



To: Members of the Planning & Regulation Committee

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

Monday, 30 November 2015 at 2.00 pm

County Hall, New Road, Oxford

A handwritten signature in black ink that reads 'PG Clark'.

Peter G. Clark
Head of Paid Service

November 2015

Contact Officer: Graham Warrington
Tel: (01865) 815321; E-Mail:
graham.warrington@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

Chairman – Councillor Mrs Catherine Fulljames
Deputy Chairman - Councillor Neil Owen

Councillors

David Bartholomew
Mark Cherry
Patrick Greene
Bob Johnston

Stewart Lilly
James Mills
Glynis Phillips
Anne Purse

G.A. Reynolds
John Tanner

Notes:

- **Site visits required for Items 11 (Clanfield C of E Primary School) and 8 (Duns Tew Quarry) have been arranged for 26 November 2015.**
- **Date of next meeting: 11 January 2016**

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 contact Glenn Watson on (01865) 815270 or glenn.watson@oxfordshire.gov.uk for a hard copy of the document.

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 - 6)

To approve the minutes of the meeting held on 19 October 2015 (**PN3**) and to receive information arising from them.

4. **Petitions and Public Address**
5. **Chairman's Updates**
6. **Request for temporary relaxation of requirements of routeing agreement associated with planning permission for erection of a mobile concrete batching plant with associated infrastructure, concrete hardstanding and portable toilet Land at Dix Pit adjacent to Workshops, Linch Hill, Stanton Harcourt - Application No MW.0053/15** (Pages 7 - 14)

Report by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) (**PN6**).

The report considers a proposed modification to the approved route for vehicles associated with the concrete batching operation at Dix Pit. The developer has implemented the consent (MW.0053/15) but found that journey times from the site into central Oxford are adversely affected by roadworks on the Wolvercote and Cutteslowe roundabouts, to the extent that concrete has been out of specification on arrival and has had to be returned. Therefore, the developer has proposed an alternative route, using the B4449 and the B4044 to reach Oxford from the west. This route includes the B4449 through the village of Sutton, which is specifically protected from a significant increase in traffic intrusion by development plan policy. The alternative route would only be used for the duration of the roadworks, only during off peak hours (9pm-3pm) and only by vehicles carrying concrete to the Westgate redevelopment in central Oxford. The applicant has also asked for agreement that the alternative route can be used for empty vehicles returning from the Westgate, however this is not considered to be justified.

It is RECOMMENDED that the County Council enter into a deed of variation to the existing routeing agreement for application MW.0053/15 to allow off-peak HGV movements on the alternative route to Oxford for concrete mixer trucks travelling to the Westgate redevelopment in central Oxford only, until the completion of

roadworks on the Cutteslowe and Wolvercote roundabouts.

7. **Section 73 application to continue the development of 'To crush, screen, blend and stock reject building blocks, furnace bottom ash and reject materials from concrete making to make material for block making' without complying with condition 5 to allow operations to take place 52 weeks a year at Hanson Building Products, Sutton Courtenay - Application No. MW.0135/15 (Pages 15 - 24)**

Report by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) (PN7).

The application considers removal of a condition on an existing consent for the crushing of reject blocks at Sutton Courtenay. The condition limits crushing activity to 6 weeks in any year and the removal of the condition would allow crushing to take place up to 52 weeks per year. There would be no increase in the amount of material permitted to be imported to the site, or to vehicle movements. The applicant has stated that the limitation to 6 weeks was the result of an error in the original application and it is not possible to crush the material which they are permitted to import in only 6 weeks per year. The application is being reported to this Committee because of objections from Sutton Courtenay Parish Council, Appleford Parish Council and one local resident. The objectors are concerned about a potential increase in throughput and vehicle numbers. The report considers the proposal to delete the condition against relevant planning policy relating to the protection of amenity.

It is RECOMMENDED that subject to the same conditions as permission MW.0129/11 (the original planning permission) amended as set out in Annex 1 and as may be otherwise necessary to reflect the approval of schemes previously required pursuant to conditions, that planning permission for application MW.0135/15 be granted.

8. **Proposed northern and eastern extension to Duns Tew Quarry (East) to extract approximately 415 000 tonnes of saleable sand and the continuation of importation of aggregate for blending and merchanting/onward sale for 16/17 years with restoration to a mix of woodland, geo-diversity benefits and nature conservation at Duns Tew Quarry (East), Horsehay Farm, Duns Tew Road, Middle Barton - Application No. MW.0036/14 (Pages 25 - 66)**

Report by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) (PN8).

The application is for the extraction of approximately 415,000 tonnes of sand from an area adjacent to the existing Duns Tew Quarry. The land would be restored to a mixture of woodland and nature conservation, with geodiversity benefits. Extraction would take place on a campaign basis for up to two months in each calendar year for a period of up to 17 years. It is also proposed to import aggregate to the site for blending and merchanting.

The application is reported to this Committee because it has an EIA and there have been three objections from local residents and concerns raised by the Parish Council and local County Councillor. Concerns raised include dust, air quality, proximity to dwellings, impact on rural roads and ecology. There have been no objections from other consultees.

The report considers the proposals against relevant planning policies with comments and recommendation of the Deputy Director for Environment and Economy (Strategy and Infrastructure Planning).

It is RECOMMENDED that subject to:

- (i) a Section 106 legal agreement to cover the matters outlined in Annex 2 to the report;***
- (ii) a routeing agreement to ensure that vehicle movements from the new development are covered by the existing routeing arrangements;***

that planning permission for application no. MW.0036/14 be granted subject to:

- (iii) conditions to be determined by the Deputy Director for Environment and Economy (Strategy & Infrastructure Planning) to include the matters set out in Annex 3 to the report; and***
- (iv) the Deputy Director for Environment and Economy (Strategy & Infrastructure Planning) being authorised to refuse the application if the legal agreement referred to in (i) above is not completed within 10 weeks of the date of this meeting on the grounds that it would not comply with OMWLP policy PE13 and the guidance set out in paragraph 118 of the NPPF (in that there would not be satisfactory provisions for the long term management of the restored site).***

- 9. Section 73 application to vary conditions 3, 6 and 14 of planning permission no. MW.0097/14 to extend the time period for the removal of all buildings, plant, machinery or structures and their foundations and bases, together with any hard standings, bunds of overburden, quarry waste or soil and complete restoration by 30th September 2016 at Wicklesham Quarry, Sandshill, Faringdon - Application No. MW.0134/15 (Pages 67 - 86)**

Report by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) (**PN9**).

The applications seek an extension of time for the restoration of the quarry and an extension of time for the soil blending operation on the site. There has been local objection to the extension of time for the quarry because of concern that the applicants are keeping the development going to help achieve a future use at the quarry. The report assesses the need to restore the quarry and the implications for future development if the applications are approved.

It is RECOMMENDED that:

- a) ***planning permission for application no. MW.0134/15 be approved subject to conditions to be determined by the Deputy Director (Strategy & Infrastructure Planning) but to include the following:***
- 1) The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application except as modified by conditions of this permission.***
 - 2) No operations, including HGVs entering and leaving the site, other than water pumping or environmental monitoring, shall be carried out at the site except between the following times:***
 - 0700 and 1800 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays;******No operations shall take place at any time on Sundays or recognised public holidays.***
 - 3) No winning and working of mineral or sale of processed mineral shall take place. The site shall be completely restored by 30 September 2016 in accordance with the approved restoration scheme.***
 - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order amending, replacing or re-enacting that Order), the access to the development hereby permitted shall not be other than as shown as 'new access' on approved plan 010/4.***
 - 5) All internal haul roads shall be maintained in a condition free from potholes.***
 - 6) All buildings, plant, machinery or structures and their foundations and bases, together with any hard standing shall be removed from the site by 30th September 2016.***
 - 7) The operators shall insulate plant or machinery, silence vehicles and provide acoustic screening as may be necessary to ensure that noise levels or frequencies shall not exceed 55 dB(LAeq) (1hour) freefield during the hours of operation permitted under condition 2, at the facades of the nearest residential properties.***
 - 8) Dust control measures shall be utilised as set out in paragraph 3.11.5 of the approved Planning Statement dated July 2014.***
 - 9) No commercial vehicles shall enter the public highway unless their wheels and chassis are clean such that mud and dust are not deposited on the highway.***
 - 10) All turf, topsoil, subsoil and overburden stripped prior to mineral extraction, or quarry waste or such similar materials presently stored on site shall be used for site restoration only.***

- 11) **No storage or respreading of topsoil and subsoil shall take place unless the percentage moisture in the subsoil and topsoil to be moved is less than the percentage moisture at the plastic limit of each of the topsoil and subsoil respectively.**
- 12) **The full depth of the restored topsoil and the top 0.15 metres of subsoil shall be ripped with an agricultural wing tine implement at a spacing not exceeding 1.5 times the working depth. All stones and rocks exceeding 100mm in any dimension and other deleterious material shall be removed.**
- 13) **No bunds of overburden, quarry waste or soil shall be left on the site after 30 September 2016.**
- 14) **No mineral shall be exported from the site with the exception of the stones to be removed under condition 12, and the hardstanding to be removed under condition 6.**
- 15) **No building, plant or machinery or structure of fixed or mobile design shall be located or operated other than on the quarry floor at the base of the deposit known as the sponge gravels except machinery engaged in storage and respreading of soil and overburden.**
- 16) **Oil and fuel storage bunds shall only be sited on impervious bases and surrounded by oil tight bund walls; the bunded areas shall be capable of containing 110% of the tank's volume and should enclose all fill and draw pipes.**
- 17) **There shall be no discharge of water containing sand, gravel, soil or grease.**
- 18) **No reversing beepers shall be fixed to, or used on, any mobile plant.**
- 19) **The field access directly from the A420 into the western part of the site shall not be used for the development the subject of this planning permission or for any purpose connected with it.**
- 20) **No works shall be carried out other than in accordance with the approved mitigation and enhancement scheme section 6 (Mitigation Measures) of the Extended Phase 1 Habitat Survey Report dated September 2012, the Reptile Method Statement submitted 28 February 2013, the Tree Planting & Grassland Mix dated 28 February 2013 and section 1.8 of the 2013 Great Crested Newt Refresher Surveys (enzygo 2013) report dated 5 July 2013.**
- 21) **Warning signs to users of footpath no. 17 of vehicles crossing the access road and to drivers of vehicles of pedestrians shall be erected and maintained for the duration of the development hereby permitted.**

Informatives

All bird nests, eggs and young are protected under the Wildlife & Countryside Act 1981 (as amended) which makes it illegal to intentionally take, damage or destroy the nest of any wild bird while it is use or being built. Therefore, no removal of [trees, scrub, hedgerows, and grassland] should take place between 1st March and 31st August inclusive to prevent committing an offence under the Wildlife & Countryside Act 1981 (as amended).

If any protected species [e.g. bats, badgers, dormice, otters, water voles, reptiles, amphibians, and breeding birds] are found at any point, all work should cease immediately. Killing, injuring or disturbing any of these species could constitute a criminal offence. Before any further work takes place a suitably qualified ecological consultant should be consulted for advice on how to proceed. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.

It is recommended that the native trees and seeds to be used in the restoration scheme are of UK (or ideally more local) provenance. For example, the Flora Locale website gives contact details for suppliers of UK provenance seed and plants:

<http://www.floralocale.org/HomePage>

A Habitat Regulations licence from Natural England for great crested newts may be required to make this permission lawful.

- b) planning permission for application no. MW.0133/15 be approved subject to conditions to be determined by the Deputy Director (Strategy & Infrastructure Planning) but to include the following:***
- 1) The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application except as modified by conditions of this permission.***
 - 2) No operations, including HGVs entering and leaving the site, other than water pumping or environmental monitoring, shall be carried out at the site except between the following times:***
 - 0700 and 1800 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays;******No operations shall take place at any time on Sundays or recognised public holidays.***
 - 3) Imported material shall be used only in connection with the restoration of the quarry in accordance with the approved restoration scheme.***
 - 4) All internal haul roads shall be maintained in a condition free from potholes.***
 - 5) There shall be no import of waste on site except soils.***

- 6) **All buildings, plant, machinery or structures and their foundations and bases, together with any hard standing shall be removed from the site by 30th September 2016.**
- 7) **The operators shall insulate plant or machinery, silence vehicles and provide acoustic screening as may be necessary to ensure that noise levels or frequencies shall not exceed 55 dB(LAeq) (1hour) freefield during the hours of operation permitted under condition 2, at the facades of the nearest residential properties.**
- 8) **Dust control measures shall be utilised as set out in paragraph 3.11.5 of the approved Planning Statement dated July 2014.**
- 9) **No commercial vehicles shall enter the public highway unless their wheels and chassis are clean such that mud and dust are not deposited on the highway.**
- 10) **Oil and fuel storage bunds shall only be sited on impervious bases and surrounded by oil tight bund walls; the bunded areas shall be capable of containing 110% of the tank's volume and should enclose all fill and draw pipes.**
- 11) **There shall be no discharge of water containing sand, gravel, soil or grease.**
- 12) **No reversing beepers shall be fixed to, or used on, any mobile plant.**
- 13) **Warning signs to users of footpath no. 17 of vehicles crossing the access road and to drivers of vehicles of pedestrians shall be erected and maintained for the duration of the development hereby permitted.**
- 14) **No works shall be carried out other than in accordance with the approved mitigation and enhancement scheme section 6 (Mitigation Measures) of the Extended Phase 1 Habitat Survey Report dated September 2012, the Reptile Method Statement submitted 28 February 2013, the Tree Planting & Grassland Mix dated 28 February 2013 and section 1.8 of the 2013 Great Crested Newt Refresher Surveys (enzygo 2013) report dated 5 July 2013.**

Informatives

All bird nests, eggs and young are protected under the Wildlife & Countryside Act 1981 (as amended) which makes it illegal to intentionally take, damage or destroy the nest of any wild bird while it is use or being built. Therefore, no removal of [trees, scrub, hedgerows, and grassland] should take place between 1st March and 31st August inclusive to prevent committing an offence under the Wildlife & Countryside Act 1981 (as amended).

If any protected species [e.g. bats, badgers, dormice, otters, water voles, reptiles, amphibians, and breeding birds] are found at any point, all work should cease immediately. Killing, injuring or disturbing any of these

species could constitute a criminal offence. Before any further work takes place a suitably qualified ecological consultant should be consulted for advice on how to proceed. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.

It is recommended that the native trees and seeds to be used in the restoration scheme are of UK (or ideally more local) provenance. For example, the Flora Locale website gives contact details for suppliers of UK provenance seed and plants:

<http://www.floralocale.org/HomePage>

A Habitat Regulations licence from Natural England for great crested newts may be required to make this permission lawful.

10. The erection of a flat roofed mobile unit to provide catering facilities at Clanfield C of E Primary School, Main Street, Clanfield - Application No. R3.0096/15 (Pages 87 - 100)

Report by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) (PN10).

This is a planning application for the erection of a flat roofed mobile unit to provide catering facilities for the school pupils of Clanfield Church of England Primary School. The application has been made due to a recent central government directive requiring the provision of school meals to primary schools. As present there is no accommodation available at the school for this facility.

It is RECOMMENDED that planning permission for application R3.0096/15 be granted subject to conditions to be determined by the Deputy Director for Environment and Economy (Strategy and Infrastructure Planning) to include the following:

- i. The development to be commenced within a period of three years from the date of the permission.***
- ii. Development to be carried out in accordance with the submitted documents and plans.***
- iii. Translucent film being attached to the southern elevation windows and door to obscure views to the neighbouring boundaries.***
- iv. Access to the development during the construction phase to be solely via the northern access onto and from the access road to the east.***
- v. During the construction phase of the development the applicant shall provide adequate protection to the large Corsican Pine on the southern boundary.***
- vi. Soakage tests being carried out and the soakaway design submitted for approval prior to the operational phase of the development.***

11. Commons Act 2006: In the matter of an application to register Humpty Hill, Highworth Road, Faringdon as a Town or Village Green (Pages 101 - 166)

Report by the Chief Legal Officer and Head of Law & Governance (**PN11**).

An application was made by Mr Robert Stewart for registration of land at Humpty Hill, Highworth Road, Faringdon in Oxfordshire as a new town or village green under the Commons Act 2006. The landowner objected to this application and a public inquiry was held. The Council is the Commons Registration Authority and the Planning & Regulation Committee has delegated authority to determine such applications.

The matter was originally referred to the October meeting of the Planning & Regulation Committee (see minute 60/15 of Item PN3 of this agenda) but as a last minute submission was received from the objectors, which it was felt needed to be referred to the Inspector for an opinion, it was deferred.

The Inspector's report and officer's recommendation are therefore set out and the Committee is therefore requested to determine the application.

Having received the Opinion of the Inspector set out in Annexes 2 and 5 to this report, the Committee is RECOMMENDED to APPROVE the application for registration as a new Town or Village Green that plot of land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire that site being indicated clearly on the map included in the application submitted by Mr Robert Stewart on 19 April 2013.

12. Relevant Development Plan and other Policies (Pages 167 - 188)

Paper by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) (**PN12**).

The paper sets out policies in relation to Items 6, 7, 8, 9 and 10 and should be regarded as an Annex to each report.

Pre-Meeting Briefing

There will be a pre-meeting briefing at County Hall on **Monday 30 November at 12 midday** for the Chairman, Deputy Chairman and Opposition Group Spokesman.

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PLANNING & REGULATION COMMITTEE

MINUTES of the meeting held on Monday, 19 October 2015 commencing at 2.00 pm and finishing at 2.46 pm

Present:

Voting Members: Councillor Mrs Catherine Fulljames – in the Chair

Councillor Neil Owen (Deputy Chairman)
Councillor David Bartholomew
Councillor Mark Cherry
Councillor Patrick Greene
Councillor Bob Johnston
Councillor Stewart Lilly
Councillor James F. Mills
Councillor Glynis Phillips
Councillor G.A. Reynolds
Councillor John Tanner
Councillor Richard Webber

Officers:

Whole of meeting G. Warrington and J. Crouch (Law & Governance); C. Kenneford and D. Periam (Environment & Economy)

Part of meeting

Agenda Item	Officer Attending
6.	K. Broughton and C. Rossington (Environment & Economy)
7.	M. Thompson (Environment & Economy)
8.	R. Goodlad (Law & Governance)

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 and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda, reports and schedule, copies of which are attached to the signed Minutes.

54/15 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

<i>Apology</i>	<i>Temporary Appointment</i>
Councillor Anne Purse	Councillor Richard Webber

55/15 MINUTES

(Agenda No. 3)

The minutes of the meeting held on 14 September 2015 were approved and signed.

Minute 51/15 – Erection of a mobile concrete batching plant – Linch Hill, Stanton Harcourt

Responding to Councillor Phillips officers confirmed that as yet no contribution had been received from Hansons with regard to funding improvements for Moreton Lane, Northmoor.

56/15 PETITIONS AND PUBLIC ADDRESS

(Agenda No. 4)

<i>Speakers</i>	<i>Item</i>
Stephen Anderson Myra Peters & Mark Yates	6 – Barford Road Farmhouse, South Newington

57/15 CHAIRMAN'S UPDATES

(Agenda No. 5)

Serving of the review on mineral permissions (ROMP) at Thrupp Lane and Thrupp Farm, Radley

A review letter had been re-issued.

Radley ROMP Prohibition Appeal

Following the appeal against the Radley ROMP Prohibition Order fees of £47,218 awarded against the County Council had now been paid.

58/15 CHANGE OF USE OF AGRICULTURAL BARN TO TOPSOIL STORAGE AND SCREENING FOR TOPSOIL BUSINESS, A NEW LEAN-TO 10 X 30M BARN AND NEW FARM ACCESS FOR BARFORD ROAD FARMHOUSE, BARFORD ROAD, SOUTH NEWINGTON - APPLICATION NO.MW.0080/15

(Agenda No. 6)

The Committee considered (PN6) a planning application to regularise a long term topsoil recycling operation in an existing barn. Apart from the retrospective element there was also a proposed extension to the barn and proposed access to the adjoining residential property.

The Committee also noted:

- Two corrections to the report:
 - paragraph 25, line 1 delete “at current level but would have concerns if the development intensified”;
 - paragraph 61, line 3 – “18” to read “18,000”;
- 2 additional conditions as set out in the addenda sheet.

Mr Anderson considered that technical data with regard to tonnage output and vehicle size and numbers and referred to in the report was flawed insofar that the size of vehicles proposed would require at least 20 – 24 movements per day in order to achieve the output proposed. The recommended 12 movements per day would therefore mean that in trying to meet the proposed output the operation would soon be in breach of any permission granted in the terms proposed today. The design of the bund was misleading along and the site currently operated outside the hours of operation now proposed. Barford Road was not suitable for large vehicles with a potential for conflict with other large vehicles including school buses and he failed to see what had changed since the first application for a certificate of lawful use had been refused. He concluded that if permission was granted then conditions should be strictly applied to control the maximum number of HGVs and agricultural tractors; storage of material west of the bund and a requirement for vehicles to access the site via Iron Hill and not through the village.

He then responded to questions from:

Councillor Mills – school buses normally picked up at 8.30 am.

Councillor Cherry – there had been some small amounts of road patching carried out but large areas where the road surface was breaking up were below standard with further repairs required to serious potholes.

Myra Peters accepted that there had been problems with mud on the road but she pointed out that the road was not solely used by vehicles from the Barford Road operation. Other traffic included a local contracting business less than half a mile away, agricultural traffic, school buses, local shop deliveries to Deddington and local traffic. The lay-by opposite was currently used to access a small pig rearing operation but was also used by parked vehicles including lorries and local drivers. She accepted work was needed to make the operation more acceptable and that included a bund to mitigate against noise and proposals to hard surface the site to reduce mud. However, she emphasised the urgent need to expand the barn, which was currently fully utilised, to keep material dry and increase the efficiency of the site which would help offset concerns expressed regarding working outside the proposed weekend provision.

Mr Yates accepted that vehicle size would mean that annual throughput might not be achieved but the 20,000 tonnes pa represented very much a top limit figure. He confirmed that every effort would be made to make traffic turn left out of the site.

Ms Peters and Mr Yates then responded to questions from:

Councillor Fulljames – prior to diversifying the farm had been a fully operational working farm but now had a limited farming operation which included some sheep and hay crops.

Councillor Johnston – lorries accessing the site would be rigid and not articulated.

Councillor Phillips – the proposal was aimed at increasing storage and not output.

Councillor Reynolds – there was no weighbridge on the site but they confirmed they had access to alternative facilities. There would also be weigh tickets and receipts for material going out, which would be available for inspection. Vehicles would also be encouraged to use the correct route via Iron Down Hill.

Councillor Cherry – wheelwash facilities had been considered along with plans to hard surface the site to help minimise mud.

Councillor Johnston – stones recovered from the screening process were used for road repairs.

Councillor Reynolds referred specifically to a number of issues of concern with the site not least of all its proximity to such a narrow access road but felt, subject to controlling a number of specific issues namely the need to control mud on the road, which appeared to come mainly from this site, and noise the recommendation was the correct one. The site was untidy but with the required controls in place and strict enforcement of conditions could be more acceptable. Therefore subject to the 2 additional conditions as set out in the addenda sheet together with an additional condition that no unsheeted vehicles should leave the site he moved the officer recommendation. Councillor Johnston seconded the motion and it was:

RESOLVED: (unanimously) that subject to a 278 Agreement for the improvements to the road verge opposite the existing site entrance being entered into within three months of the grant of planning permission and the works being carried out within six months of the grant of planning permission that planning permission for application no. MW.0080/15 be approved subject to conditions to be determined by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) but to include the following:

- i) Development to be carried out in accordance with the application;
- ii) No more than 12 HGV movements per day;
- iii) The business to operate between the hours of 07:30 to 17:30 Monday to Friday and 08:00 to 13:00 on Saturday. No operating to take place on Sundays or Bank Holidays;
- iv) Noise condition;
- v) Bund to be constructed prior to the permitted operational development taking place;
- vi) Development to be carried out in accordance with paragraph 5.7 of Phase 1 Habitat Survey;

- vii) No operational works to take place until a planting scheme had been submitted and approved;
- viii) Planting to be carried out in the next planting season;
- ix) The new residential access should not be constructed until a S.278 agreement for the construction of the access had been completed;
- x) The new residential access should be used only for the purpose of access to the adjoining house.
- xi) Details of wheel cleaning measures to be submitted and approved.
- xii) Details of dust suppression measures to be submitted and approved.
- xiii) Throughput of the site must not exceed 20,000 tonnes per annum.
- xiv) The bund should be constructed using only subsoil from the site and processed material from the topsoil screening operation.
- xv) Within three months of the date of the permission details of the planting and ongoing maintenance of the bund should be submitted and approved.
- xvi) No unsheeted vehicles to leave the site.

59/15 UPDATE TO LOCAL LIST OF INFORMATION REQUIREMENTS FOR VALIDATION OF PLANNING AND RELATED APPLICATIONS.

(Agenda No. 7)

A Local List of Information Requirements for the Validation of Planning and Related Applications (the Local List) was required by statute to be updated at least every two years. The current Local List adopted by the Planning & Regulation Committee on 13 January 2014 had been published on the website on 27 January 2014 and was therefore due for updating by January 2016. The list had been reviewed with no significant changes to the drivers for individual items on the list other than minor changes and updates to the supporting text..

RESOLVED: (on a motion by Councillor Phillips, seconded by Councillor Johnston and carried unanimously) that:

- (a) the draft revised Local List of Information Requirements as set out at Annex 1 to the report (PN7) be subject to a five week period of public consultation;
- (b) if after that period and following further consultation with the Chairman and Deputy Chairman of the Planning & Regulation Committee, it was considered that no significant changes were required to the draft revised Local List of Information Requirements then the Deputy Director for Environment & Economy (Strategy and Infrastructure Planning) be authorised to adopt and publish that list;
- (c) if, however, after that period and following further consultation with the Chairman and Deputy Chairman of the Planning & Regulation Committee, it was considered that significant changes were required to the draft revised Local List of Information Requirements, the matter be reported back to the Planning & Regulation Committee for further consideration.

60/15 COMMONS ACT 2006: IN THE MATTER OF AN APPLICATION TO REGISTER HUMPTY HILL, HIGHWORTH ROAD, FARINGDON AS A TOWN OR VILLAGE GREEN

(Agenda No. 8)

The Committee had before it a report (PN8) setting out an application made by Mr Robert Stewart for registration of land at Humpty Hill, Highworth Road, Faringdon in Oxfordshire as a new town or village green under the Commons Act 2006. The Committee had been due to consider the application in the light of a report by an independent Inspector who had considered the matter at a public inquiry following an objection by the landowner.

The County Council was the Commons Registration Authority and the Planning & Regulation Committee had delegated authority to determine such applications.

However, a late submission received from the objectors had raised further legal issues which, on the advice of the Chief Legal Officer and Head of Law & Governance, needed in turn to be referred to the independent Inspector in order to give him an opportunity to respond.

Therefore in the light of that advice the Committee **RESOLVED** (unanimously) to defer consideration of the application to enable the Inspector to consider further points of law raised by the landowner.

..... in the Chair

Date of signing

PN6

For: PLANNING AND REGULATION COMMITTEE – 30 NOVEMBER 2015

By: DEPUTY DIRECTOR FOR ENVIRONMENT & ECONOMY (STRATEGY & INFRASTRUCTURE PLANNING)

Development Proposed:

Erection of a mobile concrete batching plant with associated infrastructure, concrete hardstanding and portable toilet – Amendment to routeing agreement

Division Affected: Eynsham

Contact Officer: Mary Thompson **Tel:** Oxford 815901

Location: Land at Dix Pit adjacent to Workshops, Linch Hill, Stanton Harcourt, Oxford, OX8 1BB

Application No: MW.0053/15 **District Ref:** 15/01531/CC3REG

District Council Area: West Oxfordshire

Applicant: Hanson Quarry Products Ltd

Date Received: 31 March 2015

Consultation Period: 30 April – 21 May 2015

Background

1. Planning & Regulation Committee resolved to grant permission for the erection of a mobile concrete batching plant and associated infrastructure at land within Dix Pit landfill site on 27 July 2015 (item number PN9), as set out in the minutes of the meeting. An amendment to the conditions controlling the source of aggregate to be imported to the site was agreed by Planning & Regulation committee on 14 September 2015 (item number PN6).
2. The resolution to grant permission was subject to a routeing agreement to ensure that HGVs travel via the A415 and the A40, rather than using the B4449 eastwards through Sutton village and the B4044 over Swinford toll bridge. A routeing agreement was completed on 17 September 2015 and the permission was issued on 18 September 2015. Plan 1 is the routeing plan contained within that agreement, showing the route which HGVs associated with the development must use.

