

PLANNING AND REGULATORY COMMITTEE

25 OCTOBER 2022

ADDENDUM

PLANNING APPLICATION MADE UNDER SECTION 73 OF THE TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) TO NOT COMPLY WITH CONDITIONS 3, 5, 10, 11, 12, 13, 49 AND 53 OF PLANNING PERMISSION: 15/000013/CM “PROPOSED MINERALS EXTRACTION OF ABOUT 1.4 MILLION TONNES OF SAND AND GRAVEL AND ERECTION OF A TEMPORARY WHARF WITH PROGRESSIVE RESTORATION TO MAKE A LANDSCAPED LAKE” TO FACILITATE AN ALTERNATIVE WORKING SCHEME AND PROGRESSIVE RESTORATION SCHEME TO AGRICULTURE AND A LAKE SUITABLE FOR WATER SPORTS AT RYALL NORTH QUARRY, LAND OFF RYALL COURT LANE, HOLLY GREEN, UPTON-UPON-SEVERN, WORCESTERSHIRE

Impact upon festival land

1. Since the publication of the report to Committee, a further letter of representation has been received from the organiser of the Sunshine Music Festival and Mello Festival, which includes images of the camping fields associated with the festivals and the land to be lost as result of this proposal, and a copy of their previous letter of representation. Whilst they do not object to the scheme in principle, they are extremely concerned about the disruption that the proposal would cause to the above festivals. Their letter of representation is summarised below:

- They state that since the very first day CEMEX arrived at site, CEMEX have never met with them to help and advise them what the impact would be to their business. CEMEX have consistently used the perception that they are proposing new water sports facilities, a new lake, a rowing club etc., and they have not considered the biggest assets to Upton-upon-Severn which are the music festivals.
- Since the arrival of CEMEX, the organiser of the above festivals states that they have never seen an application for a lake or rowing club, concluding that it appears there is no such application.

- They state that they hold a professional licence, an Event Management Plan guidance compatible to the Government purple guide, insurance, and health and safety compatibility and have done so for the past 15 years. They hope, along with all other activities in Upton-upon-Severn, that the above festivals are considered to be the town's biggest assets. For example, one shop alone took £42,000 over the 4-day period of Sunshine Festival this year.
- They state that they understand progress, but they do not understand why any company asking for planning permission has not considered the impact to Upton-upon-Severn's assets and other local businesses without meeting them first and planning in a professional manner.
- They state that they rent the land from the landowner but feel that when CEMEX held their pre-application public consultation at the town hall, they never planned with the current users of the land to accommodate their needs.
- They state that without reassurances of roads and access being completed before Mello Festival (end of May) they consider that they are going to struggle. They request that a condition is imposed that CEMEX meet with them to produce a plan that addresses their concerns to suit all businesses.
- They state that the proposed development would result in a 25% reduction in the size of the area available for festivals. This would have a huge impact on their revenue, coming at a time where the festival is still struggling to recover from the impact of the coronavirus (COVID-19) pandemic.
- They state they have been advised that they could use an area to the north of the proposed development, but they understand that the road allowing access to this area would not be in place until the end of the building work and, therefore, would be unable to use this area without access for emergency vehicles. They request the imposition of a condition requiring the road to be built as a priority.
- They state they are also extremely concerned that, despite their previous concerns, CEMEX have already dug up the majority of the water pipes that were installed by the festival owner on the site to service the festival and the camping areas. This water is now not fit for drinking.
- They state they are extremely concerned that if the proposed development is permitted without conditions protecting the infrastructure of the festivals, then the festivals would no longer be viable. This would be a huge loss to the community and the arts of Upton-upon-Severn.

2. In response to the above letter of representation, the applicant has forwarded comments from the landowners who state that the following:

- There are several different events and organisers, and they have met with each of them on several occasions, each meeting being cordial, constructive and positive to the future of the various events.
- They consider that they have successfully addressed their concerns, and with them they have developed plans to suit their different needs. In the course of those discussions, they have always used the plans showing the proposed extension area boundary and restored lake. They have covered topics such as availability of additional land (stating that there is plenty, with more available if required), access routes, provision of utilities, separation of traffic, separation of public and performers, health and safety and many more matters.
- They state that it is fair to say that the organisers would prefer to have no disruption to the tried and trusted formula they are familiar with, but equally the landowners felt they were reassured and happy with the alternative arrangements, and more importantly, are excited about the final restoration outcome which all agree would provide a superior venue.
- The applicant states that the landowners have re-confirmed to CEMEX their continued support for the festivals and other community projects on the land to continue. To this end, the applicant has provided a plan highlighting all the land available in the vicinity of the proposed lake that is available for use associated with the music festivals. This includes additional land to the west, north-west and north of the proposed lake. It also includes the routes of proposed new access tracks and roadways.
- The applicant states that an area of approximately 30.51 hectares is being retained for use for music festival, and approximately 24.64 of additional land would be made available for use for music festivals, resulting in a net gain for land used for festivals.

