

**DEVELOPMENT CONTROL AND REGULATORY BOARD****13<sup>TH</sup> FEBRUARY 2025****REPORT OF THE CHIEF EXECUTIVE****COUNTY MATTER****AMENDMENT SHEET FOR REPORT TAKEN TO MEETING ON 21<sup>ST</sup>  
NOVEMBER 2024**

<b>APP.NO. &amp; DATE:</b>	2024/10117/04 (2024/EIA/0081/LCC) – 9 <sup>th</sup> July 2024.
<b>PROPOSAL:</b>	To continue the development of Desford Brickworks and Quarry by amending the provisions of Condition 2 of Planning Permission 2018/0669/04, in so far as it relates to the phasing of mineral extraction. This application seeks to amend the chronological order the quarry phases are worked, promoting one phase to be worked at an earlier stage in the quarry development programme.
<b>LOCATION:</b>	Land at Desford Brickworks, Heath Road, Desford, Leicestershire, LE67 1DL.
<b>APPLICANT:</b>	Forterra Building Products Ltd.
<b>MAIN ISSUES:</b>	Landscape and Visual Impacts, Noise Impacts
<b>RECOMMENDATION:</b>	Permit subject to the conditions set out in Appendix A and a legal agreement.

**Circulation Under Local Issues Alert Procedure**

Mr. P. Bedford CC MP  
Dr. R. Hills CC

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### **Decision of 21 November 2024**

1. On 21 November 2024 the Development Control and Regulatory Board considered the above application and resolved that the application be permitted subject to:
  - (a) The conditions nos. 1-53 as set out in the appendix to the report, subject to amendment to conditions 36, 49 and 51 as set out in the Addendum report;
  - (b) The prior completion of a legal agreement to ensure existing obligations are attached to the new permission.

A copy of the report considered by the Board at that meeting can be found here:

<https://democracy.leics.gov.uk/documents/s186544/Desford%202024-EIA-0081-LCC%20DCRB%20Report.pdf>

### **Background to latest report**

2. The Ministry for Housing, Communities and Local Government (MHCLG) published its revised National Planning Policy Framework (NPPF) on the 12th of December 2024. All changes to the NPPF are immediate, other than those relating to plan-making which are set out in the transitional arrangements.
3. The revised NPPF presents an updated policy context for those decisions which have been resolved for approval by the Development Control and Regulatory Board, but a decision has not yet been issued. For example, for those applications which required a legal agreement to be secured prior to a decision notice being issued.
4. The County Planning Authority finds it both necessary and in the best interest of applicants, the public and the Authority to refer items back to Board where there has been a delay between the resolution and notice issue for Board items, where considered appropriate in light of this new policy context.
5. This is with regard to the case of *Kides v South Cambridgeshire District Council and others at the Court of Appeal in 2002*, which concerned matters arising from the issue of decision notices sometime after the original decision to grant permission was taken. It was held that there was a duty to have regard to any new factor that had arisen for the first time between the committee decision and the signing of the decision notice. We consider it prudent to have regard to that ruling for planning application reference 2024/10117/04 (2024/EIA/0081/LCC).
6. As such, the County Planning Authority has sought updated responses from consultees where necessary. This has informed an updated assessment of the proposal as set out below.

### **Revised Planning Policy**

7. The revised planning policy context for this application is the National Planning Policy Framework (NPPF), dated December 2024. The following paragraphs are relevant.
8. Amended paragraph 96 (Promoting healthy and safe communities) states that planning decisions should aim to achieve healthy, inclusive and safe places which...
  - c) enable and support healthy lives, through both promoting good health and preventing ill-health, especially where this would address identified local health and well-being needs and reduce health inequalities between the most and least deprived

communities – for example through the provision of safe and accessible green infrastructure, sports facilities, local shops, access to healthier food, allotments and layouts that encourage walking and cycling.

9. Added paragraph 102 (Promoting healthy and safe communities) states that planning policies and decisions should promote public safety and take into account wider security and defence requirements by: a) anticipating and addressing possible malicious threats and other hazards (whether natural or man-made), especially in locations where large numbers of people are expected to congregate. Policies for relevant areas (such as town centre and regeneration frameworks), and the layout and design of developments, should be informed by the most up-to-date information available from the police and other agencies about the nature of potential threats and their implications. This includes appropriate and proportionate steps that can be taken to reduce vulnerability, increase resilience and ensure public safety and security. The safety of children and other vulnerable users in proximity to open water, railways and other potential hazards should be considered in planning and assessing proposals for development.
10. Amended paragraph 116 (Highways) states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.
11. Amended paragraph 161 (Climate change) states that the planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
12. Further to this, added paragraph 163 (Climate change) states that the need to mitigate and adapt to climate change should also be considered in preparing and assessing planning applications, taking into account the full range of potential climate change impacts.
13. Paragraph 182 (Planning and flood risk) states that applications which could affect drainage on or around the site should incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff, and which are proportionate to the nature and scale of the proposal. These should provide multifunctional benefits wherever possible, through facilitating improvements in water quality and biodiversity, as well as benefits for amenity. Sustainable drainage systems provided as part of proposals for major development should: a) take account of advice from the Lead Local Flood Authority; b) have appropriate proposed minimum operational standards; and c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.
14. A footnote within the superseded NPPF (December 2023) aimed to make the availability of agricultural land for food production an explicit consideration in determining if sites are appropriate for development. This footnote has now been removed. However, the NPPF remains clear that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