Proposed Modification to routeing agreement

3. The applicant has asked to temporarily vary the routeing agreement for certain vehicles only. They have found that concrete mixer trucks delivering concrete to the Westgate Centre redevelopment in Oxford city centre have been caught up in delays on the A40 heading into Oxford due to roadworks on the Cutteslowe and Wolvercote roundabouts. The delay has meant that the concrete has arrived at the Westgate Centre time-expired and therefore cannot be used and has had to be returned to the site.
4. Therefore, the applicant has asked for a variation to the routeing agreement for vehicles delivering concrete to the Westgate redevelopment and returning from the Westgate redevelopment only, until the completion of the roadworks. The proposed alternative route for these vehicles is shown on Plans 2 and 3. Vehicles would travel east along the B4449 towards Eynsham and then along the B4044 until joining the A420 eastwards into Oxford. Plan 2 shows the alternative route from the site and through Sutton and Plan 3 shows the approved and alternative routes in relation to Oxford, including the location of the roadworks and the Westgate redevelopment.
5. The applicant has stated that they would only use the alternative route between 9am and 3pm, in order to avoid peak times at the toll bridge and school run traffic.
6. The planning application stated that there would be an average of 21 vehicle movements per day associated with concrete transport. The

applicant is seeking agreement for concrete vehicles travelling both to and from the Westgate redevelopment to use the alternative route. This is because the vehicles travelling into Oxford would be carrying concrete which must reach the destination within a set timeframe or it is rejected. They have also asked for the returning vehicles to use the alternative route in order to get back to Dix Pit in enough time to fit all the deliveries in the proposed six hour window. 21 vehicles is an average not a maximum and the conditions on the planning consent do not specify a maximum number of vehicles per day.

Consultations

7. Transport Development Control, Stanton Harcourt Parish Council and the local County Councillor Cllr Charles Mathew were informed of the proposed amendment to the routeing and invited to comment.
8. Transport Development Control have confirmed that the roadworks on the roundabouts to the north of Oxford are adding around 20 minutes and up to 40 minutes to journey times on the eastbound A40 between 7am and 2pm. These roadworks are expected to continue until November 2016. Transport Development Control have confirmed that the dimensions and characteristics of the B4449 do not make it entirely unsuitable for use of HGV traffic. The additional average of 10 movements over a six hour day would amount to less than one vehicle per half hour, which given the background traffic would have no appreciable risk to safety or increase in congestion. There is a slightly higher than average accident rate on the B4449 between Sutton and Eynsham due to a cluster of collisions involving HGVs near the bend by Bell Bridge. Therefore, recommend that the dispensation is applied to full loads of concrete only rather than returning empty lorries.
9. Councillor Charles Mathew has commented by telephone and considers that the proposal is absolutely unsatisfactory for a number of reasons:
 - Additives could be added to the concrete to prevent it going hard before it reaches the destination
 - Hanson knew about the conditions on the consent for some time and should have anticipated this, delays on the A40 have been ongoing since before the application was determined
 - The proposed hours for the alternative route (9am-3pm) are not the worst times for delays on the A40
 - This would set a precedent for other companies with routeing agreements in the area
 - Hanson has other sites and made a commercial decision to locate the batching plant at this one in knowledge of the routeing requirements
 - The B4449 is suffering additional traffic due to the delays on A40

- Concern over the use of Swinford bridge, which can be dangerous and lorries passing each other on the narrow bridge can cause delays
- He has received 40 emails from residents, all of which consider this to be unreasonable

Comments of the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning)

10. Oxfordshire Minerals and Waste Local Plan 1996 policy SH2 states that planning permission will not be granted for minerals or waste development which would lead to a significant increase in traffic in Sutton, or prolongation of significant traffic intrusion.
11. The proposed use of the alternative route for lorries delivering concrete to the Westgate would be in the interests of sustainability as it would address the current problem of concrete loads being returned to the site, which results in unnecessary traffic on the highway network and wastage. The justification for also allowing returning empty lorries to use the route is less clear.
12. Transport Development Control have not objected, however they have recommended that the dispensation only applies to full concrete lorries, to mitigate the risk of concrete being rejected at the Westgate Site, not also the empty lorries returning to the site.
13. The use of the alternative route for Oxford-bound loaded concrete lorries only would result in an average of 1 additional HGV movement every half hour on the B4449, based on an average of 10 movements per day within the six hour window proposed. The use of the route for both outbound and returning lorries (an average of 21 per day) would result in almost one movement every quarter of an hour, which would be more noticeable. In the absence of an overriding reason justifying the use of this route for empty vehicles, it is considered that these movements would lead to a more significant increase in vehicles travelling through Sutton which is not justified and not in accordance with OMWLP policy SH2.
14. The applicant has explained that the use of the alternative route for vehicles carrying concrete to the Westgate redevelopment is necessary because loads are not arriving within the necessary time period using the approved route. Transport Development Control have confirmed roadworks are causing delays on this route. Therefore, given the limited number of vehicle movements and the restricted hours that vehicles would be routed through Sutton, also due to the circumstances beyond the control of the applicant in relation to roadworks on the outskirts of Oxford, it is considered that the increase in HGV traffic through Sutton resulting

from the use of the amended route for vehicles carrying concrete only, would be justified.

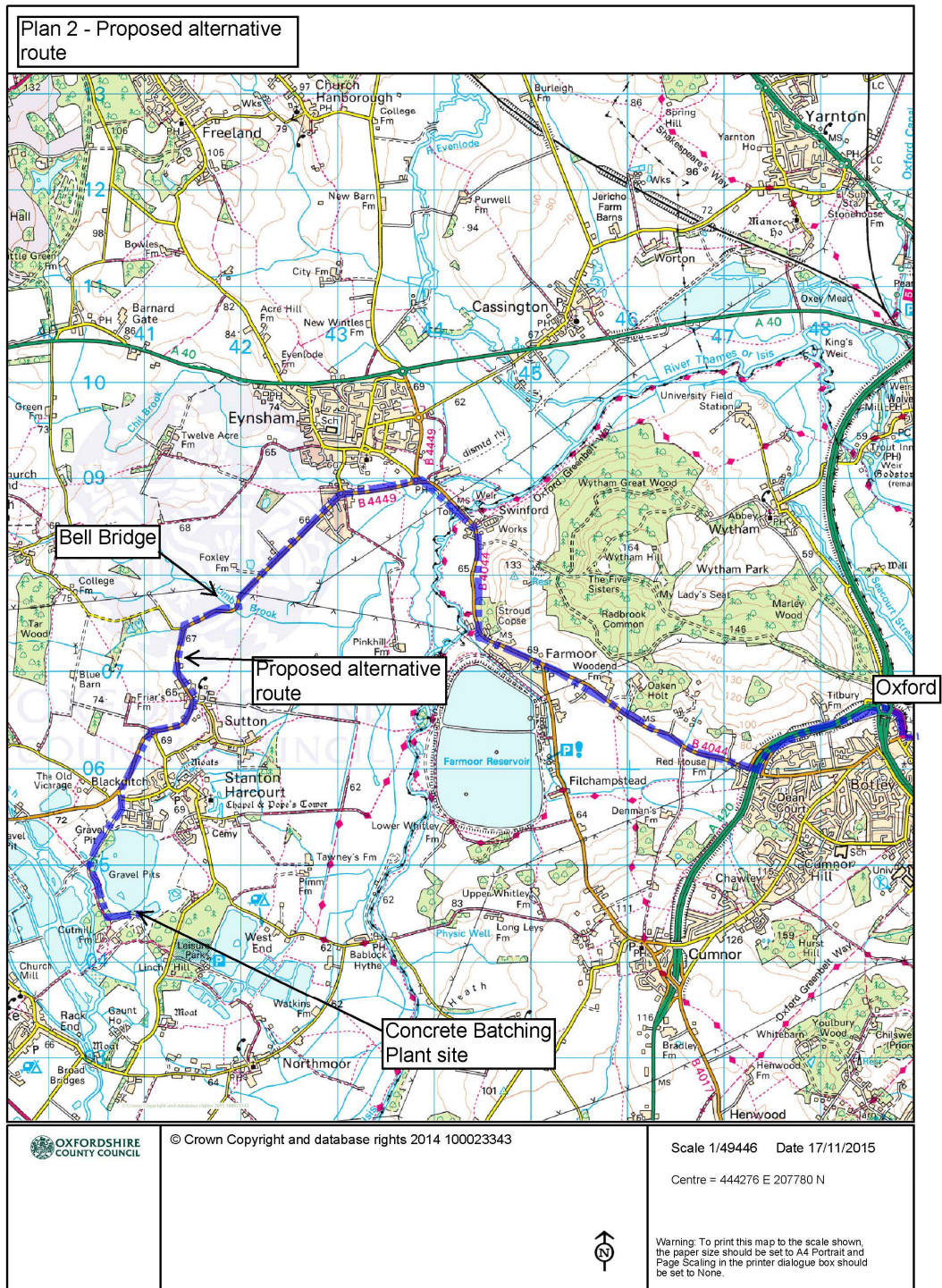
15. It has been suggested that the problem could be addressed through the use of additives to the concrete to extend the length of time it can be transported for. The applicant has advised that the Westgate redevelopment does not accept concrete containing any additives.
16. Transport Development Control have identified a slightly higher than average accident rate on the B4449 between Eynsham and Sutton due to a cluster of incidents near Bell Bridge bend. This is further reason for not allowing more vehicles than necessary to use the alternative route and limiting use of the route to HGVs carrying concrete only.
17. If agreed, this change to the approved route could be achieved through a deed of variation relating to the existing routeing agreement.
18. **RECOMMENDATION**
19. **It is RECOMMENDED that the County Council enter into a deed of variation to the existing routeing agreement for application MW.0053/15 to allow off-peak HGV movements on the alternative route to Oxford for concrete mixer trucks travelling to the Westgate redevelopment in central Oxford only, until the completion of roadworks on the Cutteslowe and Wolvercote roundabouts.**

BEV HINDLE

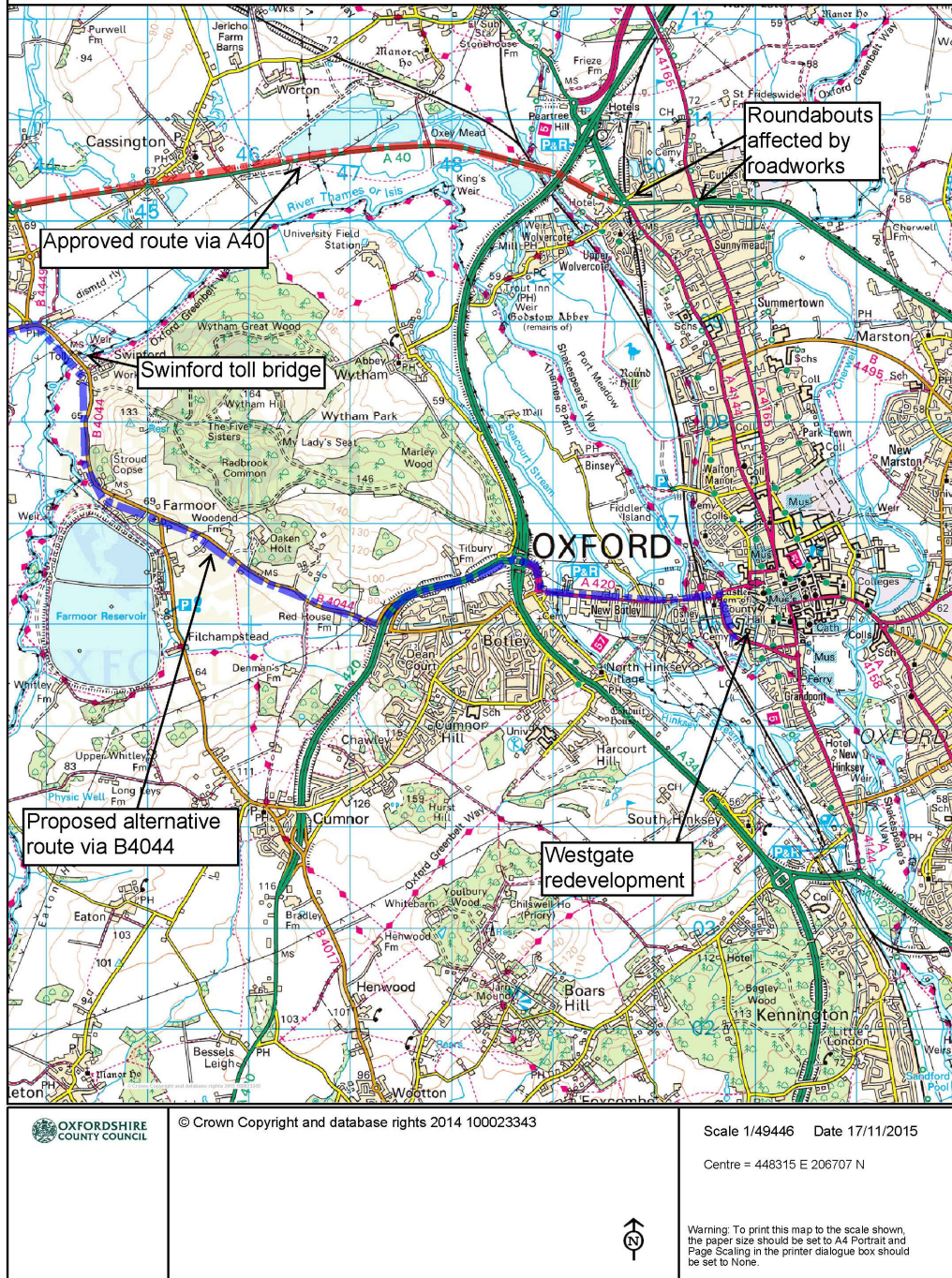
Deputy Director for Environment & Economy (Strategy & Infrastructure Planning)

November 2015





Plan 3 - Dix Pit concrete batching plant amended routing



For: PLANNING AND REGULATION COMMITTEE – 30 NOVEMBER 2015

By: DEPUTY DIRECTOR for ENVIRONMENT & ECONOMY (STRATEGY & INFRASTRUCTURE PLANNING)

Development Proposed:

To continue the development of 'To crush, screen, blend and stock reject building blocks, furnace bottom ash and reject materials from concrete making to make material for block making' without complying with condition 5 to allow operations to take place 52 weeks a year

Division Affected: Sutton Courtenay and Marcham
Contact Officer: Mary Thompson **Tel:** 01865 815901
Location: Hanson's Sutton Courtenay Site
Application No: MW.0135/15 P15/V2432/CM
Applicant: Hanson Quarry Products Europe Limited
District Council Area: Vale of White Horse
Date Received: 1 October 2015
Consultation Period: 15 October – 5 November 2015

Contents:

- Part 1 – Facts and Background
- Part 2 – Other Viewpoints
- Part 3 – Relevant Planning Documents
- Part 4 – Analysis and Conclusions

Recommendation

The report recommends that the application (MW.0135/15) be approved.

• Part 1 – Facts and Background

Location (see plan 1)

1. The site lies within the Sutton Courtenay minerals and waste complex between the villages of Sutton Courtenay (900 metres to the west) and Appleford (1 kilometre to the east). The B4016 Appleford road is 700 metres to the north and Didcot Power Station 1 kilometre to the south. Didcot lies 1.6 kilometres (1 mile) to the south.

Site and Setting

2. The site is 2.5 hectares in extent and forms part of an aggregate stocking area associated with the sand and gravel processing plant currently processing gravel from the Bridge Farm workings north of the B4016. The processing plant and a concrete batching plant lie immediately to the north.
3. To the south is a green waste composting site, waste transfer station (WTS) and materials recovery facility (MRF) operated by FCC waste management company. Abutting the site to the west is a ditch leading to the River Thames. There is a tree screen between the ditch and the stocking area. To the east there are old silt ponds.

Background and History of the Site

4. Sand and gravel extraction has taken place at the Sutton Courtenay complex since the 1930s and landfilling since the 1970s. In the late 1990s the site ownership was split between two firms, Hanson and FCC.
5. Hansons have completed extraction in the main complex but were granted planning permission for sand and gravel extraction (APF/SUT/1815-CM) in 2008 for extraction at Bridge Farm, north of the B4016, until the 30th September 2012 and this was subsequently extended (P12/V1729/CM) until 30th September 2018.
6. The landfill site has permission until 2030. In 2015 FCC were granted an amended permission (P15/V0530/CM) with changes to the conditions to allow the site to be restored using less waste. The application site is within the landfill permission but no landfilling is to take place within this area.
7. Planning permission for the crushing of reject blocks on this part of the wider site was granted in 2013 (MW.0129/11, district reference 11/02440/CM).

Details of the Development

8. The site has permission to import reject thermalite blocks from the Company's block making site at Coleshill at Birmingham (600 tonnes a

week), Thatcham (500 tonnes a week) and nearby Milton (25 tonnes a week). Blocks are stocked, crushed, screened and blended with reject materials from concrete making on the adjacent area (50 tonnes a week). The total importation therefore equates to about 5100 tonnes per calendar month. Until the closure of Didcot A power station, total import included 400 tonnes per week of Furnace Bottom Ash (FBA) and so equated to 6825 tonnes per calendar month, although the FBA was transported on internal roads and not the public highway. The resulting material is sent to the Milton Blockworks for use in the production of blocks.

9. When the application was originally submitted and approved, it was proposed to undertake crushing and screening operations for only 6 weeks in each year. However, the applicant has been undertaking these operations in excess of this and therefore the current application has been made to regularise this. The applicant states that the 6 week period referred to in the application must have been an error as it would not have been possible to crush the permitted tonnages in such a short time period. The applicant states that the original application should have read 6 *months* per year. They have now applied for condition 5 to be completely removed, to allow operations to take place up to 52 weeks each year.
10. The conditions on the existing consent do not include a limit on the tonnages of material imported to the site, although the application stated that this would be 1125 tonnes per week by road, plus 400 tonnes per week of furnace bottom ash (FBA) from the adjacent Didcot Power Station and 50 tonnes per week of reject concrete from within the site, both delivered by internal roads. Imports of FBA have ceased following the closure of Didcot A Power Station and it is now proposed to increase the import from Milton from 25 to 50 tonnes per week. This would not cause any increase in vehicle movements because vehicles would be travelling to Milton to deliver the material produced in the plant in any case and material would be backhauled. It would result in an average import to the plant (including reject concrete from elsewhere in the Sutton Courtenay site) of 5200 tonnes per calendar month.
11. The proposed development is for a temporary period to end on 31st December 2030, in line with the timescales for the restoration of the wider landfill site.
12. No change is proposed to the access route, which is onto the Didcot Perimeter road (A4130). This is secured by a condition on the existing consent which would be carried forward onto any new consent granted.

• Part 2 – Other Viewpoints

Representations

13. One letter of representation was received. This states that the application is an attempt to greatly increase the activities at the site with

a considerable cost to the local communities and of no benefit to those communities.

Consultation Responses

14. Sutton Courtenay Parish Council – Object. Information has not been provided on the additional throughout which would result and therefore more information is required on vehicle movements and the origins of the material.
15. Appleford Parish Council – Object to the proposals on the basis that the removal of the constraints in the condition would subject the Parish to an increase in nuisance from traffic, including not merely traffic using local roads, but also increased environmental impacts of noise, dust and fumes, which would also arise from the additional use of the site.
16. Didcot Parish Council – No strong views
17. Vale of White Horse District Council Planning – No objection.
18. Environment Agency – No comment.
19. Thames Water – No comments.
20. Natural England –no comment to make.
21. OCC Transport Development Control – No objection. There is little information about trip generation; however a condition limiting import to no more than 5200 tonnes per calendar month to ensure that there is no intensification of the use of the site would be appropriate. This is a reasonable variation and recommend such a condition is imposed along with the existing conditions and obligations granted under MW.0129/11, condition 5 excepted.
22. OCC Biodiversity – No objections.
23. OCC Drainage – No response received at the time of writing report.

Part 3 – Relevant Planning Documents

Relevant Planning Policies – (See policy annex attached to this Agenda)

24. Development should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
25. The relevant development plan documents are:
 - The Vale of White Horse Local Plan (VLP)2011
 - The Oxfordshire Minerals and Waste Local Plan (OMWLP)1996

26. The Draft Oxfordshire Minerals and Waste Local Plan Core Strategy (OMWCS) was subject to consultation in March 2014. This document is now at a more advanced stage of preparation and further weight can now be given to the policies it contains. At the meeting of the full County Council on 24th March 2015, the OMWCS was approved for publication and submission to the Secretary of State for independent examination following consideration of any representations received. It is therefore appropriate to consider draft policies which are relevant to this development.
27. The Vale of White Horse District Council's Local Plan 2031 Part One was submitted to the Secretary of State for independent examination in March 2015. Therefore, as with the OMWCS the plan is at an advanced stage and the draft policies can be applied as relevant. However, it does not contain a general policy on amenity and therefore there are no relevant policies.

Relevant Policies

28. The relevant policies are:

- Vale of White Horse Local Plan (VLP) 2011
DC9 – Neighbouring amenity
- Oxfordshire Minerals & Waste Local Plan (OMWLP) 1996
PE18 – Imposition of conditions to protect amenity
SC3 – Routeing in Sutton Courtenay area
- Draft Oxfordshire Minerals and Waste Core Strategy (OMWCS)
C5- General environmental and amenity protection

Comments of the Deputy Director for Strategy and Infrastructure Planning

29. The issue which needs to be considered in determining this application is the proposed amendment to the number of weeks per year the operations would take place.

Amendment to Crushing Timings

30. OMWLP policy PE18 refers to the Code of Practice which sets out guidance on hours of working, noise, dust and transport. OMWCS policy C5 states that proposals for minerals and waste development shall demonstrate that there would be no adverse impact on the local environment, human health or residential amenity, including from noise, dust, traffic and air quality.
31. VLP policy DC9 states that development will not be permitted if it would unacceptably harm the amenities of neighbouring properties and the wider

environment in terms of a number of factors including noise or vibration, dust, pollution or external lighting.

32. The only change proposed to the existing development is the number of weeks per calendar year during which it would be permitted to operate the crusher. No change is proposed to the size of the site, the operations that take place within it, hours of operation and there would be no increase in the amount of material which is imported to the site and crushed. The application has been made because it is not possible to crush the amount of material which the permission allows to be imported, within a six week period. The applicant believes that the original application contained an error in referring to a six week crushing period per year and it should have been six months.
33. The site is remote from residential properties and located within a wider site which is already subject to ongoing waste disposal, waste recycling and mineral processing uses. There have been no complaints from local residents about the impact of the development since it was permitted even though it has been operating in breach of the requirements of condition 5. There are a number of conditions on the existing conditions, which would all be carried forward onto a new consent. Many of these cover amenity issues including a restriction on operating hours, location of plant, height of stockpiles and retention of vegetation, noise limits and white noise on reversing vehicles and dust suppression. The consent is temporary until 2030, in line with other development in the wider site.
34. Due to the distance between the development and the nearest properties, it is considered that there would be no significant impact on amenity as a result of increasing the number of weeks that crushing is permitted to take place, particularly given the controls on noise, dust, visual impact and hours of operation secured by other conditions.
35. The applicant has requested that condition 5 limiting the number of weeks during which crushing operations can take place is removed altogether, rather than amended to correct the alleged mistake in the original application and refer to a 6 month (26 week) crushing period, rather than 6 weeks. This is to remove the administrative burden of keeping and producing records to show on which days crushing operations took place.
36. I consider that the removal of condition 5 is acceptable. It was originally applied in order to ensure that the development was carried out as set out in the application. However, the potential for amenity impacts are very limited due to the site location and the other conditions and so the condition is not considered to be necessary to protect amenity. In the absence of a condition limiting the activity on the site through a restriction on crushing activity, it is recommended that an additional condition is put on the consent to limit the tonnages of imported material to what is proposed. This would ensure that the removal of the condition limiting crushing activity did not allow the development to intensify such that there could be an adverse impact on the highway network.

37. Therefore, subject to a condition to limit the amount of material imported to the site, I consider that the removal of condition 5 limiting crushing activities to 6 weeks a year would not have an adverse impact on local amenity and the proposal is in accordance with OMWLP policy PE18 and the provisions of the Code of Conduct, and also with OMWCS policy C5 and VLP policy DC9.
38. OMWLP policy SC3 requires that developments in this area are subject to a routeing agreement so that HGVs do not use routes through local villages. The existing permission is not subject to a routeing agreement but rather includes a condition requiring that HGVs only access the site via the access onto the Didcot Perimeter Road (A4130) and this condition would be carried forward onto any new consent. As there are other conditions ensuring that material is only brought from Coleshill, Thatcham and Milton and only exported to Milton, the condition for the use of the southern access only would be sufficient to ensure that local roads are not used in association with this development. Subject to this, the development is in accordance with the principles of OMWLP policy SC3.

Conclusions

39. The proposal to remove the condition restricting crushing to six weeks per year is considered to be acceptable. Amenity would be adequately protected by other conditions on the consent, in accordance with OMWLP policy PE18, OMWCS policy C5 and VLP policy DC9.
40. A further condition to require that the amount of material imported to the site remains as proposed would ensure that there would be no unacceptable increase in activity at the site or increase in vehicle movements as a result of the relaxation on crushing duration.
41. The development would be subject to the existing condition covering routeing and access, in accordance with OMWLP policy SH3.

RECOMMENDATION

- 42. It is RECOMMENDED that subject to the same conditions as permission MW.0129/11 (the original planning permission) amended as set out in Annex 1 and as may be otherwise necessary to reflect the approval of schemes previously required pursuant to conditions, that planning permission for application MW.0135/15 be granted.**

BEV HINDLE

Deputy Director for Environment & Economy (Strategy & Infrastructure Planning)

November2015

Annex 1

Amendments to Conditions:

Conditions to remain as on existing consent (reference MW.0129/11 District Ref: 11/02440/CM) except for the deletion of condition 5:

From the date of this permission the operator shall keep a record of the dates that block crushing takes place and that record shall be kept on the land and made available to the Waste Planning Authority at any time upon request. Block crushing shall not take place except for up to 6 weeks in any calendar year.

And the addition of a new condition as follows:

No more than 5200 tonnes of material shall be imported to the site in any calendar month. Written records of all imports to the site shall be kept and made available to the Waste Planning Authority within 14 days of a request being made.

European Protected Species

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2010 which identifies 4 main offences for development affecting European Protected Species (EPS).

1. Deliberate capture or killing or injuring of an EPS
2. Deliberate taking or destroying of EPS eggs
3. Deliberate disturbance of an EPS including in particular any disturbance which is likely
 - a) to impair their ability –
 - i) to survive, to breed or reproduce, or to rear or nurture their young, or
 - ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - b) to affect significantly the local distribution or abundance of the species to which they belong.

4. Damage or destruction of an EPS breeding site or resting place.

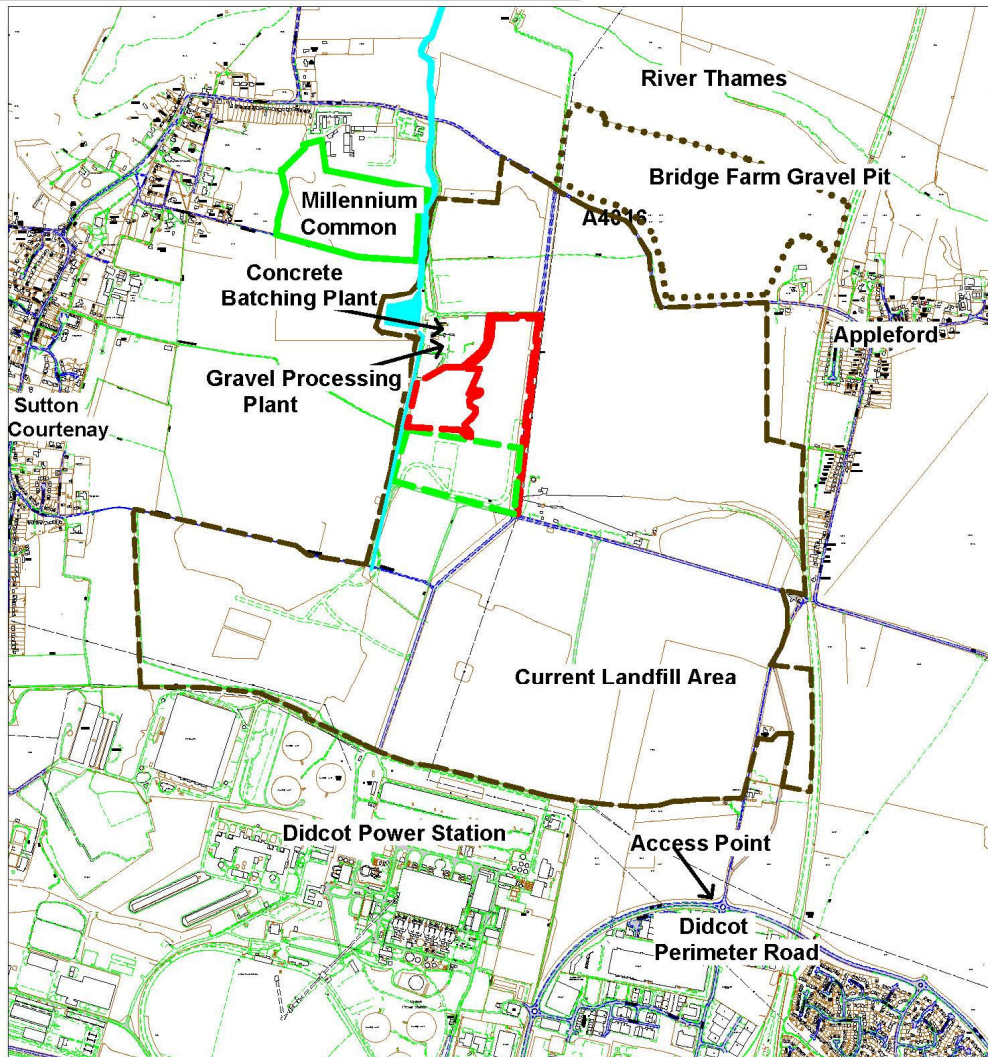
Records indicate that a European Protected Species is likely to be present near, but not on, the site.

