



To: Members of the Planning & Regulation Committee

***Notice of a Meeting of the Planning & Regulation  
Committee***

**Monday, 18 July 2022 at 2.00 pm**

**Council Chamber - County Hall, New Road, Oxford OX1 1ND**

A handwritten signature in black ink that reads "Stephen Chandler".

Stephen Chandler  
Interim Chief Executive

July 2022

Committee Officer: **Jack Latkovic**  
Tel: 07513703436 ; E-Mail: [jack.latkovic@oxfordshire.gov.uk](mailto:jack.latkovic@oxfordshire.gov.uk)

---

*Members are asked to contact the case officers in advance of the committee meeting if they have any issues/questions of a technical nature on any agenda item. This will enable officers to carry out any necessary research and provide members with an informed response.*

---

**Membership**

Chair – Councillor Geoff Saul  
Deputy Chair - Councillor Richard Webber

*Councillors*

Robin Bennett  
Felix Bloomfield  
Yvonne Constance OBE  
Imade Edosomwan

Mohamed Fadlalla  
Stefan Gawrysiak  
Judy Roberts  
David Rouane

Les Sibley  
Ian Snowdon

---

**Notes:**

- **Date of next meeting: 5 September 2022**

## Declarations of Interest

### The duty to declare.....

Under the Localism Act 2011 it is a criminal offence to

- (a) fail to register a disclosable pecuniary interest within 28 days of election or co-option (or re-election or re-appointment), or
- (b) provide false or misleading information on registration, or
- (c) participate in discussion or voting in a meeting on a matter in which the member or co-opted member has a disclosable pecuniary interest.

### Whose Interests must be included?

The Act provides that the interests which must be notified are those of a member or co-opted member of the authority, **or**

- those of a spouse or civil partner of the member or co-opted member;
- those of a person with whom the member or co-opted member is living as husband/wife
- those of a person with whom the member or co-opted member is living as if they were civil partners.

(in each case where the member or co-opted member is aware that the other person has the interest).

### What if I remember that I have a Disclosable Pecuniary Interest during the Meeting?.

The Code requires that, at a meeting, where a member or co-opted member has a disclosable interest (of which they are aware) in any matter being considered, they disclose that interest to the meeting. The Council will continue to include an appropriate item on agendas for all meetings, to facilitate this.

Although not explicitly required by the legislation or by the code, it is recommended that in the interests of transparency and for the benefit of all in attendance at the meeting (including members of the public) the nature as well as the existence of the interest is disclosed.

A member or co-opted member who has disclosed a pecuniary interest at a meeting must not participate (or participate further) in any discussion of the matter; and must not participate in any vote or further vote taken; and must withdraw from the room.

Members are asked to continue to pay regard to the following provisions in the code that *“You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself”* or *“You must not place yourself in situations where your honesty and integrity may be questioned.....”*.

Please seek advice from the Monitoring Officer prior to the meeting should you have any doubt about your approach.

### List of Disclosable Pecuniary Interests:

**Employment** (includes *“any employment, office, trade, profession or vocation carried on for profit or gain”*.), **Sponsorship, Contracts, Land, Licences, Corporate Tenancies, Securities.**

For a full list of Disclosable Pecuniary Interests and further Guidance on this matter please see the Guide to the New Code of Conduct and Register of Interests at Members’ conduct guidelines. <http://intranet.oxfordshire.gov.uk/wps/wcm/connect/occ/Insite/Elected+members/> or seek advice from the Monitoring Officer prior to the meeting should you have any doubt about your approach.

**If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.**

# AGENDA

1. **Apologies for Absence and Temporary Appointments**
2. **Declarations of Interest - see guidance note opposite**
3. **Minutes (Pages 1 - 8)**

To approve the minutes of the last meeting.

## 4. **Petitions and Public Address**

*Members of the public who wish to speak at this meeting can attend the meeting in person or “virtually” through an online connection.*

*To facilitate “hybrid” meetings we are asking that requests to speak are submitted by no later than 10.00 am Friday on 15<sup>th</sup> July 2022. Requests to speak should be sent to:*

[jack.latkovic@oxfordshire.gov.uk](mailto:jack.latkovic@oxfordshire.gov.uk)

*If you are speaking “virtually”, you may submit a written statement of your presentation to ensure that if the technology fails, then your views can still be considered. A written copy of your statement can be provided no later than 9 am 2 working days before the meeting. Written submissions should be no longer than 1 A4 sheet.*

## 5. **PROGRESS REPORT ON MINERALS AND WASTE SITE MONITORING AND ENFORCEMENT (Pages 9 - 46)**

The report recommends that the Schedule of Compliance Monitoring Visits in Annex 1 and the Schedule of Enforcement Cases in Annex 2 be noted.

## 6. **SERVING OF THE PROHIBITION ORDER FOR THE REVIEW OF THE MINERAL PLANNING PERMISSION (ROMP) AT THRUPP FARM AND THRUPP LANE, RADLEY (Pages 47 - 94)**

As resolved at the meeting of the Planning and Regulation Committee on 6th September 2022, the report provides an update on the progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP areas DD1 and DD2. It is recommended that the Planning and Regulation Committee’s conclusion from its meeting on 9th September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased be updated to reflect new information demonstrating an ongoing intention to continue mineral working on the Radley ROMP site and that the unserved Prohibition Order is revoked. Further, that officers be instructed to seek an agreed date for the submission of the ROMP

Application.

**Pre-Meeting Briefing**

There will be a pre-meeting briefing on a date and at a time to be determined for the Chairman, Deputy Chairman and Opposition Group Spokesman.

## PLANNING & REGULATION COMMITTEE

**MINUTES** of the meeting held on Monday, 6 June 2022 commencing at 2.00 pm and finishing at 3.20 pm

**Present:**

**Voting Members:** Councillor Geoff Saul – in the Chair  
Councillor Richard Webber (Deputy Chair)  
Councillor Yvonne Constance OBE  
Councillor Imade Edosomwan  
Councillor Mohamed Fadlalla  
Councillor Stefan Gawrysiak  
Councillor Judy Roberts  
Councillor David Rouane  
Councillor Les Sibley

**Other Members in Attendance:** Councillor Dan Levy (for Agenda Item 5)

**Officers:**

Whole of meeting Cameron MacLean & David Mytton (Law & Governance);  
David Periam, Strategic Infrastructure and Planning)

Part of meeting Mary Hudson, Strategic Infrastructure and Planning

*The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with [a schedule of addenda tabled at the meeting] [the following additional documents:] and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda and reports [agenda, reports, and schedule/additional documents], copies of which are attached to the signed Minutes.*

### **29/21 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS**

(Agenda No. 1)

Apologies for absence were received from Councillors Snowdon, Bloomfield, and Bennett.

### **30/21 DECLARATIONS OF INTEREST**

(Agenda No. 2)

The Chair noted that, regarding the role of Councillors as Corporate Parents responsible for Looked after Children (LAC) and children in care homes, it was appropriate for Members of the Committee to register a non-pecuniary and non-prejudicial interest. In so doing, the Chair noted that it was a requirement that Planning Committee Members, when considering the application that was before the Committee, to restrict their consideration to the Planning merits of the application.

### **NOTED**

**31/21 MINUTES**

(Agenda No. 3)

There was one amendment to the minutes, as follows –

Item 22/22 Apologies for Absence and Temporary Appointments

Councillor Sibley asked that, having sent his apologies for absence for the meeting on 25 April, that this be recorded in the minutes.

Subject to that amendment, the Committee approved the minutes of the meeting of 25 April 2022 and authorised the Chair to sign them as a correct record.

**32/21 PETITIONS AND PUBLIC ADDRESS**

(Agenda No. 4)

Representations had been received from the applicant and Councillor Dan Levy, Divisional Member for Eynsham, in respect of Item 5 on the agenda.

**33/21 CONSTRUCTION OF A SINGLE STOREY DWELLING FOR USE AS A CHILDREN'S HOME WITH ASSOCIATED EXTERNAL WORKS TO FORM A NEW ACCESS ON TO BACK LANE, ASSOCIATED LANDSCAPING, BOUNDARY TREATMENT AND CAR PARKING.**

(Agenda No. 5)

The Committee considered a report by the Assistant Director for Strategic Infrastructure and Planning regarding proposals to construct a new six-bedroom single story dwelling to be used as a children's home providing supported accommodation for four children of secondary school age and two members of staff who would stay on site overnight.

Councillor Webber, Deputy Chair, noted that Oxfordshire County Council ("the Council"), as the Planning Authority, was being asked to grant planning permission in respect of an application by the Council. For the benefit of Members of the Committee and Members of the Public, he asked if the Council's Legal Officer could provide clarification on the role of the Committee in determining this application.

Mr David Mytton, Legal Officer, stated that the relevant statutory provisions allowed the Council, along with District Councils, to decide planning applications submitted in their name. Accordingly, when considering such applications, it was incumbent upon Members of the Planning Committee to restrict their consideration of the application to the Planning merits of the application.

Mary Hudson, Principal Planning Officer, Strategic Infrastructure and Planning, presented the report that was before the Committee.

In response to Member's questions, officers provided the following information.

- (a) Regarding an objection to the application by Thames Valley Police (TVP) on the grounds of security, a proposal to increase the height of a section of fencing had resulted in TVP withdrawing the objection.

- (b) Referring to Paragraph 11 of the report regarding construction materials, it was standard practice with new buildings to include a planning condition requiring samples of the materials to be used to be provided for approval.
- (c) Children resident at the home would travel to and from school on a school coach. Paragraph 77 of the report noted that there was a bus service from Aston to Witney and Carterton, and a school coach taking children from the village to the school in Witney. It was officers' understanding that the children, under the supervision of the on-site staff, would walk from the home to a pickup and drop-off point for the school coach.
- (d) Regarding direction signs for drivers visiting the home, notably the number of specialists required to visit the home, officers stated that signage was not an issue that had been raised during consultations on the proposals.

Officers stated that, if the Committee was minded to approve the Planning application, the requirement for appropriate signage could be added as an informative to the conditions of the Planning approval.

- (e) Officers did not have the results of the tree survey immediately to hand. However, from the Plans on display, it appeared that the tree on the left of the proposed driveway entrance to the home was to be retained in which case it could be made a condition of the Planning approval that the tree be the subject of an appropriate Preservation Order.
- (f) In response to a question about whether the construction of the home was to the highest environmental standards, it was noted that Paragraph 91 of the report referred to the Sustainability Statement which had been submitted as part of the Design and Access Statement which listed the design measures which had been incorporated to ensure the building was more energy efficient than the minimum statutory requirements.
- (g) Referring to Paragraph 88 of the report which stated that Aston, Cote, Shifford & Chimney Parish Council had requested, should the application be approved, that there be a condition that the development included a septic tank notwithstanding that Thames Water was of the view that a septic tank was not necessary, and that the development could be connected to the mains sewerage system, it was noted that Thames Water was a statutory consultee.

In response to a proposal that West Oxfordshire District Council (WODC) be consulted on, and its approval be sought to, any sustainable drainage system (SuDS) in relation to the development, officers stated that, if there was a condition on any planning permission requiring consultation on SuDS or any other matter, it was for the relevant Planning Authority to determine the application.

As there were no more questions for officers, the Chair invited the applicant's agent, Ms Hannah Wiseman of Bluestone Planning, to make a presentation to the Committee on behalf of the applicant.

Having heard the representations on behalf of the applicant, the Chair invited Members Of The Committee to ask any questions they might wish to put to Ms Wiseman and the applicant's other representatives present at the meeting.

In response to Members' questions, Ms Wiseman provided the following information.

- (a) Regarding the proposal that a rural location was the best location for children who would reside at the home, it was stated that the home would be a "home from

home” which offered a safe community setting away from locations which might otherwise put those children at risk.

- (b) As the home would be in a conservation area and was required to meet specific service standards and needs, the choice of materials and design had taken these matters into consideration and, in response, the design and planning proposals had gone through several iterations to ensure the security of the home, that it met the highest environmental standards, and was in accordance with the relevant Local Plans, as documented in the papers accompanying the application.
- (c) It was during the pre-planning consultation process that Thames Water had stated it was their view that a septic tank was not necessary for this development.

As there were no more questions for Ms Wiseman, the Chair invited Councillor Dan Levy, Divisional Member for Eynsham, and WODC Ward Member for Eynsham & Cassington, whose written representations were set out in Paragraph 21 of the report, to address the Committee.

At the conclusion of his presentation, and at the invitation of the Chair, Councillor Levy answered several questions by Members of the Committee. In response to the questions to Councillor Levy, officers provided the following information.

- (a) That WODC had not responded to the latest consultation on the revised design proposals did not prevent the Committee from deciding the application.
- (b) The Committee was being asked to decide the application in accordance with the same policies that would be applied if WODC were deciding the application.
- (c) It would be appropriate for the Committee to seek the views of the applicant, regarding the provision of a septic tank.

In response to this last point, Mr Mike Smithers of Beard Construction, on behalf of the applicant, stated that consideration had been given to the inclusion of a septic tank, but this had not been taken further because of the response from Thames Water that a septic tank was not necessary.

Mr Smithers went on to say that, in the hierarchy of foul water drainage<sup>1</sup>, consideration had to be given first to connecting to a mains connection [public sewer or a private sewer connecting to a public sewer]. He stated that a septic tank was possible but, unless told otherwise by Thames Water, the hierarchy of foul water drainage required a mains connection.

As there were no more questions for Councillor Levy, the Chair proposed that Members now proceed to debate the application. In the subsequent debate, the following points were raised.

- (a) The views of the Parish Council regarding a requirement for a septic tank should be taken into consideration and made the subject of a planning condition should the application be granted.
- (b) Appropriate signage should be included as an informative on any planning permission that might be approved.
- (c) The application, if approved, would entail a modest encroachment into green space and, as the Parish Council was broadly in support of the application, the applicant should take the views of the Parish Council into account.

---

<sup>1</sup> [The Building Regulations UK: Part H – Section H1 Foul Water Drainage](#)



- (d) Officers should have an opportunity to see samples of the reconstituted stone before approval was given to the choice of materials to be used.

At this stage of the proceedings, the Chair asked if there was a formal motion before the Committee.

Motion

That the Committee approve the recommendation as set out in the report, as follows -

1. That planning permission for R3.0149/21 be approved, subject to conditions to be determined by the Director for Planning, Environment and Climate Change to include those set out in Annex 1 [of the report]; and
2. Subject to –
  - (i) The proposed planning permission including an informative about providing appropriate signage directing visitors to and from the home to approach the home from the village and not from the road to Witney; and
  - (ii) Approval by officers of samples of the reconstituted stone it was proposed to use in the construction of the home prior to any approval being given to the choice of materials to be used in the construction  
[as set out in Annex 3 of the report, *Heads of Condition, Paragraph 13: External materials – submission, approval, implementation*, the detailed wording of the condition to be agreed by officers].

Moved by Councillor Stefan Gawrysiak. Seconded by Councillor Edosomwan.

In the subsequent debate on the motion, the following points were raised.

- (a) The Local Plan stipulated there should be no development [at this location] unless there was an exceptional need, and the present application fulfilled that requirement.
- (b) Anecdotal evidence regarding the technical advice provided by Thames Water about the suitability of a mains connection indicated that such advice was not always reliable. Therefore, the advice from Thames Water should be qualified and provision made for the inclusion of a septic tank, if necessary.
- (c) As Thames Water was a statutory consultee, it may not be appropriate to insist on there being a septic tank contrary to the technical advice provided by Thames Water. Therefore, rather than risk the viability of the project by insisting on the inclusion of a septic tank, consideration should be given to a condition requiring seeking technical advice from a source other than Thames Water.

In response to this proposal, officers suggested it might be possible to include a planning condition requiring the inclusion of a septic tank unless the applicant submitted, for approval, a scheme for foul drainage which demonstrated that a septic tank was not a practicable alternative to a mains connection.

In response to a question by the Committee's Legal Officer, Councillors Gawrysiak and Edosomwan confirmed they were prepared to amend the motion to include a planning condition requiring the inclusion of a septic tank subject to the submission of a scheme for approval for managing foul drainage which precluded the use of a septic tank for practicable reasons, the precise wording of the condition to be delegated to officers.

- (d) In response to a question, it was noted that any right of appeal would ordinarily lie with the applicant. However, as Oxfordshire County Council (OCC) was the applicant in the present case, there was no right of appeal. Furthermore, West Oxfordshire District Council, which had objected to the application, had no right of appeal against the County Council's decision.
- (e) It was proposed that there should also be an informative added to the proposed planning conditions regarding a requirement that the construction of the home meet the highest environmental standards that might be expected.

Councillors Gawrysiak and Edosomwan confirmed their approval to the further amendment to the motion.

The Chair then called for a vote on the motion, as amended.

