

Report to	Planning Committee
Date	11 October 2018
By	Director of Planning
Local Authority	South Downs National Park Authority (West Sussex)
Extant Permission	SJ/98/1471 and SJ/98/1472
Site Operator	Dudman Aggregates Ltd
Proposal	Mineral Site Compliance and Monitoring – Consideration of the ongoing Suspension Order for the working of minerals at the site
Address	Minsted Sandpit, Minsted lane, West Sussex

Recommendation:

1. That the Suspension Order for the working of minerals at Minsted Sandpit be maintained; and
 2. That the Planning Committee confirm that the Review of Mineral Planning Permission (SDNP/13/06169/ROMP), has not stalled and therefore the site should not be subject to a Prohibition Order to prevent further mineral working.
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Executive Summary

Minsted Sandpit is a permitted soft sand site located within the SDNP. The site was operational until 14 August 2014 when, as a result of a number of planning breaches, the site was placed in suspension. As such, no further mineral working can take place until the Suspension Order is lifted. Since that time no further quarrying has been undertaken at this site and the site has been actively monitored since the suspension by Officers of the SDNPA.

The monitoring visits are chargeable in line with regulations that came into force in England on 6 April 2006. The regulations allow Mineral Planning Authorities to charge a fee to mineral site operators when visiting a site to carry out monitoring in order to measure compliance with the planning permissions. The objective of the introduction of these fees was to ensure that the planning permissions were monitored in accordance with good practice. These original regulations were subsequently amended in 2012 by The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. Under these regulations, mineral planning authorities can charge for a maximum of 8 site visits for monitoring site operations within any 12 month period where the site is operational, or one visit in other circumstances.

As the site is not currently operational it is deemed proportionate by Officers that yearly visits are sufficient.

In 2013 it was agreed between the SDNPA Minerals Officers at the time, having considered formal enforcement action, and the Minsted Site Operator, that the most appropriate way to review the operation of the site and the planning breaches would be for the Operator to submit a Review of Mineral Permission (ROMP) application. Accordingly, an application was submitted in December 2013 but was deemed invalid. Officers have continued to liaise with the site operator in the

intervening years to work towards validation of the ROMP Application. This has been a complex process requiring costly reports for the applicant and significant documentation and evidence in support of the application. The Operator also advises that they can demonstrate remaining reserves still to be worked at the site of circa 480,000 tonnes.

Due to the length of time that the ROMP has remained invalid, this report is brought before Planning Committee to determine if it is appropriate that the Suspension Order remain in place or, if it is concluded that the 2013 ROMP application has stalled, that a Prohibition Order can be made to prevent any further working of mineral within this site.

The National Planning Policy Guidance, (NPPG), for Minerals advises that Suspension Orders should be used to deal with environmental problems arising at sites where minerals development has been temporarily suspended, but the Mineral Planning Authority believes that an Operator intends to resume working in the foreseeable future. Prohibition Orders are orders whose purpose is to make it absolutely clear that minerals development has stopped and cannot resume without a fresh planning permission, and to secure the restoration of the land.

It is not the purpose of this report to consider merits of the ROMP application. Once the outstanding information has been submitted by the Site Operator, a full statutory consultation process will take place so that the planning merits and acceptability or otherwise of the information submitted can be considered. However, it is the recommendation of this report that the Suspension Order should remain in place until such a time that all the necessary reports associated with the ROMP application have all been submitted and assessed, a full statutory consultation process undertaken and a new set of planning conditions agreed upon.