Compliance with National Planning Policy Framework

In accordance with paragraphs 186 and 187 of the NPPF Oxfordshire County Council take a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development. We work with applicants in a positive and proactive manner by;

- offering a pre-application advice service, and
- updating applicants and agents of any issues that may arise in the processing of their application and where possible suggesting solutions.

Location Plan - Block Crushing - Sutton Courtenay



Plan is for guidance only, accurate application plans can be found on the e-planning website using reference MW.0135/15

- The Site
- Millennium Common
- Landfill Permission

- Bridge Farm Gravel Pit Permission
- Composting Site
- Ditch to River Thames

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For: PLANNING AND REGULATION COMMITTEE – 30 NOVEMBER 2015

**By: DEPUTY DIRECTOR FOR ENVIRONMENT & ECONOMY
(STRATEGY & INFRASTRUCTURE PLANNING)**

Development Proposed:

Proposed northern and eastern extension to Duns Tew Quarry (East) to extract approximately 415 000 tonnes of saleable sand and the continuation of importation of aggregate for blending and merchanting/onward sale for 16/17 years with restoration to a mix of woodland, geo-diversity benefits and nature conservation.

Division Affected:	Deddington Woodstock	
Contact Officer:	Mary Thompson	Tel: 01865 815901
Location:	Duns Tew Quarry (East), Horsehay Farm, Duns Tew Road, Middle Barton	
Application No:	MW.0036/14	
District refs:	14/0526/P/CM (West Oxfordshire) 14/00625/CM (Cherwell)	
District Council Area:	West Oxfordshire Cherwell	
Applicant:	Smiths (Bletchington) Ltd.	
Application Received:	4 April 2014	
Consultation Periods:	17 April – 14 May 2014 15 October – 5 November 2015	

Contents

- Part 1- Facts and Background
- Part 2 – Other Viewpoints
- Part 3 – Relevant Planning Documents
- Part 4 – Assessment and Conclusions

Recommendation: The report recommends that the application be approved subject to conditions and a legal agreement.

• **Part 1- Facts and Background**

Location (see plan 1)

1. Duns Tew Quarry is located in the north of the county, approximately 10 miles (16 kilometres) south of Banbury.
2. The application site falls in both Cherwell and West Oxfordshire District Council areas. The site access and southern part of the quarry fall within West Oxfordshire District and the northern part of the quarry falls within Cherwell District.
3. The majority of the application area falls within Cherwell District, including the entirety of the new land proposed for extraction. The area within West Oxfordshire is part of the existing active quarry and includes the access road, office and weighbridge, parts of the building supplies yard and storage and sales areas and areas of proposed and existing tree planting.

Site and Setting (see Plan 2)

4. There are two separate areas of Duns Tew Quarry, on either side of the road. This application is to extend the quarry on the eastern side of the road.
5. Extraction of the permitted mineral reserve from the eastern quarry was completed in 2007 and extraction operations moved to the western quarry. The eastern quarry remained in use for processing and ancillary activities. The new extraction area would be to the north and east of the existing eastern quarry.
6. The centre of the village of Duns Tew lies 700 metres¹ to the north of the site boundary. Middle Barton, Westcott Barton and Bartongate villages (The Bartons) lie approximately 2.5 km (1.5 miles) to the south.
7. The application site area is 14.6 hectares, containing an extraction area of 6.1 hectares. In addition to the extraction area the application covers the existing building supplies and storage and sales area, the access road, weighbridge and offices, areas for woodland planting, the existing quarry and rifle range.
8. The site is bounded to the west by Duns Tew Road. There is an access from this road into the existing eastern quarry in the south west corner of the site. This access would continue to be used for the extension area.
9. Arable agricultural land lies to the north, east and south of the site. 40 metres to the east of the eastern boundary is an area of agricultural grassland.

¹ All distances are approximate.

10. Part of the site is an existing quarry containing an open sand floor, mounds of overburden and mineral and the area for aggregate storage, mixing and sales. The remainder of the site is agricultural land. 51% of the agricultural land is classed as 'best and most versatile' agricultural land (grade 3a) (4.9 hectares) The site has a slight rise from south to north. The extension area comprises two fields, currently in arable use. They are bounded by mature hedgerows.
11. The closest properties are identified on Plan 2. These include Horsehay Farm (on the other side of the road 100 metres south of the site entrance) and Blue Barn Farm (190 metres to the east of the extraction area). Four Winds Farm and Tewley Barn lie close to Blue Barn Farm but slightly further from the application site.
12. The quarry is a geological SSSI (Horsehay Quarries) and this designation covers the southern part of the application area. Middle Barton Fen SSSI lies approximately 1 kilometre to the south west of the site. The western quarry, on the other side of the Duns Tew Road to the application site, is a Local Wildlife Site.
13. Duns Tew village dates back to the 9th century and contains a 12th century church and 17th century manor house. Most of the village is a designated conservation area. There is also a conservation area covering the Bartons.
14. The application area is in Flood Zone 1 and therefore is not at risk of flooding.
15. The development does not affect any existing public rights of way. However, it is proposed to provide public access to the quarry and SSSI as part of the restoration scheme, for the duration of the long term management period.

Planning Background

16. Soft sand has been extracted from Duns Tew Quarry since the 1950s.
17. Extraction of the permitted mineral reserve from the eastern quarry was completed in 2007 and extraction operations moved to the western quarry where sand is worked on an annual campaign basis. The west quarry is a ROMP site (permission B302/54 granted 1955) and extraction takes place under a set of new conditions granted in 2008 (07/00423/CM). This allows until December 2015 for the extraction of mineral, however after the campaign dig in summer 2015 the final phase remains unworked. The eastern quarry remains in use for processing and ancillary activities (under permission MW.0174/09) and has permission until 2018 for a building supplies compound and the storage and processing of indigenous sand and imported aggregate, (under

permission reference 09/01105/CM (Cherwell reference)/ 09/0996/P/CM (West Oxfordshire reference)). The haul road between the east and west quarries has a separate permission (07/00435/CM), permitting its retention until September 2016. The rifle range was granted permission in 1977 (W189/77U) and 1987 (W1682/86U).

Details of the Development

Mineral Extraction

18. The proposal is to remove approximately 415 000 tonnes of soft sand and to continue existing import of aggregate for blending and sale. Permission is sought for a 17 year period with average annual soft sand sales of 25 000 tonnes. The maximum depth of working would be 9 metres below ground level. Working in the extension area would commence after remaining reserves in the western quarry had been worked.
19. It is proposed to work the site on a campaign basis whereby a single excavator and two dump trucks would remove and transport sand over a two month period per year. The two month period would take place in the summer months and within this there would be either one or two campaign digs. Plant and equipment would be brought onto the site for a short period to extract enough sand to meet demand for the rest of the year.
20. Overburden would be stripped and then sand would be removed using a 360 degree hydraulic excavator. It would then be transported to the stocking area by dump truck. Sand would then be taken from the surge pile, processed and stockpiled.
21. Sand would be extracted to the north and east on two faces. The direction of working would be predominantly northerly for the first 8 years and then easterly. In areas where the sand is deep it would be excavated in two benches for safe working. The mineral deposit is dry and therefore no dewatering would be required.
22. It is proposed to plant a 3.9 hectare area of woodland to the east of the extraction area prior to extraction.
23. Mineral working would involve the removal of the currently exposed faces which comprise the geological SSSI. However, new faces would be exposed.
24. Duns Tew soft sand is principally used as a limestone mortar for brick and block masonry. It has a distinctive colour and is used in local building and restoration works.

Restoration and Aftercare

25. The site would be progressively restored as working takes place. The restoration would include an area of quarry floor left to regenerate naturally and to be managed for biodiversity. There would be provision for low level grazing and an area of woodland plantation. It would incorporate benefits for geodiversity through the retention of sand faces. The rifle range would remain and be made more secure and the buildings supply yard would be utilised as a site management yard. The applicant has agreed to a 20 years long term management period following the 5 years statutory aftercare period.

Minerals Processing and other Associated Development

26. The sand extracted from the site would be processed at the site in the base of the quarry using a screen and also a mobile crusher brought onto the site as needed, as per current operations. The sand surge pile would also sit on the quarry floor.
27. The site currently contains an area used for the storage of building supplies and an area for merchandising, associated with the processing activities connected to the extraction of sand from the western quarry. It is proposed to continue those activities should permission for this extension be granted and sand extraction continue.
28. It is proposed to sell approximately 25 000 tonnes per year of sand from the quarry and 25 000 tonnes per year of materials imported to the site for onward sale.

Traffic and Access

29. There would be no increase in traffic over the existing levels generated by current quarrying and related activity at the site. The development would give rise to an average of 48 HGV movements per day. It is estimated that 12 of these would use the Middle Barton Road.
30. Lorries would be routed in accordance with the existing routing agreement for the site. This requires HGVs to access the A4260 by turning right out of the site and then right again. This junction onto the A4260 has access to the northbound carriageway only. Therefore there is also a permitted route for HGVs that need to enter or leave from the southbound carriageway. This involves turning left out of the site then left again on the B4030 and onwards to the A4260.
31. The existing site access into the eastern quarry onto Duns Tew Road would be used. At present the western quarry is accessed off the Duns Tew Road further to the north and there is a crossing point and internal haul road for lorries transporting material from the western quarry into the eastern quarry for processing. This crossing point and haul road

would be closed and restored following the completion of extraction in the western quarry.

Hours of Operation

32. Proposed working hours are 07.00-18.00 Monday to Friday and 07.00-13.00 on Saturdays with no working on Sundays or Bank Holidays.

Environmental Impact Assessment

33. The application is supported by an Environmental Impact Assessment (EIA) and an Environmental Statement (ES) was submitted along with the application. This covers the key environmental impacts of the proposal. Details can be found in Annex 4.
34. Following the first consultation period, further information was requested in respect of the EIA. This was provided in October 2015. The additional information included additional work on biodiversity, including a Great Crested Newt survey. The applicant also proposed a scheme of passing places and carriageway improvements and an addendum on air quality. The additional information also responded to points raised about the extent of the extraction area.

Legal Agreements

35. The applicant has proposed a Section 106 legal agreement to secure advance woodland planting, long term management for biodiversity and for the geological faces, public access to the nature conservation area and SSSI. Details of heads of terms are set out in Annex 2.
36. The applicant has confirmed that they are willing to enter into a new routing agreement securing the same route as used for the existing operations.

Part 2 – Other Viewpoints

37. There were two consultation periods, one on the application and Environmental Statement as submitted and a further period of consultation on additional information, including further environmental information, which was subsequently provided by the applicant.
38. The full text of the consultation responses can be seen on the eplanning website. They are also summarised in Annex 5 to this report.
39. There have been no objections from consultees.

Third Party Representations

40. A total of three third party representations were received during the first consultation period in 2014. These are summarised at Annex 1 with copies of the full letters available in the Members' Resource Centre.
41. The main concerns raised by third party representations are traffic on the narrow local roads, damage to those roads, dust, air quality and impact on ecology. Further information was requested from the applicant on these topics.
42. Three third party representations were also received to the second consultation, on the additional information. These were from the same residents who made the three representations on the original consultation. Details of these are also provided in Annex 1.
43. Comments were received from the County Councillor for Deddington Cllr Arash Fatemian in November 2015. This states that it is disappointing that the further information is not more constructive. The Great Crested Newt issue is distracting from the wider protection of wildlife in the area and also concerns about dust and wind. The greatest concerns are about highways. Given that the merchant material has no upper limit there could be 25 000 lorry loads per year. An upper limit should be imposed. Roads in the area are narrow, have limited passing places and are in poor condition. There should be a weight limit on truck sizes.
44. A representation was received from Cllr Mike Kerford-Byrnes (Cherwell District Council Councillor, Astons & Heyfords) (May 2014):

"The case for continued extraction is strong and local concerns seem to relate to the way in which the development is carried out, rather than its principle. The two major concerns are the impact of dust generated by the development and the impact on the rural road network.

Regarding dust, if the dog leg on the north eastern face of the workings was straightened this would move the development and impacts further from residential properties. The footprint could be revised to ensure the same amount of sand. The campaign digs should take place during the times in the year when wind speeds are lowest and extraction and bund construction should cease if wind speed levels exceed a cut-off point (suggest 6 metres per second for extraction and less for bund formation).

Local roads are narrow and weak. There are now fewer journeys related to agriculture, but with heavier vehicles. A further 17 years of use will further damage the road. OCC Highways should be involved in discussions as they have ultimate responsibility for the road network. There should be a discussion regarding the provision of passing places and the reinforcement of verges. A Section 106 legal agreement should be used if necessary."

Part 3 – Relevant Planning Documents

Relevant planning documents and legislation (see Policy Annex to the committee papers)

45. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
46. The Development Plan for this area comprises:
 - Oxfordshire Minerals and Waste Local Plan (saved policies) (OMWLP).
 - The West Oxfordshire Local Plan 2011 (WOLP) (saved policies).
 - Cherwell Local Plan 1996 (retained policies set out in Appendix 7 to the Cherwell Local Plan 2011-2031 Part 1)(CLP 1996).
 - Cherwell Local Plan 2011-2031 Part 1.
47. Other relevant plans are:
 - Draft Oxfordshire Minerals and Waste Local Plan (OMWCS).
 - Draft West Oxfordshire Local Plan (DWOLP).
48. The Draft Oxfordshire Minerals and Waste Local Plan: Core Strategy (OMWCS) has been out to consultation. This document is now at a more advanced stage of preparation and as such further weight can be given to the policies that it contains. At the meeting of the full County Council on 24th March 2015, the OMWCS was approved for publication and submission to the Secretary of State for independent examination following consideration of any representations received. Therefore, it is appropriate to consider draft policies which are relevant to the development.
49. The entirety of the new area proposed for extraction falls within Cherwell District and so policies from those plans are most relevant to the development. However, the access road, office and weighbridge and parts of the storage and sales area are in West Oxfordshire District (WODC) and so policies from plans covering that area are also relevant with regard to that part of the proposals.
50. West Oxfordshire District Council (WODC) is preparing a new Local Plan to guide development until 2031 (DWOLP). This was submitted in July 2015 and independent examination is scheduled to take place during November 2015 and February 2016. As this draft plan has been approved for submission and examination by WODC, it is appropriate to consider the draft policies.
51. The Government's National Planning Policy Framework (NPPF) was published in March 2012. This is a material consideration in taking planning decisions. In March 2014 the National Planning Policy Guidance (NPPG) was published.

Relevant Policies

The full wording of all relevant policies is available in the policy annex. They are summarised below.

Development Plan Policies

- The saved policies of the OMWLP:
 - SD1 – Landbanks for soft sand which accord with current government advice.
 - PE2 – Permission for mineral extraction outside areas identified will not be permitted unless demand cannot be met from those identified areas.
 - PE3 – Appropriate buffer zones to be safeguarded to protect against unacceptable losses of residential or natural amenity.
 - PE4 – Proposals for mineral extraction will not be permitted if they would have a harmful effect on groundwater.
 - PE8 - Archaeological evaluation and mitigation.
 - PE11 – The rights of way network should be maintained and improvements encouraged.
 - PE12 – Public access to restored mineral sites
 - PE13 – Mineral sites should be restored appropriately and within a reasonable timeframe.
 - PE14 – Sites of nature conservation importance should not be damaged.
 - PE18 – Use of planning conditions and planning obligations to regulate and control development. Code of Practice.
 - PB1- Design and siting of mineral processing plants to minimise environmental disturbance.
 - PB2 – Removal of processing plant
- The retained policies of CLP 1996
 - TR7 – Development attracting traffic on minor roads
- The saved policies of the WOLP 2011:
 - Policy BE19 - Noise
 - Policy NE1 – Development in the Countryside
 - Policy NE3 - Local Landscape Character
 - Policy NE7 - The Water Environment
 - Policy NE13 - Biodiversity Conservation
 - Policy NE14 - Sites of Nature Conservation or Geological Importance
 - Policy NE15 - Protected Species
 - Policy T1 – Traffic Generation
 - Policy TLC8 - Public Rights of Way
- Cherwell Local Plan 2011-2031(CLP 2031)
 - ESD10 – Protection and Enhancement of Biodiversity
 - ESD13 – Local Landscape Protection and Enhancement

Other Policies

Oxfordshire Minerals and Waste Local Plan: Core Strategy Proposed Submission Draft August 2015 (OMWCS)

- Policy M2 – Provision for working aggregate minerals
- Policy M3 – Locations for working aggregate minerals
- Policy M4 – Sites for working of aggregate minerals
- Policy M5 - Working of aggregate minerals
- Policy M10 – Restoration of mineral workings
- Policy C1 – Sustainable development
- Policy C2 – Climate change
- Policy C4 – Water environment
- Policy C5 – General environmental and amenity protection
- Policy C6 – Agricultural land and soils
- Policy C7 – Biodiversity and geodiversity
- Policy C8 – Landscape
- Policy C9 – Historic environment and archaeology
- Policy C10 – Transport

The Draft West Oxfordshire Local Plan: (DWOLP)

Policy EH1 – Landscape Character

Policy EH2 – Biodiversity

- NPPF – Sections including on facilitating the sustainable use of minerals, meeting the challenge of climate change, flooding and coastal change, conserving and enhancing the natural environment.

- NPPG

Part 4 – Assessment and Conclusions

Comments of the Deputy Director for Strategy and Infrastructure Planning

52. The key planning issues are: ;

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| ii) | | T |
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| iii) | | P |
| | otential amenity effects. | |

Other important planning issues to consider include:

- iv) Landscape and Visual Impact;
- v) Soils;
- vi) Restoration;
- vii) Geology;

- viii) Biodiversity;
- ix) Archaeology;
- x) Cumulative Impact;
- xi) sustainable Development.

S

(i) Need for the mineral

53. The NPPF states that great weight should be given to the benefits of mineral extraction, including to the economy (paragraph 144.)
54. It is government policy, as set out in the National Planning Policy Framework (NPPF) paragraph 145 that Minerals Planning Authorities should plan for a steady and adequate supply of minerals by making provision for the maintenance of landbanks of at least 7 years. OMWLP policy SD1 requires a separate landbank to be kept for soft sand. This approach is re-iterated in OMWCS policy M2, which states that a landbank of at least 7 years will be kept for soft sand, with the level of provision based on the annual requirement rate in the most recent Local Aggregate Assessment (LAA).
55. According to the figures within the most recent (2014) Oxfordshire Local Aggregate Assessment (i.e. an annual requirement of 0.189 million tonnes) the soft sand land bank at the end of 2014 was 9.4 years and therefore is currently approximately 8.5 years.
56. Therefore, at present the soft sand landbank in Oxfordshire is 1.5 years above the minimum 7 year level required by the NPPF. However, the landbank figure is a minimum requirement and not a maximum. The National Planning Policy Guidance (NPPG) paragraph 084 states that there is no maximum landbank level and each application should be considered on its merits regardless of landbank levels.
57. There is no policy support for restricting permissions simply because the minimum requirement is currently met. There are a number of other factors to take into account in considering the need for the development. The strength of the need for the mineral only becomes a significant consideration when the development would cause harm which must be weighed against the need for the development.
58. There is a need for locally worked sand, which has a distinctive colour, so that local building works can use local building material to match the historic buildings in the conservation area villages.
59. Approximately 50% of Oxfordshire's current permitted reserves of soft sand are contained at one quarry, Upwood Quarry. Duns Tew and most other soft sand quarries in Oxfordshire have limited permitted reserves remaining and Upwood Quarry would not be able to replace all the annual output that would be lost from these quarries if they are not extended or replaced when current reserves are exhausted.

60. Duns Tew is the only soft sand quarry in the northern part of Oxfordshire (although the sand and gravel quarry at Finmere has produced some soft sand and has some remaining reserves); the next nearest currently permitted soft sand quarry in Oxfordshire is at Upwood Quarry, approximately 5 miles south west of Oxford.
61. New permissions for soft sand will be needed in the next 2 years, in order to maintain the minimum 7 year landbank and ensure the continued supply of soft sand.
62. For the reasons set out above, it is considered that there is a need for the proposed extension to Duns Tew Quarry in order to maintain a steady and adequate supply of soft sand in Oxfordshire, notwithstanding the current landbank level.
63. OMWLP policy PE2 b (ii) states that planning permission will not be granted for mineral working outside the areas identified in that plan unless the apportioned supply cannot be met from within the areas identified. However, no areas were identified in the plan for soft sand because there was no need for additional soft sand resources to be identified during the plan period to 2006. The apportioned supply is no longer relevant and the provision figure now used is from the LAA. As there are no areas identified for soft sand working in the OMWLP, it is the case that the LAA provision figure (0.189 million tonnes per year) cannot be met by identified areas (as there are none). However, it is also true, as set out above, that this permission would not be required to meet the minimum landbank figure due to existing permissions at other sites. Therefore, the proposals do not conflict with this policy, although they are not fully supported by it. The age of this policy must be taken into account when determining how much weight to give it. The policy was intended to cover a plan period of 1996-2006.
64. OMWCS policy M3 identifies Duns Tew as one of two 'principal locations' for soft sand working in Oxfordshire. OMWCS policy M4 sets out criteria which specific sites for inclusion in the Site Allocations Document will be assessed against. This includes priority for the extension of existing quarries, where environmentally acceptable, which supports this extension application.
65. OMWCS policy M5 states that permission will be granted for the working of aggregate minerals within the sites allocated further to policy M4 and that permission will not be granted outside the allocated sites unless needed to maintain a steady supply of aggregates in accordance with policy M2. As work on the Sites Allocation Document has not yet commenced, this policy does not yet apply.
66. Therefore, the identification of the general area in OMWCS policy M3 and the priority given to extensions to existing sites in policy M4 support this proposal.

(ii) Traffic

67. Transport policy supports development that uses suitable roads that are well connected to the strategic network. WOLP policy BE1 states that development will not be permitted until appropriate supporting transport infrastructure is available. WOLP policy T1 states that development which would generate significant levels of traffic will not be permitted in locations where travel by means other than private car is not a realistic alternative.
68. CLP policy TR7 states that development which would regularly attract large commercial vehicles onto unsuitable minor roads will not normally be permitted.
69. OMWCS policy C10 states that minerals development should make provision for safe and suitable access to the advisory lorry routes and where possible improve the safety and efficiency of the road network and local amenity. Where minerals are to be accessed by road workings should be located in areas which minimise road distances to locations of demand. OMWCS policy M4 states that in allocating specific sites through the Minerals and Waste Local Plan Part 2, the suitability and accessibility of the primary road network will be taken into account, along with the ability to provide more sustainable movement of excavated materials.
70. NPPF Paragraph 32 states that developments which would generate significant amounts of movement should be accompanied by a Transport Assessment and decisions should take into account whether opportunities for sustainable transport nodes have been taken up and whether safe and suitable access can be achieved.
71. A Transport Assessment has been submitted with this application and considered by the Highways Authority. There would be no change to existing traffic levels as the development would represent the continuation of the existing level of activity on the site. Although the local roads are minor and not designed for HGV traffic, vehicles do not have to travel far on them before accessing the A4260. The proposed routeing agreement, which is as the existing, would ensure that only the most suitable routes to and from the A4260 would be taken. The A4260 is marked as a 'non-strategic link road to smaller towns' on the Oxfordshire Lorry Route Map. Therefore, it is considered that these are suitable lorry routes to access the A4260.
72. Duns Tew Quarry is the only supplier of soft sand in the north of Oxfordshire. Therefore, the extraction of sand from this location to supply markets in north Oxfordshire complies with the requirement of

OMWCS policy C10 that mineral workings should be in locations to minimise road distances. Maintaining a supply from the north of the county and therefore not increasing the distance which the sand is transported also has sustainability benefits supported by the NPPF's presumption in favour of sustainable development.

73. There has been no objection to the application from the Highways Authority, subject to the applicant undertaking works to the Duns Tew and Middle Barton roads to improve passing places and therefore reduce the impact of HGVs on local traffic on narrow rural roads. The applicant has agreed to this and provided a plan showing the works, which is acceptable to the Highways Authority. This can be secured through a planning condition and a Section 278 agreement will be required to comply with the condition due to the need to undertake works to the public highway.
74. The concerns about a potential increase in HGV movements and the potential for intensification over time can be addressed through condition. The applicant has confirmed that they would be willing to accept a condition setting an annual average on the combined tonnage of the export of indigenous sand and merchanting material of 50 000 per year, with the average worked out on a 5 yearly basis and the maximum in any one year being 60 000 tonnes. Such a condition would ensure that the development is carried out as proposed and that traffic generation is not significantly higher than what has been assessed. It would not be necessary to control import of material if the total tonnage of material exported is controlled in this way. Therefore, it is recommended that this condition is added to any condition granted, along with a condition requiring that records be kept and made available on request to ensure effective monitoring.
75. The concerns about the large size of HGVs on the narrow local roads can also be addressed through use of condition. The applicant has confirmed that they are willing to restrict the size of vehicles accessing the site to rigid body lorries only for day to day operational purposes. Larger articulated vehicles would still be required on occasion to deliver plant. It is recommended that such a condition is added to any consent granted to alleviate concerns over large vehicles on the local road network.
76. Therefore, subject to the recommended conditions, it is considered that the development is acceptable in terms of impact on the highway network and in accordance with WOLP policies BE1 and T1, CLP policy TR7 and OMWCS policy C10.

(iii) Amenity Impacts

77. OMWLP policy PE3 requires appropriate buffer zones around mineral workings. NPPF paragraph 123 states that planning decisions should aim to avoid noise giving rise to significant adverse effects as a result of

new developments, whilst recognising that development will often create some noise. It also states that decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life through the use of planning conditions. NPPF paragraph 144 states that unavoidable noise and dust from mineral workings must be controlled, mitigated or removed at source. OMWLP policy PE18 refers to the Code of Practice which sets out guidance on buffer zones, landscaping, soil management, hours of working, noise, dust and transport.

78. OMWLP policy PB1 requires that processing plants are sited, designed and landscaped in such a way to minimise environmental disturbance. WOLP policy BE19 states that proposals which would have an adverse impact on occupiers through significant noise disturbance would not be permitted unless there is an overriding need for the proposal which cannot be met elsewhere.
79. OMWCS policy C5 states that proposals for mineral development shall demonstrate that they will not have an unacceptable adverse impact on the environment, residential amenity or other receptors. OMWCS policy M4 lists criteria to be used in allocating specific sites and these criteria are also applicable in assessing the suitability of sites put forward through the application process. Criterion k) vii is avoidance, or ability to suitably mitigate potential impacts on residential amenity and human health.

Noise

80. There have been no objections on the grounds of noise and the submitted noise assessment suggests that noise levels would be within acceptable limits. The proposal incorporates measures to mitigate noise, including the construction of bunding on the eastern and northern boundaries. The material would be processed on the quarry floor, a suitable distance from sensitive receptors. Conditions on the existing consent ensure that only white noise reversing beepers can be used and plant is fitted with silencers. Such conditions can also be added to any new permission granted. The noise assessment submitted with the application recommends that noise monitoring is carried out and further mitigation is required if noise limits are being exceeded. This can be secured through condition.
81. It is considered that, subject to the imposition of conditions, the development is acceptable in terms of noise and complies with the relevant policies as outlined above.

Dust and Air Quality

82. Concerns have been raised about dust and about the potential for this to cause a general nuisance and also to impact on the health of a local resident who has a lung condition. Representations have highlighted the

potential for dust with small particle size to have an impact on air quality and therefore on human health.

83. The applicant has submitted a detailed dust assessment which concludes that increased dust levels during quarrying would be localised and could be adequately mitigated against. Comprehensive mitigation measures are set out in the dust management plan and these could be secured through condition.
84. Additional mitigation was suggested in a further dust report commissioned by an objector. The Environmental Health Officer has suggested that conditions could be used to incorporate the recommendations of both dust reports. He has confirmed that conditions including the requirement for real time dust monitoring during extraction campaigns and the establishment of the tree screen belt prior to commencement would address concerns about dust impacts.
85. The Environmental Statement included an Air Quality Assessment which concludes that air quality objectives would not be exceeded. The County Council's Public Health team were consulted on this application and sought a response from Public Health England. They had no objection and confirmed that there are unlikely to be any significant health impacts from this development. As with nuisance dust, conditions can be used to ensure that air quality is monitored and that measures are put in place to ensure that there is no unacceptable adverse impact on air quality in the area as a result of the quarrying operations.
86. Therefore, as there have been no objections from the Public Health team or the Environmental Health Officer, and environmental assessment work has shown that there would be no significant impact, the development is considered to be acceptable in terms of dust, both in terms of nuisance dust and impact on air quality and health. Subject to conditions to cover dust monitoring and mitigation, the development is in accordance with the NPPF, OMWLP policy PE18 and OMWCS policy C5 in respect of dust. It also complies with the requirement for sites to be able to avoid or mitigate impacts on human health, as set out in OMWCS policy M4.

Site location and size

87. Processing activities would take place using mobile plant, on the quarry floor. The location of processing activities at the base of the quarry would minimise the environmental impact of these operations, in accordance with OMWLP policy PB1.
88. Local residents, Duns Tew Parish Council and the local District Councillor have suggested that amenity impacts could be reduced by amending the extraction boundary to increase the distance between the eastern boundary and Blue Barn Farm. However, the responses from relevant technical consultees have confirmed the findings of the

Environmental Statement that the extraction area as submitted would not cause unacceptable amenity impacts and therefore it is not necessary for the extraction area to be amended.