The votes cast were, as follows:

<b>For:</b>	<b>9</b>
<b>Against:</b>	<b>0</b>
<b>Abstentions:</b>	<b>0</b>

**RESOLVED:** That the Committee approve the recommendation as set out in the report, as follows -

1. That planning permission for R3.0149/21 be approved, subject to conditions to be determined by the Director for Planning, Environment and Climate Change to include those set out in Annex 1 [of the report]; and
2. Subject to –
  - (i) The proposed planning permission including an informative about providing appropriate signage directing visitors to and from the home to approach the home from the village and not from the road to Witney;
  - (ii) Approval by officers of samples of the reconstituted stone it was proposed to use in the construction of the home prior to any approval being given to the choice of materials to be used in the construction  
[as set out in Annex 3 of the report, *Heads of Condition, Paragraph 13: External materials – submission, approval, implementation*, the detailed wording of the condition to be agreed by officers];
  - (iii) A planning condition requiring the inclusion of a septic tank unless the applicant submitted, for approval, a scheme for foul drainage which demonstrated that a septic tank was not a practicable alternative to a mains connection;
  - (iv) The proposed planning permission include a second informative regarding a requirement that the construction of the home meet the highest environmental standards that might be expected.

**34/21 RELEVANT DEVELOPMENT PLANS AND POLICIES**  
(Agenda No. 6)

**NOTED**

Chair: .....

**Councillor Geoff Saul**

Date: .....

This page is intentionally left blank

Guidance is given in square brackets under each of the headings below. Headings which are discretionary are also in square brackets. Please delete as you go along and remove heading and sections not needed.

## **Division Affected – All**

## **PLANNING AND REGULATION COMMITTEE**

**18 July 2022**

## **PROGRESS REPORT ON MINERALS AND WASTE SITE MONITORING AND ENFORCEMENT**

**Report by Director of Planning, Environment and Climate Change**

**Contact Officer:** Neal Richmond **Tel:** 0771 865 6922

The report recommends that the Schedule of Compliance Monitoring Visits in Annex 1 and the Schedule of Enforcement Cases in Annex 2 be noted.

### **Executive Summary**

1. The report provides a summary of the work undertaken by the County's planning monitoring and enforcement team. It gives an update by way of a schedule of compliance monitoring visits for the period 1 April 2021 to 31 March 2022 (Annex 1). An update on the progress of planning enforcement actions is also provided (Annex 2).

### **Introduction**

2. This report updates members on the regular monitoring of minerals and waste planning permissions for the financial year 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2022 and on the progress of enforcement cases.

### **Compliance Monitoring Visits**

3. County Council officers endeavour to pursue and foster good working relationships with operators following the grant of planning permission. The effective monitoring of sites can avoid problems developing and by acting in a proactive manner we can be a positive educator of good practice. This approach can avoid the necessity to act in a reactive way after problems emerge and can avoid the need for enforcement action. Through our efforts we seek to:
  - I. identify potential problems early and avoid them developing;
  - II. minimise the need to resort to enforcement or other action;
  - III. encourage good practice in the first instance thus reducing the need to apply sanctions against bad practice;

- IV. review planning decisions and agreements made with the County Council;
  - V. facilitate regular liaison and dialogue between operators, the public/local community representatives and the council officers.
4. All sites with an active planning permission are scheduled to be visited on a formal basis. A written report is produced following any substantive site visit and shared with the site occupant. Where elements of non-compliance with a consent are identified this can result in subsequent compliance with matters that are outstanding or in a planning application being made to regularise unauthorised development on site. On occasion, should regularisation not occur, (and where it considered expedient to do so), formal enforcement action may be pursued.
  5. Annex 1 provides a schedule of all the consented sites we monitor. It includes two columns, one which sets out the target visits for the fiscal year 1 April 2021 to 31 March 2022, and the second which sets out the number of compliance monitoring visits that were carried out during that period. **75%** of the total targeted number of visits were carried out with the majority of active sites in the county receiving at least one visit. The number of visits is not necessarily reflective of workload as site visits vary in their complexity, both in terms of responding to their planning history and in the action required. The number of site visits undertaken also varies according to the level of activity on site and the engagement of other stakeholders (such as the Environment Agency) with whom we work closely. Whilst there are some instances where target number of visits were not met; this is due to both the prioritisation of visits to more demanding sites (where new/unforeseen issues had been identified or complaints received) and also the backdrop of non-emergency site visits being curtailed in line with the Covid 19 restrictions. During the monitoring year where Covid 19 adversely impacted upon physical visits undertaken, emergency/urgent enforcement visits were still undertaken, alongside 'desktop' planning audits conducted throughout the periods of lockdown. The inability to enter onto the land (and thus what could constitute a chargeable visit) impacted the level of income from monitoring fees to those landfill and mineral sites where legislation provides for a charge to be levied.
  6. In order to try to achieve and maintain good environmental standards countywide, officers have committed to monitoring planning permissions across all of the mineral and waste related sites in Oxfordshire. However, you will see that some sites have a zero target, these are low risk, small scale or dormant sites (such as sewage treatment works) which we record but will typically only be visited every other year.
  7. Out of a total of 110 sites, 45 are within the remit of Government Regulations that allow the council to charge a fee for conditions monitoring, in that they relate directly to the planning permissions for the winning and working of mineral or directly to landfilling permissions.

8. The remaining non-chargeable sites include such facilities as scrap yards, recycling operations, waste transfer stations, sewage works and composting operations.
9. The current charges are respectively £397 for an active site and aftercare visit, and £132 for a dormant site where activity is not taking place. (These charges are legislated and set by central government through 'The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012' as amended.
10. Officers determine the target number of visits for each site on a "risk assessment" basis for each site drawing on the following points:
  - I. sensitivity of location
  - II. size and type of development
  - III. number and complexity of planning conditions
  - IV. number of issues requiring monitoring input
  - V. the stage and pace of development
  - VI. breaches of planning control that are or have been observed
  - VII. complaints received for the site.
11. There is an opportunity for operators to enter into discussions on how the Council has reached its decision for the number of visits scheduled per year. Having set a target for the number of visits per annum, officers keep the frequency of actual visits under review and adjust the frequency particularly taking account of IV, VI, and VII and above.

## **Enforcement**

12. Annex 2 of this report summarises active cases subject to ongoing investigation and formal enforcement action. It sets out alleged breaches of planning control and the progress toward remedying those substantive breaches of planning control.
13. All operators are made aware of an allegation of a breach in planning control that has been made against them.
14. When a case is closed it will appear on the progress report as 'Case Closed' with a summary of the outcome.

15. A glossary of terms used in Annex 3 is attached. The Senior Enforcement Officer can be contacted for further information in respect of any of these cases if necessary.

### **Monitoring and Enforcement Service**

16. The adopted policy of Oxfordshire County Council Local Monitoring and Enforcement Plan commits to maintaining resources to effectively carry out the objectives and meet its aims. The routine monitoring programme continues to foster greater compliance with planning conditions, and promotes identifying and rectifying matters where conditions are not being complied with on all mineral and waste planning permissions.
17. The service is generally well received by householders, liaison committees, parish and town councils with access to compliance reports providing a basis for discussions with operators on the progress on sites in their locality. It seeks to provide a timely response to local people's concerns and serves to pre-empt issues which are likely to affect the amenities of an area.
18. Officers in the team also provide key support in ensuring that details pursuant to permissions are submitted where these are required by planning conditions before a development starts. They often co-ordinate action between Development Management planners, Highways, Ecology and other County services and the operator. The aim is to ensure pre commencement works are completed in a timely manner and before the main development is started. Ultimately, the work of the county planning monitoring and enforcement team is fundamental to maintaining confidence in the planning system and protecting and enhancing the environment for all residents and businesses within Oxfordshire.

### **Financial Implications**

19. Not applicable as the financial interests of the County Council are not relevant to the enforcement of planning control.

### **Legal Implications**

20. There are not considered to be any legal implications arising from this report.

### **Equality & Inclusion Implications**

21. In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of



opportunity and foster good relations between different groups. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

## **RECOMMENDATION**

**It is RECOMMENDED that the Schedule of Compliance Monitoring Visits in Annex 1 and the Schedule of Enforcement Cases in Annex 2 be noted.**

### **Rachel Wileman**

Report by Director of Planning, Environment and Climate Change

Annexes:	Annex 1:	Schedule of Compliance Monitoring Visits
	Annex 2:	Schedule of Enforcement Cases
	Annex 3:	Glossary of Terms
Background papers:	None	
Other Documents:	Oxfordshire County Council Local Monitoring and Enforcement Plan	

This page is intentionally left blank

**Minerals & Waste Compliance Monitoring Sites in Cherwell District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Alkerton CA & Landfill, Alkerton, Nr. Banbury, Oxon.	Alkerton Landfill	W	Aftercare	Full	1	1
	Alkerton CA	W	Active	Nil		
Barford Road Farm, Barford Road, South Newington, Banbury OX15 4JJ		W	Active	Nil	2	2
Alkerton, Horton, Wroxton Stratford Road, Hornton, Banbury, OX15 6AH.	Alkerton Quarry	M	Active	Full	2	4
	Hornton Grounds Quarry.	M	Active for stone processing			
	Wroxton	M	Active	Full		
Ardley Quarry, Ardley, Bicester, Oxon, OX27 7PH.	Ardley Landfill	W	Active	Full	3	1
	Ardley EfW	W	Active	Nil		
	Ardley HWRC	W	Active	Nil		

**Minerals & Waste Compliance Monitoring Sites in Cherwell District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Ardley Composting Site, Ashgrove Farm, Upper Heyford Road, Ardley, OX27 7PJ.	In-vessel Composting	W	Active	Nil	<b>1</b>	<b>1</b>
Dewar's Farm, Ardley Road, Middleton Stoney.		M	Active	Full	<b>3</b>	<b>2</b>
Horsehay Quarry, Middle Barton Road, Duns Tew.		M	Active	Full	<b>3</b>	<b>2</b>
Ferris Hill Farm, Sibford Road, Hook Norton, Banbury, OX15 5JY.		W	Active	Nil	<b>4</b>	<b>1</b>
Finmere Quarry, Banbury Road, Finmere, Oxfordshire, MK18 4AJ.	Finmere (Landfill)	W	Active	Full	<b>6</b>	<b>6</b>
	MRF	W	Dormant	Nil		
	Sand & Gravel	M	Not Implemented	Full		

**Minerals & Waste Compliance Monitoring Sites in Cherwell District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Heneff Way - Batching, Heneff Way, Banbury.		M	Active	Nil	2	1
Heneff Way - Tarmac, Heneff Way, Banbury.		M	Active	Nil	2	2
L.C. Hughes Scrap Yard, London Road, Bicester.		W	Active	Nil	1	0
Spittle Farm WTS, Thorpe Road, Overthorpe Industrial Estate, Banbury		W	Active	Nil	2	1
Shipton on Cherwell Quarry, Shipton on Cherwell, Oxfordshire.		W	Active	Full	6	4
Smiths of Bloxham - WTS. Milton Road, Bloxham, Banbury.		W	Active	Nil	2	0
Stratton Audley, Elm Farm Quarry, Stratton Audley.	Landfill	W	Dormant	Low	1	1
White Hill Quarry, Tackley, OXON		M	Dormant	Low	1	0
<b>Total</b>	-	-	-	-	<b>41</b>	<b>29 (71%)</b>

This page is intentionally left blank

**Minerals & Waste Compliance Monitoring Sites in Oxford.**

Contact Officer: Neal Richmond, Senior Enforcement Officer  
Tel: 0771 865 6922

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Jackdaw Lane Scrap Yard		W	Active	Nil	1	0
Redbridge CA, Old Abingdon Road, Oxford.		W	Active	Nil	1	0
<b>Total</b>	-	-	-	-	<b>2</b>	<b>0 (0%)</b>

This page is intentionally left blank



**Minerals & Waste Compliance Monitoring Sites in South Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Ambrose Quarry, Ewelme, Oxon.		M	Dormant	Low	1	0
Battle Farm, Crowmarsh, Oxon, OX10 6SL.		W	Active	Nil	1	1
Caversham, Sonning Eye, Reading.	Caversham Main	M	Active	Full	3	3
	Caversham Triangle	M	In restoration	Full		
	Caversham Extension	M	Active	Full		
Chinnor Quarry.		M	Aftercare	Full	1	2
Culham UKAEA		W	Active	Nil	0	0
Culham No 1		W	Active	Nil	1	0
Ewelme Landfill. Goulds Grove, Ewelme, Wallingford, Oxon.	Ewelme I (Buildings)	W	Active	Nil	3	3
	Ewelme I WTS	W	Active	Nil		
	Ewelme II MRF	W	Active	Nil		
	Ewelme II Landfill	W	Active	Full		
Eyres Lane Waste Transfer Site, Ewelme.		W	Active	Nil	3	2

**Minerals & Waste Compliance Monitoring Sites in South Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Greenwoods of Garsington, Scrap Yard, Pettiwell, Garsington, Oxford.		W	Active	Nil	<b>1</b>	<b>0</b>
Main Motors Ltd, Woodside, Old Henley Road, Ewelme, Oxon		W	Active	Nil	<b>2</b>	<b>0</b>
Hundridge Farm, Waste Transfer, Hundridge Farm, Ipsden, Oxon		W	Active	Nil	<b>1</b>	<b>0</b>
Menlo Industrial Park - Scrap Yard, Roycote Lane, Thame, Oxfordshire, OX9 2JB.		W	Active	Nil	<b>1</b>	<b>1</b>
Moorend Lane, Thame		M & W	Active	Full	<b>2</b>	<b>1</b>
New Barn Farm		M	Active	Full	<b>3</b>	<b>2</b>
Oakley Wood, Old Icknield Way, Crowmarsh		W	Active	Nil	<b>1</b>	<b>1</b>

**Minerals & Waste Compliance Monitoring Sites in South Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Playhatch Quarry - WTS, Dunsden Green Lane, Playhatch, Caversham, Reading.		W	Active	Nil	<b>2</b>	<b>1</b>
Woodeaton Quarry, Woodeaton, OXON.		M	Active	Full	<b>2</b>	<b>4</b>
<b>Total</b>	-	-	-	-	<b>28</b>	<b>21 (75%)</b>

This page is intentionally left blank

**Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Aasvogel, Waste Transfer Station, Grove Business Park, Grove.		W	Active	Nil	<b>1</b>	<b>0</b>
Bowling Green Farm, Stanford Road, Faringdon, Oxon.		M	Active	Full	<b>3</b>	<b>3</b>
Prospect Farm, Chilton, Didcot, Oxfordshire, OX11 0ST.		W	Active	Nil	<b>2</b>	<b>0</b>
Drayton CA Site, Drayton, Oxon.		W	Active	Nil	<b>1</b>	<b>0</b>
Composting Facility, Church Lane, Coleshill, Swindon, SN6 7PR.		W	Active	Nil	<b>1</b>	<b>1</b>
Faringdon Quarry, Fernham Road, Little Coxwell, Oxfordshire.		M	Active	Full	<b>3</b>	<b>1</b>

**Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.**

**Contact Officer: Neal Richmond, Senior Enforcement Officer**  
**Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Glebe Farm Composting, Glebe Farm, Hinton Waldrist, Oxfordshire.		W	Active	Nil	<b>1</b>	<b>1</b>
Haynes of Challow, East Challow, Wantage, Oxon, OX12 9TB.		W	Active	Nil	<b>1</b>	<b>0</b>
Hatford Quarry, Sandy Lane, Hatford, Oxon, SN7 8JH.		M	Active	Full	<b>4</b>	<b>2</b>
Hill Farm - Woodchipping, Nr Didcot, Oxfordshire.		W	Active	Nil	<b>2</b>	<b>2</b>
Quelchs Orchard, Scrap Yard, Charlton, Wantage.		W	Active	Nil	<b>1</b>	<b>0</b>
Radley Sand and Gravel Plant, Thrupp Lane, Radley.	Curtis Yard & Tuckwell's Plant	M & W	Dormant	Nil	<b>1</b>	<b>0</b>

**Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Harwell, UKAE, Harwell, Didcot, OX11 ORA.					<b>1</b>	<b>0</b>
	Business Park		Active	Nil		
	Catapult Pit		Active	Nil		
	Southern Storage		Active	Nil		
	Waste Management Complex (B462)	W	Active	Nil		
	Western Storage		Active	Nil		
Radley Ash Disposal Scheme	Lake E	W	Not Implemented	Nil	<b>0</b>	<b>0</b>
	Phase I	W	Aftercare	Full		
	Phase II	W	Aftercare	Full		
	ROMP area	M	ROMP	Full		
Sandhill Quarry, Sands Hill, Faringdon, Oxon, SN7 7PQ.		M	Dormant	Low	<b>1</b>	<b>0</b>
Shellingford Quarry, Shellingford Crossroads, Stanford In The Vale, Faringdon, Oxon, SN7 8HE.		W	Active	Full	<b>3</b>	<b>4</b>

**Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Stanford in the Vale Waste Disposal and Civic Amenity Site		W	Active	Nil	<b>1</b>	<b>1</b>
Stone Pitt Barn, Kingston Road, Frilford, Abingdon, OX13 5HB		W	Active	Nil	<b>2</b>	<b>5</b>
Sutton Courtenay (Hanson), Appleford Sidings, Abingdon, Oxfordshire, OX14 4PW.	Batching Plant	W	Active	Nil	<b>3</b>	<b>4</b>
	Bridge Farm	W	Active	Full		
	Rail Head	W	Active	Nil		
	Tarmac plant	W	Active	Nil		
Sutton Courtenay (FCC), Appleford Sidings, Abingdon, Oxfordshire, OX14 4PW.	Composting	W	Active	Nil	<b>3</b>	<b>4</b>
	Landfill	W	Active	Full		
Sutton Wick Landfill, Bassett Lane, Oday Hill, Abingdon.		W	Aftercare	Full	<b>1</b>	<b>1</b>
Sutton Wick Sand and Gravel, Peep-O-Day Lane, Abingdon, Oxon.	Allen Land	M	Restoration	Full	<b>3</b>	<b>2</b>
	Sutton Wick Plant	M	Active	Nil		
	CAMAS	M	Active	Full		



**Minerals & Waste Compliance Monitoring Sites in Vale of the White Horse District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
Swannybrook Farm, Kingston Bagpuize		W	Active	Nil	<b>3</b>	<b>3</b>
Tubney Woods Sand Quarry and Landfill Site, Besselsleigh, Oxfordshire.		M	Restoration	Full	<b>1</b>	<b>2</b>
Upwood Park Sand Quarry and Landfill Site, Besselsleigh, Oxfordshire.		M	Active	Full	<b>3</b>	<b>2</b>
Whitecross Metals, Whitecross, Abingdon, Oxon.		W	Active	Nil	<b>1</b>	<b>0</b>
Wickleham Quarry, Faringdon, Oxfordshire.		M	Aftercare	Full	<b>1</b>	<b>2</b>
<b>Total</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>47</b>	<b>40 (85%)</b>

This page is intentionally left blank

**Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

<b>Address</b>	<b>Sites</b>	<b>Type - Mineral or Waste</b>	<b>Status</b>	<b>Charge</b>	<b>Target Visits for year 01/04/21 to 31/03/22</b>	<b>Visits completed for the period 01/04/21 to 31/03/22</b>
B & E Skips, 115 Brize Norton Road, Minster Lovell, Oxon, OX29 0SQ.	Minster Lovell	W	Active	Nil	<b>1</b>	<b>1</b>
Burford Quarry, Burford Road, Brize Norton, Oxfordshire.	Quarrying	M	Active	Full	<b>3</b>	<b>2</b>
	Manufacturing					
Castle Barn Quarry, Sarsden		M	Active	Full	<b>2</b>	<b>2</b>
New Wintles Farm		W	Active	Nil	<b>2</b>	<b>3</b>
Controlled Reclamation, Dix Pit, Stanton Harcourt, Oxon.		W	Active	Full	<b>2</b>	<b>1</b>
Sheehan Recycled Aggregates, Dix Pit, Stanton Harcourt, Oxon.	Wash Plant	W	Active	Nil	<b>2</b>	<b>1</b>

**Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Crawley Scrap Yard		W	Active	Nil	1	0
Deans Pit CA Site, Chadlington.		W	Closed	Nil	1	1
Dix Pit, Stanton Harcourt, Oxon.	Conblock	W	Dormant	Nil	3	1
	Dix Pit CA	W	Active	Nil		
	Dix Pit Landfill Site	W	Active	Full		
	North Shore	M	Complete	Full		
	Premix - Hanson	M		Nil		
Enstone Airfield Waste Transfer. Unit 1, Enstone Airfield, Enstone, Oxon.	Waste Transfer (Unit 1)	W	Dormant	Nil	3	2
	Sound Attenuation Bunds	W	Active	Full		
Ethos Waste Transfer Lakeside Industrial Estate, Standlake, Oxon		W	Dormant	Nil	4	1

**Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Fraser Evans & Sons, Worsham Quarry, Minster Lovell, Oxon.	Tyre Recycling	W	Active	Nil	1	0
Worsham (Asthall)		W	Not Yet Commenced	Nil	1	0
Gill Mill, Tar Farm, Gill Mill Complex, Ducklington, Oxfordshire.	Rushey Common	M	Long term Mgt.	Nil	3	2
	Gill Mill Quarry	M	Active	Full		
Great Tew Quarry, Butchers Hill, Great Tew, Oxon.		M	Active	Full	3	2
Hardwick Batching Plant, Hardwick Recycling Adj. B4449, Hardwick, Oxon.	CEMEX	M	Active	Nil	2	4
	Fergal Yard					
Hickman Bros Landscapes, Burford		W	Active	Nil	1	0
Adler & Allan, Lakeside Industrial Estate, Standlake		W	Active	Nil	1	0

**Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.****Contact Officer: Neal Richmond, Senior Enforcement Officer****Tel: 0771 865 6922**

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Manor Farm - Waste Transfer, Kelmscott, GL7 3HJ.		W	Active	Nil	1	0
Ubico, Downs Road WTS, Witney, Oxon.		W	Active	Nil	1	1
Mick's Skips (Hackett's Yard), Lakeside Industrial Estate, Standlake, Oxon.		W	Active	Nil	1	0
Mick`s Skips (Witney)		W	Active	Nil	1	1
Sandfields Farm, Over Norton, Oxfordshire.		W	Active	Nil	2	2
Rollright Quarry, Chipping Norton.	Phase 1	M	Active	Full	4	5
	Phase 2	M	Active	Full		
Showell Farm, Chipping Norton, Oxon OX7 5TH.		W	Active	Nil	1	1
Slape Hill Quarry, Glympton.		W	Active	Nil	1	1
Old Railway Halt, Grt Rollright		W	Active	Nil	1	0

**Minerals & Waste Compliance Monitoring Sites in West Oxfordshire District.**

Contact Officer: Neal Richmond, Senior Enforcement Officer  
Tel: 0771 865 6922

Address	Sites	Type - Mineral or Waste	Status	Charge	Target Visits for year 01/04/21 to 31/03/22	Visits completed for the period 01/04/21 to 31/03/22
Steve Claridge Motor Salvage, Carterton		W	Active	Nil	1	0
Sturt Farm, Units 2A, 4 Sturt Farm Ind, Burford.		W	Active	Nil	1	0
Watkins Farm, Linch Hill, Stanton Harcourt, OXON. OX29 5BJ.	ROMP area	M	Aftercare	Full	1	3
	Stonehenge Farm	M	Dormant	Full		
	Ireland Land	M	Dormant	Full		
Whitehill Quarry, Adj. A40, Burford, OXON.		M	Active	Low	3	2
Worton Rectory Farm, Cassington, OXON. OX29 4SU.	Cassington Quarry	M	Active	Full	4	3
	Worton Composting	W	Active	Nil		
	M&M WTS	W	Active	Nil		
<b>Total</b>	-	-	-	-	<b>59</b>	<b>42 (71%)</b>

This page is intentionally left blank



Progress of Enforcement Cases

**Contact Officer: Neal Richmond, Senior Enforcement Officer**  
**Tel: 0771 865 6922**

Location	Alleged Breach of Planning Control	Progress/Update summary.
<b>South Oxfordshire District Council</b>		
Land adj. Sewage Works, Clifton Hampton	Unauthorised deposit of waste	Waste soil; construction and demolition waste and wood deposited on hardstanding adjacent to the Culham Science Park. PCN served. Maintain watching brief.
Former MOD Warehouse, Pyrton Lane, Watlington	Unauthorised waste operations	Waste wood and carpet had been brought to the site, stored and processed (chipped) without planning permission. A PCN has been served. The waste activity ceased. Maintain watching brief.
<b>Vale of White Horse</b>		
Swannybrook Farm, Abingdon Road, Kingston Bagpuize	Breach of Conditions – concrete crushing; operating beyond site boundary; excessive HGV movements; excessive stockpile height.	Waste operations were being carried out outside of the site boundary of the permitted waste soils recycling site, unauthorised use of concrete crusher, excessive height of stockpiles and excessive number of HGVs. Retrospective Planning applications MW.0135/19 & MW.0134/19 were submitted by the operator to regularise the unauthorised activities. Following a resolution to grant planning permission (October 2020) by OCC P & R Committee, (subject to a legal agreement relating to routing of HGV's), upon completion and signing of the legal agreement, new planning permissions with updated conditions for enhanced control of the site were issued. . The site is now governed by the new planning permissions. Ongoing site visits (including a joint visit with the Environment Agency) have taken place. Maintain watching brief/ formal monitoring.

<b>Cherwell</b>		
Lower Nill Farm, Hook Norton Road	Unauthorised deposit of waste.	A planning enforcement notice (EN) was served requiring the cessation of importation of waste and the removal of previously imported waste from the agricultural land. The EN was not appealed by the landowner and therefore came into effect 15 <sup>th</sup> March 2021. Whilst importation of waste onto the land has ceased in line with the requirements of the EN, the removal of waste from the site has not yet taken place. The County Council considered the expediency of early prosecution proceedings to effect the removal of materials from site. That consideration took into account the impact Covid 19 Lockdowns had on the ability of the landowner to organise the removal, and more recently, that the landowner has positively engaged with the County Council about solutions for the site. The landowner has now instructed planning agents who will be seeking formal pre application advice and are drawing up a retrospective planning application which should involve the removal of the majority of waste, with partial recontoured retention. Ultimately, should the materials not be removed from the land in line with the requirements of the EN, or a satisfactory solution through majority removal / regularisation through planning consent, a criminal prosecution could be initiated. Regular liaison with the landowner's representatives, and ongoing monitoring of the site continues to take place.
Shipton-on-Cherwell Quarry	Breach of Conditions – development not to plan; the deadline for the cessation of mineral extraction; import of aggregates, submission of aftercare schemes; breach of the approved mineral extraction area; breach of the depth of mineral working; submission of restoration schemes	Following a PCN being served on the operator in March 2020, a breach of conditions Enforcement Notice (BCEN) was served on the operator and all those with an interest in the land on 31/07/2020. The BCEN alleges breaches of Conditions 1,2,3,39,46,47 and 50 of planning permission ref MW.0001/19 dated 22/03/2019. The operator made an appeal against the BCEN to the Planning Inspectorate which has suspended the effect and requirements of the BCEN until the case is heard and decision reached by the Planning Inspectorate. The Planning Inspectorate had originally timetabled the appeal to be heard June 29 <sup>th</sup> -30 <sup>th</sup> 2021 by way of a hearing. This hearing was postponed at the agreement of the Planning Inspectorate given the EN appeal was agreed to be linked to a Section 78 planning appeal (refusal of planning permission) for a proposed south

		<p>eastern extension at the Shipton-on Cherwell Quarry (and for which evidence was put forward latterly by the Environment Agency).</p> <p>These linked case hearings were then rescheduled by the Planning Inspectorate to take place for 3 days in February 2022. In the intervening period, a further comprehensive PCN was served 19<sup>th</sup> November 2021 and returned 21<sup>st</sup> December 2021. This assisted in clarification of the extent of breaches at the site, updating and augmenting the original PCN information.</p> <p>In January 2022, due to the appellant submitting a technical statement at a very late stage, the Planning Inspectorate postponed the February hearing to allow sufficient time for response. This has protracted matters further.</p> <p>Subsequent to the above mentioned developments in the cases, on 7<sup>th</sup> April 2022 the appellant operator of the site withdrew a part retrospective Section 73 planning application which was lodged with the County Council and which had encompassed some of the unauthorised development subject of the original BCEN. The appellant has committed to provide a full planning application as a replacement, and to this effect, a formal screening request was made to the County Council and screening opinion issued 24<sup>th</sup> June 2022 which confirmed the development would require an Environmental Impact Assessment (EIA).</p> <p>The linked appeals are now scheduled to take place via planning hearing for 3 days commencing 13<sup>th</sup> September 2022. In the meantime, the site is subject to ongoing monitoring and any necessary further enforcement action kept under review.</p>
Land of Pound Lane, Sibford Gower	Unauthorised waste disposal on agricultural land.	PCN's were served on the landowners of agricultural land in respect of alleged unauthorised waste disposal. Early contact with the landowners has resulted in waste disposal on the land ceasing and a stated commitment to remove the waste materials from the land to an authorised site. The Environment Agency (EA) were informed by the County Council and are also taking action through

		<p>their powers under the Environmental Protection Act. Trial pit digging to establish the depth and type of materials was actioned in December 2021, and a limited amount of the waste material was removed from the site. However, in the opinion of both the EA and the County Council further waste needs to be removed. Further enforcement action to be kept under review if all waste materials are not voluntarily removed. Ongoing monitoring of the site.</p>
<p>Land south of Barford Road, South Newington</p>	<p>Unauthorised deposit of waste</p>	<p>Waste soils imported on land from a development site in Hook Norton to fill a lake on agricultural land. PCN Served. The landowner asserted that the import of material is required to provide for an area of hard surface (for the storage of hay and straw), which is permitted development under Class A of Part 6 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The case was also reported to the Environment Agency for their investigation., maintain a watching brief.</p>
<p>Stratton Audley Quarry</p>	<p>Unauthorised deposit of waste and on-going breach of planning conditions – failure to restore</p>	<p>The site was required to be restored by 31<sup>st</sup> December 2008. OCC had ten years from that date in which to bring enforcement proceedings for on-going breach of planning control as reported to Planning &amp; Regulation Committee on 29<sup>th</sup> October 2018. An Enforcement Notice was served and withdrawn. Planning application MW.0120/18 was submitted by the landowner seeking to allow extension of time for the completion of the restoration and withdrawn. In both cases this was by agreement pending submission of a further application to address the need for a revised restoration scheme taking into account the presence of protected habitats and species. The County Council has up to 4 years from the date of the withdrawn EN to initiate/recommence formal enforcement action if considered necessary. As the backstop date for serving a replacement EN nears (December 2022), in the absence of planning permission being obtained, the County Council will have to consider a further EN to protect the Council's position and ensure an appropriate restoration of the land.</p>

Land off the east side of Bicester Road, Kidlington	Material change in the use of the land to the importation and disposal of waste materials.	3 PCN's dated 13 <sup>th</sup> April, 4 <sup>th</sup> May have been sent in connection with this unauthorised development. These were directed at the registered landowner, and the directors of the operating company. Further action on the non return of the PCN questionnaires is under consideration along with additional enforcement action to be guided by legal advice on the circumstances surrounding this case. Monitoring of the site is ongoing.
<b>West Oxfordshire</b>		
Land at 'Park Field', Tracey Barn Farm (North of Green Lane), Great Tew, Chipping Norton.	Unauthorised mineral extraction (quarrying) and waste infilling.	A Temporary Stop Notice (TSN) was served on the landowner and operator on 20 <sup>th</sup> May 2021 requiring the cessation of ' <i>The winning and working of mineral and any other activity carried out as part of, or associated with, the winning and working of mineral on the land; the removal of extracted minerals from the land; the importation and disposal of waste material onto the land</i> '. Further extraction and infill of this large and entirely unauthorised quarry was brought to an immediate halt following the service of this TSN. Meeting and negotiations with the landowner before the TSN expired in time led to a written commitment not to further extract materials or infill the resultant void, pending a retrospective planning application to be submitted to and considered by the County Council development management team. Such a retrospective planning application was received, processed, and conditional planning permission was granted on 9 <sup>th</sup> May 2022 under reference (MW.0100/21). The development which has been brought under control by conditional planning permission will be subject to chargeable monitoring visits by the monitoring and enforcement team. Case closed.
Ethos (William Wyatt's Yard), Standlake Industrial Park	Unauthorised waste operations	Stockpiling and removal of previous deposit of unauthorised waste. PCN served. Immune from enforcement action. Site is continuing to be monitored by the Monitoring & Enforcement team in case of resurrection of waste importation.
Land West of Fish Hill Farm, Drakes Lane	Unauthorised disposal of waste	A small uncovered pit filled with a significant amount of waste bottles and cans with an adjacent larger area of spoil. PCN served. Landowner confirmed that stripping back of topsoil and excavation to improve the drainage of land is carried

		out and no import of waste took place. Fly-tipping of waste bottles and cans removed with evidence of proper disposal. Maintain a watching brief.
Manor Farm, High Street, Great Rollright	Unauthorised quarrying and deposit of waste	PCN served on the landowner and the operator. Ongoing monitoring to ensure no further waste importation or mineral extraction. Further formal enforcement action being kept under review.
Land at Great Tew Ironstone Quarry, Butchers Hill, Great Tew, Chipping Norton, Oxfordshire OX7 4BT	Breach of planning condition	Two breach of condition notices (BOCN's) were served on 21 <sup>st</sup> August 2021 in respect of excess HGV movements in breach of condition 35 of planning permission reference MW.0078/15 (15/02678/CM) dated 7 <sup>th</sup> September 2018 which states " <i>No HGV movements associated with clay exportation shall take place during the harvest season (1st August to 31st October). Reason: In the interests of highway safety and public amenity. (OMWCS C5)</i> " The notices were served on:-Johnston Quarry Group Limited, The Estate Office, Quarry Farm, Banbury Road, Great Tew, Chipping Norton, Oxfordshire, OX7 4AH. and Nicholas Matthew Middlemass JOHNSTON, (Director) Johnston Quarry Group Limited, The Estate Office, Quarry Farm, Banbury Road, Great Tew, Chipping Norton, Oxfordshire, OX7 4AH. The notices required ceasing all HGV movements associated with clay exportation throughout the harvest season period (1 <sup>st</sup> August to 31 <sup>st</sup> October). These notices remain in effect and the site is subject to regular monitoring.
Rollright Quarry, Little Rollright, Chipping Norton, Oxfordshire OX7 5QB	Breach of planning condition	Two breach of condition notices (BOCN's) were served on 24 <sup>th</sup> January 2022 in respect of excess HGV movements in breach of condition 10 of planning permission reference MW.0063/20 District Ref: 20/01964/CM dated 8 <sup>th</sup> December 2020 which states " <i>HGV movements to and from the site through the access shown on approved plan F32m/1a shall not exceed 6 in any one day. HGV movements to and from the site shall in any case be restricted to 60 in any one day. Reason: In the interests of highway safety.</i> " The notices were served on:-Oxfordshire Minerals Group Ltd, The Estate Office, Quarry Farm, Banbury Road, Great Tew, Chipping Norton, Oxfordshire, OX7 4BT, and Nicholas Matthew Middlemass JOHNSTON, (Director) Oxfordshire Minerals Group Ltd, The Estate Office, Quarry Farm, Banbury Road, Great Tew, Chipping Norton, Oxfordshire,