1. Site Description

- 1.1 Minsted Sandpit was first granted planning consent for the working of minerals in March 1948 and since then various operators have worked this site. The site within the approved redline is 33 hectares (approx.). It is located within the SDNP 0.5 km (approx.) from Minsted Village and approximately 0.7km south west of the village of Stedham. Iping Common Site of Special Scientific Interest and Local Nature Reserve adjoins the northern boundary of the site and extends westwards.
- 1.2 Vehicular access is from its north east corner from Minsted Road, an adopted no-through road that connects with the A272, some 500m to the north of the site entrance. There is a residential property, Woodman's Cottage, adjacent to the site access on the other side of Minsted Road and other properties further to the east at Quags Corner and south of the site on Andrews Lane. Fitzhall lodge lies to the west adjacent to Elsted Road.
- 1.3 There are public footpaths that run outside but adjacent to the southern boundary and to the north. There is a public bridleway adjacent to the western boundary within dense plantation of woodland.
- 1.4 The site consists of a large lake covering approximately 50% of the site. Within the north eastern corner is the site office and site processing equipment where sand dredged from the lake is dewatered, screened and graded. Nearer the entrance is a concrete batching plant. A restored bund is situated along the northern part of the site, except where an open area for the processing and mixing of soils is located.

2. Relevant Planning History

- 2.1 The original planning permission for sand working was granted in 1948. There are two extant consents to work the quarry, firstly the Interim Development Order, SJ/98/1471, (the 1998 IDO). This planning permission grants consent for the north eastern part of the site, including the access, workshops, offices, weighbridge, concrete batching plant and sand processing plants. A sizable amount of the site under this permission is no longer being worked and has been restored. The consent for working the remainder of the sandpit was also granted in 1998 under a Review of Mineral Permission (ROMP) application (SJ/98/1472), this area of the site includes the current working area and the lake that has been formed as a result.
- 2.2 The history of this site is complex and a number of Breach of Condition Notices were served by West Sussex County Council, (WSCC), in 2005, in respect of breaches to

conditions 1, 4, 8 and 10, of planning permission SJ/98/1471 and conditions 2, 3, 4 and 8 of SJ/98/1472. Whilst a number of these were not complied with, WSCC chose not enforce against these breaches in favour of working with the Site Operator to regularise the operations within the site. In seeking to regularise the breaches on site a Section 73 application was submitted to WSCC on 7 October 2011. The SDNPA 'called-in' the application in November 2011 and subsequently determined that the submitted section 73 application was not valid as it was materially different from the extant consent. No further enforcement action with regard to the identified breaches of planning conditions was taken by the Officers monitoring the site at this time.

3. Review of mineral permission (ROMP) application, SDNP/13/06169/ROMP.

- 3.1 Under the provisions of the Environment Act 1995, Mineral Planning Authorities, (MPAs), are required to review mineral planning permissions on a periodic basis every 15 years. Following the introduction of a new provision within the Growth and Infrastructure Act 2013 such reviews can be extended beyond 15 years at the discretion of the MPA. These reviews are known as a Review of Mineral Permission or ROMP applications. The purpose of a ROMP application is to ensure that the conditions attached to extant mineral planning consents comply with contemporary environmental standards.
- 3.2 Accordingly, it was deemed appropriate to address the issues within the Minsted Sandpit through the submission of a ROMP application, covering both the IDO and the 1998 ROMP. Subsequently, this was submitted by the site operator on the 19 December 2013. The information initially submitted was insufficient and, due to an incomplete Environmental Statement, the SDNPA determined on the 14 August 2014 that the site should be placed in automatic suspension. Since that time the site has continued to be monitored by SDNPA Officers, (latest monitoring report attached as appendix 2). SDNPA Officers are satisfied that the site has not been worked since it was put into suspension.
- 3.3 MPA's should usually only seek a review of planning conditions when monitoring visits have revealed an issue that is not adequately regulated by planning conditions, which the Operator has been made aware of and has not been able to address. It was considered that this does apply to Minsted Sandpit and therefore the ROMP application was an appropriate course of action, specifically in order to update the working plan and restoration plans and to review geotechnical and hydrology issues, as well as to ensure that the current conditions met contemporary environmental standards.
- 3.4 It is important to note that a key test of the ROMP is that any revised conditions should not prejudice to an unreasonable degree the economic viability of the operations or the asset value of the site. Therefore in any applications, material changes to the asset value of the working and winning would be inappropriate, including additional areas of working and any reduction in the area of working can be the subject of compensation claims. ROMP applications cannot be refused but conditions can be attached which seek to apply appropriate and necessary environmental controls.
- 3.5 Many of the more technical and lengthy reports required have now been submitted to the SDNPA but before the submitted ROMP application can be validated, it is considered that the following documents are still outstanding and must be submitted. These requirements have been discussed with the Site Operator and they have confirmed their intention to submit these documents without further undue delay;
- With regards to the remaining reserves on site, a more detailed topographical survey is required showing the remaining reserves, current levels and showing further cross sections of the lake and into the banks,
 - A more detailed working and restoration information which addresses the planting commentary not just the species laid out. Further cross sections of the final form and planting of the banks are required,
 - Annual estimated extraction rate for the site if it is reopened and active, this should include what rate and how much,