89. The supporting text relating to OMWLP policy PE3 states that the established standard buffer zone between the edge of a quarry and an individual dwelling or group of dwellings is 100 metres. When determining planning applications the County Council will have regard to the established standard, together with the individual circumstances of the site. The application site lies well over 100 metres from the curtilage of any residential dwellings.
90. The applicant is aware of the comments from the Parish Council and District Councillor and although they have not amended the application to reduce the area they have indicated that they would accept a condition preventing extraction in an area to the east of a straight line up from the south eastern corner of the site. The applicant has stated that they do not consider that such a condition would meet the legal tests for a valid condition as it is not necessary to reduce the extraction area for any technical reason. The reduction in site area would mean not working one year's supply of soft sand. As the condition is not necessary to make the development acceptable in environmental or amenity terms and as it would result in a loss of sand which could otherwise contribute to the landbank, it is not recommended that such a condition is added. However, if having considered the matter and concluded that such a condition would be justified, members of the committee could add this condition to the resolution should they otherwise be minded to approve the application as recommended.

(iv) Landscape and Visual Impacts

91. CLP 2031 policy ESD13 states that development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. WOLP policy NE3 states that development will not be permitted if it would harm the local landscape character. OMWCS policy C8 states that proposals should respect and where possible enhance local landscape character and include details to mitigate adverse landscape impacts.
92. DWOLP policy EH1 states new development should respect and, where possible, enhance the intrinsic character, quality and distinctive natural and man-made features of the local landscape.
93. WOLP policy NE1 states that proposals in the countryside should maintain or enhance the value of the countryside for its own sake.
94. The site is not subject to any formal landscape designations and there have been no specific concerns raised during the consultation about the impact on the landscape. A detailed Landscape and Visual Assessment

was submitted with the application, which concludes that the impact of the proposals could be mitigated to a 'slightly adverse' level. Mitigation measures are proposed including woodland planting, consistent with the 'estate woodlands' character area which the site is within. The site is relatively remote and so there are few viewpoints from which visual amenity would be affected. Again, mitigation measures would reduce the impact on viewpoints which could be affected, for example advance planting in the area closest to Blue Barn Farm. Therefore, although there is the potential for a slight adverse impact, this must be weighed against other factors which support the development and there would not be significantly adverse impacts in terms of landscape or visual impact. Overall, the development is in accordance with, OMWCS policy C8, CLP 2031 policy ESD13, DWOLP policy EH1 and WOLP policies NE1 and NE3.

(v) Soils

95. The NPPF paragraph 143 states that worked land should be reclaimed at the earliest opportunity taking into account the safeguarding of the best and most versatile agricultural land to conserve soil resources, amongst other considerations including biodiversity and recreation. NPPF paragraph 112 states that local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. OMWCS policy C6 states that the permanent loss of best and most versatile agricultural land will only be permitted where it can be shown that there is a need for the development which cannot reasonably be met using lower grade land. Proposals shall make provision for the management and use of soils
96. The proposal would involve the loss of 4.9 ha of best and most versatile agricultural land. Mitigation measures would be put in place to carefully handle soils to prevent unnecessary damage.
97. Natural England have considered the application with regard to their statutory remit on soils and land quality and have not objected.
98. Although the loss of best and most versatile agricultural land is not supported by paragraphs 112 and 143 of the NPPF, this has to be weighed against the benefits of the proposed restoration scheme including the enhancements for biodiversity and geodiversity. The relatively small scale of the loss also mitigates the impact.
99. There is policy support for the provision of new biodiversity habitat, including in other parts of NPPF paragraph 143. Paragraph 143 does not give preference for agricultural restoration over other forms of restoration. On balance I do not consider that the loss of 4.9 hectares of best and most versatile agricultural land creates an unacceptable conflict with policy, given the policy support for the restoration proposals. Conditions can be used to ensure that soils are handled appropriately.

(vi) Restoration

100. OMWLP policy PE13 requires that applications for minerals and waste development are accompanied by satisfactory proposals for the eventual restoration of the site. NPPF paragraph 144 states that planning applications should provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards.
101. OMWCS policy M10 states that mineral workings shall be restored to a high standard in a timely and phased manner to an appropriate afteruse aiming to provide a net gain in biodiversity. OMWLP policy PB2 states that all processing plant should normally be removed within 24 months of the completion of extraction. OMWCS Policy M4 criterion d (for the suitability of specific sites for mineral extraction) is the potential for restoration and afteruse.
102. OMWLP policy PE12 states that where appropriate public access will be sought to restored minerals sites and where this is required long term management must be secured. OMWLP policy PE11 states that improvements to the rights of way network will be encouraged. WOLP policy TLC8 also encourages improvements to the rights of way network.
103. The proposed restoration is supported by the Ecologist Planner and has the potential to bring benefits for biodiversity, geodiversity and public access in the area.
104. The restoration scheme is considered to be acceptable, in accordance with OMWLP policy PE13, OMWCS policy M10 and the NPPF.
105. The restoration proposals include the removal of all processing plant, machinery and stockpiles in accordance with OMLP policy PB2. The 24 month timescale for removal of any associated plant can be secured through condition.
106. The restoration proposals include public access to the restored site and the applicant is willing to commit to this through a Section 106 legal agreement. The provision of new areas of public access is supported by OMWLP policies PE11 and WOLP policy TLC8.

(vii) Geology/SSSI

107. WOLP policy NE14 and OMWCS policy C7 state that development shall ensure that there is no adverse impact on a SSSI. All proposals for mineral working shall demonstrate how the development will make an appropriate contribution to the maintenance and enhancement of geodiversity, including fossil remains and trace fossils.

108. The current excavations that form part of the geological SSSI would be removed as the working progressed into the proposed extension area. However, new faces would be exposed and as part of the restoration it is proposed to retain exposed faces for study. Therefore, by creating new exposures the scheme has the potential to enhance the SSSI. Natural England have welcomed the proposal to allow access for recording of new exposures.
109. The applicant has agreed to provide a SSSI management plan and to manage the SSSI in accordance with it during the long term management period, including maintenance of the cliff face and public access. In addition, the SSSI would be accessible for educational purposes for the duration of the development, by prior appointment.
110. The development has the potential to be beneficial for geodiversity, due to the exposure of new faces and long term management of the SSSI. The development is therefore acceptable in terms of WOLP policy NE14 and OMWCS policy C7.

(viii) Biodiversity

111. NPPF paragraph 118 supports the protection and enhancement of biodiversity especially on designated sites. NPPF paragraph 109 states that the planning system should enhance the natural environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. WOLP policy NE13 states that in determining planning applications the council will seek to safeguard, maintain and enhance priority habitats and species, development proposals should include measures to mitigate effects on features of nature conservation value. OMWLP policy PE14 protect sites of nature conservation importance should not be damaged. OMWCS policy C7 states that minerals development should conserve and where possible enhance biodiversity and avoid harm to protected, priority or notable species. WOLP policy NE15 also protects protected species. Proposals should demonstrate how the development would make an appropriate contribution to the maintenance of enhancement of local habitats and biodiversity including contributing to the targets of the Conservation Target Areas.
112. DWOLP policy EH2 states that biodiversity will be protected and enhanced to achieve an overall net gain. CLP 2031 policy ESD10 sets out a number of ways that biodiversity will be enhanced including reusing soils, aiming to increase the number of trees in the District, protecting SSSIs and seeking a net gain in biodiversity.
113. The restoration scheme is for a nature conservation afteruse that is expected to enhance the site for biodiversity in the long term through the creation of new grassland, woodland, bare ground and sand cliff habitats and suitable management. Therefore, the proposal should result in a net gain for biodiversity, in accordance with policy. The application details

mitigation measures for the operational phase and these could be secured through condition.

114. During the first consultation period, a neighbour stated that Great Crested Newts were present in ponds in close proximity to the application site. The applicant was not permitted access to the pond itself, but surveyed nearby accessible ponds and undertook terrestrial surveys. No Great Crested Newts were found.
115. The Ecologist Planner originally asked for further information on how the development would avoid impact on birds such as sand martin and little owl. Information on the use of best practice techniques, including erection of nest boxes and re-profiling and netting of cliffs where necessary was provided and the Ecologist Planner confirmed that the measures proposed are acceptable.
116. Banbury Ornithological Society (BOS) made detailed comment on the application, including the need for sand faces to be refreshed as sand martins prefer nesting in freshly cut sand. The applicant has confirmed that the provision of fresh faces post restoration would be in line with the management of the geological SSSI. BOS also queried whether a sand face could be provided in the western quarry restoration to provide an alternative nesting site for sand martins during the works. The approved restoration for the west quarry includes an exposed vertical face as this is beneficial for the geological SSSI. The applicant has confirmed that they would be agreeable to working with BOS in ongoing site management and this could be formalised by wording referring to collaborative working with other parties in the Section 106 agreement. Therefore, the points raised by BOS have been addressed.
117. Both the Ecologist Planner and the BOS commented on the use of non-native species in the woodland planting mix, stating that native species would be preferable. The applicant subsequently amended the proposed planting scheme with more limited use of non-native species. Non-native species are required for dust mitigation purposes and the Ecologist Planner has confirmed that the revised planting mix is acceptable.
118. Overall, the development is considered to be acceptable in terms of impact on biodiversity. Potential adverse impacts would be minimised through mitigation and a net gain in biodiversity is expected through the restoration. Therefore, the proposals are in line with the NPPF, WOLP policies NE13 and NE15, OMWP policy PE14, OMWCS policy C7, DWOLP policy EH2 and CLP 2031 policy ESD10.

(ix) Water environment

119. OMWLP policy PE4 states that proposals for mineral working will not be permitted where they would have an impact on groundwater levels. WOLP policy NE7 states that development should not have an adverse impact on the water environment. OMWCS policy C4 states that

proposals should demonstrate that there would be no unacceptable adverse impact on surface or groundwater.

120. The site is not in the floodplain. A hydrological, surface water and flood risk assessment was submitted with the application and recommends a surface water management scheme, which can be required through condition. There has been no objection from the Environment Agency, subject to a condition for groundwater monitoring. Therefore, subject to conditions, the development complies with relevant policies related to the water environment, including OMWLP policy PE4, WOLP policy NE7 and OMWCS policy C4.

(x) Archaeology

121. OMWLP policy PE8 states that preliminary archaeological assessment work should be provided with applications for mineral extraction and further work may be necessary. OMWCS policy C9 states that proposals should demonstrate that they would not have an unacceptable adverse impact on the historic environment. The NPPF states that where a development would cause substantial harm to designated asset consent should usually be refused.
122. The site contains a linear feature, a banjo enclosure (a type of archaeological feature of the British Middle Iron Age, so named because in plan it consists of a small round area with a long entrance track leading inward from one direction) and possibly further surviving features. Therefore, further work is needed to determine the extent of archaeological remains in the application area and how damage to these can be minimised. The archaeologist has confirmed that it is acceptable to require these investigations by condition, rather than prior to the determination of the application, as there is no evidence that the features on the site would be of equivalent significance to a scheduled monument. The programme of work would ensure that research and analysis is undertaken.
123. Subject to the recommended conditions, the development is acceptable in terms of archaeology. As the archaeological features on the site are not designated, the NPPF does not require them to be preserved, but the implementation of the staged programme of works would ensure that damage is mitigated and heritage assets are recorded before they are lost.
124. Therefore, subject to the proposed archaeological conditions being imposed on any consent granted, the development is in accordance with policies relating to the protection of archaeological remains, including OMWLP policy PE8, OMWCS policy C9 and the NPPF.

(xi) Sustainable Development

125. The NPPF contains a presumption in favour of sustainable development, where proposals comply with development plan policies. OMWCS policy C1 reflects the presumption in favour of sustainable development contained in the NPPF stating that a positive approach will be taken to minerals development which accord with relevant policies. OMWCS policy C2 states that proposals for minerals and waste development should take into account climate change and measures should be taken to minimise greenhouse gas emissions.
126. The applicant has provided a sustainability statement detailing how measures have been incorporated into the development to ensure it is sustainable. In addition the working of soft sand close to the market for the material meets sustainability criteria through reducing the distance aggregate is transported by road. The development complies with policies related to sustainable development.

(xii) Cumulative Impact

127. The NPPF (paragraph 143) states that in relation to minerals, local plans should set out environmental criteria to assess planning applications against and that the cumulative effect of multiple impacts from individual sites in a locality should be taken into account. This is reflected in OMWCS policy M4 (I). This is an extension to the area and timescales of an existing quarry, with no proposed increase to the annual production of mineral from this area and no increase in traffic. Therefore, it is not considered that there would be a significant cumulative impact as most of the impacts of the development would be short term for the duration of workings, albeit that the overall time period for development and the amount of mineral to be extracted in total would be increased.

Conclusions

128. The development is generally in accordance with development plan policy and other material considerations, including the policies set out in the NPPF on a range of issues including transport, protection of amenity, biodiversity, restoration, landscape and archaeology. Satisfactory mitigation has been provided where necessary.
129. Therefore, it is recommended that the application be approved subject to conditions and legal agreements, as set out below.

Recommendation

130. **It is RECOMMENDED that subject to:**
 - (i) **a Section 106 legal agreement to cover the matters outlined in Annex 2 to this report;**
 - (ii) **a routeing agreement to ensure that vehicle movements from the new development are covered by the existing routeing arrangements;**

that planning permission for application no. MW.0036/14 be granted subject to:

- (iii) conditions to be determined by the Deputy Director for Environment and Economy (Strategy & Infrastructure Planning) to include the matters set out in Annex 3 to this report; and**
- (iv) the Deputy Director for Environment and Economy (Strategy & Infrastructure Planning) being authorised to refuse the application if the legal agreement referred to in (i) above is not completed within 10 weeks of the date of this meeting on the grounds that it would not comply with OMWLP policy PE13 and the guidance set out in paragraph 118 of the NPPF (in that there would not be satisfactory provisions for the long term management of the restored site)**

Bev Hindle

Deputy Director (Strategy and Infrastructure Planning)

Annex 1**Third Party Representations on Planning Application (May 2014)**

A total of 3 representations were received. The issues raised are set out below along with an officer response.

Dust

- Concern that dust report includes irrelevant readings of the existing situation;
- Blue Barn Farm is a high sensitivity receptor and this is not acknowledged in the dust report;
- The dust report suggests that individual circumstances cannot be taken into account, but they must be;
- Dust report classifies the quarry as a site of small emission magnitude, which is not correct;
- The site is located in a particularly windy location, which is not properly taken account of in the dust report, which uses data from Brize Norton;
- Vegetation screen will not have grown sufficiently to protect properties from dust when development commences.

The application was supported by an Environment Impact Assessment which included detailed dust assessment work. A draft dust assessment was criticised by objectors for failing to take into account the local conditions and therefore the dust assessment which was submitted with the application was more detailed, including a number of dust monitoring points and weather data from the quarry. Dust was monitored during a campaign dig on the existing quarry site. The dust assessment methodology was agreed with the Environmental Health Officer, who has not objected to this application.

Air Quality

- Assessment does not consider cracked silica;
- Development has the potential to be harmful to resident with a chronic respiratory disorder;
- The development is 195 metres from dwelling, guidance suggests a stand-off of up to 1000m where PM10s are generated. Crushing and screening would produce PM10s but this has not been measured.

The application is accompanied by an air quality assessment, which concludes that small sand quarries do not make a major contribution to particulate matter concentrations and that air quality objectives would not be exceeded. The assessment fully considers PM10s (particulate matter 10 micrometres or smaller in diameter). There has been no objection from the District Councils in terms of air quality. Public Health England have advised that Respirable Crystalline Silica rarely causes a significant health risk in non-occupation settings. Furthermore, any health risk occurs due to long term exposures, which is not expected to occur in this instance.

Advice from OCC's solicitor has confirmed that the specific health issues of one individual in the vicinity of the development cannot be a material consideration of any great weight.

Size and scale of the development

- Phase 3 should be reduced as it is very close to residential properties;
- There should be a maximum tonnage for the importation operation;
- There should be a maximum tonnage for exported extracted sand.

The detailed environmental assessment work has demonstrated that the proposed quarry would not have any significant adverse environmental impacts, therefore there is no justification for requiring the applicant to amend the application boundaries.

The applicant has agreed to a combined maximum tonnage for imported material and exported sand in order to address the concerns that have been raised.

Impact on local roads

- Roads are narrow and vehicles have to use verges and private drives to pass HGVs;
- There is significant damage to verges and road edges and markings at Duns Tew junction can't be seen;
- Formal passing places should be provided;
- The sides of the roads should be reinforced;
- Road markings should be reinstated;
- Improvements should be made at Smiths expense;
- Routeing agreement needs to be strictly enforced;
- Traffic assessment appears to have been undertaken without a site visit.

In response to these concerns the applicant has proposed highway works to widen damaged highway verges and improve passing places on the Duns Tew and Middle Barton roads. Any reports of breaches of the routeing agreement would be investigated and any substantiated would be pursued with the site operator. There would be no increase over existing vehicle movements associated with the quarry.

Impact on residences

- Mature trees should be planted to screen dust, noise and light pollution;
- Proximity to houses;

There are a number of difficulties with planting mature trees. However, the applicant has included trees in the planting mix which would grow quickly and it is proposed that these would be planted in the first planting season following the grant of any planning permission. This would allow some time for them to establish as an effective screen prior to the commencement of extraction operations.

An objection from a property to the east of the site states that the development would extend to within 23 metres from the property boundary.

The application site lies 190 metres from the curtilage of this property and the 23 metre figure relates to land owned by that property but used as agricultural grassland. The buffer zones between the development and residential properties is considered to be appropriate to mitigate the impacts of the development, in accordance with development plan policy.

Ecology

- Data was not collected from the adjacent property which includes an amphibian conservation pond and set-aside wildlife conservation area;
- Proximity of quarry likely to have a detrimental effect on the amphibian, deer, badgers, hares, bats and birds on the adjacent land.

The application has been considered by consultees with ecological expertise including the OCC Ecologist Planner, Natural England and BBOWT. There has been no objection from these consultees. Conditions could be used to ensure there is no significant impact on wildlife and in the long term the restoration scheme would be beneficial for biodiversity. Following information provided by a neighbouring property, further ecological assessment work was undertaken to determine whether Great Crested Newts (GCN) were present on adjacent land.

Visual Amenity

- Blue Barn Farm currently looks out onto open arable fields, the view would be eradicated by the proposed bund.

The proposed bund would be located over 200 metres from the dwelling at the closest point and there would be advance planting between the bund and the property. A visual impact assessment was submitted with the application and did not find any significantly adverse impacts. An existing gap in the hedgerow would be closed with advance planting.

Other

- Did not find the community consultation process helpful.

All statutory consultation processes have been complied with and the applicant undertook additional community consultation on their proposals ahead of submitting the application.

Representations on Additional Information (November 2015)

Traffic

- Scale of the development too large; an upper limit for imported material for sale should be set;
- HGVs should be limited to 32 tonnes as 44 tonne lorries are too large for the road;
- Road edges should be reinforced and passing places provided;
- Although Smiths vehicles adhere to their routeing agreement, other hauliers heading to the quarry do not;
- Air pollution - diesel emissions in Duns Tew village.

The development would not represent an increase in HGV movements from the current operations and a condition to limit the annual tonnage of material imported and exported would secure this. The routeing agreement would apply to all vehicles carrying out the development. The applicant has proposed a scheme for improvements to passing places and road verges.

Ecology

- the assessments assume that the land will remain in intensive agricultural use but this looks unlikely and therefore will become more attractive to GCN;
- GCN surveys not properly conducted;
- There should be concern for all amphibian species not only GCNs.

The Ecologist Planner is satisfied with the way in which the ecological survey work was conducted. Although no Great Crested Newts were found, conditions would ensure that the development took place in accordance with the mitigation works set out in the submitted biodiversity report, including an ecological walkover survey prior to each campaign dig. Great Crested Newts have a greater degree of policy protection than other amphibians due to being a European protected species.

Dust

- Dust remains a concern despite the Technical Response provided by DustScan Ltd;
- Dust will be a problem throughout the year as sand moving, screening and blending take place, not only during extraction periods;
- Site and neighbouring property have experienced sustained high winds.

Dust has been thoroughly assessed in the original Environmental Assessment and in Technical Response. These conclude that dust impacts would be negligible with proposed mitigation measures in place. There would be a Dust Management Plan, including monitoring, secured by condition.

Heads of terms for legal agreement

- 3.9 hectare area of woodland planting;
- 20 year extended management for the site including implementation of a management plan for nature conservation and a management plan for the geological faces;
- Preparation of a 'Nature Reserve Management Plan' including details of site access point, parking provision, signage, interpretation boards and public access;
- 'Site Management Plan' for the SSSI including maintenance of cliff faces and details of public access;
- Ongoing access to the SSSI for educational purposes by prior arrangement during the course of the development.

Heads of Conditions

1. Complete accordance with plans;
2. Commencement within three years;
3. End date for extraction (end of 2034);
4. End date for removal of plant, cessation of ancillary activities and restoration completion (end of 2035, or within 24 months of the cessation of mineral extraction if sooner than 2034);
5. Submission of detailed restoration plan;
6. Speed limit on access road and signage;
7. Access road to be kept pot hole free;
8. No more than 4 lorries a day importing aggregates to the site shall leave without a load of sand from the site;
9. Export limit of 50 000 tpa average measured over 5 years, maximum of 60 000 in any year;
10. No articulated lorries to be used for the import of material for merchandising or for the export of sand worked from the site;
11. Records of exports to be maintained and made available on request;
12. No extraction beneath the Northampton Sands;
13. Oil tanks to be sited on impermeable base and bunded;
14. No lorries shall park overnight at the site, other than in accordance with approved plan;
15. Maximum of 10 weeks of extraction in any calendar year, between April and September only;
16. Submission of scheme detailing the retention of exposed geological face;
17. No extraction until a 3 metre screening bund has been constructed on eastern boundary;
18. Noise monitoring;
19. Noise limits;
20. Standard working hours as set out in report;
21. Restriction of permitted development rights;
22. Use of existing approved access only;
23. Lorry sheeting;
24. No deposit of mud or dust on the highway;
25. Noise mitigation measures as proposed to be implemented;
26. Noise monitoring scheme to be submitted and implemented;
27. Soil handling in accordance with ES and Natural England guidelines;
28. Submission and implementation of an archaeological written scheme of investigation;
29. White noise reversing beepers only;
30. Submission of details of any external lighting ;
31. Signage to ensure HGV driver are aware of the permitted route;
32. Submission and implementation of Ecological Management Plan;
33. Submission and implementation of scheme for the protection of retained trees and hedgerows;
34. Ecological walkover survey prior to each campaign dig, including badger check;

- 35. Means of egress for mammals;
- 36. 5 year aftercare scheme including woodland management, annual aftercare meetings and annual submission of reviews and programmes;
- 37. Groundwater monitoring scheme;
- 38. Implementation of mitigation measures in submitted dust management plan and submission and implementation of further detailed dust; mitigation plan, including monitoring during extraction campaigns, details the location of the sand surge stockpile and screening equipment, confirmation that extraction in the eastern part of the site will not commence until dust mitigation screening is well established ;
- 39. Implementation of proposed highway improvement works.

Compliance with National Planning Policy Framework

In accordance with paragraphs 186 and 187 of the NPPF Oxfordshire County Council take a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development. We work with applicants in a positive and proactive manner by:

- offering a pre-application advice service, as was the case with this application, and
- updating applicants and agents of issues that have arisen in the processing of their application through a meeting suggesting further information that could be submitted to overcome these concerns.
- Input from other relevant parties (for example the Banbury Ornithological Society) into the management of the site, as agreed.

Environmental Statement

1. An Environmental Statement (ES) was submitted with the planning application.
2. Appendix A contains the Landscape and Visual Impact Assessment. This sets out the landscape character classifications affecting the area. The Oxfordshire Wildlife and Landscape Study (OWLS) classifies the area as 'wooded estate lands.' The significance of landscape effects is assessed and it concludes that although there is the potential for significant adverse landscape effects, given the proposed mitigation the residual impact is likely to be slightly adverse. Visual impacts from a number of viewpoints are assessed and mitigation considered. Overall the report concludes that the development would not cause significant adverse effects on either landscape character or visual amenity.
3. Appendix B contains the Biodiversity Assessment. This contains an ecological data search, extended phase 1 habitat survey and surveys for species which have the potential to be adversely affected. A number of habitats are identified and are assessed as having low ecological value. The impact on identified species and habitats is assessed and in general the development, including the restoration proposals is found to have a beneficial impact.
4. Appendix C contains the noise assessment. This identifies Blue Barn Farm, Glebe Farm and Horsehay Farm as potentially affected noise sensitive receptors. Results of noise monitoring are reported and the assessment indicates that noise limits would not normally be exceeded. Further noise monitoring should be carried out within 3 months of commencement and then at regular intervals to ensure that noise levels remain within acceptable limits. The report also concludes that access roads should be kept in good condition and speed limits enforced as noise from empty vehicles on the haul roads also has the potential to cause disturbance.
5. Appendix D contains a dust assessment. Dust was monitored during operation of the existing quarry. It was found that if there were no mitigation dust impacts could be observed up to 150 metres from the quarry boundary when winds were high. A Dust Management Plan including mitigation measures is provided. It is concluded that, subject to the continuation of high standards of site management and the establishment of the proposed vegetation screening, the risk of adverse impacts to Blue Barn Farm or any other receptor downwind, is negligible.
6. Appendix D1 is the Air Quality Assessment. The assessment concludes that the air quality in Duns Tew is currently very good and

that small sand quarries such as Duns Tew Quarry do not make a major difference to local PM concentrations. Therefore it is concluded that further assessment is not required, but mitigation should be put in place. Mitigation measures are as set out in the Dust Management Plan.

7. Appendix E contains a Transport Assessment. This considers the potential traffic impact of the continuation of quarrying and merchenting operations until 2033. It concludes that there would be no material adverse impact on the free flow and safety of traffic. It is not anticipated that there would be any increase in traffic levels under a new consent, only the continuation of existing quarry related movements.
8. Appendix F contains a soils resources and agricultural land use survey. This states that just over half (51%) of the 9.6 hectare area of agricultural land is grade 3a and therefore classified as best and most versatile agricultural land. The remaining 49% is grade 3b. It is recommended that the soil resources from the three soil types present are stored separately.
9. Appendix G contains a hydrological, surface water and flood risk assessment. This states that the site is within flood zone 1 and has no risk of flooding. The development would be above the water table and not increase the risk of flooding elsewhere. It is recommended that a surface water management scheme is implemented to ensure any surface water run-off is directed away from adjacent land. There should be a soakaway on the northern boundary.
10. Appendix H contains the Archaeological Desk Based Assessment. This states that there is probably a prehistoric landscape in the area but no archaeology has been observed in the application site area.
11. Appendix I contains a geological investigation of the site. This provides the results of borehole drilling and shows the presence of soft sand across the site to a depth of 7.5 metres. The proposed extension would remove the existing faces which comprise the geological SSSI, however it would develop new faces and the opportunity for easier access to them.

Annex 5

Consultation Responses Summary

Duns Tew Parish Council – First Response

- | | | |
|----|---|---|
| 1. | <p>o objection subject to –</p> <ul style="list-style-type: none"> • Straightening of eastern boundary to increase the gap between the quarry and Blue Barn Farm to reduce dust and air pollution impacts and allow further mitigation planting. • Installation of passing places on Middle Barton Road. • Highway Authority to consider verge reinforcement on Middle Barton Road where damage is caused by HGV movements associated with the quarry. • Formal annual liaison meetings to include Smiths, the Parish and relevant attendees from the County Council. | N |
|----|---|---|

Would like confirmation that the Dust Management Plan requires Smiths to adjust working according to the weather and would like to see the Environmental Health Officer's assessment of the Dust Report.

Duns Tew Parish Council – Response on additional information:

- | | | |
|----|---|---|
| 2. | <p>isappointed that no concessions have been made regarding concerns raised, other than passing places. Still concerns about the dust report. Concern about an increase in traffic due to there being no upper limit on aggregate import. Concern about the increasing use of 44 tonne vehicles on the roads around the quarry. Land around the quarry is not agricultural as stated, some is now eco-friendly set aside.</p> | D |
|----|---|---|

Cherwell District Council

3. First Response - No objections.
4. Response on additional information – No further comments.

West Oxfordshire District Council

- | | | |
|----|--|---|
| 5. | <p>No objection. Would encourage widespread consultation to gain the opinions of local people before a final decision is made.
Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT)</p> | |
| 6. | <p>o comments, but support the comments of the Ecologist Planner.</p> | N |

Natural England

7. N
 o objection subject to conditions.

SSSI - The application is in close proximity to Horsehay Quarries SSSI. Natural England supports the application and congratulates the applicant on their willingness to allow continued access to new sections of the extended quarry. As long as the development is carried out in strict accordance with the submitted plans there is not likely to be an adverse effect on the site. Suggests a condition to ensure the retention of faces of Horsehay Sand and overburden. Suggests that the management of natural regeneration of overburden should be a consideration for the long term management plan.