## **Consultations**

15. In light of the above, the following statutory bodies have been reconsulted on the application for a revised response. Given that no revisions to the application are proposed, an additional round of public consultation was not considered necessary. However, those who previously made representation on the application were notified of its return to Board for decision.
16. **Local Highway Authority (Leicestershire County Council)** – No objection.
17. Stated, “The LHA understands that whilst a decision resolving to grant permission was reached at Development Control and Regulatory Board (DCRB) in November 2024, a Decision Notice was not issued by the CPA (County Planning Authority) prior to the changes in the National Planning Policy Framework, being published in December 2024. Therefore, the LHA understands there is a requirement for the application to be referred back to the DCRB.
- After a review of the application, the LHA understands the applicant has not changed the proposals; therefore, the LHA continues to advise ‘No Objection to Variation of Condition 2’ planning application”.
18. **Lead Local Flood Authority (LLFA, Leicestershire County Council)** – No revised comments.
19. **Hinckley and Bosworth Borough Council (Environmental Health)** – No revised comments.

## **Assessment of the Proposal**

20. Following publication of the Officer’s main report and accompanying addendum report which were presented and considered at Development Control and Regulatory board on the 21<sup>st</sup> November 2024, the new NPPF (2024) was published on the 12th December 2024.
21. Careful regard is had to the new relevant material considerations presented and set out within this report and the consultation responses received from the relevant technical consultees. The main considerations are the revised policy regarding the presumption in favour of sustainable development, climate change, highways, promoting healthy and safe communities and planning and flood risk. These considerations are assessed below in turn.
22. The updated NPPF contains significant amendments concerning climate change, which make explicit that climate adaptation and mitigation are now central to decision-making. It is noted that this application solely relates to the amendment of Condition 2 of permission reference: 2018/0669/04, in so far as it relates to the phasing of mineral extraction whereby the upper part of Phase 7 would be worked in advance of opening up the extension areas south of Heath Road. Given all other aspects of the development would remain as approved under permission reference: 2018/0669/04, potential impacts surrounding climate change are considered negligible. Therefore, no further consideration of climate change impacts, adaptation or mitigation is required to inform the assessment set out in the report dated 21<sup>st</sup> November 2024.

23. With regard to highways, a revised assessment of the proposals in light of the revised NPPF has been undertaken by the Local Highway Authority, which confirm that its previous observations and recommendation remains. Given this, no further consideration of highways or transportation matters is required to inform the assessment set out in the report dated 21<sup>st</sup> November 2024.
24. With regard to promoting healthy and safe communities, the main relevant revision to the NPPF relates to ensuring and considering the safety of children and other vulnerable users in proximity to open water, railways and other potential hazards in planning and assessing proposals for development. The development does propose the continuation of the existing operations established by permission reference: 2018/0669/04, albeit promoting one phase to be worked at an earlier stage in the quarry development programme. It is not proposed to allow children or other vulnerable users in proximity to railway sidings or open water. Additionally, it is considered that these health and safety matters are also appropriately controlled under the separate relevant health and safety legislation surrounding quarries. Given this, no further consideration of the health and safety of communities is required to inform the assessment set out in the report dated 21<sup>st</sup> November 2024.
25. In respect of the NPPF updates to considering flood risk, surface water and Sustainable Urban Drainage Systems (SuDS), potential impacts regarding the water environment were considered within an addendum to the Environmental Statement (ES) submitted as part of this application. In relation to quarry development, the assessments as part of permission reference: 2018/0669/04 considered the water environment as a whole and not on a phase-by-phase basis. Therefore, altering the phasing of the quarry working would not affect the conclusions reached in previous assessments. Moreover, altering the phasing would not give rise to any significant effects as it does not alter the profile of the overall excavation. The existing water management would continue to operate in the same fashion (i.e. water directed to the lowest part of the workings). The nature of the development (including large voids) and proposed drainage arrangements (runoff predominantly directed to voids) will inherently slow and hold storm water runoff in line with the principles of sustainable drainage. A revised assessment of the proposals in light of the revised NPPF has been undertaken by the Lead Local Flood Authority who provided no additional comments. Therefore, subject to the development taking place in accordance with the relevant surface water drainage and groundwater monitoring conditions, the revised changes to the NPPF have no impact on the previous recommendation with respect to flood risk, surface water and SuDS.
26. In respect of the minor modifications to the NPPF with regards to consideration of the availability of agricultural land for food production, it is important to note that this application does not seek to introduce any new physical development to the site, expand the site area, or intensify operations. Therefore, the potential impacts against the background of this negligible policy consideration which has now been removed, are considered insignificant.
27. In view of the above updated assessment of the development, it can be concluded that a revised consideration of cumulative impacts arising from the development is not required. As such, the previous cumulative impact considerations remain.

### **Conclusion and Recommendation**

28. Overall, the new material considerations presented by the updated NPPF do not alter the findings of the original assessment, the given overarching summary and

conclusion or the recommendation as set out in the main report dated 21<sup>st</sup> November 2024. As such the recommendation as set out in the main report dated 21<sup>st</sup> November 2024 remains and is repeated below for clarity.

### **Recommendation**

A. PERMIT subject to the conditions as set out in Appendix A of the main report dated 21<sup>st</sup> November 2024, as amended by the addendum dated 21<sup>st</sup> November 2024, and the prior completion of a legal agreement to ensure existing obligations are attached to the new permission.

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