- Landscape impact – a Landscape Architect to provide an updated Landscape Visual Impact Assessment of the site using the existing site conditions as a base line to ensure that the proposed restoration scheme can be implemented,
- A new single set of proposed conditions to cover both SJ/98/1471 and SJ/98/1472 operation areas,
- Further details with regard to silt management within the site.

4. Consultations

- 4.1 When the 2013 ROMP application is made valid through the submission of the outstanding documents, a full consultation exercise will be undertaken with both statutory and non-statutory consultees and local residents.

5. Representations

- 5.1 Whilst the Compliance and Monitoring report is not subject to public consultation, it is a document that the public can request to see. Comments have been received from a local resident group which are summarised below:

- The condition of the existing sandpit causes harm by its derelict appearance and unrestored condition,
- The SDNPA have confirmed that there are multiple breaches of planning conditions and the site has been overworked beyond the permitted boundaries, depth and angle of working, (officer comment - see appendix 3 monitoring report, since updated by 2018 report at appendix 2, a number of the alleged breaches were unfounded)
- In September 2012 the SDNPA confirmed to site operator that they would take enforcement action within two months to avoid further harm to local environment, (officer comment - this was subsequently reviewed after finding that some of the alleged breaches were unfounded and the ROMP review process determined as a better way forward)
- Minsted sandpit was all but fully restored in 2004 and since that time the current Operator has undone the restoration and then, through over extraction beyond permitted limits, has left the site incapable of meeting the approved restoration plan,
- The Site Operator has shown to be unwilling to provide the required information to determine the 2013 ROMP application and with the removal of extraction equipment confirmed that there are no economically viable reserves of sand remaining,
- This action will also ensure that the ‘ancillary’ concrete batching plant and associated imported materials are removed from the site,
- The residents group request that Members impose Prohibition Notice under Regulation 52 of the Town and Country Planning (EIA) regulations 2011 in respect of the stalled 2013 ROMP.

Sussex Wildlife Trust

- 5.2 Sussex Wildlife Trust (SWT) have made the following comments in respect of the suspension order at Minsted Sand Pit:

- Concern over the long term impacts of the works on the adjacent SSSI.
- The lack of progress over restoration despite the site being unworked for a significant period of time.

6. Planning Policy Context

The policy context will be considered at such time when all the outstanding information has been submitted and the ROMP application is made valid. The proposal subject of this report however concerns the procedural process to be decided with regard to the current Suspension Order.