Soils – Note that the development would extend over 4.9 hectares of ‘best and most versatile’ agricultural land. The details of the application should be carefully considered in light of the Technical Guidance to the NPPF on restoration and aftercare of minerals sites. It would be appropriate to specify agriculture as an afteruse. The advice contained in Defra’s Good Practice Guide for Handling Soils should be taken into account.

Biodiversity – The application may provide the opportunity to incorporate features which are beneficial to wildlife, such as bird nest boxes or bat roosting places.

Protected Species – Have not assessed this application for protected species, however Natural England have published standing advice, which should be considered.

Banbury Ornithological Society

8. S
 upport the long term restoration proposals. The existing quarry has a high level of interest for a range of species including breeding sand martins, orchids and red data invertebrates. The sand martin colony is the most important feature in terms of bird conservation, but there are a number of other birds likely to find the restored quarry to their liking. Sand martins like to nest in freshly cut sand faces. After the quarry is restored the face will weather and erode and become less suitable. Therefore, it will be necessary to refresh the face from time to time and there will have to be suitable access to the face and a suitable stand-off behind the cliff.

9. W
 order whether the west quarry could be restored with a nesting cliff so that there is an alternative should the summertime campaign dig disturb sand martins on the east quarry. It is important to avoid the use of topsoil in the calcareous grassland areas and calcareous overburden should be used to create the buttresses. Support the advice of the ecologist to use only native species in the woodland planting. Would also like to see scrub habitat, including areas of gorse as this is a favoured nesting site for several bird species.

10. I
 f the quarrying process does result in areas of wetter ground, these should be enhanced where possible, for example through the creation of seasonal pools. Pleased to see that a section 106 agreement is proposed for the long term management of nature conservation. This would benefit from close involvement of local nature conservation organisations during restoration, would it be possible for the agreement to establish this formally?

Thames Water

11. T
 his development would not affect Thames Water – no comments to make.

Environment Agency

12. F
 irst Response - No objection, subject to conditions to protect groundwater.

13. R
 esponse on further information – No further comment.

Public Health England

14. N
 o objection. Dusty emissions have the potential to cause nuisance and particulate matter less than 10 µm in diameter can present a health risk. Therefore, good working practices are essential. Planning conditions should ensure that there is the appropriate level of monitoring to demonstrate that the development does not cause an adverse off-site impact. This should follow a tiered approach proportionate to the risk and initially using nuisance monitoring and legislation to control emissions. If health concerns continue to be raised and emissions off-site are unabated then ambient particulate matter levels would be required to make a health assessment.

15. A
 specific concern has been raised regarding silica. Provided that air

quality objectives are not exceeded, it is likely that there would not be a significant public health risk, especially as any health risk occurs due to long term exposures, which is not expected to occur in this instance due to the very intermittent nature of the work, proposed to take place for only two months of the year. The development is remote and extraction campaigns would take place for only two months a year.

Highways Authority

16. First Response - No objection. Recommends conditions relating to wheelwashing and a scheme for the provision of passing places of Duns Tew and Middle Barton roads. A routeing agreement is required to ensure quarry traffic is restricted to the same route as existing.
17. Response on additional information – No objection. The proposals for improving passing places are adequate. Traffic generation is unlikely to be substantial.

County Archaeological Services

18. F
First response – An archaeological field investigation should be implemented. There is evidence of a linear feature running northwards towards the area of proposed development. On the southern end of the linear feature is a banjo enclosure, which was an Iron Age enclosed settlement.
19. S
Second Response – Confirmation that further archaeological work can be required by condition and is not necessary prior to determination because there is no evidence that the application area contains features of equivalent significance to a scheduled monument. Recommends conditions for the implementation of a scheme of investigation.

Rights of Way and Countryside access

20. N
No response received.

County Drainage Engineer

21. N
No comments received.

County Ecologist Planner

22. F
First Response – Requests further information in order to assess the impact on Great Crested Newts. The restoration proposals are

generally appropriate. Support the need for a 20 year long term management plan post aftercare. It would be helpful to understand how public access to the site would be managed. The planting mix for the proposed woodland area seems unusual and further details would be helpful. Details of how campaign gigs would affect sand martins and little owl should be provided. A condition would be necessary for an ecological walkover survey prior to each campaign dig. Further information should be provided on proposed mitigation for impacts on red data book plant species.

23. F
 inal Response – No objection subject to conditions and a Section 106 agreement for 20 year's long term management. As proposed by the applicant, a Nature Reserve Management Plan and Site Management Plan for the SSSI should be linked to the s106 agreement. Satisfied with the approach taken to Great Crested Newts. Support the restoration proposals. Consider the revised planting scheme acceptable as the non-native species have been reduced and are for dust mitigation purposes. Mitigation for little owl and sand martin is appropriate. Conditions should be attached to cover ecological management plan, scheme for protection of retained trees and hedgerows, ecological walkover survey prior to each campaign dig, means of egress for mammals, aftercare scheme, annual aftercare meetings and reviews.
- Arboricultural Officer*
24. N
 o objection. Recommends a condition for a detailed woodland management aftercare programme.

Annex 6**European Protected Species**

The Local Planning Authority in exercising any of their functions, have a legal duty to have regard to the requirements of the Conservation of Species & Habitats Regulations 2010 which identifies 4 main offences for development affecting European Protected Species (EPS).

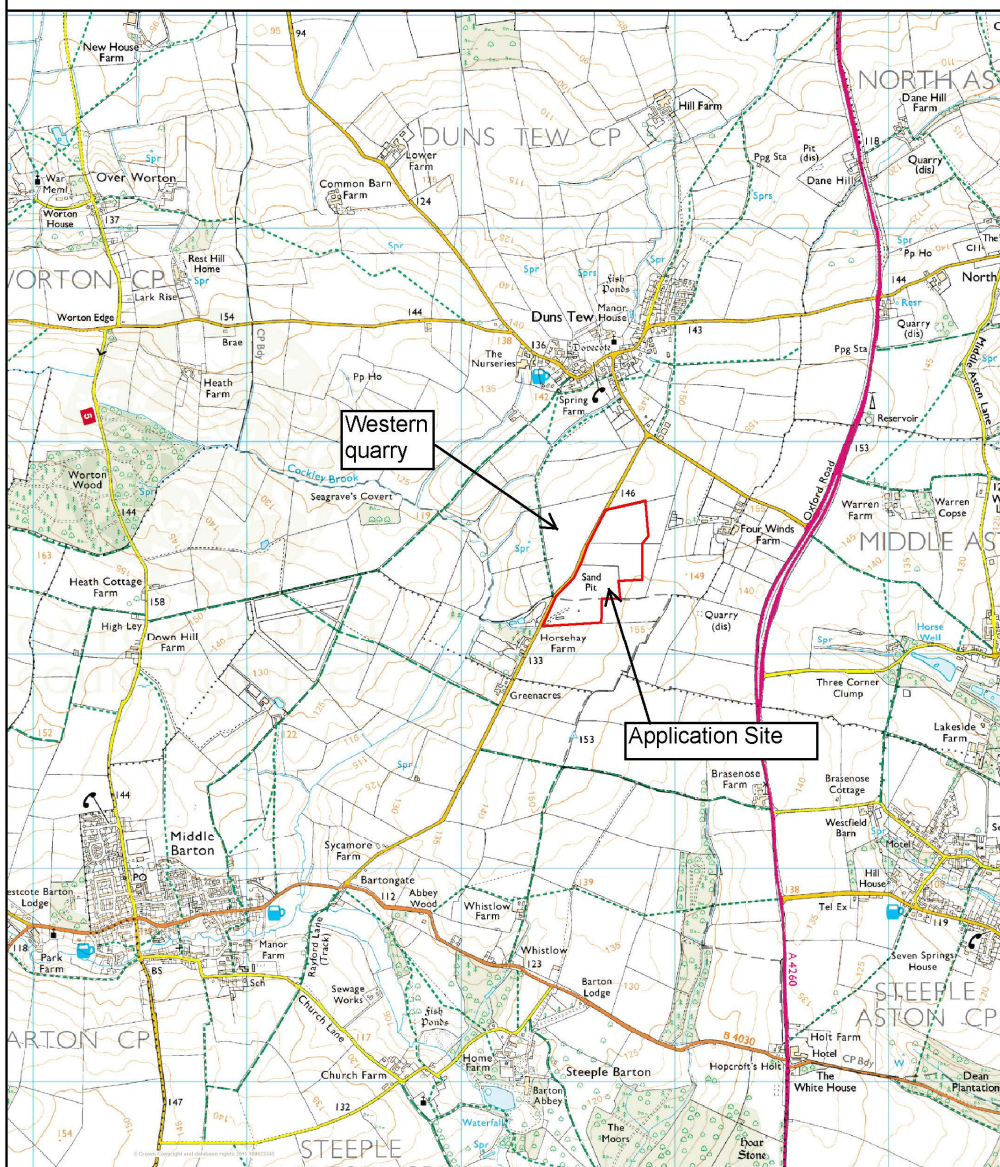
1. Deliberate capture or killing or injuring of an EPS
2. Deliberate taking or destroying of EPS eggs
3. Deliberate disturbance of a EPS including in particular any disturbance which is likely
 - a) to impair their ability –
 - i) to survive, to breed or reproduce, or to rear or nurture their young, or
 - ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate; or
 - b) to affect significantly the local distribution or abundance of the species to which they belong.

4. Damage or destruction of an EPS breeding site or resting place.

Ecological survey results indicate that European Protected Species are unlikely to be present within the proposed development area or adversely affected by the proposed development. Therefore no further consideration of the Conservation of Species & Habitats Regulations is necessary.

Plan 1 - Location Plan

Duns Tew Quarry MW.0036/14



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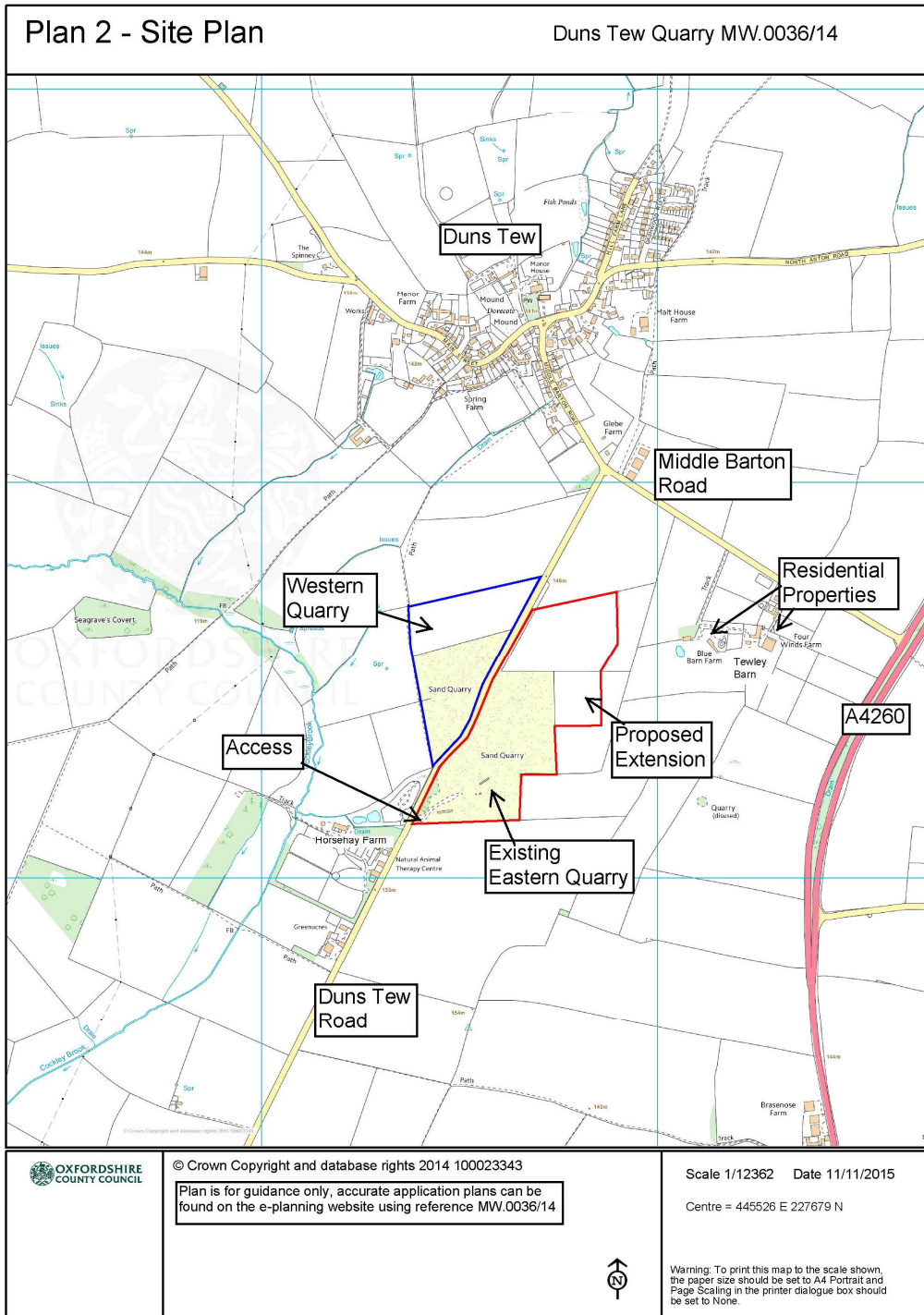
Plan is for guidance only, accurate application plans can be found on the e-planning website using reference MW.0036/14

Scale 1/24723 Date 11/11/2015

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PLANNING AND REGULATION COMMITTEE – 30 NOVEMBER 2015

DEPUTY DIRECTOR FOR ENVIRONMENT AND ECONOMY (STRATEGY & INFRASTRUCTURE PLANNING)

Development Proposed:

- i) Section 73 application to vary conditions 3, 6 and 14 of planning permission no. MW.0097/14 to extend the time period for the removal of all buildings, plant, machinery or structures and their foundations and bases, together with any hard standings, bunds of overburden, quarry waste or soil and complete restoration by 30th September 2016; and
- ii) Section 73 application to vary condition 3 of planning permission no. MW.0134/14 to require cessation of the development for the importation of materials together with operations for the blending of imported and indigenous quarried materials, removal of all buildings, plant, machinery or structures and their foundations and bases together with any hardstandings and complete restoration of the site by 30th September 2016.

Division Affected: Faringdon

Contact Officer: Kevin Broughton **Tel:** 01865 815272

Location: Wicklesham Quarry, Sandshill, Faringdon, Oxon, SN7 7PQ.

Applicant: Grundon Sand & Gravel Ltd.

Application Nos:

- i) MW.0134/15 District ref No: P15/V2384/CM
- ii) MW.0133/15 District ref No: P15/V2380/CM

District Council Area: Vale of White Horse District Council

Date Received: 18 September 2015

Consultation Period: 8 October – 29 October 2015

Recommendation:

The report recommends that the applications be approved.

Contents:

- Part 1 – Facts and Background
- Part 2 – Other Viewpoints
- Part 3 – Relevant Planning Documents
- Part 4 – Analysis and Conclusions

• Part 1 – Facts and Background

Location (see site plan Annex 1)

1. Wicklesham Quarry is immediately south of the A420, approximately 1km (0.6 miles) south of Faringdon.
2. The site is in both the North Vale Corallian Ridge and the Great Western Community Forest.

Site and Setting (see site plan Annex 1)

3. The site is within and surrounded by open countryside to the south of the A420.
4. The site is located within the landscape character area of 'North Vale Corallian Ridge'. The specific landscape character type of the site and its immediate surrounding area is defined as Rolling Farmland.
5. The nearest properties to the site (the Gardens and Wicklesham Lodge Farm) are immediately adjacent to the quarry at its furthestmost south east corner.
6. The entire site lies within the Wicklesham and Coxwell Pits Site of Special Scientific Interest (SSSI). This SSSI has been designated for its geological interest. A public footpath crosses the access road to the quarry. Public bridleways run along its southern boundary and link to further bridleways to the south and east. The quarry is a SSSI due to geological exposures on its perimeter.
7. Two ponds created by the quarry support a small Great Crested Newt population.
8. The main vehicle access into the site is from a slip road immediately to the west of the junction of the A417 (Park Road) and the A420.
9. The quarrying activities have lowered the landform by some 8 metres over an area of approximately 8 hectares.

Planning History

10. Planning permission was granted in 1986 for the extraction of sand and gravel from the quarry.
11. Since then the County Council has granted several permissions for the site mainly to extend the time period to complete extraction of minerals and then restore the site but also for the importation of materials to be used in connection with construction of golf courses together with operations for the blending of imported and indigenous quarried materials. The current permissions for the quarry require the cessation of the permitted operations by 30th September 2015 with restoration by 30th April 2016.
12. In 2013 the County Council granted permission (reference MW.0126/10) for the western extension of the existing quarry to extract 816,000 tonnes of mineral over a period of 15 years. This permission required that sole access to the western quarry be taken from a new access to be constructed onto Fernham Road. A section 73 permission was granted in 2014 to allow the use of the eastern quarry access to serve the western extension area until 30th September 2015.
13. In February 2015 planning permission was granted for the importation of material for use in the construction of golf courses together with blending with mineral extracted at the quarry. The permission was granted for a temporary period of time until 30th September 2015.
14. Mineral extraction at the site has finished and all activities are being moved over to the new western extension site to accord with the permitted operational end date of 30th September 2015.
15. Soils have been stored on the quarry perimeter and within the site, but there is insufficient soil on the site to achieve the approved restoration.
16. A scheme has been agreed with Natural England to retain the geological exposures that have been created as a result of the quarry. This involves leaving a narrow buffer strip adjacent to the exposure and a small rock pile that can be examined leaving the remainder of the quarry floor to be farmed.

Details of the Developments

17. The first planning application (MW.0134/15) seeks an extension of time for the restoration of the quarry of five months, from 30 April 2016 to 30 September 2016. The second application (MW.0133/15) seeks an extension to the time limit for the importation, blending and restoration operation also until 30 September 2016.
18. The soil material would be stockpiled to the maximum height of 4 metres, and 2 metres away from the quarry face, as required by the

current permission. When the weather is suitable, and the soil is dry and friable, the soil would be spread across the site.

19. The applicant intends to import and blend suitable soil material with remaining stockpiles of on site materials. They say that these materials are most likely to be generated by construction work which usually commences in the spring. These materials would be blended with stocks at the quarry to produce a soil that would be used for restoration purposes.
20. The applicant envisages that soils would be imported at current levels, 10,000 tpa, and the blended materials would be used solely for quarry restoration.
21. The two ponds have been isolated from the working area and will remain as part of the restoration plan. However a licence is required from Natural England to complete quarry restoration works to ensure that habitat is retained and improved.

• Part 2 – Other Viewpoints

Representations

22. There are 12 third party objections, 9 of which are from local residents and one which gave no address. The following comments were made:
 - The NPPF requires restoration to be carried out at the earliest opportunity. OCCs Background Paper on Quarry Restoration reflects these aims.
 - The current planning permissions state the quarry must be restored to agriculture in accordance with the rural character of its setting on the Corallian Ridge.
 - Its SSSI status is of outstanding importance for geology.
 - It is a conservation target area for Oxfordshire's Biodiversity Action Plan.
 - Great weight should be given to timely restoration of the quarry.
 - Delaying restoration would serve the landowners bid to obtain planning permission for industrial use, and this would be an abuse of process.
 - This is creeping industrialisation.
 - Extensions to timescales should not be continually permitted.
 - What are the reasons for the extension of time and why aren't they in the public domain?
 - The land should be restored to agricultural use without further delay.
 - Enforcement action should be taken.
 - Activity at the quarry ceased in 2010.
 - Unrestored, the site is a visible scar on the landscape within a network of well used footpaths.
 - There are rare plants and protected species on the site.

Consultations

MW.0134/15

23. Vale of White Horse District Council (Planning) – no objection.
24. Vale of White Horse District Council (Environmental Protection) – no comments.
25. Little Coxwell Parish Council – objects for the following reasons:
 - This is the third application for an extension of time. The site should have been restored to agriculture 2 years ago.
 - The new quarry is well underway and quarrying at Wicklesham ceased over a year ago. This is a delaying tactic, as the owners are hoping to be able to develop the site for employment land.
 - The NPPF requires that: 'Local planning authorities should provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards, through the application of appropriate conditions.' The earliest opportunity was some time ago. Further delay is not justified.
26. Faringdon Parish Council – no objection.
27. Environment Agency – no comments.
28. Natural England – no comments, but asks that the planning authority should ensure it has sufficient information to fully understand the impact of the proposal on the local site before it determines the application.
29. Thames Water – no comments.
30. County Ecologist / Planner - no objection to the proposals, but makes the following comments:
 - If minded to permit, please apply the ecology conditions and informatives from the previous consents, plus a condition requiring the submission of further details of the restoration scheme. The applicant could submit this pre-determination if they would prefer.
 - Applicant has applied for a licence from Natural England because of the potential impact on Great Crested Newts (a European Protected Species). As time has elapsed since the last Great Crested Newt surveys, I assume that Natural England would require a more recent survey for licencing and it is possible that the location of newts on the site might have changed which could influence the restoration plan. In determining the application OCC need to consider it likely that the three tests of derogation are met if minded to grant consent. The third test relates to ecology and I am satisfied that this application meets that test with the Site Restoration Plan as approved (Drawing Number DG/QO/WIC/SM/03 Rev A), the first and second tests are planning-related.

- The proposed restoration scheme includes the creation of ponds suitable for Great Crested Newts in their breeding phase. I consider that it is likely that a Natural England licence would be issued for the proposed works.
- However, prior to commencing restoration further information is needed to assess the details of the restoration proposals. For example, confirmation of how the grassland on the site will be managed e.g. will it be grazed? I recommend that they confirm that the ponds would be fenced so that grazing animals could not access them due to the potential impact on breeding newts and their terrestrial habitat. Also, plans should be submitted to show the contours of the ponds.

31. Minerals and Waste Policy – no comments.

MW.0133/15

32. Vale of White Horse District Council (Planning) – no objection.

33. Vale of White Horse District Council (Environmental Protection) – no comments.

34. Faringdon Town Council – no objections.

35. Environment Agency – no objections.

36. Natural England – no comments, but asks that the planning authority should ensure it has sufficient information to fully understand the impact of the proposal on the local site before it determines the application.

37. Ecologist Planner – as for MW.0134/15.

38. Minerals and Waste Policy – no comments.

Part 3 – Relevant Planning Documents

Relevant planning policies (see Policy Annex to the committee papers)

39. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.

The relevant development plan documents are:

- Saved policies of The Oxfordshire Minerals and Waste Local Plan 1996
- Saved policies of The Vale of White Horse Local Plan 2011.

40. The Draft Oxfordshire Minerals and Waste Local Plan Core Strategy (OMWCS) has been out to consultation. This document is now at a more advanced stage of preparation and as such further weight can be given to the policies it contains. At the meeting of the full County Council on 24th March 2015, the OMWCS was approved for publication and submission to the Secretary of State for independent examination following consideration of any representations received. Therefore, it is appropriate to consider draft policies which are relevant to the developments.
41. The Vale of White Horse Local Plan 2031 Part 1: Strategic Sites and Policies, has been submitted to the Secretary of State for independent examination. It is therefore also appropriate to consider draft policies that are relevant to the developments.
42. The Government's National Planning Policy Framework (NPPF) and the National Policy for Waste (NPPW) are material considerations in taking planning decisions.

Relevant Policies

43. Oxfordshire Minerals and Waste Local Plan 1996 - Saved Policies (OMWLP):
 - PE13 (Restoration of mineral sites)
 - PE11 (Rights of Way)
 - PE14 (Nature conservation)
 - PE18 (Regulation of development through imposition of conditions. Code of Practice)
 - PB1 (Siting of plant and buildings)
 - PB2 (Removal of plant and buildings)
44. Vale of White Horse Local Plan 2011(VOWHLP)
 - DC9 (Impact of development on neighbouring uses)
45. Oxfordshire Minerals and Waste Local Plan Core Strategy – Proposed Submission Document (OMWCS):
 - M8 (Restoration of mineral workings)
 - C5 (General environmental and amenity protection)
 - C7 (Biodiversity and geodiversity)
46. Vale of White Horse Local Plan 2031 Part 1: Strategic Sites and Policies Submission Document (VOWHLPSD)
 - CP1 (Presumption in favour of sustainable development.
 - CP44 (Landscape)
 - CP45 (Conservation and enhancement of biodiversity)
47. National Planning Policy for Waste (NPPW)
48. National planning Policy Framework (NPPF)

• **Part 4 – Analysis and Conclusions**

Comments of the Deputy Director (Strategy and Infrastructure Planning)

49. Before embarking on the assessment of the applications against the policies I will address some of the issues raised in the consultation process that are not material to the decision.
50. The comment has been made to the effect that the proposal is a delaying tactic, it would be beneficial to the applicant in terms of achieving an industrial use on the site, and that it would be an abuse of process.
51. As planning authority, the County Council does not know the motives of the applicant, and it must consider the applications on their merits. To do that in accordance with the development plan, taking into account other material considerations is the correct process.
52. Granting planning permission to these applications would not affect the planning merits of any future application. This site would be as it is now subject to restoration conditions. If another application, determined on its merits, was granted permission and implemented, it would override the current permission whether restoration was achieved or not.
53. The two applications are very closely linked as one is intended to provide additional materials to be used in the restoration of the original quarry area. I therefore consider that the impacts of both applications are closely linked and need to be considered together,
54. Policy CP 1 of the VOWHLPSD states that planning applications that accord with its policies will be approved, unless material considerations indicate otherwise. It also says that where there are no policies, or where they were out of date permission will be granted unless material considerations indicate otherwise. This reflects the presumption in favour of sustainable development set out in the NPPF, and give a strong indication that planning permission should be granted unless there are clear policy or material considerations to refuse.
55. The main issues to be addressed in determining these applications relate to whether the proposed development is acceptable in terms of impacts on the neighbouring amenity and biodiversity, and whether the development would have an adverse effect on the completion of site restoration.

Impact on neighbouring amenities and landscape

56. Policy VOWHLP DC9 requires that development will not be permitted if it would unacceptably harm the amenities of neighbouring properties and the wider environment. Policies PE18 of the OMWLP and the associated code of practice and C5 of the OMWCS make similar provision.
57. The location of the development is as it has been whilst mineral was being extracted. The National Planning Practice Guidance allows normal operations to have a maximum noise level of 55dB(A) and 70 LAeq, 1h for temporary operations. Previous noise surveys indicate that noise levels as experienced at the nearest property, The Gardens, would not exceed these levels and this was when actual extraction was taking place closer than the location of the development proposed here. It is not therefore considered that there would be any significant adverse impact associated with either application and it is noted that the Environmental Protection Team has made no objection to the applications.
58. The effect of dust upon the local residents should not be significant. Like the previous operations within the quarry, a number of mitigation measures and standard good working practices would be applied to reduce the potential for fugitive dust emissions. Again, the Environmental Protection Team has made no objection to the applications.
59. Policy PB1 of the OMWLP requires plant to be suitably sited. The plant would continue to be located in the bottom of the quarry at a depth of some 8 metres below surrounding land. The boundaries of the quarry are also generally provided with substantial hedgerow/tree planting. The plant would not be visible other than from within the quarry. It is also proposed that it would continue to be operated for less than a year, up to September 2016, whilst the site is restored. Therefore, I consider that the proposal is consistent with policies PB1 & PE18 of the OMWLP, DC9 of the VOWHLP and C5 of the OMWCS.
60. Policy CP44 of the VOWHLP seeks to protect the landscape of the area. The proposed development would enable restoration of the site in accordance with this policy.

Restoration of the site

61. Wicklesham Quarry is a long established site in which extraction operations have now been completed. Policy PE13 of the OMWLP requires mineral working sites to be restored within a reasonable timescale and that proposals for restoration should be submitted at the same time as any application for mineral working. Policy M8 of the OMWCS makes similar provision. Policy PB2 of the OMWLP requires

the removal of plant from mineral extraction sites within 24 months of the completion of extraction.

62. Paragraph 13 of the NPPF states that in determining planning applications local authorities should “provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards, through the application of appropriate conditions, where necessary.”
63. The site is currently not restored, and the County Council as local planning authority would not be achieving restoration by refusing these planning applications. It would then be faced with the need to take enforcement action to require the applicant to achieve the desired restoration. This would require allowing them a reasonable timescale in which to comply with the approved restoration conditions. I do not believe there is anything to be gained by following that route when the current applications would achieve the same result along with providing additional restoration materials.
64. There is local concern that the activity on the site continues to go on and on without restoration being achieved. To encourage restoration within the timescale I recommend two things: firstly that a condition be attached to prevent any further soils leaving the site; and secondly that there be no restriction on the amount of soil material imported to the site. This would focus all activity on the restoration of the site. A condition should also be attached requiring the cessation of importation and blending one month before the final end date for restoration so that there is no delay to the final restoration of the processing area itself.
65. It is my view that these applications which would allow the importation and blending materials would achieve the restoration by 30th September 2016 which is a reasonable timescale and as early as possible from this point in time. I therefore consider that the proposal would not conflict with the aims of policies PE13, PE18 and PB2 of the OMWLP and M8 of the OMWCS to achieve restoration at the earliest opportunity.
66. Policy CP44 of the VOWHLPD seeks to protect the landscape of the area. The restoration of the site would fit with the aims of this policy.

