

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 8th 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 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.

Update

2. At the meeting of the Planning and Regulation Committee on 19th 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 7th 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 8th March 2021. This report was duly presented to the meeting on 8th 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 8th March 2021 that:
 - (a) the Planning & Regulation Committee's previous conclusion from its meeting on 9th 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 19th 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.

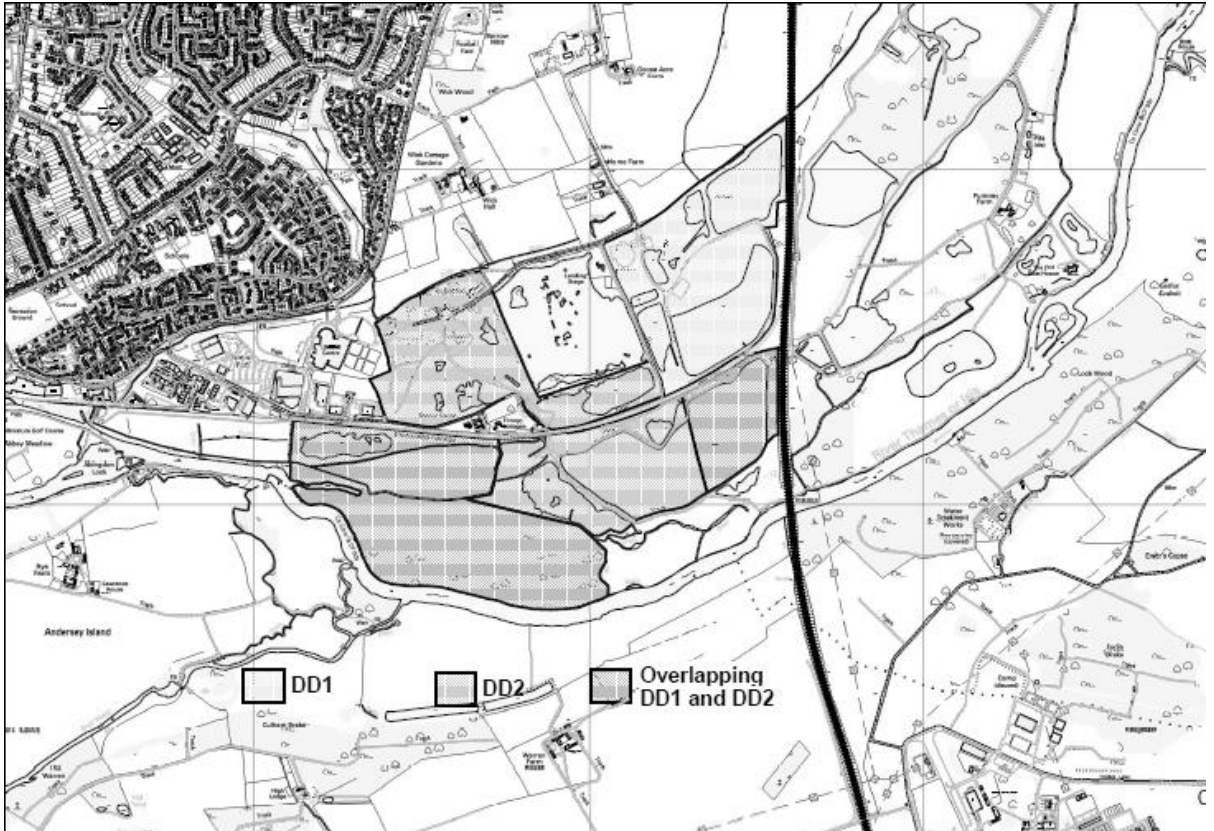


Figure 1: The Radley ROMP permissions site.

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 8th 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 9th 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 7th 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 8th 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 8th 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 7th September 2020 and 8th 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 8th 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 8th 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 9th 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 9th September 2019 that the winning and working of mineral has permanently ceased can now be sustained. The committee is

