable. One of the permissions for Blaengwynlais is an IDO permission and the end date for all permissions needs to be consistent.

### Working rights

If the Local Planning Authority determine conditions different to those submitted by the applicant, it is required to consider whether the effect of the conditions, other than restoration and aftercare conditions, is to further restrict working rights and if so, whether the effect of the restriction would be to prejudice to an unreasonable degree either the economic viability of the operation or the asset value of the site.

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The conditions put forward for approval vary only marginally from those submitted by the applicant in December 2013. The proposed conditions do not restrict the depth of working, the site area, the height of waste heaps, the rate of mineral extraction, the period of expiry of the permission or the total quantity of mineral to be extracted and therefore, it is considered that working rights are not restricted.

#### Conclusion

The applicant's proposed conditions as set out in Annexe B, with minor revisions to drafting as set out in Appendix C, are considered to be a positive contribution to updating the existing conditions, which date from 1961 in Caerphilly and earlier in Cardiff. The existing nine conditions would be replaced with a comprehensive schedule of 48 conditions informed by an environmental impact assessment. Those conditions will ensure that future working takes place in accordance with modern standards and controls.

**RECOMMENDATION:** That the conditions set out in the attached appendix are approved.

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