Biodiversity

67. Policies PE14 of the OMWLP and C7 of the OMWCS seek to protect biodiversity and policy CP46 of the VOWHLPD seeks to restore and enhance biodiversity. The Ecologist Planner has no objection subject to the relevant conditions from the previous consent being attached, and a further condition discussed below. The principle of the restoration has been determined by the earlier applications and I consider that the development would be in compliance with these policies.

68. The proposed development would not alter the existing restoration scheme and would help to achieve the satisfactory restoration of the site and so comply with policies CP44 and CP46.
69. The Ecologist/Planner considers that the proposed development is likely to affect a protected species, the Great Crested Newt. Under the Conservation of Species & Habitats Regulations 2010, this means there is a duty for the County Council as planning authority to consider in its determination of the application whether the proposal would be likely to secure a licence from Natural England to carry out any works. To do so the proposals must meet with the three derogation tests which are in summary:
 - Preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment;
 - There is no satisfactory alternative; and
 - The action will have no detrimental impact upon population of the species concerned e.g. because adequate compensation is being provided.
70. A revised restoration plan was submitted by the applicant. The Ecologist/Planner believes that, with the updated restoration plan including mitigation for Great Crested Newts, the third test is met for both applications.
71. In terms of the first of the derogation tests, the site is a long established quarry which has already had a number of extensions of time. The County Council as Mineral Planning Authority has a clear responsibility to seek to ensure that in granting any mineral permission, it is of primary importance for the environment that provision is made for the satisfactory restoration of the site. A number of extensions of time have already been granted for the final restoration. The mineral has all been worked and I therefore consider that the need to see the site restored satisfactorily and expeditiously is now of primary importance for the environment and constitutes an imperative reason of overriding public interest. The applicant is preparing a revised restoration scheme to address the points raised by the Ecologist Planner. Subject to this, I consider that the first test is met for both applications.
72. Any alternative restoration scheme for the site is likely to encounter the same issue with regard to the potential impact on Great Crested Newts. If planning permission were to be refused to these applications then the County Council would still have a duty to consider whether it would be expedient to take enforcement action to secure the restoration of the site as required under the existing planning permissions. If the County Council did not consider it to be expedient to enforce then the site would effectively be left unrestored which would be an unsatisfactory alternative to restoration contrary to the conclusion reached above and also to the clear wishes of consultees

and local residents who wish to see the quarry restored as soon as possible. As well as there being no alternative to a satisfactory restoration of the site, there is clearly no alternative site at which the restoration could be carried out and the blending of materials is so closely associated with the restoration at the site that I consider that there is also no realistic alternative site for that either. The applications therefore meet the second derogation test.

73. Therefore it is concluded that, subject to a satisfactory revised restoration scheme being submitted, the three derogation tests are met and that Natural England would be likely to issue a licence.

Other issues

74. Policies PE11 of the OMWLP and C11 of the OMWCS seek to protect users of Rights of Ways. The proposed developments would not have any further effect any rights of way. I do not consider that they would have any additional impacts beyond any that may already exist on the users of the public rights of way.

Conclusion

75. Subject to a satisfactory revised restoration scheme being submitted the proposed developments set out in application nos. MW.0133/15 and MW.0134/15 are considered to be acceptable and in compliance with both development plan and developing policies and should be approved.

Recommendation

76. It is **RECOMMENDED** that
- a) **planning permission for application no. MW.0134/15 be approved subject to conditions to be determined by the Deputy Director (Strategy & Infrastructure Planning) but to include the following:**
 - 1) **The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application except as modified by conditions of this permission.**
 - 2) **No operations, including HGVs entering and leaving the site, other than water pumping or environmental monitoring, shall be carried out at the site except between the following times:**
 - **0700 and 1800 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays;****No operations shall take place at any time on Sundays or recognised public holidays.**

- 3) No winning and working of mineral or sale of processed mineral shall take place. The site shall be completely restored by 30 September 2016 in accordance with the approved restoration scheme.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Order amending, replacing or re-enacting that Order), the access to the development hereby permitted shall not be other than as shown as 'new access' on approved plan 010/4.
- 5) All internal haul roads shall be maintained in a condition free from potholes.
- 6) All buildings, plant, machinery or structures and their foundations and bases, together with any hard standing shall be removed from the site by 30th September 2016.
- 7) The operators shall insulate plant or machinery, silence vehicles and provide acoustic screening as may be necessary to ensure that noise levels or frequencies shall not exceed 55 dB(LAeq) (1hour) freefield during the hours of operation permitted under condition 2, at the facades of the nearest residential properties.
- 8) Dust control measures shall be utilised as set out in paragraph 3.11.5 of the approved Planning Statement dated July 2014.
- 9) No commercial vehicles shall enter the public highway unless their wheels and chassis are clean such that mud and dust are not deposited on the highway.
- 10) All turf, topsoil, subsoil and overburden stripped prior to mineral extraction, or quarry waste or such similar materials presently stored on site shall be used for site restoration only.
- 11) No storage or respreading of topsoil and subsoil shall take place unless the percentage moisture in the subsoil and topsoil to be moved is less than the percentage moisture at the plastic limit of each of the topsoil and subsoil respectively.
- 12) The full depth of the restored topsoil and the top 0.15 metres of subsoil shall be ripped with an agricultural wing tine implement at a spacing not exceeding 1.5 times the working depth. All stones and rocks exceeding 100mm in

any dimension and other deleterious material shall be removed.

- 13) No bunds of overburden, quarry waste or soil shall be left on the site after 30 September 2016.
- 14) No mineral shall be exported from the site with the exception of the stones to be removed under condition 12, and the hardstanding to be removed under condition 6.
- 15) No building, plant or machinery or structure of fixed or mobile design shall be located or operated other than on the quarry floor at the base of the deposit known as the sponge gravels except machinery engaged in storage and respreading of soil and overburden.
- 16) Oil and fuel storage bunds shall only be sited on impervious bases and surrounded by oil tight bund walls; the bunded areas shall be capable of containing 110% of the tank's volume and should enclose all fill and draw pipes.
- 17) There shall be no discharge of water containing sand, gravel, soil or grease.
- 18) No reversing beepers shall be fixed to, or used on, any mobile plant.
- 19) The field access directly from the A420 into the western part of the site shall not be used for the development the subject of this planning permission or for any purpose connected with it.
- 20) No works shall be carried out other than in accordance with the approved mitigation and enhancement scheme section 6 (Mitigation Measures) of the Extended Phase 1 Habitat Survey Report dated September 2012, the Reptile Method Statement submitted 28 February 2013, the Tree Planting & Grassland Mix dated 28 February 2013 and section 1.8 of the 2013 Great Crested Newt Refresher Surveys (enzygo 2013) report dated 5 July 2013.
- 21) Warning signs to users of footpath no. 17 of vehicles crossing the access road and to drivers of vehicles of pedestrians shall be erected and maintained for the duration of the development hereby permitted.

Informatives

All bird nests, eggs and young are protected under the Wildlife & Countryside Act 1981 (as amended) which makes it illegal to intentionally take, damage or destroy the nest of any wild bird while it is use or being built. Therefore, no removal of [trees, scrub, hedgerows, and grassland] should take place between 1st March and 31st August inclusive to prevent committing an offence under the Wildlife & Countryside Act 1981 (as amended).

If any protected species [e.g. bats, badgers, dormice, otters, water voles, reptiles, amphibians, and breeding birds] are found at any point, all work should cease immediately. Killing, injuring or disturbing any of these species could constitute a criminal offence. Before any further work takes place a suitably qualified ecological consultant should be consulted for advice on how to proceed. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.

It is recommended that the native trees and seeds to be used in the restoration scheme are of UK (or ideally more local) provenance. For example, the Flora Locale website gives contact details for suppliers of UK provenance seed and plants:

<http://www.floralocale.org/HomePage>

A Habitat Regulations licence from Natural England for great crested newts may be required to make this permission lawful.

- b) planning permission for application no. MW.0133/15 be approved subject to conditions to be determined by the Deputy Director (Strategy & Infrastructure Planning) but to include the following:
 - 1) The development shall be carried out strictly in accordance with the particulars of the development, plans and specifications contained in the application except as modified by conditions of this permission.
 - 2) No operations, including HGVs entering and leaving the site, other than water pumping or environmental monitoring, shall be carried out at the site except between the following times:
 - 0700 and 1800 hours Mondays to Fridays and 0700 to 1300 hours on Saturdays;

No operations shall take place at any time on Sundays or recognised public holidays.

- 3) Imported material shall be used only in connection with the restoration of the quarry in accordance with the approved restoration scheme.**
- 4) All internal haul roads shall be maintained in a condition free from potholes.**
- 5) There shall be no import of waste on site except soils.**
- 6) All buildings, plant, machinery or structures and their foundations and bases, together with any hard standing shall be removed from the site by 30th September 2016.**
- 7) The operators shall insulate plant or machinery, silence vehicles and provide acoustic screening as may be necessary to ensure that noise levels or frequencies shall not exceed 55 dB(LAeq) (1hour) freefield during the hours of operation permitted under condition 2, at the facades of the nearest residential properties.**
- 8) Dust control measures shall be utilised as set out in paragraph 3.11.5 of the approved Planning Statement dated July 2014.**
- 9) No commercial vehicles shall enter the public highway unless their wheels and chassis are clean such that mud and dust are not deposited on the highway.**
- 10) Oil and fuel storage bunds shall only be sited on impervious bases and surrounded by oil tight bund walls; the bunded areas shall be capable of containing 110% of the tank's volume and should enclose all fill and draw pipes.**
- 11) There shall be no discharge of water containing sand, gravel, soil or grease.**
- 12) No reversing beepers shall be fixed to, or used on, any mobile plant.**
- 13) Warning signs to users of footpath no. 17 of vehicles crossing the access road and to drivers of vehicles of pedestrians shall be erected and maintained for the duration of the development hereby permitted.**
- 14) No works shall be carried out other than in accordance with the approved mitigation and enhancement scheme**

section 6 (Mitigation Measures) of the Extended Phase 1 Habitat Survey Report dated September 2012, the Reptile Method Statement submitted 28 February 2013, the Tree Planting & Grassland Mix dated 28 February 2013 and section 1.8 of the 2013 Great Crested Newt Refresher Surveys (enzygo 2013) report dated 5 July 2013.

Informatives

All bird nests, eggs and young are protected under the Wildlife & Countryside Act 1981 (as amended) which makes it illegal to intentionally take, damage or destroy the nest of any wild bird while it is use or being built. Therefore, no removal of [trees, scrub, hedgerows, and grassland] should take place between 1st March and 31st August inclusive to prevent committing an offence under the Wildlife & Countryside Act 1981 (as amended).

If any protected species [e.g. bats, badgers, dormice, otters, water voles, reptiles, amphibians, and breeding birds] are found at any point, all work should cease immediately. Killing, injuring or disturbing any of these species could constitute a criminal offence. Before any further work takes place a suitably qualified ecological consultant should be consulted for advice on how to proceed. Work should not recommence until a full survey has been carried out, a mitigation strategy prepared and licence obtained (if necessary) in discussion and agreement with Natural England.

It is recommended that the native trees and seeds to be used in the restoration scheme are of UK (or ideally more local) provenance. For example, the Flora Locale website gives contact details for suppliers of UK provenance seed and plants:

<http://www.floralocale.org/HomePage>

A Habitat Regulations licence from Natural England for great crested newts may be required to make this permission lawful.

BEV HINDLE

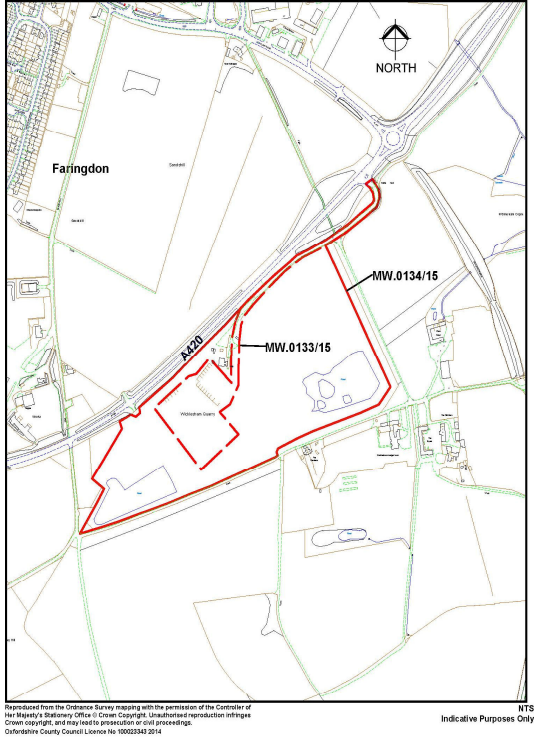
Deputy Director for Environment & Economy (Strategy & Infrastructure Planning)

November 2015

Compliance with National Planning Policy Framework

In accordance with paragraphs 186 and 187 of the NPPF Oxfordshire County Council take a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development. We work with applicants in a positive and proactive manner by; offering a pre-application advice service. In this case the applicant did not take advantage of the opportunity. Any issues that occurred during the processing of the applications were raised with the applicant and this led to improvements rendering the developments acceptable. The applicant was informed of a holding objection from the County Ecologist / Planner, but was able to overcome this with the completion of a Phase 1 Habitat Survey.

Wicklesham Quarry - application nos. MW.0133/15 and MW.0134/15



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For: PLANNING AND REGULATION COMMITTEE – 30 NOVEMBER 2015

DEPUTY DIRECTOR FOR ENVIRONMENT AND ECONOMY (STRATEGY & INFRASTRUCTURE PLANNING)

Development Proposed:

The erection of a flat roofed mobile unit to provide catering facilities

Division Affected: Bampton
Contact Officer: Matthew Case **Tel:** 01865 815819
Location: Clanfield C of E Primary School, Main Street,
Clanfield, Bampton, OX18 2SP
Application No: R3.0096/15 **District Ref:** 15/02983/CC3REG
Applicant: Oxfordshire County Council
District Council Area: West Oxfordshire DC
Date Received: 31 July 2015
Consultation Period: 6 August to 27 August 2015

Contents:

- Part 1 – Facts and Background
- Part 2 – Other Viewpoints
- Part 3 – Relevant Planning Documents
- Part 4 – Analysis and Conclusions

Recommendation: Approval

• Part 1 – Facts and Background

Location (see site plan Annex 1)

1. Clanfield Church of England Primary School is located in the village of Clanfield.
2. The site lies within the existing school boundary which is surrounded on three sides by housing (north/south and west). Access to the school site is off Main Street (A4095) via Bakery Lane.
3. The existing main school building was built in 1873, with a later extension in 1991, including three additional classrooms. There is also a single storey temporary classroom and purpose built early years foundation stage building built on part of the existing playing fields in 2011.

4. The location of the proposed building is currently used as a school playground.
5. The nearest houses to the proposed development would be the Old Schoolhouse 20 metres to the west and Lime Tree House 30 metres to the north, and the proposed building would be about 2.5-5 metres from the nearest school boundary with the residential gardens. Prospect House which lies to the south-west of the existing school has a garden which borders the school site to the south and is a Grade II Listed Building as is Alice's Cottage which lies to the north of the existing school buildings.
6. There is one mature tree (large Corsican Pine) between the proposed school building and the southern boundary. The site lies within the Environment Agency's flood risk zone 1.

Details of the Development

7. The application is for a mobile catering unit which will include a kitchen, servery, and dining hall to accommodate 60 pupils. The application has been made due to a recent central government directive requiring the provision of school meals to primary schools. As present there is no accommodation available at the school for this facility.
8. The proposed mobile unit would be a single storey extension for educational classroom purposes. in this case a catering facility. The walls proposed are Dobel 200XT plastisol "Buttermilk" BS 10 C31. The wall colour would match the stone of the existing school buildings. The building would have a flat roof finish in composite steel, white in colour. There is a metal fascia trim at roof level, and skirt covering the floor construction. Both features will be coloured "New Red" BS 04 D 44 to match roofs of school buildings. The windows and doors would be polyester coated aluminium double glazed. The windows would be white, and the doors blue (RAL 5013). The unit proposed would be just over 3m tall, 15.5m long and 6.2m wide. The unit would have a floor space of 98 m². The unit would be accessed via a ramped access for pupils, a separate staff entrance, and include a separate fire exit.
9. The mobile unit would be divided into two rooms, the kitchen, and dining area, including servery.
10. The unit's foundations will be limited to the depth of the playground construction thickness. The unit will be placed on concrete pad foundations nominally 150mm deep, so to protect the tree roots from the large Corsican Pine on the neighbouring boundary.
11. The surface water run-off from the new roof area would drain to soakaway. Foul water drainage would be drained via inspection chamber on the existing temporary building drain line.

12. One additional member of staff would be employed to run the kitchen, with an existing member of staff to serve the lunch. The cook's position would replace the current driver of the meals from St Kenelm Church of England Primary School in relation to car parking. The car park will have space for all members of staff, with allocated spaces.
13. If permitted, the kitchen will begin preparing lunch from 9.15 - 9.30 am. The cookers would be turned on around 10 am, depending on cooking times. Hot lunches will be served in two sittings, the first sitting being around 12 noon and the second no later than 12.30 pm. The cookers will be turned off before 12 noon and all utensils/cooking equipment will be loaded into the dishwasher.
14. Additional Information was supplied relating to numbers using the mobile unit. The school currently serves on average 75 children with a hot meal a day; this is served in two sittings in the classroom. The additional information was supplied due to comment from a local resident concerned that the number of children served food would exceed 60 pupils at a time.
15. Depending on storage facilities installed, the applicant doesn't anticipate needing more than 1-2 deliveries per week. The School Lunch Company (TSLC) who supplies the food deliveries will aim for delivery slots outside of school hours. Delivery vehicles will temporarily pull into the staff car park and should not be on site for more than 5-10minutes.

• **Part 2 – Other Viewpoints**

Representations

16. There are four letters voicing several concerns from local residents. The concerns raised are:
 - i. Parking and Access Impact;
 - i. Additional parking needed for additional staff.
 - ii. Impact of deliveries by goods vehicles linked to the preparation of school meals.
 - iii. Access during the construction period.
 - ii. Concern over impact on the large Corsican Pine on the southern boundary.
 - iii. Impact on the setting of the surrounding listed buildings.
 - iv. Loss of privacy.
 - v. Hours of opening.
 - vi. Increased Noise:
 - i. Noise caused by internal movement of chairs and tables;
 - ii. Potential noise impact of the extractor fans in the kitchen; and
 - iii. Noise Impact caused by roof in heavy rain.

- vii. Impact of smells caused during food preparation and waste food.
- viii. Flooding Risk.
- ix. Total number of pupils served hot meals a day.

Consultations

17. West Oxfordshire District Council: No Objections.
18. Clanfield Parish Council: *"The Parish Council has no objection to the siting of the proposed mobile catering unit but, since the access to the school is over the village green and more and heavier vehicles will be using it for access, it would like a condition that requires OCC to resurface/hard surface the access track and undertake on-going responsibility for its maintenance."*

"Secondly, following consultation with residents, a further condition that the unit is used only at lunchtimes to ensure that neighbours are not subjected to cooking smells any longer than is necessary."

Response from applicant's agent:

"The route we have planned involves bringing the delivery lorries via the A4095 & then down Marsh Lane & down the school's back lane as you mention."

I haven't considered what direction we would actually come from but this could be optional if that helps? These are not particularly large lorries, so it would be a minimal impact to a usual traffic day on this road."

The delivery process for the modular building should take one day at the most (subject to any unforeseen circumstances)."

We would position a small crane in the playground and position the modular bays, that we would plan to delivery sequentially close together to minimise the time the crane is on site."

After the first day the bays should all be in place and it is only small goods vehicle traffic after this point for the next 7 working days or so"

The Case Officer asked for confirmation on the location of the access road wanting to be resurfaced, suggesting to the Parish Council that access in the construction phase should be done via the northern access onto Marsh Lane, so the Green would be avoided.

Response from Parish Council:

"I was not referring to Marsh Lane. The school is accessed now from Main Street (A4095) over a very small bridge at the bottom of Bakery Lane and left in to the school across the village green. Access to the school from Marsh lane would be a much better solution – northern entrance"

19. Archaeology: *“There are no archaeological constraints to this application.”*
20. Arboricultural Officer – The Arboricultural Officer originally objected to the development leading to changes to the unit’s foundations, so not to cause damage to the large tree’s root plate. He has now confirmed that he no longer has an objection.
21. Conservation Officer (WODC) – *“In our view, the proposed development would make no significant impact on the setting of the adjacent listed buildings – it would be too far away from either of them, and it would read against the existing school buildings, some of which are of similar form.”*
22. Transport Development Control: *“Provided this catering unit provides only for the pupils at Clanfield School, does not involve any new access, and does not affect existing pedestrian or cycle access to the school, highways has no objection.”*
23. Lead Flood Authority –No objection but requests that soakage test results and the proposed soakaway design are provided once the tests have been carried out.

• **Part 3 – Relevant Planning Documents**

Relevant planning policies (see Policy Annex to the committee papers)

24. Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
25. The relevant Development Plan policies are:
West Oxfordshire Local Plan 2011 Policies:
 - Policy BE2 (General development standards)
 - Policy BE3 (Provision for movement and parking)
 - Policy BE8 (Development affecting the setting of a listed building)
 - Policy BE19 (Noise)
 - POLICY NE6 (Retention of Trees, Woodlands and Hedgerows)
 - Policy NE9 (Surface Water)
 - Policy T1 (Traffic Generation)
26. Other Material Considerations are:
 - i) Draft West Oxfordshire Local Plan 2031(DWOLP):
 - Core Policy OS4 (High Quality Design)
 - Core Policy T4 (Parking Provision)
 - Core policy EH6 (Environmental Protection)
 - Core Policy EH7 (Historic Environment).

- ii) The Government's National Planning Policy Framework (NPPF) was published on 27 March 2012. This is a material consideration in taking planning decisions. The CLG letter to the Chief Planning Officers dated 15th August 2011 is also relevant.

• **Part 4 – Analysis and Conclusions**

Comments of the Deputy Director (Strategy and Infrastructure Planning)

27. The CLG letter to the Chief Planning Officers dated 15th August 2011 set out the Government's commitment to support the development of state funded schools and their delivery through the planning system. The policy statement states that:

"The creation and development of state funded schools is strongly in the national interest and that planning decision-makers can and should support that objective, in a manner consistent with their statutory obligations." State funded schools include Academies and free schools as well as local authority maintained schools.

It further states that the following principles should apply with immediate effect:

- There should be a presumption in favour of the development of state-funded schools;
- Local Authorities should give full and thorough consideration to the importance of enabling the development of state funded schools in their planning decisions; Local Authorities should make full use of their planning powers to support state-funded schools applications;
- Local Authorities should only impose conditions that clearly and demonstrably meet the tests as set out in *National Planning Practice Guidance*;
- Local Authorities should ensure that the process for submitting and determining state-funded schools' applications is as streamlined as possible;
- A refusal of any application for a state-funded school or the imposition of conditions, will have to be clearly justified by the Local Planning Authority.

This has been endorsed as part of the National Planning Policy Framework.

28. NPPF paragraph 72 states planning authorities should give great weight to the need to create, expand or alter schools.
29. The justification given for the proposal is due to a central government directive requiring the provision of school meals to primary schools. At

present there is no formal kitchen or dining room available at the school. There is therefore a need for the development which accords with the aims of central government to support the development of state schools.

Design and amenity

30. Policy BE2 of the WOLP states development is to only be approved where it is well designed and respects the existing scale, pattern and character of the surrounding area and creates or retains a satisfactory environment for those living in or visiting the area. Policy OS4 of the DWOLP makes similar provision.
31. The mobile catering unit walls will be constructed with a 'Buttermilk' colour to match the stone of the existing school buildings. It is proposed the mobile unit will have a flat steel roof in white, with metal fascia trim at roof level and skirt covering the floor construction will be 'new red' to match the roofs of the school. The unit will only be one storey, and most of the building screened by the southern boundary 1.8 metres (6 foot) fence, trees, shrubs and hedgerow running on neighbouring boundaries.
32. Some of the local residents have concerns the proposed building will impact on their privacy especially the properties to the south, by overlooking the gardens of Prospect House and Fuchsia Cottage. Although the building appears to sit approximately 1.3 metres higher than the southern fence boundary, much of the southern boundary's trees, shrubs and hedgerows appear to be evergreen, partly screening most of the boundary. The vast majority of children and adults using the building would have restricted views across the neighbouring gardens due to screening and limitations in their own height.
33. The applicant has agreed, if required, to use a translucent film to obscure the views out of the southern elevation windows and doors. The film potentially would only need to be applied in line with the fence height, approximately the top half of the windows. This can be required by a planning condition.
34. Policy BE19 of the WOLP and Policy EH6 of the DWOLP state planning permission will not be granted if occupants would experience significant noise disturbance.
35. Some of the residents have concerns the mobile unit would cause noise disturbance from the movement of chairs and tables, the extractor fan attached to the kitchen and the impact of rain on the metal roof.
36. The applicant's agent explained the unit will include sound reduction achieved through the building fabric. Panel construction insulation would also act as an additional sound proofing medium. In terms of

noise created from the extractor fans, the sizes and airflow will be calculated on the building size and cooking units.

37. The justification for the proposed building is to supply school dinners to school pupils with the noise levels potentially peaking in the kitchen and servery and dining areas over lunchtime. According to national Planning Practice Guidance notes, the definition of 'significant observed adverse effect level' is 'the level of noise exposure above which significant adverse effects on health and quality of life occur.' Based on the definition the potential noise levels created would not be significant in nature. The existing playground where the building would be located is of course in any instance used by the children for play, with commensurate noise levels during lunch hours. I do not consider that there would be such an adverse effect from noise from this development as to render the development unacceptable.
38. Paragraph 120 under the NPPF states to prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for location, including effects on health and general amenity. Odour is defined as a type of pollution in the NPPF Glossary.
39. Local residents and Clanfield Parish Council have concerns that local amenity will be impacted from odours created from the kitchen. Clanfield Parish Council would like a condition attached that the building is only used at lunchtimes to ensure neighbours are not subject to cooking smells.
40. The applicant's agent supplied additional information stating there will be a canopy extraction unit over the cooking equipment removing the odours to the outside air. The kitchen would begin preparation of lunch approximately from 9.15 - 9.30 am and lunch service and cleaning would be complete by 1pm and 2pm, respectively. I see no reason why the building would be used outside these times other than for occasional school events and do not consider that the attachment of a condition restricting the use to school lunchtimes can be justified.
41. There were concerns relating to food waste attracting vermin and creating an unpleasant odour. The management of food waste is a school management issue which will be covered by food standard and safety regulations. Should any odour issues arise these would be a statutory nuisance for the District Council to investigate as Environmental Health Authority.
42. This proposed building does not detract from the character of the school buildings adjacent to which it is located, nor to the general character of the area. Whilst there are immediate residential neighbours, there would be no significant detrimental impact to their amenity and the application complies with policies BE2 and BE19 of the WOLP and policies EH6 and OS4 of the DWOLP.

Historic environment

43. Policy BE8 states development should not impact on the setting of a listed building. Policy EH7 of the DWOLP states proposals which harm the setting of the significance of a designated heritage asset will be resisted, unless a clear and convincing justification can be made to outweigh that harm.
44. There are two listed buildings in the surrounding area, Alice's Cottage [approx. 38m] to the north-west and Prospect House [approx. 40m] to the south-west. Both buildings are well screened from the application area by an existing school building and outbuilding respectively. I discussed the application with the conservation team at West Oxfordshire District Council. Their view is the proposed development would make no significant impact on the setting of the adjacent listed buildings. The proposed building is of course on an area which already forms part of the school's hard play area adjacent to the existing school buildings which post-date the listed buildings. Whilst I note the concern raised by a local resident, I consider that the proposed development does not impact on the setting of the listed buildings and is not contrary to the provisions of policies BE8 of the WOLP and EH7 of the DWOLP.

Highways

45. Policy BE3 of the WOLP states provision should be made for the safe movement of people and vehicles, whilst minimising impact upon the environment. In built-up areas priority should be given to pedestrians, cyclists and public transport. Policy T1 of the WOLP states proposals which would generate significant levels of traffic will not be permitted. Policy T4 of the DWOLP states developments which significantly increase car parking demand will be expected to make appropriate public car park provision.
46. The site in the construction phase will be accessed via the school playing field access track from Marsh Lane and A4095. There were concerns from the Parish Council this would be from the southern end of Marsh Lane. After discussion with the applicant, the site will be accessed via the northern entrance off the access road from Marsh Lane. The northern entrance is in a less populated area, and better suited for HGV movement than the southern entrance to Marsh Lane. By using the northern entrance this would avoid the need to access the village green area and avoid the need to consider the need to resurface Marsh Lane.
47. Local residents have raised concerns relating to unsuitable parking provision and the impact of vehicles accessing the school. Lunch meals are currently delivered from off-site on a daily basis. Traffic levels generated from this development will not significantly increase levels of traffic. TSLC will aim for delivery slots outside of school hours.

Delivery vehicles will temporarily pull into the staff car park and should not be on site for more than 5-10 minutes.