		<p>OX7 4BT.. The notices required:- ceasing any HGV movements to or from the site through the access shown on approved plan F32m/1a in excess of 6 in any one day. These notices remain in effect, and the site is subject to regular monitoring.</p>
--	--	---

This page is intentionally left blank



Awaiting DP	-	Details pursuant to a planning condition must be approved by OCC prior to commencement of development.
BCN	-	Breach of Condition Notice – A summary procedure for the enforcement of planning conditions. Where there has been a failure to comply with a condition attached to a current planning permission the Local Planning Authority may serve such a notice.
CDC	-	Cherwell District Council
CLEUD	-	Certificate of lawful use / development. A procedure to allow a person to ascertain whether; (a) the existing use of land or buildings is lawful; (b) any operations carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with a condition of a planning permission is lawful.
COU	-	Change of Use
EA	-	Environment Agency
EN	-	Enforcement Notice
Expediency	-	A judgment of the merits of an activity against planning policy.
LBA	-	Letter before action - a formal letter which sets out the alleged breach in planning control and suggested remedy.
OCC	-	Oxfordshire County Council
PCN	-	Planning Contravention Notice – A formal notice requiring a recipient to provide information about development on land so far as they are able.
Pd	-	permitted development
Pp	-	planning permission
SODC	-	South Oxfordshire District Council
VoWH	-	Vale of White Horse District Council
WODC	-	West Oxfordshire District Council

This page is intentionally left blank

## Division Affected – Kennington and Radley

### PLANNING AND REGULATION COMMITTEE

18TH JULY 2022

#### Serving of the Prohibition Order for the Review of the Mineral Planning Permission (ROMP) at Thrupp Farm and Thrupp Lane, Radley

#### Report by Director of Planning, Environment and Climate Change

**Contact Officer:** David Periam **Tel:** 07824 545 378

**Location:** Land at Thrupp Lane and Thrupp Farm, Radley

**District Council Area:** Vale of White Horse

#### Executive Summary

1. As resolved at the meeting of the Planning and Regulation Committee on 6<sup>th</sup> September 2022, the report provides an update on the progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP areas DD1 and DD2. It is recommended that the Planning and Regulation Committee's conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased be updated to reflect new information demonstrating an ongoing intention to continue mineral working on the Radley ROMP site and that the unserved Prohibition Order is revoked. Further, that officers be instructed to seek an agreed date for the submission of the ROMP Application.

#### Update

2. At the meeting of the Planning and Regulation Committee on 19<sup>th</sup> September 2019, a report was presented with regard to the Review of the Old Mineral Permissions DD1 and DD2 at Thrupp Farm and Thrupp Lane, Radley (the Radley ROMP site – please see Figure 1 below). The Committee resolved that mineral working had permanently ceased and that therefore there was a duty to serve a Prohibition Order.
3. At its meeting on 7<sup>th</sup> September 2020, a further report was presented to the Planning and Regulation Committee. The Committee resolved to hold service of the Prohibition Order in abeyance pending (1) the progression and

determination of application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP areas DD1 and DD2; and (2) an update from H. Tuckwell and Sons Ltd which was to be accompanied by documentary evidence of progress made with the ROMP conditions application and accompanying Environmental Statement. This update was to be provided to the meeting of the Planning and Regulation Committee on 8<sup>th</sup> March 2021. This report was duly presented to the meeting on 8<sup>th</sup> March 2021.

4. The Planning and Regulation Committee resolved on 8<sup>th</sup> March 2021 that:
  - (a) the Planning & Regulation Committee's previous conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site had permanently ceased and that the duty to serve a Prohibition Order should not be rescinded but that the service of that Prohibition Order be held in abeyance pending: i) the progression and determination of application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP areas DD1 and DD2; and ii) H. Tuckwell and Sons Ltd providing an update, accompanied by documentary evidence, on progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP areas DD1 and DD2 to the meeting of the Planning and Regulation Committee on 19<sup>th</sup> July 2021;
  - (b) officers be instructed to investigate whether it was possible to serve a partial Prohibition Order should it be concluded that mineral working had permanently ceased over part but not all of the ROMP areas DD1 and DD2.
5. A further report was provided to the meeting of the Planning and Regulation Committee on 6<sup>th</sup> September 2021 and is appended as Annex 1 (for full report and its annexes please see the Planning and Regulation Committee pages on the County Council's website).
6. The officer recommendation was that the Planning and Regulation Committee's previous conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased be rescinded and that the Prohibition Order of that date but not yet served is revoked.
7. The Committee resolved to defer a decision to the July 2022 meeting of the Committee with the expectation being that the operator would by that time have submitted a ROMP application accompanied by an Environmental Statement for the whole of the Radley ROMP permissions area.
8. It was also resolved at the Planning and Regulation Committee's meeting on 6<sup>th</sup> September 2022 to grant planning permission to application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP areas DD1 and DD2 subject to the completion of a section 106 Legal Agreement for the creation of a permissive path to

provide a link between Thrupp Lane and the disused railway line as part of the restoration of the site

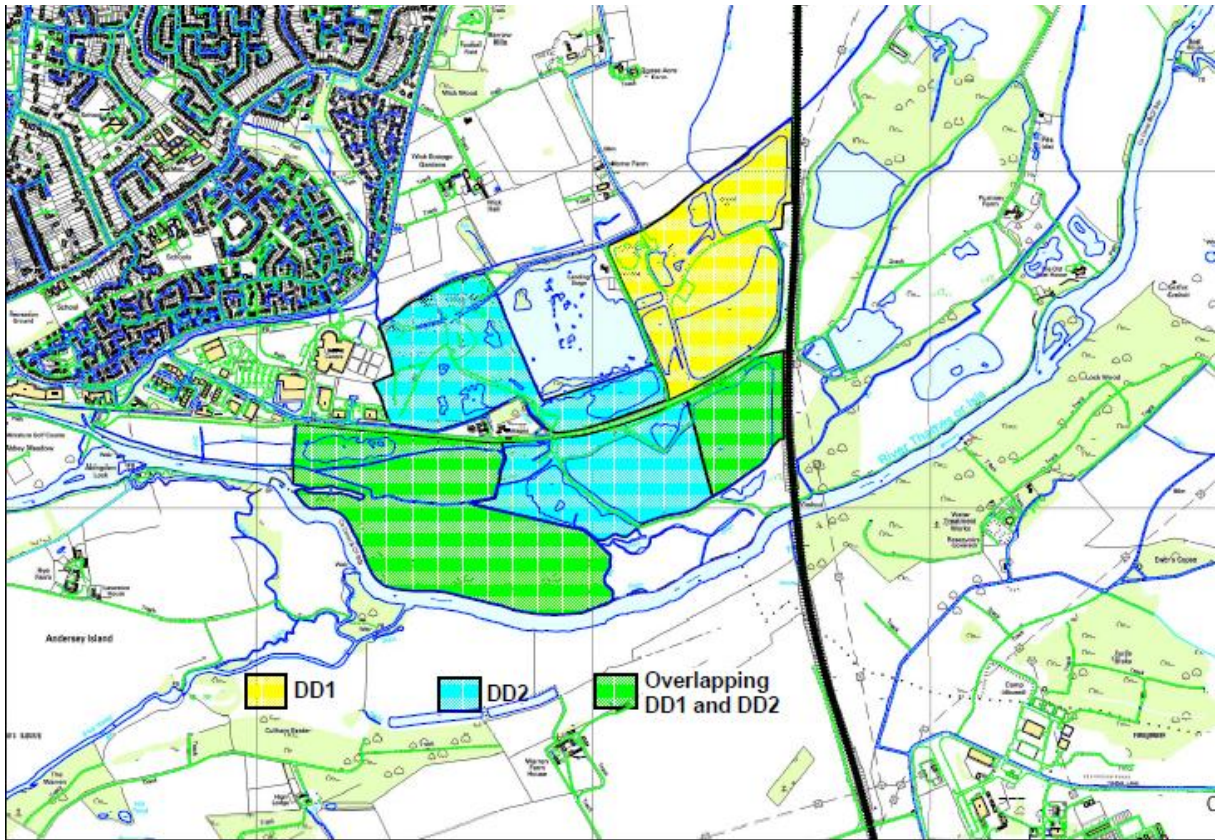


Figure 1: The Radley ROMP permissions site.

### Update from the agent on behalf of the H. Tuckwell and Sons Ltd

9. An update has been provided by the agent (Annex 2) which is summarised as follows:
  - i) Email updates from the consultants who are contributing towards the ROMP Application and ES have been provided. This includes listing of draft plans produced and being worked on along with purchase of an up to date Ordnance Survey base plan.
  - ii) Groundwater quality monitoring in the sand and gravel deposit was completed in December 2021. The monitoring focussed on an assessment of various dissolved metals that had concentrations that exceeded the relevant Environmental quality standards for freshwater surface water. No other work has been completed as awaiting the results of the agent's consultation with siltbusters and an update on the working plan for the quarry. The siltbuster will be used to control water quality.
  - iii) Baseline noise surveys/analysis plus initial site noise calculations in July 2021; Calculations relating to site noise and potential bunding,

diagram of required bunding and investigation of mitigation measures in February 2022; and Sound Power Level research and data sourcing plus additional site noise calculations and advice in March /April 2022.

iv) Ecology Work on the Thrupp Quarry ROMP undertaken so far is as follows:

- Phase 1 habitat survey (2018)
- Breeding bird surveys x 2 (2021)
- Wintering bird survey x 2 (2020 & 2021)
- Botanical surveys (2018/2020)
- Invertebrate surveys x 3 (2021)
- Bat surveys (transects and static boxes) (2021)
- Badger & harvest mouse surveys (2020/21)

Further to these, eDNA analysis for Great Crested Newts have also been undertaken on 6 waterbodies in 2021 and in 2022.

An extended phase 1 habitat survey report with a summary of a data search was also produced in 2018.

A single breeding bird survey of the new conveyor route undertaken and another one is due in June/July.

An updated botanical survey has also been undertaken along with the eDNA test for Great Crested Newts (May 2022).

v) A copy of the front cover to a chapter of the Environmental Impact Assessment for "Written Scheme of Investigation" (archaeology).

vi) Meeting held with John Curtis & Sons Ltd and Ecologist Jonathan Adey to agree a strategy for the restoration of the previously worked ROMP Areas. This will form part of the ROMP Application. The agent states that it was understood from this meeting that John Curtis & Sons Ltd are seeking to progress a planning application to retain existing, and to create further, employment opportunities at the industrial estate.

10. The agent states:

It was hoped to have the ROMP Application submitted in spring-summer 2022. As stated at several Planning & Regulation Committees, a precise deadline for the submission of the ROMP Application cannot be provided. This is because the creation of an acceptable Development Proposal is an iterative process to establish deliverable design and working procedures within acceptable and controllable environmental impacts.

Following a topographical survey, it has been necessary to relocate the conveyor route and access road to avoid the large mound known as the 'Somme' and mature trees. As a result, the revised routes are being surveyed

by an ecologist which is ongoing. This will be completed in September/October. Tuckwells' are therefore aiming to have the ROMP Application submitted in early 2023.

In considering how best to advise the Planning & Regulation Committee, I respectfully request that you consider the following past chain of events:

- This is the second attempt at serving a Prohibition Order. The first was quashed in 2014 by the Secretary of State who also awarded full costs against OCC;
- The current decision to serve a Prohibition Order was made at the meeting in September 2019. At this time, tangible evidence of Tuckwells' ongoing works was submitted by Douglas Symes who was acting for John Curtis & Son's Ltd. I understand that Douglas provided this evidence in writing and presented it at the Planning & Regulation Committee meeting. This evidence was disregarded, and the Prohibition Order was supported, even though the recommendation was based on conjecture without any objective supporting evidence;
- Douglas Symes provided further evidence to the Planning & Regulation Committee in January 2020. This was also disregarded and the decision to progress with the Prohibition Order was again made without any objective supporting evidence;
- The Planning & Regulation Committee's arguments for progressing with the Prohibition Order were reviewed, in May 2020, by legal Counsel whose formal Legal Opinion confirmed that the Prohibition Order could not be sustained if put to the Secretary of State at another inquiry;
- In March 2021, the Planning & Regulation Committee's justification for continuing with the Prohibition Order was to allow Planning Application Ref: MW.0075/20 to be determined. This argument was flawed, as the ROMP could be worked without Tuckwells' yard. Consent for Planning Application Ref: MW.0075/20 has now been granted;
- I spoke at the March 2021 Planning & Regulation Committee requesting that the Prohibition Order should be quashed. The case presented was that sufficient evidence supported by Counsel had already been provided, while there was no evidential basis to support the Prohibition Order. I also highlighted that delaying a decision was 'kicking the can down the road' at the expense of creating more ongoing uncertainty and costs for Tuckwells;
- Regardless of the extensive evidence provided at the March 2021 Planning & Regulation Committee, a decision was made not to quash the Prohibition Order;
- In September 2021, the Planning Officer recommended revoking the Prohibition Order. It was clear from this Committee Report that your Planning Officer and OCC's legal advisors recognised that the key legal test to quash the Prohibition Order had been met. i.e. 'evidence of a genuine intention to extract minerals for the ROMP' had been provided. The Planning Officer's report included a summary of a Legal Opinion sought by OCC which did not support a full or partial Prohibition Order and recognised that the Secretary of State would almost certainly refuse to confirm the Prohibition Order. This Legal Opinion echoes that sought by Tuckwells which had been provided to OCC; and

- Regardless of the Planning Officer's recommendation (as supported by two Legal Opinions), the Planning & Regulation Committee resolved to defer a decision to July 2022. This decision, yet again, clearly ignored the evidence provided by Tuckwells and the two Legal Opinions and was made without any objective supporting evidence.

This chain of events had resulted in nearly 3 years of uncertainty and extra costs for Tuckwells, at a time when they have been making significant financial investments in the ROMP. Tuckwells' stance continues to be that they have clearly demonstrated that significant financial investments has been, and continues to be, made in the ROMP Area. This is costing tens of thousands of pounds on top of the £35,000 plus spent on Planning Permission Ref: MW.0075/20. Considering the extensive cost and extent of the detailed evidence that Tuckwells have provided to date, when compared against the complete lack of tangible evidence to support the Prohibition Order, Tuckwells are of the opinion that OCC are acting unreasonably in pursuing the Prohibition Order.

Tuckwells therefore respectfully request that OCC end this ongoing uncertainty and unnecessary costs and make an evidence-based decision, as supported by two Legal Opinions, to quash the Prohibition Order.