7. Site Monitoring Assessment

- 7.1 The SDNPA has received representation from a Local Residents Group, (LRG), with regards to Minsted Sandpit and why the SDNPA has not/is not taking action against the identified breaches within the site. The LRG have also sought explanation as to why the SDNPA has not sought to impose a Prohibition Order on the site now that considerable time has elapsed since the ROMP application was initially submitted in 2013.
- 7.2 The LRG assert that a Prohibition Order under Regulation 52 of the Town and County Planning (EIA) Regulations 2011 in respect of the stalled Review of Mineral Permission application (ref; SDNP/13/06169/ROMP) should be issued and the progressive restoration of the site undertaken without further delay. The LRG reasoning is that, after almost 5 years, the Site Owner has been shown to be unwilling to provide the required information to determine the ROMP application. Furthermore, that the removal of extraction equipment from the quarry has confirmed that there are clearly no economically viable sand reserves remaining at the site.
- 7.3 When considering the approach to regularise the breaches within this site SDNPA Officers have continued to monitor the site on a yearly basis. The SDNPA first became involved in monitoring and conducted a joint monitoring visit of the site with WSCC in December 2012. The site was operational and so regular monitoring visits were undertaken, all identifying a number of breaches of planning conditions across the two extant permissions. There were opportunities here, whilst the site was still operational, to take enforcement action against the alleged planning condition breaches within the site. This was not pursued and on the 16 December 2013 the ROMP application SDNP/13/06196/ROMP was submitted in an attempt to address the outstanding issues.
- 7.4 The SDNPA took over sole compliance monitoring of the site on 1 April 2014. The final monitoring visit to be undertaken prior to the site being placed into suspension was on 4th July 2014, (attached as appendix 3 to this report). This monitoring report identified 21 breaches of planning conditions with regard to permission SJ/98/1472, (this consent concerns the lake and the area of the site that was still being worked), and 6 breaches of planning conditions with regard to permission SJ/98/1471, (the IDO which concerns the area of the site including the access, storage areas and concrete batching plant).
- 7.5 Following a change in SDNPA Officers, a full review of the site was undertaken to establish why the ROMP application had stalled for so long and to understand the nature of each of the planning condition breaches as reported in 2014. It was concluded that many of the multiple breaches to which the LRG refer, as described in the 2014 monitoring report, (Appendix 3 of this report), pertain to conditions that requested further information to be submitted post commencement and that some of the breaches identified were indeed repetitions.
- 7.6 Importantly, despite the initial findings of the 2014 monitoring report, it is considered that the workings on site accord with approved plan SD/1/57a. Legal advice has been sought and it is found that this plan, (as referred to within condition 8 of extant planning consent SJ/98/1472), is the approved plan that defines the extent of mineral workings permitted within the site. Furthermore, it is not considered that previous conditions explicitly restrict working beyond a maximum depth.
- 7.7 A further concern of the LRG is harm caused by the derelict appearance and unrestored nature of the site. However, this site has planning consent for the quarrying of sand until 21 February 2041. Accordingly, it would be inappropriate for the SDNPA to remove the asset value of the quarry unless it can be certain that the reserves within the site are exhausted and mineral working has ceased.
- 7.8 When the information submitted for the ROMP application was reviewed in late 2016, the Case Officer determined that, whilst there has been some attempt to provide additional information back in 2014, further information was still outstanding. It was recommended by the officer that the outstanding information, (including ecology reporting to be undertaken over a number of months), be submitted in one batch rather than being 'drip fed' into the process. Since then it is considered that the Site Operator has made clear their intention to

proceed with the ROMP application process through the submission of a number of reports. These reports include; hydrology reports, noise reports, (submitted in 2016), and further ecology reports, (submitted in February 2018). These are expensive reports to commission and demonstrate an ongoing commitment by the site operator to continue to address the outstanding matters of the 2013 ROMP application.

