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3rd February 2021
Place Services

F.A.O. Terry Burns
Minerals and Waste Planning Team
Essex County Council

Dear Terry,

Application No: ESS/45/18/COL Birch Quarry Additional Information (December 2020)

Proposal: Continuation of use of land for mineral extraction and ancillary use without compliance with Conditions 1 (Approved Details) and 3 (Duration) of planning permission ESX/27/92/COL originally granted for "Winning and working of sand and gravel, erection of a concrete batching plant and associated facilities, construction of a new site entrance and restoration to agriculture and amenity" to enable a revised restoration scheme and to accommodate an extension of time to achieve site restoration through until 31st December 2029. Land at Birch Pit, Maldon Road, Birch

Location: Birch Pit, Maldon Road, Birch, CO5 9XE

Further to our last formal comments on this scheme by letter dated 7th October 2020 we provide an updated response. The October response followed the receipt of information in June 2020, comprising a covering letter from SLR dated 04.06.2020, and three scenario options as Plans BP10/5 and a LVA summary.

This response provides a further update since the correspondence from SLR, dated 15th December. Part of the letter comprised a 'Tree Constraints Plan Accompanying Notes' from DB Landscape Consultancy. This was prepared following the survey carried out 13th November 2020.

Landscape (Anne Westover)

My comments on the three options put forward for further consideration are as follows. Please note that these should be read alongside my previous comments in the Place Services letters dated 20th March 2019, 25th April 2019 and 7th October 2020.

We have stated previously that part of the small woodland (1 Phase 1 Habitat Survey) appears to be shown to be removed by the scheme. This is the section located to the south west side of the farm track and containing a number of mature oak and woody undergrowth. This woodland area has recently been assessed and is now indicated on the recent submission/Tree Constraints Plan as Group G2. The position of this group and all other trees indicated as AP meaning Approximate Location.

1. Scenario 1 Plan BP10/5 Rev A No hedge retained

This plan shows the hedge and the six mature oak trees removed (Phase 1 Habitat Survey). The revised plan BP10/5 - Rev A- Dec 2020 does now address the inclusion on G2. This is the copse of seven oaks and understorey growing beyond the woodland edge and access track.

The removal of the mature oaks along with the hedgerow in which they grow will result in the loss of a significant landscape feature. Whilst it is recognised that the feature has become fragmented by the previous removal of hedgerows, trees and copses this remaining feature presents an important landscape feature linking and providing connectivity with the small woodland and further hedges/large trees extending east across the landscape. The feature could form a key role in future landscape restoration post excavation. Any further fragmentation of landscape features should be resisted.

The large mature oaks are visible in the wider landscape extending out from the woodland. Photographs taken in both winter and summer months indicate their presence within the wider landscape. Whilst there are no 'more' sensitive receptor viewpoints from footpaths or bridleways in the vicinity there are views of this landscape from the road and from residential properties.

The historic hedge/oak trees form an important element of the baseline landscape character and helps to assist with some screening of the current mineral extraction operations. The loss and fragmentation of any element of this will represent a major/moderate adverse landscape impact. I have previously stated that the hedgerow is '*important*' under the criteria in the 1997 Hedgerows Regulations.

Mitigation offered

Any additional planting of hedgerows such as those indicated will be beneficial in respect to landscape restoration particular if mature features are removed. The proposed hedge crossing the restored agricultural land will have some habitat connectivity benefits. However it will be some time before the hedge offers the wider landscape or visual benefits afforded by the oak trees T1-T7. I would anticipate a tree height of 4/5 metres after 20 years subject to positive after care management. At this height the trees will begin to make a visual contribution to the landscape.

I previously advised that if on balance this option of No Hedge/oaks retained (as per the planning application) is accepted/approved then I would wish to see a further hedgerow offered as mitigation. This being the enhancement of the field boundary with hedgerow to create connectivity between the woodland and Top Pond Holes woodland to the north.

I note that this has now been offered (subject to landlords' agreement) as part of the scheme. This would certainly be beneficial as mitigation in the longer term. I note the proposed hedge across the pre-restored land and agree that this would be beneficial. Both would need to be subject to a legal agreement to secure delivery and after-care.

I would have no objection to an attempt to lift and translocate any self-sown oak which may need to be removed as part of an approved scheme. However, this would need to be done with particular care and with an aftercare package to ensure successful growth. Other oak for new planting should be propagated from the local oak on site to ensure good local provenance.

Planting distances for hedgerow trees suggested at one tree per 30 metres is low, and in some areas there would be scope to increase this to distances of 15-20metres. This is in accordance with our recommendations for other quarry sites across the county. Hedgerow trees are often space intermittently and at close distances than the 30 metres suggested by Hanson.