48. As mentioned above, the school currently allocates a parking space for the daily delivery of school meals, and a second space for a member of staff to serve the meals. The additional staff member to cook the meals will take the car park space currently allocated for the delivery of school meals. The applicant's agent has confirmed there are sufficient car park spaces for all members of staff. Therefore the development is considered to be in accordance with Policies BE3, T1 and T4 of the DWOLP.

Trees

49. Policy NE6 of the WOLP states permission will not be granted for proposals that would result in the loss of trees, woodlands or hedgerows, or their settings, which are important for their visual, historic, or biodiversity value. Some residents have concerns that the construction will impact on the large Corsican Pine on the southern boundary. The pine is located on land owned by a neighbouring resident. Local residents have asked for a condition to be included to protect the pine from damage during the construction period. The County's Arboricultural Officer initially objected to the application. The applicant has supplied amended foundation plans, using concrete pads which would prevent damage to the tree's root plate and the objection has now been removed. I therefore consider that the development is in accordance with Policy NE6 of the WOLP.

Drainage

50. Policy NE9 of the WOLP states intensification of existing development will not be permitted where the additional surface water run-off would result in adverse impacts such as an increased risk of flooding.
51. The local residents also have concerns regarding history of flooding. I understand the village suffered badly from flooding in 2007, due to flash flooding. The proposed development is in flood risk zone 1, which is defined by the Environment Agency as "land assessed as having a less than 1 in 1,000 annual probability of river or sea flooding". There are areas to the south, north and west of the school which come under flood risk zones 2 and 3. After the flash flood in 2007, West Oxfordshire District Council published a report on the extent of the flooding and the next steps and recommendations to prevent the flood in the future.
52. The Lead Local Flood Authority raised concerns that the run-off water from the roof would go to a soakaway but that no tests or calculations have been provided. Further information has been provided and they have no objection subject to the soakaway tests results and consequent soakaway design details. I consider therefore that any

permission should be subject to a condition requiring that this information be submitted for approval.

Conclusions

53. The proposed development with suitable conditions as set out in the report would not cause any significant harm to the area in terms of loss of amenity, traffic or in other respects. It would allow the school to provide school meals in appropriate accommodation in line with the central government directive. The proposed building would be an acceptable design for its location. There would therefore be no overriding reason for it not to be granted planning permission in accordance with the development plan policies and the presumption in favour of development.

RECOMMENDATION

54. **It is RECOMMENDED that planning permission for application R3.0096/15 be granted subject to conditions to be determined by the Deputy Director for Environment and Economy (Strategy and Infrastructure Planning) to include the following:**
- i. The development to be commenced within a period of three years from the date of the permission.**
 - ii. Development to be carried out in accordance with the submitted documents and plans.**
 - iii. Translucent film being attached to the southern elevation windows and door to obscure views to the neighbouring boundaries.**
 - iv. Access to the development during the construction phase to be solely via the northern access onto and from the access road to the east.**
 - v. During the construction phase of the development the applicant shall provide adequate protection to the large Corsican Pine on the southern boundary.**
 - vi. Soakage tests being carried out and the soakaway design submitted for approval prior to the operational phase of the development.**

BEV HINDLE

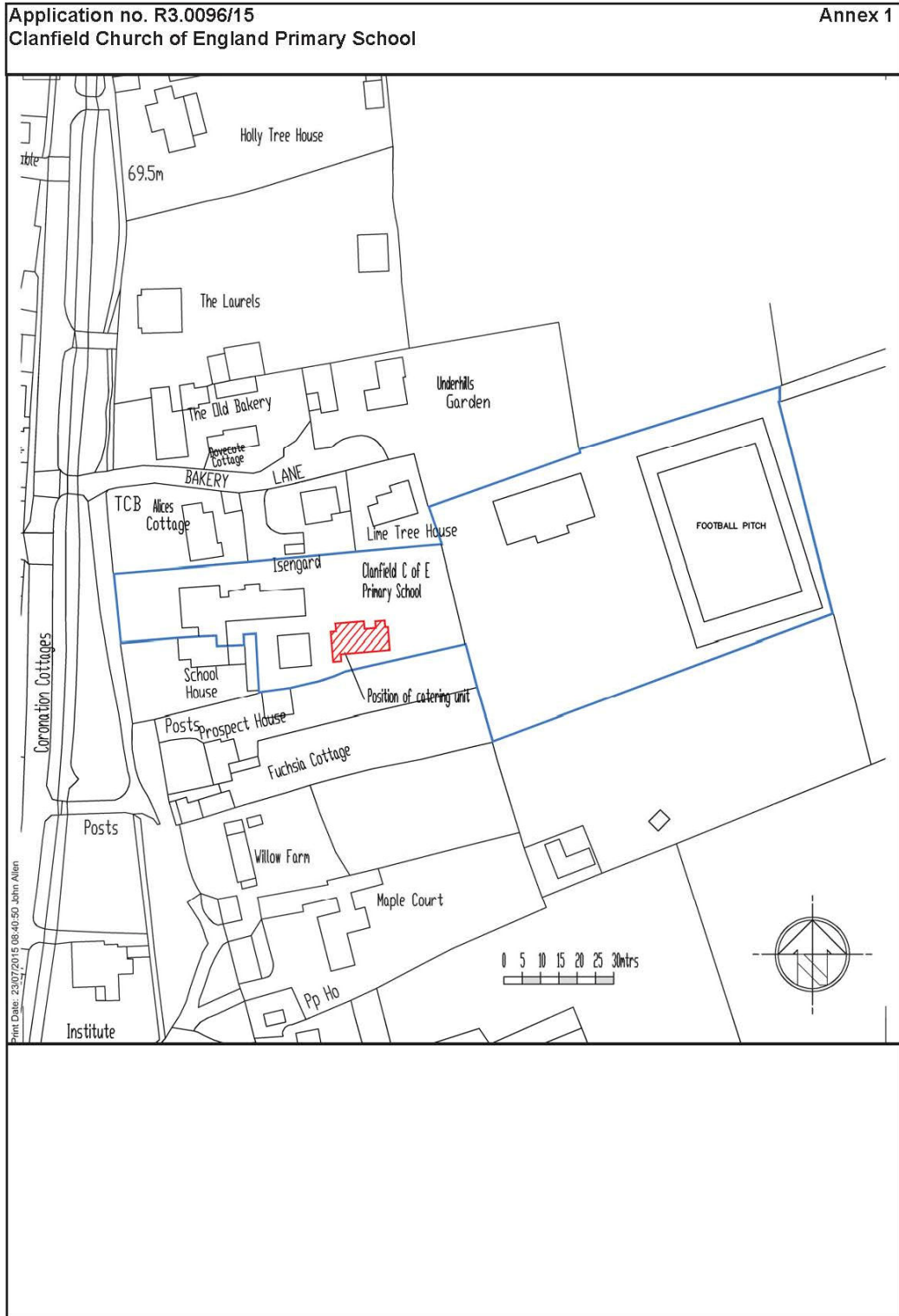
Deputy Director FOR Environment & Economy (Strategy & Infrastructure Planning)

November 2015

Compliance with National Planning Policy Framework

In accordance with paragraphs 186 and 187 of the NPPF, Oxfordshire County Council takes a positive and proactive approach to decision making focused on solutions and fostering the delivery of sustainable development.

We work with applicants in a positive and proactive manner by offering a pre-application advice service, which the applicant took advantage of in this case updating applicants and agents of any issues that may arise in the processing of their application and where possible suggesting solutions. Concerns were raised on number of matters include access to the site during the construction and operational phase, loss of privacy, impact on the setting of the listed buildings, and impacts on local amenity. These were raised with and satisfactorily addressed by the applicant.



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Division(s): Faringdon

PLANNING & REGULATION COMMITTEE – 30 NOVEMBER 2015

COMMONS ACT 2006: IN THE MATTER OF AN APPLICATION TO REGISTER HUMPTY HILL, HIGHWORTH ROAD, FARINGDON AS A TOWN OR VILLAGE GREEN

Report by the Chief Legal Officer

Introduction

1. On 19 April 2013, Mr Robert Stewart on behalf of the Friends of Humpty Hill of 14 The Pines, Faringdon applied to the County Council as Registration Authority under Section 15 of the Commons Act 2006 to register land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire (“the Application Land”) as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.
2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.
3. The application was considered initially by Legal Services who provided advice as to whether the application was ‘duly made’. In light of such advice the application was accepted as ‘duly made’ and was subsequently publicised in accordance with the statutory requirements.
4. One substantive objection was received during the statutory 6-week objection period from Gladman Developments Ltd, Charles Francis Nigel Allaway and Rosemary Ann Pollock (together the “Objector”). The objection raised several factual and legal issues in relation to the application and so an independent public inquiry was held. Dr Charles Mynors (“the Inspector”), a barrister experienced in the area of law was appointed to chair the Inquiry.
5. The Inquiry sat on 16-19 March 2015 and 24 March 2015 at the Sudbury House Hotel, Faringdon with a site visit on 23 March 2015.
6. A copy of the Inspector’s initial Report is appended at Annex 2. The main points to note are summarised below.
7. This matter was originally on the agenda for the Committee’s meeting on 19 October 2015. Due to additional submissions on behalf of the Objector dated 16 October 2015 being lodged, the Committee deferred the matter for further legal consideration at the request of officers.

8. A supplementary Report dated 30 October 2015 was subsequently prepared by the Inspector and is appended at Annex 5. The main points to note and conclusions are summarised below.

The Application Site: Land at Humpty Hill, Faringdon

9. The application form describes the Application Land as Humpty Hill, Highworth Road, Faringdon in Oxfordshire. The Application Land is shown edged red on the map included as part of Annex 1.
10. The Application Land is a grass meadow, roughly rectangular in shape and adjoins the western end of the built-up area of Faringdon. The land is bounded on all 4 sides by hedges and Highworth Road runs along the southern boundary. The land gently slopes from the southern boundary.
11. The hedges are generally thick and impenetrable, except for pedestrian access in the form of kissing gates at the north-eastern and south-eastern corners.
12. A public footpath (207/2, Great Faringdon Footpath No 2) runs between the two kissing gates. In addition, there is a roughly circular informal path around the field, overlapping with the public footpath on the eastern boundary. There is also a second, less well-defined path running hard up against the boundary hedges.
13. At the gate on the southern boundary there is a sign giving a revocable permission for persons to use the land for recreation.
14. The whole of the Application Land is registered at HM Land Registry under title number ON273315. The registered proprietor is Charles Francis Nigel Allaway and Rosemary Ann Pollock.
15. The locality or neighbourhood relevant to the application is described as the civil parish of (Great) Faringdon.

The Town Green Application

16. The application form was duly signed by Mr Stewart and supported by the prescribed Statutory Declaration. The Applicant submitted several additional pieces of information in support of his application, including a supporting statement and some 71 evidence questionnaires by other local residents who used the land. Further evidence and statements were also submitted by the Applicant in preparation for the public inquiry.
17. On 15 July 2013 the Applicant provided an updated version of the plan attached to his application, drawn to the correct scale and exhibited as part of his statutory declaration. This was as requested by the

registration authority. This is the map that is included as part of Annex 1 hereto.

The Determination of the Application

18. Having been received by the County Council and accepted as 'duly made', the application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site, and placing copies on public deposit. A copy of the statutory notice, application and plan was also served on the landowner.
19. The statutory objection period expired on 19 March 2014. A substantial objection was received from the Objector dated 18 March 2014. An objection was also received from Scottish & Southern Electricity due to the presence of overhead power lines. Some statements in support of the application by local people were also received.
20. The principal grounds for objection were in summary as follows:-
 - a. That the Applicant had not established a 'locality or ... neighbourhood within a locality';
 - b. That the Applicant had failed to show use of the land by 'a significant number' of local people;
 - c. The use of the land was not of sufficient intensity and quality to bring home to the reasonable landowner that public rights were being asserted;
 - d. The Applicant has not shown that the land was used for 'lawful sports and pastimes';
 - e. The Applicant has not proved use of the whole of the land (as opposed to the footpaths and tracks);
 - f. The Applicant has not shown that the uses were 'as of right', in that according to the objector the use was either by right (in so far as it related to public right of way use) or forcible (in so far as locked gates were crossed or climbed, gaps made in hedges etc)
 - g. The landowners warned local people to get back onto the public footpath, therefore contesting local use of the land; and
 - h. Use by local people was small scale and sporadic.
21. In a separate letter the Objector also raised the argument that, since the registration authority had needed to go back to the Applicant for further information (the plan) the application was not 'duly made' until that later date. By that time, it was argued, the provisions of s15C Commons Act 2006 had come into force and there was no right to apply due to the existence of a 'trigger event' (an application for planning permission). The registration authority considered that this application was still 'duly made' in accordance with the Church

Commissioners v Hampshire County Council [2014] EWCA Civ 634 and this point was not subsequently pursued.

22. The County Solicitor consulted Counsel on these issues. Ultimately it was considered that the issues raised were ones of fact as well as law and could not be resolved simply in writing and that a public Inquiry would need to be held.
23. It is important to note at this stage that the Council as Commons Registration Authority is essentially neutral in this matter. It is simply concerned to assess the application and register the Application Land if it qualifies properly for registration. In carrying out this assessment it must look back over the use of the land and apply the statutory test under s15 Commons Act 2006. The potential future use of the land, or its desirability in planning terms, is not relevant to the assessment that the Council as Commons Registration Authority needs to make.

The Public Inquiry

24. A public Inquiry chaired by an independent barrister was therefore held on 16-19 March 2015 and 24 March 2015 at the Sudbury House Hotel, Faringdon with a site visit on 23 March 2015.
25. The Applicant represented himself and the Objector was represented by Counsel. Both parties called witnesses to give evidence in person and further written evidence was also given to the Inquiry.
26. The Inspector subsequently submitted his initial Report and recommendation to the County Solicitor on 27 September 2015 a copy of which is attached at Annex 2.
27. This matter was originally on the agenda for the Committee's meeting on 19 October 2015. By a letter dated 16 October 2015 Walker Morris Solicitors on behalf of the Objector raised certain matters in response to the Inspector's initial Report. This letter is appended at Annex 3. At the request of officers, the Committee deferred the matter for further legal consideration.
28. The Applicant was given the opportunity to respond to the Objector's letter dated 16 October 2015 and did so by a letter dated 20 October 2015. A copy of this letter is appended at Annex 4.
29. The Inspector reviewed the additional submissions and produced a supplementary Report dated 30 October 2015. A copy of this supplementary Report is appended at Annex 5.

The Inspector's Recommendations

30. The Inspector's findings are summarised at the beginning of his initial Report and are briefly as follows:

- a. that the Application Land, as a whole, has been used for twenty years by the inhabitants of Faringdon Civil Parish for lawful sports and pastimes, up to the date of the application; and
 - b. that such use has been “as of right”.
31. The Inspector sets out his conclusions in more detail from paragraph 160 of his initial Report. He finds as follows:-
- a. The general use of the land has been as a grass meadow. There has been low-level agricultural use through the year, peaking during a two-week period in the summer when the hay crop is cut and baled. No arable crops have been planted or ploughing carried out;
 - b. The growing grass usually presented no obstacle to general recreation, either on or off the paths. The landowners and others had witnessed people using the paths (and occasionally elsewhere on the land). As the grass grew longer, it made off-path use more difficult;
 - c. The evidence generally disclosed use of the land for walking (with or without a dog), children playing, and informal football, less strenuous activities such as bird watching, nature study, enjoying the view, and generally “hanging out”, “lounging about” or “chilling”, and seasonal activities such as blackberrying, other fruit gathering, sledging and tobogganing;
 - d. Use of the land was predominantly but not exclusively on the formal and informal footpaths, but there was evidence that some activities took place all over the land;
 - e. Cattle were grazed on the field in 1996 and 1997. This would have been during the months approximately May/June to September/October. Only 10 or so cattle were grazed and the Inspector found that their presence did not materially affect the use of the land for lawful sports and pastimes;
 - f. The landowner was aware of the use of the land by local people and took only cursory steps to prevent it. There was only low-level conflict between the recreational and the agricultural use and neither materially impeded the other;
 - g. In respect of the sign put up at the southern entrance, the Inspector finds that this was installed on or after 18 April 2011 and therefore that the 20-year period required was 1991-2011 and the application was made inside the 2-year period referred to in section 15(3) of the 2006 Act; and

- h. The relevant locality is the civil parish of Great Faringdon and the users of the land came predominantly from that area.
32. In conclusion, the Inspector finds that the land is a “classic case” of use for dog walking and childrens’ play. The use of the footpaths indicated use of the land as a generally circular walk for recreation (although some can be attributed to footpath use, in particular people following the north-south public footpath). The recreation and agricultural uses existed side-by-side and the landowners were aware of this and did not forbid or make use permissive until the sign was erected in 2011.
33. In particular, the co-existence of uses on the land is expressly dealt with in recent case-law and in particular by the Supreme Court in *R. (on the application of Lewis) v Redcar and Cleveland BC* [2010] UKSC 11, to which the Inspector refers in his initial Report.
34. In response to the letters of Walker Morris and the Applicant appended at Annexes 3 and 4, the Inspector prepared a supplementary Report in which his conclusions are as follows:-
- a. As regards the permissive sign, the Inspector accepts that his supplemental Report contains a different analysis, however in his opinion the outcome is the same in any event. This is because the application was either made within 2 years of the sign being put up (s15(3) of the 2006 Act), or the use ‘as of right’ has continued from the date of the sign being put in place up to the date of the application (s15(7)(b) 2006 Act);
 - b. The Inspector reasserts his conclusion that the land has been used by a ‘significant number’ of the residents of the civil parish of Faringdon. In his opinion the written evidence, oral evidence at the Inquiry and the impression of use from several visits all taken together indicate that this is a ‘well-used piece of land’. He concludes therefore that the number of people using the land was sufficient to indicate that their use of the land signified to the landowner that it was in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. He acknowledges that more users will tend to live closer to the land;
 - c. As regards the nature of the use of the land, the Inspector notes that the use for walking on paths was only one (albeit the primary) of the uses found by him. He confirms that he has discounted any footpath use that more appropriately refers to an actual or emerging public right of way, but affirms his view that the bulk of the walkers were using the land for general recreational use consistent with the assertion of a village green right.

- d. In respect of the cattle on the land, the Inspector remains of the view that this occurred for a period of months in 1996 and again in 1997. He restates his conclusion that the presence of a few (approximately 10) cattle did not affect the recreational use since people avoided the cows and vice versa. The evidence suggested that the cows would congregate near the bushes at one of the boundaries to avoid the weather and so did not materially impact the recreational use.
35. In view of these conclusions and the more detailed discussions of the law and evidence in his Reports, the Inspector recommends that the application be approved and the Application Land be registered as a town or village green.
36. The Chief Legal Officer supports these conclusions.

RECOMMENDATION

26. **Having received the Opinion of the Inspector set out in Annexes 2 and 5 to this report, the Committee is RECOMMENDED to APPROVE the application for registration as a new Town or Village Green that plot of land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire that site being indicated clearly on the map included in the application submitted by Mr Robert Stewart on 19 April 2013.**

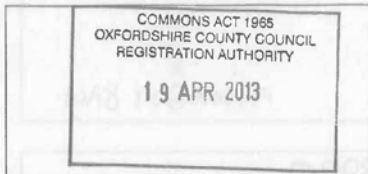
PETER CLARK
County Solicitor & Head of Legal Services

Background papers: Appendices to Form 44
Additional Evidence Questionnaires
Objections by Charles Francis Nigel Allaway,
Rosemary Ann Pollock and Gladman
Developments Ltd dated 18 March 2014
Responses received to statutory consultation
Procedural Directions of the Inspector dated 19
December 2014
Skeleton Closing Submissions on Behalf of the
Objector dated 24 March 2015
Inquiry Bundles
In Members' Resource room from 23 November
2015 until the conclusion of the meeting.

Contact Officer: Richard Goodlad, Principal Solicitor (Tel: 01865 323917)

Commons Act 2006: Section 15**Application for the registration of land as a Town or Village Green**

Official stamp of registration authority
indicating valid date of receipt:



Application number: NL REG 34

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

Oxfordshire County Council

Note 1
Insert name of
registration
authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicantName:

Full postal address:

Postcode

Telephone number:

(incl. national dialling code)

Fax number:

(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:

(incl. national dialling code)

Fax number:

(incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8): ☐

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

☒

Section 15(3) applies:

☐

Section 15(4) applies:

☐

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

If section 15(6)* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(6).

Indulgence by a significant number of the inhabitants of Faringdon as of right in lawful sports and pastimes for a period of at least 20 years before permission was granted under section 15(2) of the Commons Act 2006 as witnessed by the 71* enclosed signed statements showing use for: Children Playing, Dog Walking, Blackberry Picking, Bird Watching, Picnicking, Kite Flying, People walking, Sledging, Randers, Football, Scouts, Skiing, Drawing and Painting, Camping, General Exercise, landscape Appreciation, Running, Jogging, Golf, Ball Games, Infants School Egg Rolling, Wildlife Observation, Wild-Flower Study by a ~~large~~ significant number of people over a period from 1960 to 2013.

* Seventy One enclosed questionnaires

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Nigel Allaway
Crabtree Farm
Lechlade Road
Faringdon
SN 7 8BH

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

72 Witness Questionnaires Attached.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

18/4/2013

Signatures:



R. A. STEWART.

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

I, Robert Andrew Stewart, solemnly and sincerely declare as follows:—

² Delete and adapt
as necessary.

1.² I am ((the person (~~which~~ ~~person~~) who (has) ~~being~~ signed
the foregoing application)) ~~(the solicitor for the applicant) (one of the
applicants)~~

³ Insert name if
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)

4.⁴ I hereby apply under section 15(9) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

⁴ Continued

~~been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.~~

105
05

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

at The Portwell Angel
Market Place, Faringdon, Oxfordshire

this 18th day of April 2013



Signature of Declarant

Before me *

Signature:



Address: BUXTON COURT, 3 WEST WAY, OXFORD, OXFORDSHIRE, OX2 0SZ

Qualification: SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

Dear Lisa.

15/7/13

Please find enclosed a stat dec and map
as required for the Taon Crea Application
at Humphry Hill, Farnjolan.

07

Rob Stewart

RECEIVED 17 JUL 2013

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

I, Robert Stewart, solemnly and sincerely declare as follows:—

² Delete and adapt
as necessary.

1.² I am ((the person ~~one of the persons~~) who (has) ~~have~~ signed
the foregoing application)) (~~the solicitor to~~ (the applicant) ~~one of the~~
~~applicants~~).

³ Insert name if
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

~~⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)~~

~~4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to
register as a green the land indicated on the map and that is in my
ownership. I have provided the following necessary declarations of
consent:~~

- ~~(i) a declaration of ownership of the land;
(ii) a declaration that all necessary consents from the relevant
leaseholder or proprietor of any relevant charge over the land have~~

Cont/

⁴ Continued

~~been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.~~

113
125

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

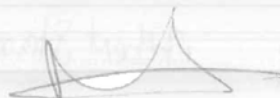
Declared by the said

ROBERT STEWART

at 21 ROLLING CROSE

FARINGDON, OXFORDSHIRE

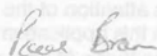
this 15TH day of JULY 2013



Signature of Declarant

Before me *

Signature:



Address:

BURTON COURT, 3 WEST WAY, SHAFER UX2 0JZ

Qualification:

SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

THIS IS THE MAP REFERRED TO IN THE STATUTORY DECLARATION
OF ROBERT STEWART DATED 15TH JULY 2013



**OXFORDSHIRE
COUNTY COUNCIL**

Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Scale 1:2500 (Approximate) Plot Date: 26 June 2013

Oxfordshire County Council Licence Number 100023343, 2013



Worksheet Ref: LJGW

In the matter of the Local Government Act 1972 and the Commons Act 2006
And in the matter of land at Humpty Hill, Faringdon, Oxfordshire

**Report to Oxfordshire County Council
on the determination of Application NLREG 33
to register as a town or village green land at
Humpty Hill, Faringdon**

Summary

I have been appointed by Oxfordshire County Council under section 111 of the Local Government Act 1972 to hold a public local inquiry into an application that has been made to it as registration authority under the Commons Act 2006 for the registration as a town or village green of land known as Humpty Hill, Faringdon, Oxfordshire ("the Application Land", or simply "the Land"), and to advise the Council as to how to determine it.

My conclusions are as follows:

- (a) that the Application Land, as a whole, has been used for twenty years until at least April 2011 by the inhabitants of Faringdon Civil Parish for lawful sports and pastimes;
- (b) that such use has been "as of right" throughout the relevant period.

I therefore consider that the Application Land is eligible to be registered as a town or village green, and I recommend that the register under the 2006 Act be amended accordingly.

In this report I first consider first various procedural matters, and outline briefly the relevant legal background. I then consider the non-contentious evidence – the physical condition of the Application Land and the immediate vicinity, and relevant documents produced independently of the present proceedings. Next, I outline the evidence produced by those resisting the registration of the Land, so far as relevant, and the evidence in support of the registration. In the final section I set out my conclusions and recommendation.

Procedural matters

The Application

1. I have been appointed by the County Council in its capacity as registration authority under the Commons Act 2006 ("the Registration Authority") to hold a public local inquiry under section 111 of the Local Government Act 1972 into an application that has been made to it for the registration as a town or village green of land at Faringdon,

Humpty Hill, Faringdon: report by Dr Charles Mynors to Oxfordshire County Council – page 1

Oxfordshire ("the Application"), and to make recommendations to the Council as to the manner in which to determine it.

2. The Application was made by Mr Robert Stewart, of 14 The Pines, Faringdon, SN7 8AU ("the Applicant") on 18 April 2013.¹ It relates to land described in the application as Humpty Hill, lying between Highworth Road and the southern end of Canada Lane.
3. The Application was made under section 15(2) of the 2006 Act (see below). It was made on the statutory form, and accompanied by a statutory declaration, maps of the Application Land and the surrounding area, and 71 completed questionnaires.
4. The Registration Authority considered that the Application had been duly made, and proceeded to advertise it, and to notify those whom the Authority considered might be expected to object.
5. Objections to the Application were made by Charles Francis Nigel Allaway and Rosemary Ann Pollock ("the Landowners") and Gladman Developments Limited ("Gladman"). The Owners jointly own the freehold interest in the Application Land; and they had entered into a contract dated 7 March 2013 with Gladman relating to the promotion of development on the Land. In this report, I refer to the Landowners and Gladman together as "the Objectors".
6. A further objection to the Application was made by Scottish and Southern Energy, on the basis that there is an overhead power line running across the Land. That objection raised no issues that are material to my recommendation or to the Council's decision, and I say no more about it in this report.
7. The Registration Authority decided to hold an inquiry at which the parties would be able to call evidence and make legal submissions.
8. I should record that, although I knew the Faringdon area reasonably well in the 1970s (my parents lived in Shellingford), I had never seen the Application Land before 2015, and knew nothing of its history, other than from the information with which I have been supplied in connection with the present proceedings. And I know none of those connected in any way with this case.

The inquiry

9. I held an inquiry at the Sudbury House Hotel in Faringdon, on 16 to 19 and 24 March 2015. I visited the Land and explored Faringdon, unaccompanied by any of the parties or the Registration Authority, on Saturday 7 March; and carried out further visits, accompanied by a representative of the Authority, during the inquiry; on my final visit I was accompanied by representatives of the parties. I regret that, due to other unexpected commitments, it has taken so long for this report to emerge.
10. I am grateful to all concerned – in particular the officers of the Registration Authority – for facilitating the smooth running of the Inquiry and the site inspection.

¹ Mr Stewart has since moved to 15 Eagles, Faringdon, SN7 7DT.

Evidence in support of the Application

11. The Applicant represented himself at the inquiry. He gave oral evidence himself as to the use of the Application Land, and called 14 further witnesses to give such evidence: Mr Gary Bates, Mr David Butler, Mr Colin Desborough, Mr Neil Edwards, Mr Joel Francis, Mr Robert Kelly, Mr Ian Lee, Ms Eileen Mrs Metcalf, Mr Joseph Middleton, Mrs Josie Miller, Mr George Platt, Mr Tim Stewart, Mr David Tutt, and Mr Edward Williams.² Each of those produced a written statement; 10 had also produced a questionnaire at the time of the Application.
12. I was given a written statement from one witness (Mr Robin Ashdown) who had been expected to give oral evidence but in the event was out of the country during the inquiry, and a further 55 written statements from others in support of the application who did not give oral evidence at the inquiry. There were also some 32 questionnaires from people or couples in support of the application who neither submitted statements nor appeared at the inquiry. I have generally lumped together representations from couples or families living at one address, as they tended to give very similar evidence; but the precise numbers in each category may be slightly inaccurate, as it is not always immediately apparent who belongs to the same family group.