#### **Other updates since the Committee's meeting on 6<sup>th</sup> September 2021**

11. Planning permission to application no. MW.0075/20 has not yet been issued as the section 106 Legal Agreement for the creation of a permissive path to provide a link between Thrupp Lane and the disused railway line as part of the restoration of the site is yet to be completed.
12. The Vale of White Horse District Council has received a planning application for "Continue use of premises as yard for contractor (use sui generis)" from Terra Firma Roadways Ltd (Application no. P21/V3165/FUL). This relates to land within the ROMP permissions DD2 area being part of the Curtis's Yard. Your officer advice to the officer at the Vale of White Horse District Council is that as this would conflict with the restoration conditions of the ROMP permissions then this application should instead be submitted to the County Council for determination as a county matter. At the time of writing the application remains with the District Council undetermined.
13. Radley Parish Council has provided a further representation (Annex 3). The Parish Council considers that further material submitted confirms Tuckwell's intentions and the Parish Council remains of the that they represent a genuine intent to extract the mineral from the ROMP permissions area other than the area outlined in yellow and marked Area A on the plan included as part of Annex 3 .
14. The Parish Council notes that the operators report a slippage of several months in the submission of their ROMP application, which will not now be made until 'early 2023', as against the previous intention of 'spring/summer



2022'. This makes it more difficult for the committee to consider the best route forward at its July meeting and potentially extends the period of blight applying to the ROMP area. If, however, the revised timetable allows reconsideration of the conveyor route between the proposed extraction and processing sites this is welcome. The Parish Council's view has always been that the two sites and the route between them need to be considered together. It remains important that the operators consult the Parish Council and others on the detail of their proposals prior to submission to the County Council, as they undertook to do at the committee's meeting on 6<sup>th</sup> September 2021.

15. The Parish Council remains of the view from the additional material submitted that there is no evidence of further mineral remaining to be extracted in the area outlined in yellow and marked Area A on the plan included as part of Annex 3 (this includes Curtis's Yard) , nor that there is any intention for the area to be used 'to a substantial extent' in connection with minerals winning and working. The legal tests for a prohibition order continue therefore to be met.
16. The Parish Council is also of the view that there is no convincing evidence that the restoration of Area A will be achieved through the ROMP application process and the landowners for that area. The additional information submitted references:

*"Meeting held with John Curtis & Sons Ltd (JCSL) and Ecologist Jonathan Adey to agree a strategy for the restoration of the previously worked ROMP Areas. This will form part of the ROMP Application. It was understood from this meeting that John Curtis & Sons Ltd are seeking to progress a planning application to retain existing, and to create further, employment opportunities at the industrial estate."*

This indicates that JCSL remains focussed not on restoration, as required as part of the ROMP process, but on the extension of non-mineral activities on the land.

Moreover the terms of the existing planning permission (DD2) applying to the area have required JCSL to submit restoration plans ever since 2012. They have not done so and it is difficult to see what has changed.

17. The Parish Council considers that the County Council can legally serve a partial Prohibition Order over any part of the land where it concludes that the winning and working of mineral has permanently ceased and has a duty to do so over Area A. The Committee could allow more time for firmer intentions on restoration to emerge but this risks yet more delay to no purpose. The delay would lead not only to continued inaction on restoration but also to continued uncertainty for Tuckwells about their planned extraction in the remainder of the ROMP area. This uncertainty has already been dragging on much too long. A

decision could and should be made now to proceed with a prohibition order, but one limited in scope just to Area A.

## Discussion

18. The decision that mineral working had permanently ceased in ROMP areas DD1 and DD2 which led then to the duty to serve the Prohibition Order was made at the meeting of this Committee on 9<sup>th</sup> September 2019. At that time, the Committee did not have before it any new information with regard to the intentions of the operator/landowner actively progressing any proposals to work the remaining mineral in the ROMP areas other than it was intended to follow on from the existing workings of H. Tuckwell and Sons Ltd at Sutton Wick.
19. The situation at the Committee's meeting on 7<sup>th</sup> September 2020 was considered to be materially different as the application for the conveyor and related development had been submitted and was out for consultation. It would come before this Committee for determination in due course. Further information had also been provided with regard to the applicant's programme for the submission of a ROMP application to review the applicable conditions and its view on the service of a PO. The position of Radley Parish Council on the matter was also provided.
20. Work was then carried out to support the submission of the ROMP application. An update on this further work was provided by the agent for H. Tuckwell and Sons Ltd to the Committee's meeting on 8<sup>th</sup> March 2021, along with further representations from Radley Parish Council.
21. At the committee's meeting on 6<sup>th</sup> September 2021 the officer advice was that the Committee now had before it firm evidence which supports the contention that the ROMP application is now being progressed. The agent for the prospective site operator has provided evidence as set out above and in Annex 2 of further work carried out on the ROMP application and Environmental Impact Assessment. Radley Parish Council has also provided further representations and remains of the view the County Council has a duty to serve a partial Prohibition Order over the part of the site which includes Curtis's Yard.
22. The Secretary of State would need to take into account any and all updated information provided since the Committee meeting on 6<sup>th</sup> September 2021 when deciding whether or not to confirm and serve the September 2019 Prohibition Order now. This is because the Secretary of State will have to take into account everything that is before them at the time they assess whether or not working has permanently ceased and this will necessarily take into account information that wasn't before the Council at the time the Council made that decision.
23. As previously advised, in order to protect the Council's position at any appeal against the Prohibition Order, it is considered that any material considerations

that have now come to the Council's notice are taken into account and weighed in the balance as to whether mineral working has permanently ceased prior to issuing the Prohibition Order. Therefore, the Council must keep under review its previous decision that mineral working had permanently ceased from the ROMP areas DD1 and DD2 in the light of the evidence now before it.

24. Further and as previously advised, now that work is being progressed towards the submission of the ROMP conditions application and accompanying ES, the Committee would be entitled to conclude the evidence now before it is that mineral working has not permanently ceased and that it should rescind its decision to serve the Prohibition Order. However, it could alternatively decide to again continue to hold the service of the Prohibition Order in abeyance pending a further update at a later Committee meeting. This would have to be based on the impossibility of taking a decision on the Prohibition Order now in light of the need for further advice, the likelihood of further information coming to light, or further steps being taken which would affect that decision. It is not considered that the evidence before the Council now is such that the Council cannot make a decision on the Prohibition Order at this time.
25. The application for the conveyor and associated development (MW.0075/20) and the committee's resolution to approve the application is also a material consideration in the Committee's deliberations. The extraction of mineral from the ROMP area is not dependent on permission being granted for this application but they are clearly related and it is material to the Council's assessment of whether or not mineral working pursuant to the ROMP permissions has permanently ceased. The Committee has resolved to grant planning permission to that application subject to completion of the Section 106 Legal Agreement as set out above.
26. The Committee is reminded as previously that in so far as the site owner is concerned, a Prohibition Order is an analogous order to a Compulsory Purchase Order and so costs at any appeal against the Prohibition Order do follow 'success', unless there are exceptional reasons for not awarding costs. It is also the case that an award may be reduced if the objector has acted unreasonably and caused unnecessary expense in the proceedings. The owner/operator is cooperating with the Council in providing additional information. This is not behaviour that can be characterised as unreasonable.
27. At its meeting on 6<sup>th</sup> September 2021, the Committee was advised whether it is possible to serve a partial Prohibition Order should it be concluded that mineral working has permanently ceased over part but not all of the ROMP areas DD1 and DD2. This followed the suggestion from Radley Parish Council that such a partial service could be carried out over the land to the north of the disused railway line. This includes the area known as Curtis's Yard where the buildings are located. However, temporary planning permission for the continued use of the buildings for a further five years was granted on appeal as set out in the report to the Committee meeting on 8<sup>th</sup> March 2021 and a further application for a permanent change of use of part of the land has been submitted to the Vale of White Horse District Council as set out above.

Officers sought Counsel's opinion. The legal advice note is attached as Annex 4.

28. This advice is summarised as follows:

- i) The Council cannot serve a Prohibition Order when there is evidence that the winning and working of minerals on that land has not permanently ceased. The submissions made by the agent, the progression and award of planning permission for Curtis's Yard and the applicant's submission of the application MW.0075/20 all clearly demonstrate an intention to continue to work the mineral from the ROMP area.
- ii) In light of these facts, the Council is severely constrained in the options available to it by the terms of the legislation. It must base the decision on the likelihood of the resumption of the winning and working of mineral on all the evidence available at the time the Prohibition Order is made. The situation now is quite unlike the situation at the time the Prohibition Order was made in September 2019 when the above evidence was not before the Council. The Council therefore acted within its powers to make the Prohibition Order then, but the factual context is now quite different and it cannot now say there is no likelihood of the resumption of the winning and working of mineral at the site on the evidence available.
- iii) The legislation allows for a Prohibition Order to be served in relation to a "site". It is therefore for the Council to consider what constitutes the site. This means the statute does not prohibit a partial Prohibition Order from being served on part of the ROMP areas DD1 and DD2 e.g. that include Curtis's Yard as advocated by Radley Parish Council. But this must be based on the evidence before the Council, including extant permissions, outstanding applications, and any discussions with the landowners, and lead to a defensible conclusion on the permanent cessation of winning and working of minerals or the depositing of mineral. A further factor is national planning practice guidance (PPG) which advises that where an ES is required, environmental information is required for the whole minerals site covered by that permission before new operating conditions can be determined. The Council has established that the submission of conditions for the entire Radley ROMP area site is Environmental Impact Assessment (EIA) development, and so the submission must be accompanied by an ES. The entirety of the site is duly in suspension pending receipt of the application for new conditions and the accompanying ES. The PPG's clear guidance that an ES must encompass "the whole minerals site" implies that government policy requires that any Prohibition Order should cover the whole of the ROMP area in the interests of protecting the environment. This is because all potential environmental impacts could not be fully assessed in an ES if there is a partial Prohibition Order in place, as this effectively removes part of the permitted area the PPG advises should be covered in the ES.

- iv) The Secretary of State is entitled to consider such evidence as they see fit and will undoubtedly consider the evidence of planning application MW.0075/20, at the very least, to constitute clear evidence of an intention to continue the winning and working of mineral on the site. Therefore, even if there was no costs risk if the Council progressed with the Prohibition Order it would be futile because the Secretary of State would almost certainly refuse to confirm the Prohibition Order.
  - v) In the light of the evidence now currently available to the Council, there is a significant risk of costs being awarded against the Council should it now proceed with the Prohibition Order.
  - vi) Because no action has been taken in relation to the Council's decision of September 2019 to make the existing Prohibition Order there is no reason why the Council cannot reconsider that decision, though it is advised that the entire procedure is transparently carried out by members given the interests that are affected and the significant public concern regarding the Radley ROMP site.
29. Separately and as previously advised, the Radley Lakes Masterplan would be a material consideration in the determination of any planning application in the Masterplan area. However, with regards to any decisions surrounding the service of the Prohibition Order for the ROMP area, due to the lack of involvement of the main landowner in the drafting of the Radley Lakes Masterplan, officer advice is that it should not be given any weight when assessing whether mineral working has permanently ceased.
30. It therefore remains officer advice that the evidence now available to the Council as set out above no longer supports the conclusion reached previously by the Committee at its meeting on 9<sup>th</sup> September 2019 that the winning and working of mineral has permanently ceased. The Committee should therefore now reconsider its previous decision that the winning and working of mineral has permanently ceased from the ROMP areas DD1 and DD2. Following consideration of the evidence at today's meeting, the Committee is therefore advised to now rescind its previous decision and to revoke the Prohibition Order.
31. Should the Committee be of the view that the winning and working of mineral has permanently ceased on part but not all of the site then it is open to the Council to reach that conclusion. There would then be a duty to serve a Prohibition Order only on the site where it was considered this situation applied i.e. a partial Prohibition Order. But for the reasons set out in the appended legal note and summarised above, including the guidance on the need for environmental information to be provided for the entire ROMP site in order to inform the ES, it is not recommended that this should be pursued.
32. Subsequent to the meeting on 6<sup>th</sup> September 2021, officers received representations from a member of the public drawing their attention to a ROMP site in North Lincolnshire. In this case, the court refused to include a site on the official list of ROMP sites after the date for inclusion expired

because of the strict wording in the relevant legislation. The wording referred to stated that a planning permission not included in the first list shall “cease to have effect” on the day following the last date that an application may be made and there is no provision in statute to extend that date. The member of the public queried whether this similarly applied to the rules relating to submission of a ROMP Application, which states that where a ROMP review is underway, then the mineral permission shall cease to have effect on the day following the review date or on such later agreed date as may be agreed at any time in writing. As the review process allows for the postponement of the submission date to any date and at any point in the process, and as the Council has been and is in discussion with the developer as regards submission of the ROMP Application, members are advised that the strict regime referred to in the North Lincolnshire case does not apply.

33. However, the terms of the relevant statute are such that it is advisable to formally agree an extension to a specified date. This does not preclude the Council from extending that date in the future, but does make the position as to the making and accepting a ROMP application clear.

## **Financial Implications**

34. Not applicable as the financial interests of the County Council are not relevant to the determination of planning applications.

## **Legal Implications**

35. The legal implications of the decisions available to the Committee are considered in the report.

Comments checked by:

Jennifer Crouch, Principal Solicitor (Environmental) (Legal)

## **Equality & Inclusion Implications**

36. In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between different groups. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

## Conclusion

37. It is considered that the further update and documentary evidence provided as well as the submission of application MW.0075/20 and the Committee's resolution to approve the application subject to completion of a Section 106 Legal Agreement does support the contention that work is being progressed on the submission of the application for new conditions for the ROMP permissions DD1 and DD2 and associated Environmental Statement. In the light of this and the legal advice now provided and appended to this report, it is not considered that the conclusion of the committee at its meeting on 9<sup>th</sup> September 2019 that the winning and working of mineral has permanently ceased can now be sustained. The committee is therefore invited to rescind its decision of 9<sup>th</sup> September 2019 and revoke the Prohibition Order.

### Recommendation

**It is RECOMMENDED that:**

**A The Planning and Regulation Committee's previous conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased be rescinded and that the Prohibition Order of that date but not yet served is revoked.**

**And**

**B That officers seek to agree a date with H. Tuckwell and Sons Ltd. by which a ROMP Application will be submitted.**

**Rachel Wileman  
Director of Planning, Environment and Climate Change**

Annexes:	Annex 1 – Report to Planning and Regulation Committee 6 <sup>th</sup> September 2021
	Annex 2 – Update from agent for H Tuckwell and Sons Ltd
	Annex 3 – Radley Parish Council further representations
	Annex 4 – Counsel's Legal Advice Note
Background papers:	Nil (All annexes available to view on the County Council's Planning and Regulation committee and application websites (MW.0045/08).

This page is intentionally left blank



## **Division Affected – Kennington and Radley**

### **PLANNING AND REGULATION COMMITTEE**

**6 SEPTEMBER 2021**

#### **SERVING OF THE PROHIBITION ORDER FOR THE REVIEW OF THE MINERAL PLANNING PERMISSION (ROMP) AT THRUPP FARM AND THRUPP LANE, RADLEY**

**Report by Assistant Director for Strategic Infrastructure and Planning**

**Contact Officer:** David Periam **Tel:** 07824 545 378

**Location:** Land at Thrupp Lane and Thrupp Farm, Radley

**District Council Area:** Vale of White Horse

### **Executive Summary**

1. As resolved at the meeting of the Planning and Regulation Committee on 8<sup>th</sup> March 2021, the report provides an update on the progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP areas DD1 and DD2. It is recommended that the Planning and Regulation Committee's conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased be updated to reflect new information demonstrating an ongoing intention to continue mineral working on the Radley ROMP site and that the unserved Prohibition Order is revoked.

### **Update**

2. At the meeting of the Planning and Regulation Committee on 19<sup>th</sup> September 2019, a report was presented with regard to the Review of the Old Mineral Permissions DD1 and DD2 at Thrupp Farm and Thrupp Lane, Radley (the Radley ROMP site – please see Figure 1 below). The Committee resolved that mineral working had permanently ceased and that therefore there was a duty to serve a Prohibition Order.
3. At its meeting on 7<sup>th</sup> September 2020, a further report was presented to the Planning and Regulation Committee. The Committee resolved to hold service of the Prohibition Order in abeyance pending (1) the progression and

determination of application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP areas DD1 and DD2; and (2) an update from H. Tuckwell and Sons Ltd which was to be accompanied by documentary evidence of progress made with the ROMP conditions application and accompanying Environmental Statement. This update was to be provided to the meeting of the Planning and Regulation Committee on 8<sup>th</sup> March 2021. This report was duly presented to the meeting on 8<sup>th</sup> March 2021 and is appended as Annex 1 (for full report and its annexes please see the Planning and Regulation Committee pages on the County Council's website).