With respect to other elements of the restored landscape we have noted that the management of the woodland belt and hedgerows along Blind Lane has not been robust. We have identified a need for positive management work including thinning, formative pruning, and plastic removal. There is a need to ensure progress on this aspect of the advanced planting management to ensure that the desired effect including screening of the extended works is achieved.

2. Scenario 2 Plan BP10/5 Half hedge retained

This scenario partially addresses the above concerns relating to loss of the landscape feature. Whilst any retention of the trees/hedge will assist to reduce landscape impact and loss of character this would be a halfway/compromise measure only so mitigation would still be needed.

Mitigation offered

If on balance this option is accepted then I would wish to see further compensation as outlined above for scenario 1. I would like to see the other hedges referred to above at Scenario 1.

The precis loss of oak trees i.e. which trees is not clarified appears to be T1, T2 and T3; and possibly T4? The trees are not specifically marked on the plans.

Depending on the outcome of further discussions and if this option is considered I would welcome the inclusion of the new hedgerow now promoted as part of Scenario 1 above i.e. between the woodland and Top Pond Holes woodland to the north.

3. Scenario 3 Plan BP10/5 Full Hedge retained

With respect to retention of the landscape feature, Hedge H1, all six oaks and the entirety of the woodland this scenario is preferable. The survey has confirmed my findings that the oak trees are of significant age, good quality and have the potential to offer considerable longevity and landscape value.

Successful retention would need to be guided by suitable buffer zones and operational practices. Impacts may arise from changes in soil structure and availability of soil moisture/water for the trees whilst excavation is underway, this may require some specific operational measures to be carried out.

If this Scenario 3 is accepted by the applicant (and processed as an amendment/amended application) I would support this option subject to appropriate conditions.

I note that in respect of Scenario 3 mitigation Hanson will offer the northern perimeter hedge to the edge of excavated zone only. Whilst any wider offer of any additional off-site hedge/tree creation/restoration would always be beneficial I do not consider that off-site hedging would be required to form part of the restoration scheme.

Arboriculture (Anne Hooper)

SLR have finally provided a tree survey based on BS5837 principles, specifically relating to T1-T6, G1-G2 and W1. The survey was carried out and the report authored by DB Landscape Consultancy, dated 13/11/2020. No Arboricultural Impact Assessment, Arboricultural Method Statement or Tree Protection plan have been provided to date, but they have stated that an Arboricultural Method Statement could be required by condition. The letter from SLR further confirms that it is their intention to retain the woodland copse at the north east of the site in its entirety and that G2 is also to be retained with setting out and root protection zones to be agreed at a later date. I have some concerns that the proposal assumes the adoption of common parameters of 12 x diameter at breast height (DBH) or Hanson's offer of a 2m standoff beyond edge of current tree canopies. I have reservations about this as it would leave the trees on an 'isthmus' or 'promontory' which could impact long-term on the health of the trees by reducing their available groundwater.

The letter also discusses additional mitigation in the form of lifting and transplanting 4m-5m naturally regenerated oaks using a tree spade. This is a costly exercise that will require effective maintenance and has no guarantee of success.

Categorisation of trees in report **T1-T6 & G1**

These trees have not been described in detail. T1 and T6 have been categorised as A1, whilst T2-T5 have been categorised as B1, being described as '...assessed as particularly good examples of their species and of some longevity [sic]'. The author goes on to say that '...the trees are showing very little [sic] defects i.e. storm damage, rot or decay with only one tree, T5 showing some signs of minor dieback in the upper crown. It is recommended there is little management attention needed to all these trees bearing in mind their good health and location.

These comments completely accord with our previous comments and comments made in the EcIA which states in section 11.117 that "The mature trees within Hedgerow 1 are good specimens and their loss could not be meaningfully compensated for in the short to medium term".

It is difficult to see how the estimated contribution in years for trees T2-T6 has been stated at only 20+ years, given their condition and the known longevity of the species, particularly as T6 has been categorised as A1.

G1

This group of trees provides good connectivity and context for the retained woodland and mature oaks if retained.

G2

The significance of this small group in the landscape is connectivity between T1-T6, T7-T11 and the woodland, W1 since they continue the original hedge line delineated by T1-T6.

W1 – Woodland copse

I support the retention of the woodland as part of the scheme.