3. As set out in the report to committee, Fish Meadow, which is located immediately to the south of the application site and the adjacent fields (to the south, south-east and south-west) are used as a venue and / or campsite for three annual music festivals (Sunshine Music Festival, Mello Festival and Upton Blues Festival) in Upton-upon-Severn. The current approved operations (as per the extant planning permission Mineral Planning Authority (MPA) Ref: 15/000013/CM) amount to a loss of an area of approximately 7.1 hectares of land used for music festivals.

4. As set out in the report to committee, the applicant states that they understand that the festivals are conducted on private land on the basis of a short-term renewable lease which provides an additional annual income for the landowners. The festival organisers do not enjoy any rights of tenure and are at the behest of the landowners and their tenants. Cemex state that whilst they are

sympathetic to the festivals, particularly given its contribution financially to the local community it is nevertheless at the landowner's prerogative as to whether they wish them to continue in this location. However, CEMEX have been informed that the landowners have provided reassurances to the festival organisers that their event can continue, and that additional land is available (approximately 24.64 hectares of additional land) immediately to the west, north-west and north of the of the proposed lake, resulting in a net gain in terms of land available for use for festivals.

5. The applicant states that the restoration scheme would not comprise the ability for music festivals to be held in this location, highlighting that there is substantial land retained between the proposed lake and the River Severn to accommodate the festivals, and that they shall seek to be as accommodating as possible with regards to the festivals.

6. The Head of Planning and Transport Planning considers that the impact upon the loss of festival land is capable of amounting to a material planning consideration, given the prominence of the festivals locally and the importance they have to Upton-upon-Severn's economic success, however, given the festivals are temporary and beholden to the landowner's agreement, it is considered limited weight should be given to this matter.

7. It is considered that the amended proposal would not amend the extent of the working area, and thus would not encroach further onto the land used for festivals, with the fallback position being that of the permitted quarry under MPA Ref: 15/000013/CM, which does not accommodate the music festivals any more or any less than this current proposal. The Head of Planning and Transport Planning considers that the proposal would not change the overall original conclusions on the impacts upon festival land and tourism that were set out in the original report to committee (MPA Ref: 15/000013/CM), namely that *"proposal would not have an unacceptable impact upon the music festival and whilst the proposal could have a potential temporary, minor and limited adverse impact upon tourism, the final restoration landform has the potential to have a positive long-term impact upon tourism to Upton-upon-Severn and the surrounding area"*.

8. It is considered that it would not be appropriate to impose a condition requiring quarrying operations to cease at a certain time of year (coinciding with festivals), given that the quarrying operations would be carried out on a campaign basis, with both the mineral extraction operations and the music festivals being sporadic and temporary in nature. For instance, the applicant has confirmed that this year saw the festival held in June on a slightly different footprint than normal, due to the fact that a portion of land used for agriculture was unavailable. It is considered that such a condition would not pass the tests of conditions (necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects), failing the enforceable, precise, and reasonable tests.

9. In relation to the impact upon the cables and pipes, it is considered that this amounts to a private matter relating to third party private rights over (or under) the landowner's land. Any claim over damage to property would be a civil matter between the relevant parties.

10. In terms of engagement with the festival organisers, whilst considered best practice, there is no planning requirement requiring as a matter of course, active and ongoing discussions between applicants and third parties. It is considered that the imposition of a condition requiring such discussions would not pass the tests of conditions (necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects), failing the 'necessary' and 'reasonable' tests.

11. With regard to the request for the imposition of a condition requiring a road to be built as a priority to the proposed additional land for use as festivals, the Head of Planning and Transport Planning considers that this request would also not pass the test of conditions, failing the necessary, relevant to the development permitted, and reasonable tests. Indeed, the route of the proposed new tracks and roadways fall outside the application site (red line boundary). It is considered that such tracks or roadways would fall outside of the scope of the proposed development, and that this is a separate private matter for the landowner and festival organiser.

12. In relation to the comment that there appears to be no application for a rowing lake, as set out in the report to committee, the Head of Planning and Transport Planning confirms that should planning permission be granted by the MPA for the current proposal, separate subsequent planning permission(s) would be required from Malvern Hills District Council for the use of the lake for formal recreation, such as rowing together with any ancillary infrastructure.

13. The Head of Planning and Transport Planning considers that as the amended proposal would not amend the extent of the working area, and the applicant has demonstrated that there is sufficient land available in the vicinity of the proposed development (subject to the agreement of the landowners, who have indicated they are actively engaged in encouraging the use of the land for festivals in the future), the proposal would not prejudice the future use of land for festivals in this location.

14. The Head of Planning and Transport Planning considers that the conclusions set out in the report to committee in relation to the impact on festival land, and the overall conclusions of the report would remain unchanged.

Contact Points

Specific Contact Points for this report

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Background Papers

In the opinion of the proper officer (in this case the Head of Planning and Transport Planning) the following are the background papers relating to the subject matter of

this report:

The application, plans and consultation replies in file reference 20/000015/CM, which can be viewed online at: <http://www.worcestershire.gov.uk/eplanning> by entering the full application reference. When searching by application reference, the full application reference number, including the suffix need to be entered into the search field. Copies of letters of representation are available on request from the Case Officer.