4. The Planning and Regulation Committee resolved on 8<sup>th</sup> March 2021 that:
  - (a) the Planning & Regulation Committee's previous conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site had permanently ceased and that the duty to serve a Prohibition Order should not be rescinded but that the service of that Prohibition Order be held in abeyance pending: i) the progression and determination of application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP areas DD1 and DD2; and ii) H. Tuckwell and Sons Ltd providing an update, accompanied by documentary evidence, on progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP areas DD1 and DD2 to the meeting of the Planning and Regulation Committee on 19<sup>th</sup> July 2021;
  - (b) officers be instructed to investigate whether it was possible to serve a partial Prohibition Order should it be concluded that mineral working had permanently ceased over part but not all of the ROMP areas DD1 and DD2.

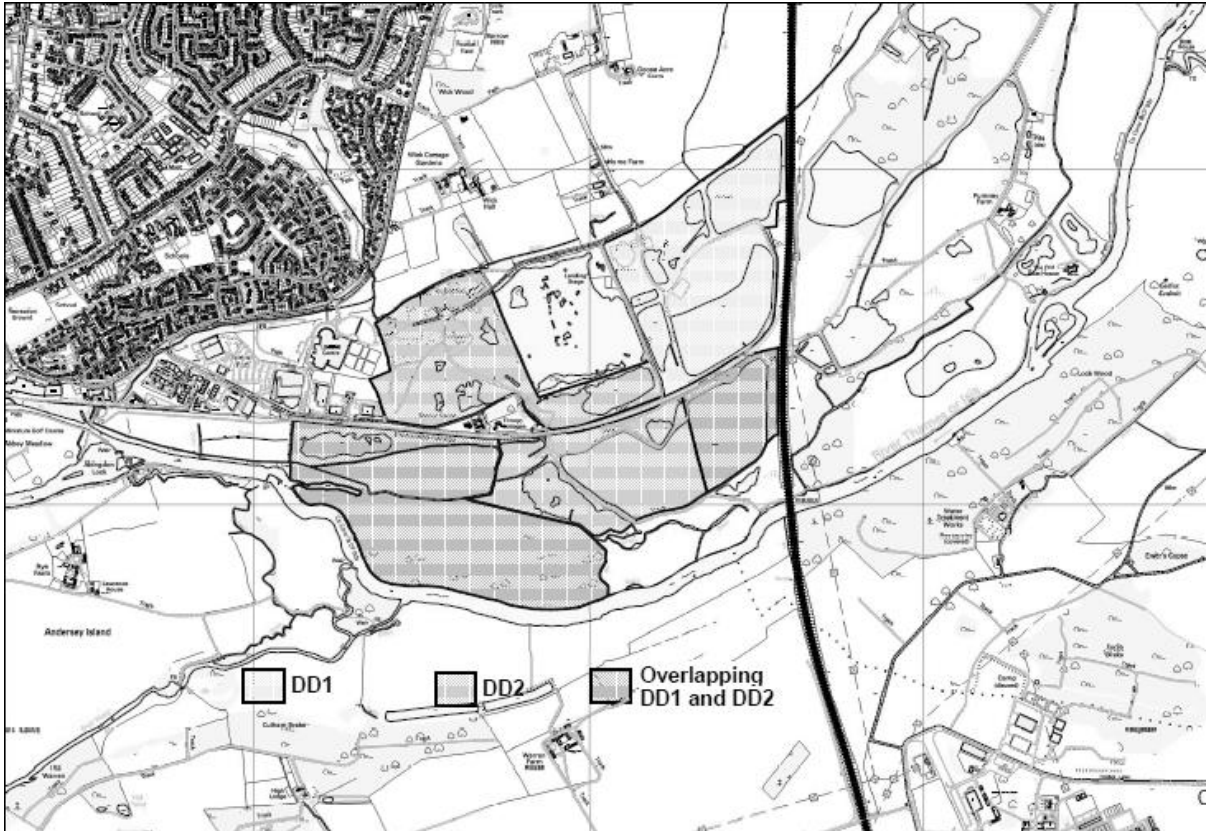


Figure 1: The Radley ROMP permissions site.

**Update from the agent on behalf of the H. Tuckwell and Sons Ltd**

5. An update has been provided by the agent (Annex 2) which is summarised as follows:

Email updates from the consultants who are contributing towards the ROMP Application and ES have been provided along with an email from the County Archaeologist agreeing the methodology to address archaeology. A company called Oxfordshire Archaeology have been instructed to produce the Cultural Heritage Chapter for the ES.

It is also confirmed that the applicant has been speaking with local residents and objector groups about the ROMP Application including the restoration of the site.

The proposed actions stated at the March 2021 Planning Committee have been undertaken, just as the actions proposed at the August 2020 Planning Committee were undertaken.

The timetable to have the ROMP Application and ES submitted, continues to be as follows:

- Spring-Summer 2021- EIA investigations surveys undertaken including- ecological, noise, hydrological, landscape and visibility surveys;

- Winter 2021 to Spring 2022: ROMP Application and ES prepared;
- Spring 2022: Pre-submission consultation held for the ROMP Application; and
- Spring-Summer 2022: ROMP Application (including final ES) submitted.

Even after the unprecedented conditions of three lockdowns and flooding at this site, the applicant is still on track to meet the 2022 submission date, as per my previous correspondence.

The applicant has also provided the Council with the updated ecological information required for the determination of Planning Application Ref: MW.0075/20 to allow the mineral from the Thrupp Lane ROMP to be transported and processed at the Tuckwells site at Thrupp Lane.

In considering how best to advise the Planning Committee in considering pursuing the Prohibition Order (PO), it is requested that officers consider the following past chain of events in the Officer's Report:

- This is the second attempt at serving a PO. The first was quashed in 2014 by the Secretary of State who also awarded full costs against the County Council;
- The decision to serve a PO was made at the meeting of the Planning and Regulation Committee in September 2019. At that time, the agent provided evidence of ongoing works by the late Douglas Symes acting for J. Curtis & Sons Ltd. This evidence was given in writing and presented at the Committee meeting. The PO was supported even though the recommendation was based on conjecture and contrary to objective evidence before the Committee;
- Douglas provided further substantiating evidence to the Committee in January 2020. This added weight to arguments against a decision to progress with the PO;
- The Council determined to seek a formal legal Opinion on a decision to progress with the PO;
- In September 2020, part of the justification for delaying final resolution of the PO was to allow Planning Application Ref: MW.0075/20 to be determined. It is considered the submission of Planning Application Ref: MW.0075/20 further demonstrates a genuine intention to extract minerals for the ROMP Area;
- The agent for Tuckwells spoke at the September 2020 and March 2021 Planning and Regulation Committee meetings requesting that the PO be quashed. The case presented was that sufficient evidence had been provided by that point to demonstrate an intention to continue with mineral working, while there was no evidential basis to support the PO. It was noted the summary provided of the Council's confidential internal legal advice supported withdrawal of the PO. He also highlighted that delaying a decision was *'kicking the can down the road'* at the expense of ongoing uncertainty and costs for Curtis and Tuckwells; and
- Regardless of this evidence before the Committees, decisions were made not to rescind the PO.

It was requested that following statements from the applicant are considered in the Officer's Report:

*The evidence Tuckwells has provided to date clearly demonstrates that significant financial investments has, and continues to be , been made in the ROMP Area. This has cost 10s of thousands of pounds on top of the £40,000 plus spent on Planning Application Ref: MW.0075/20 to date. This investment has been made at a time when there is a significant economic turbulence caused by the ongoing pandemic which may take many years to remedy.*

*As a Mineral Planning Authority (MPA) you have a duty to support sustainable mineral development and ensure a sufficient supply of aggregate in your County. This is what is being proposed at the Thrupp Lane ROMP by one of Oxfordshire's oldest family run mineral companies.*

*To achieve sustainable mineral development the MPA must work with and not against the Mineral Industry. In light of the positive planning approach required throughout the NPPF (2019) any further decision to continue with the PO must, to be reasonable and therefore necessary, be based on tangible evidence.*

*In light of the extensive cost and extent of the detailed evidence Tuckwells have provided to date, when compared against the complete lack of any tangible evidence to support the PO, the Tuckwells is of the strong opinion that OCC would not be acting reasonably by continuing to pursue the PO.*

*Tuckwells therefore respectfully request that you support the sustainable supply of minerals from a site that already has planning permission, by ending this ongoing uncertainty and unnecessary costs and make an evidence based decision to quash the PO'.*

#### **Other updates since the Committee's meeting on 8<sup>th</sup> March 2021**

6. Planning application no. MW.0075/20 is the subject of a separate report to this committee meeting.
7. The Radley Lakes Masterplan which is referred to as a draft document in the previous Committee report appended as Annex 1 has now been published in its final version. This adds to the weight the Council may afford to this document in decision making. It sets out the vision for the Radley Lakes which is as follows:

*'Radley Lakes will be an oasis of tranquillity set within a beautiful environment. Natural life will thrive supported by a diversity of habitats. The area will be easily accessible by the local community, providing opportunities for quiet recreation, education, and enhanced health and well-being.'*

8. Radley Parish Council has provided a further representation with regard to the service of the PO and whether a partial PO can and should be served (Annex 3). In summary the Parish Council is of the view that the County Council can

legally serve a partial PO over any part of the land where it concludes that the winning and working of mineral has permanently ceased and has a duty to do so over the north-western part of the ROMP permissions (the area outlined in yellow on the plan included as part of Annex 3), this includes Curtis's Yard.

9. It is said this area is very easy to delineate geographically and has a distinct minerals history: extraction there started and finished much earlier than in the rest of the ROMP areas DD1 and DD2. A statutory declaration made by the landowner in 2006 treated it as a distinct and relatively historic area. In an earlier meeting of the Planning and Regulation Committee, reference was made to an earlier proposal by OCC to make a PO in relation to the land covered by permission DD2 but not DD1. This ran into difficulty because DD2 and DD1 contain an area of overlap, making it inappropriate to deal with the DD2 area in isolation. The Parish Council states that is not the case here as the area to which a 'partial' PO would apply falls wholly within DD2. There is no overlap. The Parish Council can therefore see no legal barrier to a PO applying to the north-west of the ROMP area.
10. In conclusion the Parish Council believe that:
  - The County Council are under a statutory duty to make a PO applying to the north-west of the ROMP area;
  - they should decide now to proceed on that basis;
  - they should also decide now not to proceed with a PO for the remainder of the ROMP area.

These decisions would bring a welcome end to the current uncertainty and blight.

## Discussion

11. The decision that mineral working had permanently ceased in ROMP areas DD1 and DD2 which led then to the duty to serve the PO was made at the meeting of this Committee on 9<sup>th</sup> September 2019. At that time, the Committee did not have before it any new information with regard to the intentions of the operator/landowner actively progressing any proposals to work the remaining mineral in the ROMP areas other than it was intended to follow on from the existing workings of H. Tuckwell and Sons Ltd at Sutton Wick.
12. The situation at the Committee's meeting on 7<sup>th</sup> September 2020 was considered to be materially different as the application for the conveyor and related development had been submitted and was out for consultation. It would come before this Committee for determination in due course. Further information had also been provided with regard to the applicant's programme for the submission of a ROMP application to review the applicable conditions and its view on the service of a PO. The position of Radley Parish Council on the matter was also provided.
13. Work was then carried out to support the submission of the ROMP application. An update on this further work was provided by the agent for H. Tuckwell and

Sons Ltd to the Committee's meeting on 8<sup>th</sup> March 2021, along with further representations from Radley Parish Council.

14. It is therefore the case that the Committee now has before it firm evidence which supports the contention that the ROMP application is now being progressed. Radley Parish Council has also provided further representations that it is now of the view that the case to proceed with a PO over the whole of the ROMP permissions area is weak but that there is a strong case to serve a partial PO over the north-west part of the site which includes Curtis's Yard.
15. As the Committee has been previously advised, the Secretary of State would need to take into account any and all updated information provided since the Committee meeting on 8<sup>th</sup> March 2021 when deciding whether or not to confirm and serve the September 2019 PO now. This is because the Secretary of State will have to take into account everything that is before them at the time they assess whether or not working has permanently ceased and this will necessarily take into account information that wasn't before the Council at the time the Council made that decision.
16. As also previously advised, in order to protect the Council's position at any appeal against the PO, it is considered that any material considerations that have now come to the Council's notice are taken into account and weighed in the balance as to whether mineral working has permanently ceased prior to issuing the PO. Therefore, the Council must keep under review its previous decision that mineral working had permanently ceased from the ROMP areas DD1 and DD2 in the light of the evidence now before it.
17. Further and as previously advised, now that work is being progressed towards the submission of the ROMP conditions application and accompanying ES, the Committee would be entitled to conclude the evidence now before it is that mineral working has not permanently ceased and that it should rescind its decision to serve the PO. However, it could alternatively decide to again continue to hold the service of the PO in abeyance pending a further update at a later Committee meeting. This would have to be based on the impossibility of taking a decision on the PO now in light of the need for further advice, the likelihood of further information coming to light, or further steps being taken which would affect that decision. It is not considered that the evidence before the Council now is such that the Council cannot make a decision on the PO at this time.
18. As set out in the reports to the Committee on 7<sup>th</sup> September 2020 and 8<sup>th</sup> March 2021, the application for the conveyor and associated development (MW.0075/20) is also a material consideration in the Committee's deliberations. The extraction of mineral from the ROMP area is not dependent on permission being granted for this application but they are clearly related and it is material to the Council's assessment of whether or not mineral working pursuant to the ROMP permissions has permanently ceased.
19. The Committee is reminded as previously that in so far as the site owner is concerned, a PO is an analogous order to a Compulsory Purchase Order and

so costs at any appeal against the PO do follow 'success', unless there are exceptional reasons for not awarding costs. It is also the case that an award may be reduced if the objector has acted unreasonably and caused unnecessary expense in the proceedings. The owner/operator is cooperating with the Council in providing additional information. This is not behaviour that can be characterised as unreasonable.

20. At its meeting on 8<sup>th</sup> March 2021, the Committee resolved that officers investigate whether it is possible to serve a partial PO should it be concluded that mineral working has permanently ceased over part but not all of the ROMP areas DD1 and DD2. This followed the suggestion from Radley Parish Council that such a partial service could be carried out over the land to the north of the disused railway line. This includes the area known as Curtis's Yard where the buildings are located. However, temporary planning permission for the continued use of the buildings for a further five years was granted on appeal as set out in the report to the Committee meeting on 8<sup>th</sup> March 2021. Officers have therefore sought Counsel's opinion. The legal advice note is attached as Annex 4.

21. This advice is summarised as follows:

- i) The Council cannot serve a Prohibition Order when there is evidence that the winning and working of minerals on that land has not permanently ceased. The submissions made by the agent, the progression and award of planning permission for Curtis's Yard and the applicant's submission of the application MW.0075/20 all clearly demonstrate an intention to continue to work the mineral from the ROMP area.
- ii) In light of these facts, the Council is severely constrained in the options available to it by the terms of the legislation. It must base the decision on the likelihood of the resumption of the winning and working of mineral on all the evidence available at the time the Prohibition Order is made. The situation now is quite unlike the situation at the time the Prohibition Order was made in September 2019 when the above evidence was not before the Council. The Council therefore acted within its powers to make the Prohibition Order then, but the factual context is now quite different and it cannot now say there is no likelihood of the resumption of the winning and working of mineral at the site on the evidence available.
- iii) The legislation allows for a Prohibition Order to be served in relation to a "site". It is therefore for the Council to consider what constitutes the site. This means the statute does not prohibit a partial Prohibition Order from being served on part of the ROMP areas DD1 and DD2 e.g. that include Curtis's Yard as advocated by Radley Parish Council. But this must be based on the evidence before the Council, including extant permissions, outstanding applications, and any discussions with the landowners, and lead to a defensible conclusion on the permanent cessation of winning and working of minerals or the depositing of



mineral. A further factor is national planning practice guidance (PPG) which advises that where an ES is required, environmental information is required for the whole minerals site covered by that permission before new operating conditions can be determined. The Council has established that the submission of conditions for the entire Radley ROMP area site is Environmental Impact Assessment (EIA) development, and so the submission must be accompanied by an ES. The entirety of the site is duly in suspension pending receipt of the application for new conditions and the accompanying ES. The PPG's clear guidance that an ES must encompass "the whole minerals site" implies that government policy requires that any Prohibition Order should cover the whole of the ROMP area in the interests of protecting the environment. This is because all potential environmental impacts could not be fully assessed in an ES if there is a partial Prohibition Order in place, as this effectively removes part of the permitted area the PPG advises should be covered in the ES.