- 7.9 In terms of the existing breaches within the site, as stated at point 5.1 of this report, it is considered that the majority relate to the non-submission of information and the inconsistency of previously approved plans that conflict with one another. It is considered that the main planning breach within the site is the slope stability of the Southern and Western quarry faces. However, action was not taken when this breach was first identified by WSCC in favour of working with the Site Operator. Currently, due to the length of time that the site has remained undisturbed, it is not considered appropriate for the SDNPA to commence enforcement action for the regularisation of this slope stability without first formally assessing the technical information submitted in respect of the 2013 ROMP. It is considered that the Suspension Order made in 2014 was an appropriate course of action at that time. Furthermore, it is important to maintain the Suspension Order until such a time as the technical reports submitted with the 2013 ROMP are fully assessed in order to prevent harm to the environment. It is important to note that the land is entirely in private ownership, that there are no public right of way across the site and that there are warning signs erected on the perimeter fencing that warn of the quarry and that entering the site constitutes trespass. Public safety and operative safety at the site is a matter for the Health and Safety Executive and falls outside the remit of planning.
- 7.10 With regard to serving a Prohibition Order on the site, regard must be had to the relevant legislation. The legislation concerning a Prohibition Order is contained in Regulation 52 of the 2011 EIA Regulations (ROMP applications: duty to make a prohibition order after two years suspension of permission) and Paragraph 3 of Schedule 9 of the 1990 Act (Prohibition of resumption of mineral working). It is to be noted that new EIA Regulations came into force in 2017 and repealed most of the 2011 Regulations. However, a saving provision is in place which means that if an Environmental Statement had been submitted with regards to a ROMP application before the new Regulations came into force (in 2017), the 2011 Regulations continue to apply.
- 7.11 Where it can be shown that the winning and working or depositing of minerals has not permanently ceased, an MPA has a discretion whether to make a Prohibition Order.
- 7.12 In this case the ROMP application is still live and there is evidence of reserves in the site and intention has been shown from the Site Operator to work these reserves. In addition, there is information still outstanding from the Environmental Statement; an updated Landscape Visual Impact Assessment is required to assess the current baseline of the site and the ability of the restoration plan to be implemented, that winning, working or depositing has not permanently ceased and the MPA is not under a duty to make a Prohibition Order.
- 7.13 Further, it is considered through an assessment of the plans submitted that it is likely that there are a degree of unworked reserves, (albeit that further site sections are required to show in greater detail the volume and location of the reserves remaining). Furthermore, the continued submission of costly reports in connection with the 2013 ROMP, (albeit at a slow rate initially, the speed of the submission of reports have increased since 2016), demonstrate that it is reasonable to conclude that working has not permanently ceased. The removal of the dredger from a site in suspension is not sufficient evidence to reasonably assume that all workings at the site have ceased.

8. Conclusion

Having reviewed the history of this site it is reasonable to conclude that there are remaining reserves within the site and that works to extract these reserves have not permanently ceased.

9. Reason for Recommendation

- 9.1 It is recommended that the planning application SDNP/13/06169/ROMP continue to be progressed and that until such a time that the application is determined and a new set of conditions issued, the site shall remain in suspension and no sand will be worked.

10. Crime and Disorder Implication

- 10.1 It is considered that the proposal does not raise any crime and disorder implications.

11. Human Rights Implications

- 11.1 This planning enforcement recommendation has been considered in light of statute and case law and any interference with an individual's human rights is considered to be proportionate to the aims sought to be realised.
- 11.2 When considering enforcement action The Human rights Act 1998 and the implication of that Act have been considered and the following observations have been made.
- 11.3 Under Article 8 (right to respect for private and family life) the SDNPA is justified in continuing the suspension of mineral workings at the site in the interests and amenities of the locality.
- 11.4 Under Protocol 1 of Article 1, by taking this action, i.e. the investigation, the SDNPA is seeking to enforce the laws 'deemed necessary to control the use of property in accordance with the general interest'.

12. Equality Act 2010

- 12.1 Due regard has been taken of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010.

13. Proactive Working

- 13.1 In reaching this decision the Local Planning Authority has actively liaised with and responded to any correspondence from the local resident's group in a positive and proactive way, in line with the NPPF.

TIM SLANEY

Director of Planning

South Downs National Park Authority

Contact Officer: Heather Lealan
Tel: 01730 819363
email: Heather.lealan@southdowns.gov.uk

Appendices

1. Site Location Map
2. 24 September 2018 Site Monitoring Report (site visit undertaken 06/08/2018)
3. 4 July 2014 Site Monitoring Report (site visit undertaken 20/06/2014)

Background Documents

National Planning Policy Framework (2018)
<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

South Downs National Park Partnership Management Plan (2013)
<https://www.southdowns.gov.uk/national-park-authority/our-work/key-documents/partnership-management-plan/>

West Sussex and South Downs Joint Minerals Plan 2018
<https://www.westsussex.gov.uk/about-the-council/policies-and-reports/environment-planning-and-waste-policy-and-reports/minerals-and-waste-policy/minerals-and-waste-development-scheme/>

Chichester District Local Plan (1999)
<http://www.chichester.gov.uk/localplan1999>

Submission version of the emerging South Downs Local Plan
<https://www.southdowns.gov.uk/planning/national-park-local-plan/>

Review of Mineral Permission application SDNP/13/06169/ROMP
<https://planningpublicaccess.southdowns.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Planning Permissions SJ/98/1471 and SJ/98/1472