T7-T11

T7-T11 have been categorised as A1, with the exception of T8, stated as B1. Again, the estimated contribution in years for these trees has been given as 20+ which does not appear to correspond to their stated condition. T9 is curiously described as ‘... well on its way to be a veteran and is considered to be probably the oldest tree in the row estimated as being over 200 years old’. Veteran trees are characterised by cracks, splits and decay, not age, so it is suggested that the author has confused the epithet ‘veteran’ with ‘ancient’.

In summary, whilst the report disputes some of the tree's ages, it supports my view that the trees are important and entirely worthy of retention. This is borne out by the physiological and structural condition of the trees as stated in the Tree Survey Schedule.

Our preferred option is still therefore Scenario 3 Plan BP10/5 (with full hedge retained) which recognises the increased value of the trees since the original planning consent was granted in 1995. It would appear that no survey or assessment for this landscape feature was submitted with the original application.

Ecology (Emma Simmonds)

The new habitat creation proposed is welcome. However, the starting point should always be to keep established habitats if at all possible, especially those which are Priority habitats, have taken a long time to develop, and are already valuable. As the trees within the hedgerow are not classed as a veteran, they are not classified as irreplaceable habitat under the NPPF. However, they still have significant biodiversity value intrinsically, and by supporting other species, including protected and / or priority species. Hanson accept that the mature trees cannot be “fully compensated for in the short to medium term”.

We recognise that the approved scheme did not make provision for retention of the hedgerow and oak trees. However, given that this permission is now c.25 years old, significant changes have occurred with respect to wildlife legislation and policy.

The Mitigation Hierarchy, which is set out within the NPPF (paragraph 175), states that harm should be avoided where possible and that compensation should be the last resort. This also accords with the *Biodiversity Net Gain Good Practice Principles for Development*, which can be found at <https://cieem.net/wp-content/uploads/2019/02/Biodiversity-Net-Gain-Principles.pdf>.

Principle 1 states: *“Do everything possible to first avoid and then minimise impacts on biodiversity. Only as a last resort, and in agreement with external decision-makers where possible, compensate for losses that cannot be avoided”*.

The Good Practice Principles For Development document states that *Net Gain has been described as a measurable target for development projects where impacts on biodiversity are outweighed by a clear mitigation hierarchy approach to first avoid and then minimise impacts, including through restoration and / or compensation. Adhering to these Net Gain principles (i.e. pursuing all principles together) will help in under-pinning good practice for achieving and sustaining Net Gain.*

This is also endorsed within the Biodiversity Metric 2.0-User Guide. The Biodiversity Metric enables developers and land managers to better understand and quantify the current value of a place for nature and how proposed changes to that site, either from development or land management practice, will impact on that value. The User Guide also advises that it should always be recognised that the Metric should not override or undermine any existing planning policy or legislation including the mitigation hierarchy, which should always be considered as the Metric is applied.

All three Biodiversity Metric calculations provided for this scheme appear to produce a similar outcome for habitats. However, we disagree that any of the options create the extent of Net Gain as the calculations indicated (in comparison with the existing area), because the value of *existing* habitats has not been properly taken into account.

The SLR letter of 15th of December makes reference to ‘interim habitats’ (top of page 3). My comments related to the need for the assessment to include current habitats which are now established (and described in the Environmental Statement). Ecology Assessments should always be based on up-to-date information and the Biodiversity Net Gain (BNG) guidance states that *‘A project biodiversity baseline should be updated if more than a year has passed between surveys for the original baseline and project construction’*.

We do not believe that all of the existing habitats on site (e.g. the grassland and scrub) should be defined as a sandpit in the baseline data in the Metric calculations. The Biodiversity Metric 2.0 requires each habitat parcel (of a different habitat type or where it is in a different condition) to be separately calculated. The area of semi-improved grassland/scrub, an area of relatively high biodiversity, will be lost, as well as some arable land and some other areas of former quarry that have become vegetated. Some of these habitats are likely to fall under the category of *Open Mosaic On Previously Developed Land* (a priority habitat).

In our October 2020 response I raised concern that, with all the hedgerows removed, the area of newly created grassland has been reduced from 7.3ha wildflower grassland to 5.1ha neutral grassland. This would be slightly better with the half hedgerow retention scenario (5.8ha) and larger still at 6.1ha with full retention, though this is still less than that proposed previously in 2018 or under the 1995 permission.

With reference to the SLR letter, the term neutral grassland was used in our previous response because this was used in the Metric submitted. Ideally, we would wish to see Lowland Meadows priority habitat being created.

The SLR letter also queries where the reference to 7.3 ha of wildflower grassland comes from. We advise that the figure is derived from Table 11/7 of the applicant's submitted ecology chapter of the Environmental Statement (ES), which is copied below. As far as we were concerned, this has been part of the commitment since the submission of this document in 2018.