- iv) The Secretary of State is entitled to consider such evidence as they see fit and will undoubtedly consider the evidence of planning application MW.0075/20, at the very least, to constitute clear evidence of an intention to continue the winning and working of mineral on the site. Therefore, even if there was no costs risk if the Council progressed with the Prohibition Order it would be futile because the Secretary of State would almost certainly refuse to confirm the Prohibition Order.
  - v) In the light of the evidence now currently available to the Council, there is a significant risk of costs being awarded against the Council should it now proceed with the Prohibition Order.
  - vi) Because no action has been taken in relation to the Council's decision of September 2019 to make the existing Prohibition Order there is no reason why the Council cannot reconsider that decision, though it is advised that the entire procedure is transparently carried out by members given the interests that are affected and the significant public concern regarding the Radley ROMP site.
22. Separately, with regard to the Radley Lakes Masterplan, this would be a material consideration in the determination of any planning application in the Masterplan area, i.e. it would be material to the determination of application MW.0075/20. However, with regards to any decisions surrounding the service of the Prohibition Order for the ROMP area, due to the lack of involvement of the main landowner in the drafting of the Radley Lakes Masterplan, officer advice is that it should not be given any weight when assessing whether mineral working has permanently ceased.
23. It is therefore officer advice that the evidence now available to the Council as set out above no longer supports the conclusion reached previously by the Committee at its meeting on 9<sup>th</sup> September 2019 that the winning and working of mineral has permanently ceased. The Committee should therefore now reconsider its previous decision that the winning and working of mineral has

permanently ceased from the ROMP areas DD1 and DD2. Following consideration of the evidence at today's meeting, the Committee is therefore advised to now rescind its previous decision and to revoke the PO.

24. Should the Committee be of the view that the winning and working of mineral has permanently ceased on part but not all of the site then it is open to the Council to reach that conclusion. There would then be a duty to serve a PO only on the site where it was considered this situation applied i.e. a partial PO. But for the reasons set out in the appended legal note and summarised above, including the guidance on the need for environmental information to be provided for the entire ROMP site in order to inform the ES, it is not recommended that this should be pursued.

### **Financial Implications**

25. Not applicable as the financial interests of the County Council are not relevant to the determination of planning applications.

### **Legal Implications**

26. The legal implications of the decisions available to the Committee are considered in the report.

Comments checked by:

Jennifer Crouch, Principal Solicitor (Environmental) (Legal)

### **Equality & Inclusion Implications**

27. In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between different groups. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

### **Conclusion**

28. It is considered that the further update and documentary evidence provided as well as the submission of application MW.0075/20 does support the contention that work is being progressed on the submission of the application for new conditions for the ROMP permissions DD1 and DD2 and associated Environmental Statement. In the light of this and the legal advice now provided and appended to this report, it is not considered that the conclusion of the committee at its meeting on 9<sup>th</sup> September 2019 that the winning and working of mineral has permanently ceased can now be sustained. The committee is

therefore invited to rescind its decision of 9<sup>th</sup> September 2019 and revoke the Prohibition Order. Recommendation

**It is RECOMMENDED that:**

**The Planning and Regulation Committee's previous conclusion from its meeting on 9<sup>th</sup> September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased be rescinded and that the Prohibition Order of that date but not yet served is revoked.**

**Rachel Wileman  
Assistant Director for Strategic Infrastructure and Planning**

Annexes:                                   Annex 1 – Report to Planning and Regulation Committee  
8<sup>th</sup> March 2021

Annex 2 – Update from agent for H Tuckwell and Sons  
Ltd

Annex 3 – Radley Parish Council further representations

Annex 4 – Counsel’s Legal Advice Note

Background papers:                   Nil (All annexes available to view on the County Council’s  
Planning and Regulation committee and application  
websites (MW.0023/21).

This page is intentionally left blank

## Annex 2

### E-mails from agent dated 20<sup>th</sup> and 21<sup>st</sup> June 2022

#### *Method defined to control water quality*

This refers to the email from Lawrence Brown from Hafren which states '*No other work has been completed as we were awaiting the results of your consultation with siltbusters and an update on the working plan for the quarry*'. The siltbuster will be used to control water quality.

#### *Jonathan Adey*

The ecologist survey relates to the new conveyor route. I have referred to this attachment in my email below.

#### *John Curtis*

I am unable to provide you with correspondence of this meeting.

#### *OCC Planning Portal*

Subject to redaction, I can agree to adding these emails and attachments onto the OCC Planning Portal.

Kind regards,

Nick.

Dear David,

As discussed, I am writing to provide an update with Tuckwells' progress with the ROMP Application.

I have attached updates from some of the consultants working on the ROMP Application and Environmental Statement.

This includes:

- Draft Cultural Heritage Chapter produced by Oxfordshire Archaeology (front cover attached);
- Noise modelling undertaken to define the plant to be used and the position and height of screen bunds (see attached). The completion of this modelling has allowed draft Development Plans to be progressed;
- Production of draft Application and Development Plans (see attached);
- Groundwater sampling completed;
- Method defined to control water quality (see attached); and
- Meeting held with John Curtis & Sons Ltd and Ecologist Jonathan Adey to agree a strategy for the restoration of the previously worked ROMP Areas. This will form part of the ROMP Application. It was understood from this meeting that John Curtis & Sons Ltd are seeking to progress a planning application to retain existing, and to create further, employment opportunities at the industrial estate.

It was hoped to have the ROMP Application submitted in spring-summer 2022. As stated at several Planning & Regulation Committees, a precise deadline for the

submission of the ROMP Application cannot be provided. This is because the creation of an acceptable Development Proposal is an iterative process to establish deliverable design and working procedures within acceptable and controllable environmental impacts.

Following a topographical survey, it has been necessary to relocate the conveyor route and access road to avoid the large mound known as the 'Somme' and mature trees. As a result, the revised routes are being surveyed by an ecologist which is ongoing (**see attachment**). This will be completed in September/October. Tuckwells' are therefore aiming to have the ROMP Application submitted in early 2023.

In considering how best to advise the Planning & Regulation Committee, I respectfully request that you consider the following past chain of events:

- This is the second attempt at serve a PO. This first was quashed in 2014 by the Secretary of State who also awarded full costs against OCC;
- The current decision to serve a PO was made at the meeting in September 2019. At this time, tangible evidence of Tuckwells' ongoing works was submitted by Douglas Symes who was acting for John Curtis & Son's Ltd. I understand that Douglas provided this evidence in writing and presented it at the Planning & Regulation. This evidence was disregarded, and PO was supported, even though the recommendation was based on conjecture without any objective supporting evidence;
- Douglas Symes provided further evidence to the Planning & Regulation Committee in January 2020. This was also disregarded and the decision to progress with the PO was again made without any objective supporting evidence;
- The Planning & Regulation Committees' arguments for progressing with the PO were reviewed, in May 2020, by legal Counsel whose formal Legal Opinion confirmed that the PO could not be sustained if put to the Secretary of State at another inquiry;
- In March 2021, the Planning & Regulation Committees' justification for continuing with the PO was to allow Planning Application Ref: MW.0075/20 to be determined. This argument was flawed, as the ROMP could be worked without Tuckwells' yard. Consent for Planning Applications Ref: MW.0075/20 has now been granted;
- I spoke at the March 2021 Planning & Regulation Committee requesting that the PO should be quashed. The case presented was that sufficient evidence supported by Counsel had already been provided, while there was no evidential basis to support the PO. I also highlighted that delaying a decision was 'kicking the can down the road' at the expense of creating more ongoing uncertainty and costs for Tuckwells;
- Regardless of the extensive evidence provided at the March 2021 Planning & Regulation Committee, a decision was made not to quash the PO;
- In September 2021, the Planning Officer recommended revoking the PO. It was clear from this Committee Report that your Planning Officer and OCC's legal advisors recognised that the key legal test to quash the Prohibition Order had been met. i.e. 'evidence of a genuine intention to extract minerals for the ROMP' had been provided. The Planning Officers report included a summary of a Legal Opinion sought by OCC which did not support a full or

partial PO and recognised that the Secretary of State would almost certainly refuse to confirm the PO. This Legal Opinion echoes that sought by Tuckwells which had been provided to OCC; and

- Regardless of the Planning Officer's recommendation (as supported by two Legal Opinions), the Planning & Regulation Committee resolved to defer a decision to July 2022. This decision, yet again, clearly ignored the evidence provided by Tuckwells and the two Legal Opinions and was made without any objective supporting evidence.

This chain of events had resulted in nearly 3 years of uncertainty and extra costs for Tuckwells, at a time when they have been making significant financial investments in the ROMP. Tuckwells' stance continues to be that they have clearly demonstrated that significant financial investments has, and continues to be, been made in the ROMP Area. This is costing 10s of thousands of pounds on top of the £35,000 plus spent on Planning Permission Ref: MW.0075/20. Considering the extensive cost and extent of the detailed evidence that Tuckwells have provided to date, when compared against the complete lack of tangible evidence to support the PO, Tuckwells are of the opinion that OCC are acting unreasonably in pursuing the PO.

Tuckwells therefore respectfully request that OCC end this ongoing uncertainty and unnecessary costs and make an evidence-based decision, as supported by two Legal Opinions, to quash the PO.

Once you have had time to consider this email, and your likely recommendation, I would welcome an update.

#### Draft Application and Development Plans

Hello Nick,

Here is a summary of the plans that I have produced so far since June 2021, as requested:

757-01-01 – Location Plan (Draft 1, to 19-05-2022).

757-01-02 – Site Plan (Draft 2, to 06-06-2022).

757-01-03 – As Existing / Topographical Survey (Draft 2, to 07-06-2022).

757-01-04 – Boundary Plan (Draft 2, to 07-06-2022).

757-01-05 – Site Context (Draft 2, to 07-06-2022).

757-01-06 – Illustrative Composite Working Scheme / Phasing Plan (Draft 2, to 07-06-2022).

757-01-07 – Illustrative Working Scheme – Phase A (Draft 2, to 07-06-2022).

757-01-08 – Illustrative Working Scheme – Phase B1 (Draft 1, to 20-05-2022).

757-01-09 – Illustrative Working Scheme – Phase B2 (Draft 1, to 20-05-2022).

757-01-10 – Illustrative Working Scheme – Phase C (Draft 1, to 20-05-2022).

757-01-11 – Conveyor / Internal Haul Road (Draft 1, to 20-05-2022).

757-01-13 – Illustrative Cross Sections – As Existing (Draft 1, to 07-06-2022).

Earlier drafts of Plans 757-01-06 to -11 were also produced between the 6<sup>th</sup> and 16<sup>th</sup> May 2022, using my old file numbering.

In addition, a new Ordnance Survey 1:2,500 base plan was purchased on 27-04-2022 for the latest series of drawings, replacing the obsolete OS base that was used on the drawings produced up to 2021.

Plan Numbers 757-01-12 (updated Restoration Scheme), and 757-01-14 (Illustrative Cross Sections – Proposed) are in preparation and will be finished shortly. Please see my email of Wednesday 08-06-2022 regarding the latter.

Let me know if you have any queries on any of the above.

All the best,

Clive.

#### Groundwater quality monitoring

Nick

Groundwater quality monitoring in the sand and gravel deposit was completed in December 2021. The monitoring focussed on an assessment of various dissolved metals that had concentrations that exceeded the relevant Environmental quality standards for freshwater surface water.

Comments were made on the data and these were submitted on 1<sup>st</sup> December 2021.

No other work has been completed as we were awaiting the results of your consultation with siltbusters and an update on the working plan for the quarry.

Regards

Lawrence

#### Noise modelling

Hello Nick,

Since the previous update in June 2021, the following work has been completed:

Baseline noise surveys/analysis plus initial site noise calculations in July 2021; Calculations relating to site noise and potential bunding, diagram of required bunding and investigation of mitigation measures in February 2022; and Sound Power Level research and data sourcing plus additional site noise calculations and advice in March /April 2022.

If you require any further information, please contact me or Rachel.

Regards,  
Robert



## Ecological surveys

Hi Nick,

We have undertaken a single breeding bird survey of the new conveyor route and another one is due in June/July. An updated botanical survey has also been undertaken along with an eDNA test for GCNs (May 2022).

In addition to the above, a single breeding bird survey has also been undertaken in the PFA site along with a single bat transect and deployment of static bat boxes. Another breeding bird survey is planned shortly as are further static bat boxes deployments and transects.

Kind regards,

Jonathan

Hi Nick.

Ecology Work on the Thrupp Quarry ROMP undertaken so far is as follows:

- Phase 1 habitat survey (2018)
- Breeding bird surveys x 2 (2021)
- Wintering bird survey x 2 (2020 & 2021)
- Botanical surveys (2018/2020)
- Invertebrate surveys x 3 (2021)
- Bat surveys (transects and static boxes) (2021)
- Badger & harvest mouse surveys (2020/21)

Further to these, eDNA analysis for GCNs have also been undertaken on 6 waterbodies in 2021 and in 2022.

An extended phase 1 habitat survey report with a summary of a data search was also produced in 2018.

I hope the above is sufficient for your requirements.

Kind regards,

Jonathan

Copy of the front cover to a chapter of the Environmental Impact Assessment for  
“Written Scheme of Investigation” (archaeology)



**Thrupp Farm Romp, Radley,  
Oxfordshire**  
Written Scheme of Investigation  
Environmental Impact Assessment Chapter

June 2022  
Client: H Tuckwell & Sons  
Issue No: v.1  
GA Reference No: 7964  
NGR: SU 52650, 97020



## **Annex 3**

### **Radley ROMP. Radley Parish Council (RPC) comments on material submitted by the operators' agents on 20-21 June 2022**

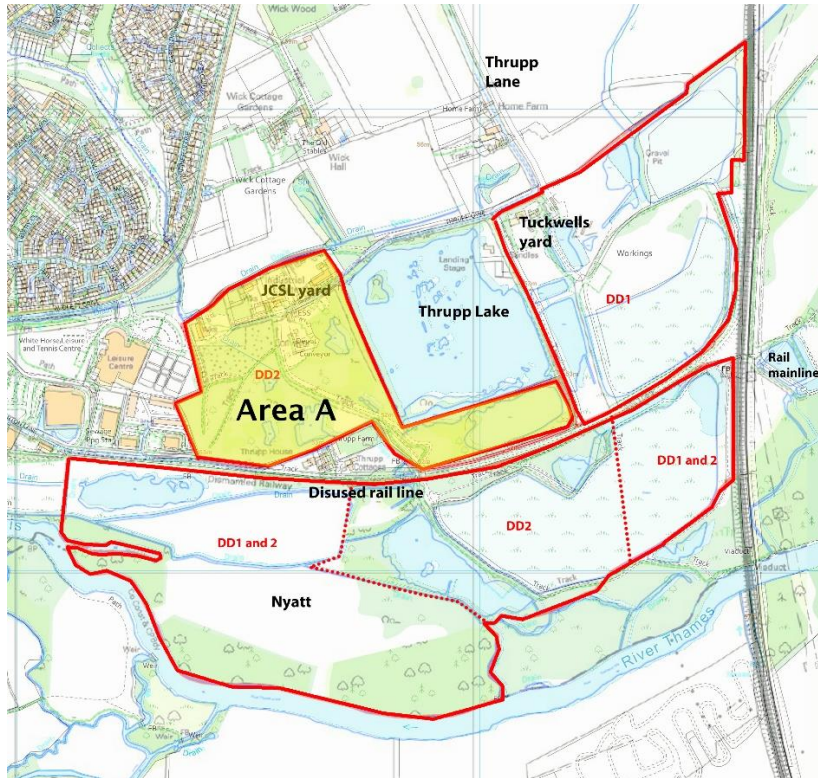
#### **Summary**

The material submitted on 20/21 June 2022 does not materially change the position considered by the Planning & Regulation Committee on 6 September 2021.

RPC's view is that

- A good case has been made for discontinuing the prohibition order for most of the ROMP area
- No such case has been made for the land in the north-west of the area, marked 'A' on the map below
- There is no convincing evidence that the restoration of Area A will be achieved through the ROMP process
- It can however be achieved through a prohibition order for this area
- Area A is easily distinguishable, under separate operator control and meets the statutory criteria for serving a prohibition order.
- OCC therefore remain under a statutory duty to proceed with a prohibition order for this area.

The comments below relate primarily to the additional material submitted on 20/21 June and should be read alongside the much fuller comments made prior to the P&RC meeting in September 2021.



## Timetable

The operators report a slippage of several months in the submission of their ROMP application, which will not now be made until 'early 2023', as against the previous intention of 'spring/summer 2022'. This makes it more difficult for the P&RC to consider the best route forward at its July meeting and potentially extends the period of blight applying to the ROMP area.

If, however, the revised timetable allows reconsideration of the conveyor route between the proposed extraction and processing sites this is welcome. RPC's view has always been that the two sites and the route between them need to be considered together.

It remains important that the operators consult RPC and others on the detail of their proposals prior to submission to OCC – as they undertook to do at the P&RC meeting in September 2021.

## Evidence from the material submitted

### Area A

The additional material submitted provides no evidence that minerals remain in this area nor that there is any intention for the area to be used 'to a substantial extent' in connection with minerals winning and working. The legal tests for a prohibition order continue therefore to be met.

Nor does it provide concrete evidence of any intention to restore the area or to propose adequate restoration conditions as part of a ROMP application.

All we are told is

: "Meeting held with John Curtis & Sons Ltd and Ecologist Jonathan Adey to agree a strategy for the restoration of the previously worked ROMP Areas. This will form part of the ROMP Application. It was understood from this meeting that John Curtis & Sons Ltd are seeking to progress a planning application to retain existing, and to create further, employment opportunities at the industrial estate."

This indicates that JCSL remains focussed not on restoration, as required as part of the ROMP process, but on the extension of non-mineral activities on the land.

Moreover the terms of the existing planning permission (DD2) applying to the area have required JCSL to submit restoration plans ever since 2012. They have not done so and it is difficult to see what has changed.

### Land other than 'Area A'

In their representations for the September 2021 meeting Tuckwells submitted considerable evidence of their intention to extract minerals from this land. In their representations RPC accepted that a genuine intent did exist.

The further material submitted on 20/21 June confirms Tuckwells intentions and RPC's view is unchanged. They represent a genuine intent.

### **The issues arising and the decision required**

In the absence of action by the P&RC the land in Area A will remain unrestored until 2043, over 60 years after minerals extraction ceased. This is not an outcome that can be brushed aside. The land is

- wholly in green belt;
- part of the Radley Lakes Masterplan area for nature conservation and quiet recreation;
- within a Local Wildlife Site and Conservation Target Area.

At its September 2021 meeting the Committee seemed clear that continued failure to restore the land was unacceptable. The question at issue was the best route to prevent this happening.

- RPC argued that the appropriate route was a prohibition order applying just to Area A, that this was viable and indeed a duty, and that there was enough evidence to decide on the matter without waiting.
- Officers advised that such a limited order was possible but that it would be preferable to seek the restoration of the area through the ROMP process.

The Committee decided that, before reaching a conclusion, it should review the position in July 2022 in the light of progress with the ROMP.

Nine months on where does this leave the Committee?<sup>1</sup> Not as far on as they had hoped. But in RPC's view there is still enough evidence to form the basis of a sound decision.

The new evidence makes it clearer than ever that there is no intention to use Area A for minerals purposes, but that there is credible evidence of an intention to extract minerals elsewhere in the ROMP area.

The tests for a prohibition order are therefore met for Area A, but not for the remainder of the ROMP area.

Nothing seems likely to change that position. The questions then are

- Is it feasible to make an order just for Area A?
- Could the same result be achieved through the ROMP process?

#### Is it feasible to make an order just for Area A?

RPC set out in September 2021 why an order applying just to Area A was feasible and appropriate in law.

- The legislation on prohibition orders is separate to that on ROMP reviews and is not tied to the area of a ROMP or even to that of an individual permission.
- The Government explained at the time that an order for part only of a ROMP area might be appropriate where there were two operators, varying in the extent of their compliance – as is the case here.
- They also explained that what was previously a power for a minerals authority to make an order was being made a duty so as to avoid blight through authority inaction – as is the risk here.

There is a further point which was not put before the Committee in September but is significant.

- The existing planning permission (DD2) already splits the DD2 area into two with one set of conditions applying to the land 'north of the disused railway' (ie Area A) and another to the remainder. A prohibition order applying just to Area A would therefore mirror a distinction already applying and not break new ground.

#### Could the same result be achieved through the ROMP process?

The evidence suggests not. Under a ROMP review it is up to the applicants not OCC to propose restoration conditions. The ROMP process is being led by Tuckwells who wish to extract gravel. The land in Area A, however, is controlled not by them but by JCSL and falls outside the management agreement between the two. JCSL have taken no action to date to restore the land as required by the current planning

---

<sup>1</sup> RPC sought to use this period for discussions with OCC on the interpretation of the law and the available options so that the Committee might be presented with an agreed analysis of the position. . OCC however declined to meet us.

permission and seem focussed on other non-minerals objectives which conflict with green belt policy and could well prejudice restoration.

The decision now to be taken

The Committee could allow more time for firmer intentions on restoration to emerge from JCSL but this risks yet more delay to no purpose. The delay would lead not only to continued inaction on restoration but also to continued uncertainty for Tuckwells about their planned extraction in the remainder of the ROMP area.

RPC's view is that uncertainty has already been dragging on much too long. A decision could and should be made now to proceed with a prohibition order, but one limited in scope just to Area A.

Radley Parish Council  
30 June 2022

This page is intentionally left blank



**Annex 4**  
**IN THE MATTER OF**

**REVIEW OF OLD MINERALS PERMISSIONS  
(PARTIAL PROHIBITION) CONCERNING LAND AT  
THRUPP LANE AND THRUPP FARM, RADLEY**

---

**ADVICE**

---

**No5**  
**CHAMBERS**  
BIRMINGHAM • LONDON • BRISTOL

## **Introduction and Factual Background**

1. I am instructed by Ms Jennifer Crouch for and on behalf of the Director of Law & Governance of Oxfordshire County Council (“the Council”) in relation to the review of mineral permissions concerning two former minerals working sites (Radley – Thrupp Lane (“DD1”), and Radley – Thrupp Farm (“DD2”), collectively “Radley ROMP”). A firm called J. Curtis and Sons Ltd is generally associated with Thrupp Farm (DD2), and another firm, H. Tuckwell & Sons Ltd, with Thrupp Lane (DD1). Both firms have coordinated their activities and worked the overall Radley ROMP site collectively from time to time.
2. What I will subsequently refer to as Areas 1, 2, 6, 7 and 8 fall within DD2. Areas 3 and 4 fall within DD1. Areas 5, 9 and 10 fall within both DD1 and DD2.
3. Both DD1 and DD2 were mined for sand and gravel. I understand that workable deposits remain in Areas 5, 6 and 7. It is estimated that approximately one million tonnes of sand and gravel remain to be extracted from these areas.
4. There is an extensive planning history relating to the Radley ROMP site which those instructing are familiar with and so will not be repeated here. It suffices to note the critical decision of Inspector Elizabeth Ord, a former solicitor, at the public inquiry concerning a previous prohibition order. Inspector Ord refused to confirm the order and the Council was required to pay substantial costs (following the normal rule in cases concerning the removal of previously held rights – similar to a CPO – that costs ought to follow the event). Inspector Ord’s decision concerned DD2 but pointed out (at paragraphs 8.6-8.10) that the extant permission for a processing plant on the adjacent site (DD1) was relevant to her assessment that the winning/ working/ depositing of minerals at the Thrupp Farm ROMP site (DD2) had not permanently ceased. Thus, she could not confirm the order because it could have precluded the operation of a valid planning permission.
5. I also note correspondence with the Council concerning permissions for areas DD1 and

DD2 extending back to 1955. This includes a decision on revocation by the MPA at the time, Berkshire County Council, concerning part of the Radley ROMP site (covered by consent reference M1/55). Unfortunately, the files contain no further details on whether the decision on revocation was taken any further. Moreover and in any event, subsequent decisions have superseded previous decisions concerning the Radley ROMP site.

6. Turning to the present matter before the Council, the Council drafted (but did not serve) a fresh prohibition order on 19 September 2019. A number of additional events have since occurred and significant further information is before the Council.
7. Firstly, an agent acting for J. Curtis & Sons Ltd submitted written evidence on 19 September 2020 asserting that they were carrying out ongoing work and thus the winning and working of minerals had not permanently ceased. Further information was submitted by the agent in January 2020.
8. Secondly, a planning application was received on 27 April 2020 from H. Tuckwell & Sons Ltd (“the applicant”) for “*the use of existing processing plant site to process sand and gravel from the nearby 94 acre Review of Old Mineral Permission (ROMP) site (Ref: P/369/71), the installation of a field conveyor system to the site boundary and ancillary facilities for the transportation, storage and processing of the sand and gravel and the use of an existing haul road*” (reference MW.0075/20, “the application”). The plant is to be situated on Area 3 and used in association with the extraction of mineral (sand and gravel) from Areas 5, 6 and 7. The machinery would cross the disused railway line from Area 3 into Area 9. It must be noted that in order to access the mineral in Areas 5, 6 and 7 then the mineral would also have to pass through Area 8 to reach the crossing point. However, those details will only come forward in the finalised ROMP conditions application (concerning the extraction of the minerals in Areas 5, 6 and 7).
9. Thirdly, an appeal against the refusal of planning permission for the further temporary B1 (office) use of the Radley ROMP area known as Curtis’s Yard (within DD2), has now been determined. The appeal was allowed by the Inspector and temporary planning permission was granted on 18 November 2020 for a period of five years. I have

helpfully been provided with that decision but note the Inspector queried but (rightly) did not determine the background issue concerning the use of the site for minerals development. That was not a question for the Inspector pursuant to that appeal.

10. A meeting of the Council's Planning and Regulation Committee ("Planning Committee") on 8 March 2021 made the following resolutions:

"A) The Planning & Regulation Committee's previous conclusion from its meeting on 9 September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased and that there is a duty to serve a Prohibition Order is not rescinded but that the service of the Prohibition Order is held in abeyance pending:

i) the progression and determination of application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP permission areas DD1 and DD2; and

ii) H. Tuckwell and Sons Ltd providing an update, accompanied by documentary evidence, on progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP permission areas DD1 and DD2 to the meeting of the Planning and Regulation Committee on 19 July 2021.

B) Officers are instructed to investigate whether it is possible to serve a partial Prohibition Order should it be concluded that mineral working has permanently ceased over part but not all of the ROMP permission areas DD1 and DD2".

11. The matter is to come before the Council's Planning Committee at its meeting on 19 July 2021.

12. Thus, to summarise: the Council must decide whether to revoke or serve the draft prohibition order presently held in abeyance (including whether to amend the prohibition order to apply to only part of the Radley ROMP site); progress determination of the application (MW.0075/20); and progress the ROMP conditions application and accompanying Environmental Statement ("ES").

13. On the partial prohibition order issue, officers are contemplating whether the

submission of the application which only affects Areas 3, 5, 6 and 7 (and a small amount of Area 9) invalidates members' previous conclusion that mineral working has ceased over the remainder of the Radley ROMP site. If not, the question is whether the Council remains under an obligation to proceed with the service of the prohibition order over the remaining area. This would secure the desired restoration of the remainder of the Radley ROMP, including Area 1, but allow the application to be granted and in due course for the development to take place. Even if such an approach is taken, however, officers are unclear how to address Areas which are only partially covered by the application or which appear likely to be necessary for minerals working in the future. Officers also query whether it is the case that once the Council have determined to treat minerals applications as pertaining to a single ROMP site, the same applies to any consequential prohibition order, (eg. whether a minerals site is severable in the manner contemplated).

14. This advice duly concerns the extant, but unserved, draft prohibition order. Essentially, I am asked to advise on resolution "B" above.

### **Advice**

15. At the outset I must be clear that Council cannot both grant planning permission for development and prohibit that development. Nor can the Council serve a prohibition order when there is cogent evidence that the winning and working of minerals on that land has not permanently ceased. The submissions made by the agent for J. Curtis and Sons Ltd, the progression and award of planning permission for Curtis' Yard (there is no reason why B1 use could never be in connection with minerals operations elsewhere on the site), and the submission of an application for planning permission all clearly demonstrate an intention to continue to work the site.
16. In light of these facts, the Council is severely constrained in the options available to it by the terms of the legislation. It must base the decision on the likelihood of the resumption of the winning and working of material on all the evidence available at the time the Council makes the order (per paragraph 3(2)(b) of Schedule 9 of the Town and

Country Planning Act 1990 (“the 1990 Act”). Here, at the time any prohibition order would be finalized and served there will be further information on the landowners’ intentions, including extant consent(s) and/or an outstanding application. That is quite unlike the situation at the time the prohibition order was made in September 2019. The Council therefore acted within its powers to make the order then, but the factual context is now quite different.

17. In short, on the facts available now the Council can no longer say there is no likelihood of the resumption of the winning and working of material at the site on the evidence available to them. It does not matter whether or not the draft prohibition order instigated the application(s); indeed, that appears to be one of the ulterior motives of the legislation (to spur operators to promptly work out and then restore their sites).
18. On the utility of progressing with a prohibition order which was validly made at the time, and notwithstanding the additional consent/ information/ application, it must be pointed out that an appeal against that prohibition order (and one must be contemplated here) is a *de novo* review. The Secretary of State is therefore entitled to consider such evidence as they see fit, (not being under any obligation similar to paragraph 3(2)(b) of Schedule 9). They will undoubtedly consider the evidence of a planning application, at the very least, to constitute clear evidence of an intention to continue the winning and working of material on the site. Therefore, even if there was no costs risk if the Council progressed with the prohibition order (I should be clear: there is significant risk of a costs award given the present circumstances), it would be futile because the Secretary of State would almost certainly refuse to confirm the order.
19. As to the service of a “partial” prohibition order concerning land to the north of the disused railway line (Area 1, which includes the area known as Curtis’ Yard), as noted earlier that area now benefits from temporary planning permission. Whilst that is for office use there is no reason why that office use cannot be in connection with the winning and working of minerals elsewhere on the Radley ROMP site. Further and in any event even if a partial prohibition order was served in relation to the land north of the disused railway line it could not stop the activity presently taking place on the site, which benefits from planning permission and it could not, in any event, be the subject

of any prohibition order. That is because a prohibition order can only preclude the winning and working or depositing of minerals. As defined in English Clays Lovering Pochin & Co v Plymouth Corp (1974) 1 WLR 742) to “win” a mineral is to make it available or accessible to be removed from the land, and to “work” a mineral is (at least initially) to remove it from its position in the land. Finally, there is also the question (for the Council) as to whether it is practicable and reasonable to sever a minerals site given the complexity that would result from a partially prohibited/partially permitted minerals site.

20. Further to this issue, I have been usefully taken to paragraph: 206 reference ID: 27-206-20140306 of the PPG which provides:

“How much of the site area is covered by a review of minerals conditions?”

Where an Environmental Statement is required, environmental information is required for the whole minerals site covered by that permission before new operating conditions can be determined.”

21. The Council has established that the submission of conditions for the entire Radley ROMP site is EIA development, and so the submission must be accompanied by an ES. The entirety of the Radley ROMP site is duly in suspension pending receipt of suggested conditions and the accompanying ES. Both documents must of course be considered and approved. The PPG’s clear guidance that an ES must encompass “the whole minerals site” covered by that permission does imply that any prohibition order should equally cover the whole of the ROMP area. This is because the potential environmental impacts could not be fully assessed in an ES if there is a partial prohibition order in place (which effectively removes part of the permitted area the PPG advises should be covered in the ES accompanying the ROMP application).
22. To conclude on this issue, paragraph 3 of Schedule 9 grants the power to issue a prohibition order in relation to “a site”. That is not defined, therefore it is up to the judgment of the Council what constitutes “the site”. In my view it would follow that the Council could theoretically sever a minerals site by way of a prohibition order but

this must be based on the evidence before the Council at the time and take into account any discussion with the landowners. The Council must be able to reach a defensible conclusion that the resumption of winning and working or the depositing of mineral “to any substantial extent” is considered unlikely. Following Inspector Ord’s decision, this includes consideration of consent and activity on adjacent sites which may be relevant. Based on the evidence I do not consider there to be such a conclusion open to the Council at the present time.

23. Because no action has been taken in relation to the Council’s decision to make the existing draft prohibition order there is no reason why the Council cannot reconsider that decision, though I would advise that the entire procedure is transparently carried out by members given the interests that are affected and the significant public concern regarding the Radley ROMP site.
24. If the applicant does not take advantage of any consent that may be granted the Council can of course commence the procedure afresh.
25. I trust this has addressed the questions posed by those instructing. If anything arises further please do not hesitate to contact me in the usual way.

**8 July 2021**  
**Nina Pindham**  
**No5 Chambers**



**IN THE MATTER OF**

**RADLEY: REVIEW OF OLD MINERALS  
PERMISSIONS (PARTIAL PROHIBITION)  
CONCERNING LAND AT THRUPP LANE  
AND THRUPP FARM, RADLEY**

---

**ADVICE**

---

**Jennifer Crouch  
Principal Solicitor (Environment Team)  
Corporate Services  
Oxfordshire County Council  
County Hall  
New Road  
Oxford  
OX1 1ND**

**Nina Pindham  
No5 Chambers  
Fountain Court  
Steelhouse Lane  
Birmingham B4 6DR**



This page is intentionally left blank