As this was the same size of grassland that was permitted under the original 1995 permission, the implication from the recent documentation is that there will now be a significantly less area (i.e. over 2 ha less) of wildflower/semi-improved grassland compared with that originally proposed for the Landscape Restoration Scheme (BP 10/5, November 2018), and that approved that the 1995 permission. Consequently, all three scenarios now involve the loss of wildflower meadow. The least loss of wildflower meadow is through the retention of the whole of the hedgerow in question.

Table 11/7 - Comparison of Restoration Habitat Areas – West of Hedgeline

Landuse / Aftercare Category	Approved Restoration Scheme (ha)	Proposed Restoration Scheme (ha)
Reedbed	1.6	1.8
Open Water	7.8	8.7
Wildflower Meadow	7.3	7.3
Arable Land	25.3	16.6
Broadleaf Woodland Planting	0.9	2.1
<i>Additional within redline, west of the hedge / plant site</i>		
Existing Woodland Planting	2.2	2.2
Arable Land (undisturbed)	0.9	7.1
New Hedgerow Planting	1200	1600
TOTAL	46	46

The SLR letter has queried the reference to the estimated age of the oak trees. However, the estimation of 250-300 years that we referred to is derived from the ecology chapter of the ES (Section 11.73).

As stated before, we disagree that any of the scenarios create as much Net Gain as stated. Notwithstanding this, SLR's letter of 15th December explains that the baseline assessment is the same for all three scenarios and, therefore, for the purposes of comparing the three different alternatives, it doesn't matter if whether the site's current baseline habitats are absolutely accurately represented.

In terms of appropriate consideration of the advance planting already undertaken under the 1995 permission, the Biodiversity Metric should have taken the habitats already created into account.

Scenario 1: No hedgerow retained

This would enable the greatest length of new hedgerow (2,550m), the most reedbed/wetland margin (1.8 ha), but the least area of wildflower grassland (5.2ha).

Scenario 2: Half hedgerow retained

This would enable 2,100m of new hedgerow, 1.2 ha reedbed and 5.9 ha wildflower grassland.

Scenario 3: Full hedgerow retained

This would enable the shortest length of new hedgerow (1600m) and least amount of reedbed, but the largest area of wildflower grassland (though still less than the 2018 restoration scheme).

Hedgerows are always dealt with separately under the Biodiversity Metric. All three scenarios provide an adequate hedgerow replacement (irrespective of mature tree loss) in terms of BNG calculations. However, the area of wildflower meadow has been reduced in all three scenarios.

In terms of the Metric, it is therefore a matter of weighing up which habitats would be preferable in this location and in the circumstances. I also note that the ecology chapter of the ES describes the scheme as '*nature conservation-led restoration*' (11.150).

Contribution towards nature conservation priorities is referred in Principle 5 of the Good Practice Principles For Development (*make a measurable Net Gain contribution*). The conservation priorities for quarries in Essex have been clearly set out under policy S12 and the accompanying Supplementary Planning Guidance: Mineral Site Restoration for Biodiversity (June, 2016), (SPG) that has been referred to in previous responses.

The priorities in the SPG are for open habitats, including Reedbeds and Lowland Meadows. Quarries are able to provide relatively large areas of habitat, compared with many forms of development and are ideal for creating these open habitats.

The mitigation proposed for scenarios 1 and 2 offer some additional extended lengths of hedgerow which will also help to create connectivity with other habitats, particularly the north- south hedgerow. It needs to be ensured that appropriate management of any off-site habitat creation is secured by a legal agreement.

The weighing up of the biodiversity (and landscape features) lost against the sterilisation of/ need for the minerals is ultimately the decision for the Minerals Planning Authority. If it decides that the need for the mineral outweighs the importance of the features to be lost it needs to demonstrate that mitigation, avoidance of harm and alternatives have robustly been considered in order to justify its decision. We reconsider that there is now sufficient information for it to undertake this decision.

Finally, we draw your attention to Principle 8 of the BNG principles: Create a Net Gain Legacy which states that it should be ensured that *net gain generates long-term benefits... agreeing practical solutions that secure Net Gain in perpetuity... andSecuring dedicated funding for long-term management*. It states that *Biodiversity compensation should be planned for a sustained net gain over the longest possible timeframe. The expectation is that compensation sites will be*

secured for at least the lifetime of the development (e.g. often 25-30 years) with the objective of Net Gain management continuing in the future.



I trust the above comments will be of use to you, should you have any queries please do not hesitate to contact me, or the named specialists detailed.

Yours sincerely,

Luke Pidgeon
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