Evidence in support of the Objectors

13. The Objectors were represented at the inquiry by Mr Philip Petchey of counsel, instructed by Walker Morris solicitors. He called eight witnesses to give oral evidence, each of whom had produced a written statement, accompanied (in some cases) by copies of relevant documents.
14. He called, firstly, six members of the Allaway family – Mr Charles Francis Nigel Allaway (“Nigel”), and his wife Mrs Alison Allaway; their children Mr John Allaway and Mrs Catherine Allaway James; Nigel’s sister Mrs Rosemary Pollock (nee Allaway); and her husband Mr Richard Pollock.
15. He also called Mr Philip Benson and Mr Ian Bowler to give oral evidence, and to produce a number of relevant documents. Mr Benson is the director of Phil Benson Contracting Limited. Mr Bowler is a partner of Strutt & Partners, Salisbury, and has been the land agent in relation to the Application Land since 2003.
16. The Objectors also relied upon written statements from a number of other witnesses who were did not appear in person at the inquiry – from Gladman, Mr Robert Black (project manager), Mr Robert Hogg (project manager), Mr James Holladay (land director), Mr Richard Horsfield (Land Director), Mr Jonathan Shepherd (director), and Mr Christopher Still (planning and development manager); for FPCR Environment and Design Ltd, Mr Martin Woolly (ecologist), Mr John Blackburn (assistant ecologist), and Ms Helen Kirk (Associate); Mr Malcolm Reeve (Director, Land Research Associates Ltd); Ms Hannah Smalley (Archaeological Consultant, CgMS Consulting); and Ms Katy Hayhoe (Associate Landscape Architect, TPM Landscaping).

² In this and other such lists in this report, the names in alphabetical order.

17. These witnesses were all willing to give evidence at the inquiry, but in the event were not required to do so, as the Applicant was willing to accept their written statement without the need for them to appear in person. In those circumstances, I did not require their attendance at the inquiry, but gave their written evidence the same weight as it would have had if they had attended and been subject to cross-examination.

The evidence

18. As is normal in such cases, the available evidence on which I have to base my recommendation consists of the documentary material (plans, photographs, reports, and so on) produced before the start of the present dispute; the oral evidence presented by those who appeared at the Inquiry, and the written statements accompanying such evidence; the statements produced by others who did not give such evidence; and what I saw myself in my various site inspections. I have listed or referred to this above.
19. I have given special weight to documentary evidence produced prior to the start of the present dispute, as the documents themselves could not be tainted by any suspicion of possible bias. As to the selection of those documents, there is no procedure for discovery, as there is in civil litigation, so there is always the possibility that unhelpful material could have been simply omitted; but there was in this case no suggestion that that had occurred.
20. I was also particularly assisted by the aerial photographs of the Application Land produced in 1999, 2004, 2006 and 2009. The proper interpretation of such photographs is always to some extent open to question; but there was no suggestion that they were not genuine photographs.
21. As for oral and written evidence produced specifically in connection with these proceedings, it needs to be remembered that the desirability or otherwise of any proposals for development on or affecting the land in question is wholly irrelevant. Equally irrelevant is any view as to whether the land should, as a matter of principle, be retained for recreation. However, it is likely that much if not all of the evidence in this category will have been produced by those who have views – possibly strong views – on such matters; and that will be relevant to my assessment of their credibility as witnesses.
22. I am aware that in this case Gladman has sought planning permission for the construction of housing on the Application Land. Its application was rejected by the local planning authority, and the subsequent appeal against that refusal dismissed by the Secretary of State.
23. Those giving oral evidence to me at the Inquiry as to the use of the Land (and those producing written statements or questionnaires) could therefore be said to be biased, in that they are or were or may have been either opposed to that proposal or in favour of it. However, I detected no particular tendency to misrepresent the truth – in either direction – and neither of the advocates (nor any of the witnesses) at the Inquiry seriously suggested that this was the case.

Humpty Hill, Faringdon: report by Dr Charles Mynors to Oxfordshire County Council – page 4

24. As noted above, fifteen witnesses appeared at the inquiry in support of the Application; and a further 85 or so produced only written evidence (either a statement or a questionnaire or both). I gave the greatest weight to those who appeared at the inquiry and were available to be cross-examined by the advocate appearing for the Objector; and I gave less weight to the evidence of those in the other categories listed above. However, as is normal in such cases, their evidence was generally consistent with the evidence of those who did appear in person.

The law

The statutory definition of a town or village green

25. The statutory definition of a town or village green is in section 15 of the 2006 Act, which, so far as relevant, when first enacted provided as follows:
- “(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (2) This subsection applies where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
- (b) they continue to do so at the time of the application.
- (3) This subsection applies where—
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
- (b) they ceased to do so before the time of the application but after the commencement of this section; and
- (c) the application is made within *the period of two years beginning with the cessation referred to in paragraph (b)*”
26. Section 15 came into force on 6 April 2007, in place of the definition previously to be found in section 22(1)(c) of the Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000). That earlier definition was virtually identical.
27. With effect from 1 October 2013, the Growth and Infrastructure Act 2014 amended section 15 of the 2006 Act, to substitute for the words in italics the words “the relevant period”. That phrase was defined in a new subsection (3A), also inserted by section 14 of the 2014 Act with effect from 1 October 2013, as follows:
- “(3A) In subsection (3), “the relevant period” means—
- (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b); ..”
28. The amendments to subsection 15(3) of the 2006 Act, and the insertion of subsection 15(3A), took effect on 1 October 2014 – see Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (SI 1488), article 6. However, by article 8(2) of that Order,

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"The coming into force of section 14 of the Act so far as it applies to land in England, has no effect in relation to any cessation referred to in section 15(3)(b) of the Commons Act 2006 which occurs before 1st October 2013."

29. It should also be noted for completeness that amendments were made to the 2006 Act (amending section 15 and inserting sections 15A to 15C) by the Growth and Infrastructure Act 2013. Those amendments came into effect on various dates from 25 April 2013; they do not apply in relation to applications made before that date.

Application to the present case

30. Section 15(2) of the 2006 Act thus makes it clear that, for the Application Land to be eligible to be registered as a town or village green by virtue of that subsection, it must have been used throughout the period of 20 years ending on the date of the application for registration:
- by a significant number of the inhabitants of a locality or of a neighbourhood within a locality, and
 - for lawful sports and pastimes,
 - as of right.
31. Where land has been used in that way for twenty years, but then ceases to be so used, for example because the landowner explicitly permits its use by local people,
- where the cessation occurs before 1 October 2013, the land will still be eligible for registration – under subsection 15(3) of the 2006 Act as originally enacted – provided the application for registration is made within two years of the cessation;
 - where the cessation occurs after 1 October 2013, the land will still be eligible for registration – under subsection 15(3) as amended – provided the application is made within one year.
32. In this case, the Application was made on 18 April 2013. To justify registration under subsection 15(2), therefore, it must be shown that the Application Land was used in a qualifying manner for 20 years starting on 18 April 1993.
33. It is said that a sign was erected in mid-2011 at the southern end of the Application Land, at the entrance from Highworth Road, permitting the use of the Land. If the effect of that sign was that all otherwise qualifying use of the Land after that date was no longer "as of right" – a point to which I briefly return later in this report – the result is that section 15(2) would not apply. However, the Land would still be eligible for registration if it was used in the appropriate manner for 20 years until the date on which the sign was erected, and the application for registration was made within two years after that date.
34. In the light of that analysis, I have considered carefully the use of the Application Land for the period starting 20 years before the sign was erected – in practice, from the start of 1991 – until the present. I refer to that in this report simply as "the relevant period".

Use for lawful sports and pastimes

35. The use of an area of land for “lawful sports and pastimes” includes use of it for various forms of informal recreation, such as walking, with or without dogs, picnicking, flying kites, picking blackberries, and children playing. This was explained by the House of Lords in *Sunningwell* as follows:

“Class c [in section 22(1) of the 1965] Act is concerned with the creation of town and village greens after 1965, and in my opinion sports and pastimes includes those activities which would be so regarded in our own day. I agree with Carnwath J in *R v Suffolk CC, ex parte Steed*, when he said that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green.³ It may be, of course, that the user is so trivial and sporadic as not to carry the outward appearance of user as of right. In the present case, however, [the inspector] found ‘abundant evidence of use of the glebe for informal recreation’ which he held to be a pastime for the purposes of the Act.”⁴

36. In particular, use for lawful sports and pastimes may not include walking along a specific route either around the edge of a field or across the middle, as a means to get from one point on the perimeter to another – that might in certain circumstances be appropriate to establish a claim to a public right of way, but it could not form the basis of a claim to a town or village green. This was considered by Sullivan J in *R (Lainig Homes) v Buckinghamshire CC*,⁵ and by Lightman J in *Oxfordshire v Oxford CC*, who summarised the position as follows:

“[102] The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green.

The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a presumption. The answer must depend on how the matter would have appeared to the owner of the land: see Lord Hoffmann in *Sunningwell*,⁶ cited by Sullivan J in *Lainig Homes*.⁷

Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).

³ (1995) 70 P. & C.R. 487, at p 503.

⁴ *Sunningwell*, per Lord Hoffmann at pp 357D.

⁵ [2003] 3 PLR 60.

⁶ [2000] 1 AC 335, 352h–353a and 354f–g.

⁷ [2003] 3 PLR 60, 80, paras 78–81.

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[103] Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a green or for both. ...

[104] The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way.

[105] The third scenario is where there has been a longer period of user of tracks referable to the existence of a public right of way and a shorter period of user referable to the existence of a green. ...⁸

37. When *Oxfordshire* came to the House of Lords, the observations of Lord Hale at first instance, quoted above – and indeed those of Lord Hale in *Loing Homes* – were described as “sensible” by Lord Hoffmann; the other members of the House did not express an opinion on the relevance of rights of way, but did not dissent from or overrule those observations. I consider the implications of this further towards the end of this report.

Other points

38. The House of Lords in *Sunningwell* established that the use of land “as of right” means use that is not by force, by stealth or by permission.⁹ Whether a use of land is “as of right” must be judged from the perspective of “how the matter would have appeared to the owner of the land”¹⁰ – a question which must be assessed objectively.¹¹ Thus in *Sunningwell* itself, twenty years’ use of glebe land for recreation by residents, the majority of whom came from a single locality, was treated as an effective assertion of village green rights.
39. Where part of an area of land is overgrown or inaccessible, that does not of itself preclude the registration of the whole (including that part) as a town or village green. As pointed out by in *Oxfordshire CC v Oxford CC*, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk.¹²
40. Finally, where a registration authority forms the view that the case for registration as a town or village green has been made out only in respect of part of the land that forms the subject of an application, it may register just that part if it considers that can be done with no injustice to the parties – and there is no rule that the smaller area of land bear any particular relationship to the land originally claimed.¹³

⁸ *Oxfordshire CC v Oxford CC* [2004] Ch 253, at [96]–[105]. Sub-paragraphs added for clarity.

⁹ *R (Sunningwell PC) v Oxfordshire CC* [2000] 1 AC 335, HL at p 356A.

¹⁰ *Sunningwell*, per Lord Hoffmann at pp 352H–353A.

¹¹ *R (Barkas) v North Yorkshire CC* [2015] AC 195, per Lord Neuberger at [21], and Lord Carnwath at [62].

¹² *Oxfordshire CC v Oxford CC* [2006] 2 AC 674, HL, per Lord Hoffmann at [67].

¹³ *Oxfordshire CC v Oxford CC* [2004] Ch 43, CA, at [101]–[111], upheld at [2006] 2 AC 674, HL, at [67].

Non-contentious evidence

The Application Land: the physical evidence

41. As noted above, I had the opportunity to view the Application Land and its immediate vicinity before and during the inquiry.
42. The Application Land adjoins the western edge of the built-up area of Faringdon, on the north side of the Highworth Road. It is approximately 5.6 hectares (14 acres) in area, rectangular in shape, and slopes gently down from a thick hedge along the north side of the Road.
43. The southern boundary of the Application Land is formed by the hedge along the Highworth Road, which is more or less impermeable except possibly by small dogs and adventurous children. The western boundary is formed by a thick hedge, also impenetrable, adjoining a large arable field of approximately the same size and shape as the Application Land. The northern boundary, at the bottom of the hill, is also in the form of a thick hedge, adjoining a small belt of trees.
44. The eastern boundary is also a hedge, but this adjoins various residential properties at either end, and a short stretch of residential road along the middle section. It is possible that there may be one or two gaps in this boundary, and there may have been some in the past; but none are particularly visible now, and any that do (or did) exist would probably only be used by those occupying particular properties, and not by local people more generally.
45. The Application Land is currently a grass meadow, with no particular features other than round the edge. There is a pedestrian entrance at the south-east corner, at the uphill end of the field, enabling access from the Highworth Road via a kissing gate. There is also at this point a sign containing a map of the Application Land and stating:

“NOTICE. The public have permission to enter this land on foot for recreation.
This permission may be withdrawn at any time”

There is no access for vehicles or horses at any point along this southern boundary.
46. At the other, downhill, end of the Land (at its north-eastern corner), there is another pedestrian kissing gate. This one is immediately adjacent to a standard metal five-bar gate, wide enough to allow vehicular access – although it would seem, from the pattern of the grass to either side, that this gateway is only occasionally used by vehicles. These gates allow access to the Land from the southern end of Canada Lane. The northern half of Canada Lane is a metalled road that runs southwards from Lechlade Road, alongside the Infant School, and then becomes the Pines. The southern half is an unmetalled track leading from the junction with the Pines down to the corner of the Application Land.
47. Between the two kissing gates, running up the eastern side of the Application Land, is a public right of way on foot. This is clearly well used; and I observed people walking up and down this route with and without dogs.
48. There is also a well-worn pedestrian route running roughly around the perimeter of the Land, but a few metres in from the edge – overlapping with the public right of way along the eastern boundary. This path is referred to in this report, as it was at the inquiry, as “the circular path” (or track), as it cuts the corner at each of the four

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corners of the field – particularly at the north-western corner, which is slightly boggy. It also cuts the corner by each of the two gates – that is, it appears that those walking round the field, having initially gained access to it from one gate, go up one side and down the other, making a circular route, presumably leaving by the same entrance as they arrived. The result is that, by each of those two gates, there is a path leading to the circular path in each direction, and the circular path itself cuts the corner, so that the walk round the field can be started or finished at either gate, and enjoyed in either a clockwise or anti-clockwise direction.

49. And the circular path is indeed well used – broadly just as much used as the right of way – as is clearly visible both by looking at the Land today, in 2015, and on inspection of the 1999 and 2004 aerial photographs. In particular, I observed that, standing at the kissing gate at the uphill end of the Land, the path going to the west (parallel to the southern boundary) and the path going to the north down the hill (parallel to the eastern boundary) appear to be more or less equally used – in other words, although in law one is a public right of way and the other is not, that does not affect the way in which they are used. The same pattern is to be seen at the Canada Lane entrance.
50. Although it was not much referred to at the inquiry or in the written statements, it is clear on site that there is a further route, tight up against the hedges around the edge of the Application Land. This boundary route too seems to be well used, as evidenced by my observation of both the physical state of the route itself and people and dogs walking along it; but it would not seem to be used as much as the circular path, perhaps because it goes right into the corners, and is therefore longer. And along the eastern boundary (adjoining the houses and the road), there are some points at which the two paths merge.
51. Finally, I noted that there was generally a wire fence within the boundary hedge. There was in addition evidence of other wire fencing at the north-western corner of the Land.
52. On my various visits to the Application Land I observed that it is clearly now being used regularly for informal walking; indeed, it would be very surprising if it were not, given that it is immediately adjacent to a residential area and easily accessible at two points at either end of a public right of way. I also noted that some of those using the Land kept to the circular path; but some went into the middle; and, as noted above, it would seem that some use the path right at the edge of the Land.
53. I also observed that there is a good general view of the Application Land from the lay-by on the north side of the Highworth Road, just to the west of the south-west corner of the Land – sometimes referred to in the evidence as “the viewing point”.
54. From the Lechlade Road, and from the track leading to Crabtree Farm, on the other hand, there is only a fairly distant view of the Application Land. I imagine that it might be possible on a sunny day in the winter to see sledging on the Land – not least because of the movement of the sledges. But I should be surprised if anyone walking on the Land would be visible from the Lechlade Road.
55. I am obviously very conscious that I have only personally seen the Land and the immediate area in spring 2015, and that it may not have always been in the same physical condition, or used in the same way, throughout the relevant period.

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The use of the Land: documentary evidence

56. Clearly the production of any written or oral evidence specifically in the context of the present Application is open to the charge that it has been fabricated, or at least exaggerated, to provide support for the case of the person producing it. Before considering such evidence, therefore, it is helpful to consider what evidence exists that altogether predates the present proceedings, and so is not open to any such doubts – even though it may be open to more than one interpretation.
57. The first items of evidence are the aerial photographs, referred to above, which indicate that the Application Land was in the period from 1999 to 2009 in more or less the same condition and use as it is today.
58. Secondly, inventory and valuation reports were produced by Dreweatt Neate, indicating that the land (under the name Liddiard's Field) was "permanent pasture" at the start of June in the years 1991 to 1996; that no dung was applied in any of those years; that fertiliser was applied in (only) 1995 and 1996; that the Land was chain harrowed in 1992 to 1996; and that it was rolled only in 1995.¹⁴ The reports for the years after 1996 were not produced. The identity of the land to which the various processes were applied is not directly stated in the reports, but there was no dispute as to the conclusions to be drawn.
59. Thirdly, handwritten stocktaking books produced by Mr Bowler, again by reference to "Liddiards Field", from 1990 to 2013¹⁵ indicates that fertiliser was applied in 1990, 1995 and 1996; chain harrowing was carried out in 1990 and from 1992 to 1999; rolling in 1990 and 1995; and no works from 2000.
60. Fourthly, invoices from various contractors indicate that hay baling was carried out on the Application Land in the years from 1993 to 2012, with the exception of 1996, 1997, 2001 and 2002.¹⁶ Again, the identity of the land involved is not stated in the reports, but there was no dispute as to the conclusions to be drawn.
61. A letter from the County Council indicates that the kissing gates were installed in 2003.¹⁷

Evidence in support of the objections to registration

The use of the Land: the evidence at the inquiry from the Owners

62. It is customary in inspectors' reports on village green inquiries to consider first the evidence produced of the Applicant. However, on reflection, in view of the oft-repeated advice from the courts that the key in such cases is always to consider first how the matter would have appeared from the perspective of the landowner, I am

¹⁴ Exhibits CFNA 2 to CFNA 7.

¹⁵ Exhibit IB 2, helpfully summarised at exhibit IB 3.

¹⁶ Exhibits CFNA 8 to CFNA 12.

¹⁷ Letter of 25 April 2003, exhibited (unnumbered) by Nigel Allaway.

starting with the evidence of the owners of the Application Land, and those advising them or working with them.

63. In this case, as noted above, oral and written evidence was to be produced at the inquiry by the Owners, Nigel Allaway and Rosemary Pollock, their spouses, and Nigel Allaway's children. Nigel Allaway was unfortunately unable to be present at the inquiry. I deal with each in turn.
64. Nigel Allaway and Rosemary Pollock have owned the Application Land since they inherited it from their mother on her death in 1990. Since they were born, in the early 1950s, they lived with their parents at Crabtree Farm, Lechlade Road – a mile or so outside Faringdon. In 1983, Mrs Pollock moved to Highworth, where she still lives.
65. Nigel Allaway explained in his written statement that the Application Land – known to him as Liddiard's Field or Cooper's Field, not as Humpty Hill – had always been permanent pasture, and in support of that produced the inventory reports, referred to above. He said that the Land had been chain harrowed each year until 2013, by him or a family member or friend, involving the use of chain harrow towed by a tractor for 1 to 2 hours, before or after the hay crop was taken. The rolling would similarly have taken 3 to 4 hours. The fertiliser would have taken 1½ hours each spring; and dung would have been spread each year, taking 45 minutes each February or March. Ragwort would have been pulled up each year before the Land was cut for hay. In addition, Mr Allaway would have visited the Land monthly while the crop was growing, and weekly towards the end of the grass growing season (around July). He mowed the Land until 2001, taking a full day; after that the mowing was done by P J Benson. And he carted the hay bales back to the Farm until 2009, taking slightly over a day. The hedges were cut every year, until c.2009.
66. Mr Allaway also stated that he had put cattle – about 10 cows – on the Land in 1996 (from June) and 1997 (from May). There was a water trough on the Land, around half way down the western boundary. There was a pen in the north-west corner of the Land, into which the cattle would be herded in September/October in order for them to be loaded on a trailer and taken back to the Farm (in 1996) or driven on foot (in 1997). There was only one isolated incident of the cattle escaping. There were no cattle after 1997.
67. When he was on the Land, engaged in harrowing, rolling, spreading fertiliser and dung, Mr Allaway mostly saw people on the path; if he saw them walking round the boundary of the Land, he would tell them to get back to the path. When mowing or carting, he only saw people on the footpath. Similarly, when he was on the Land checking the cattle, he did not see a lot of people using the footpath; and if he saw people on the circular path, he would tell them to get back onto the public footpath. Usually, if people had seen him, they would stick to the public path. But he had not seen people using the middle of the Land – he would have remembered, as it would have interfered with the crop.
68. He accepted that there had occasionally been sledging on the Land, to which he had never objected; and he had seen blackberry picking on one occasion. He also noted that children had interfered with the hay bales – cutting open the small square ones or, more recently, rolling the larger round ones down the hill – but usually they had run away before being intercepted. .

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69. Mr Allaway explained that there had been another entrance to the Land, approximately half way along the southern boundary, but this had been blocked up in around 2005.
70. Mrs Pollock – who had also never heard the Land referred to as Humpty Hill until recently – explained that until 2011 she had occasionally stopped on her way past the Land, to view it from the lay-by on the Highworth Road; and since then she had visited the Land every month, and more frequently at haymaking time. She confirmed that there had been a hay / silage crop on the Land each year, except in the two years when there had been cattle.
71. Over the years, she had seen people walking, with or without dogs, on the public path and round the edge of the Application Land – on some visits, one or two, and on some visits none – but she had not seen any tracks elsewhere on the Land. The grass would grow to around 60 cm (2 feet) tall, which would make it difficult to walk elsewhere. She particularly looked for dogs off the lead when there were cattle on the Land.
72. At the inquiry, she explained that she had considered trying to stop people on the land – including by the erection of fencing – but that it was difficult. The gate at the Canada Lane entrance had been locked, but the lock was vandalised. The permissive notice had been erected in 2011; the wording had been suggested by Swindon Council. She had seen a childminder on the land with some children, but she would not have asked them to leave; it was good for them to get out.
73. In re-examination, she explained that she was certain about the cattle on the Land in 1997, as that had been the year of Princess Diana's death, and her daughter Catherine had told her about herding the cows on horseback, which had linked in her mind with her recent visit to the USA.
74. Generally, the evidence of Mrs Pollock supported that of her brother Nigel.

The use of the Land: evidence from the Owners' family

75. Mrs Alison Allaway is the wife of Mr Nigel Allaway, one of the Owners of the Application Land. She has lived at Crabtree Farm since 1992, where she has been involved in the running of the farm. She corroborated the evidence of her husband as to the farming activities on the Land – including chain harrowing, rolling, spreading dung and fertiliser, pulling up the ragwort, mowing, baling and carting. In oral evidence, she explained that the dung had only been applied as a very thin coating. She had been on the Land every 2-3 months.
76. She explained orally that the use of the Land had been for "low level" agriculture – producing a consistent hay crop, but not intensive farming with lots and lots of artificial fertiliser.
77. She also confirmed the presence of cattle on the land in 1996 and 1997. Water for the cattle came from a neighbouring field, and a trough and a holding tank on the Land. Her husband had visited the Land every day, for 15-20 minutes, while the cattle were on the Land, entering from Canada Lane and driving around in a 4x4. She explained that cattle were very good at hiding, especially if they were not welcome; they could get under the trees at the bottom of the hill.

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78. She noted that she had sometimes seen people walking on the public path. She had also seen people walking, or dog walking, around the perimeter of the Land – usually solitary walkers rather than groups. And she was aware that children used the Land for sledging in the winter. Due to problems with children playing on hay bales, since the 1990s the hay crop has been baled and carted as soon as possible, to avoid damage. She stated in written evidence that otherwise she was not aware of anyone using the Land; although she noted in her oral evidence that Mr Benson had reported evidence of use, including dog balls. She also stated that she had seen people walking on the footpath throwing balls and frisbees; and small children on bikes.
79. Signs had been put up at the Canada Lane entrance before 2011, but they had been removed within months. She could not be specific as to whether the signs had been before or after 1991; nor could she produce any record of those signs.
80. Mr John Allaway is the son of Nigel and Alison Allaway. He was born in 1974, and lived at Crabtree Farm from 1992 to 1998, since when he has lived in Swindon. He had assisted his father with the haymaking on the Application Land in July and August from 1990 until 2004. He stated that the mowing would take around 4 hours, and turning another 4 hours two days later; the whole harvesting process would take between one and two weeks, depending on the weather. Initially he and his father had done the work themselves, and latterly they had employed contractors.
81. As to cattle, he confirmed that they were on the Land in 1996 and 1997; he suggested that there had been around 10-15 animals – dry cattle – on the Land. They were generally all over the Land, but tended to be at the edge to benefit from the shade and to keep out of the wind. His sister had helped, on horseback.
82. He noted that there had been occasional dog walkers on the Land; but the dogs had been on a lead when the cattle were present. In preparation for introducing the cattle, he and his father had secured the perimeter of the Land, and had noted that unauthorised pedestrian entrance points had been created. In written evidence, he said that he had seen people walking alone or with dogs, usually on the public path but occasionally elsewhere; “the vast majority of people I saw off the public footpath would put their dog back on its lead and return to the path if they saw me on the [Land]”. In oral evidence he said simply that he had seen some people on the footpath and others on the perimeter path. And he had seen teenagers hanging around the hay bales. He had occasionally seen sledging. But he thought that the presence of the electric cable across the Land would deter kite flying.
83. Mrs Catherine Allaway James is the daughter of Nigel and Alison Allaway, and sister of Mr John Allaway. She was born in 1982, and has lived at Crabtree Farm since 1992. She broadly corroborated the evidence of her parents, although she only left sixth form college in 2000. She had visited the Application Land around once a fortnight during the months from May to August in the years from 1990 to 2000, accompanying her father to check the crop growth. Since 2000, she had visited three or four times a week during harvesting – for two or three weeks – and otherwise every six to eight weeks.
84. She considered that there would have been roughly ten cattle on the Land in 1996 and 1997; and she described vividly her memories of driving the cattle into a pen in the north-west corner of the Land – a rectangular enclosure, made of wire fencing, just

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enough for 10 cows tightly contained – riding her horse Emily, which she acquired in around March 1996 (aged 14).

85. She remembered from the period before 2000 seeing a couple of people walking their dogs on the public path. She had also seen people on the perimeter path, and asked them to get back onto the public path. She had once seen someone walking down the middle of the field; and on one occasion children playing in the hedge on the western boundary. She had often visited the Land in her car, and people had seen the car and kept to the footpath. And she said that her parents would drive over the Land in their 4x4, to check the crops – and had sometimes driven through them.
86. Mrs Allaway James had not seen other activities on the Land; nor had she heard her friends at school in Faringdon mentioning any visits to it. She said that she could also see the Land when driving into Faringdon from the Farm; and she had sometimes seen people walking their dogs down Canada Lane in the direction of the Land. And she had seen from the top of the track to Crabtree Farm people sledging on the Application Land.
87. She was fully aware that the perimeter track had been made by people walking; that it was act of trespass; and that the use of any paths in the middle of the Land would amount to an act of damage. However, although they tried to stop unauthorised access over years and years, and had discussed fencing the footpath, they had not taken any action; as there had not been enough damage to make it worthwhile.
88. She also drew attention to a number of other open spaces which local people could use for dog walking and playing with children.
89. Mr Richard Pollock is the husband of Mrs Rosemary Pollock, one of the Owners of the Application Land. He has lived at Highworth since around 1983-1984. He corroborated their evidence as to the agricultural activities taking place there. They had visited Crabtree Farm weekly, until c. 2012, to visit her brother Nigel; and had occasionally stopped at the lay-by on the Highworth Road, to look at the Application Land from the viewing point there.
90. Mr Pollock had seen people walking, with or without dogs, along the public path or in a circle around the perimeter of the Land. He remembered discussing with his wife “on a number of occasions” the fact that they could see someone on the “wrong” side of the Land. But there were often times when they did not see anyone on the Land – and there was never anyone on the Land when he was helping his brother-in-law Nigel with the baling. He had been occasions over the years when he had seen children playing with the bales. They had usually run off down the hill before he could tell them to desist. He too had seen no other activities.
91. Several of the Allaway family had heard of the egg rolling said to have taken on the Application Land, but none had seen it.

The use of the Land: evidence from others at the inquiry on behalf of the Objectors

92. Mr Philip Benson is the director of a contracting business, and his firm has carried out various activities on the Land since the early 2000s – he could not recall the exact year

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when it started. Those activities included mowing, tedding, baling, and (since c.2011) carting.

93. His employees did the work in the period from June to August each year, depending on the weather. Between one and three of his employees would have been on the Land for between four and five days each year, from 9.00 a.m. until 9.00 p.m., with an extra day (and possibly an extra employee) in the years they were also doing the carting. He also regularly drove along the Highworth Road to get to other clients; and once the grass on the Land had been cut, he would "quite often" visit the land to see if it was ready to be turned and baled.
94. Mr Benson explained that he had seen people walking on the Land, usually on the northern perimeter – although he did not know where the footpaths were on the Land. His employees had also seen people walk round the Land in a circuit. They had found lost balls and sticks from dog walkers. If they saw a dog off the lead, they would ask the owner to put it on a lead, for safety reasons. They had also had altercations with children interfering with the hay bales; and he himself had seen children trying to roll bales down the hill. Otherwise, they had not told people to leave; although the had reported the incidents to Mr Allaway.
95. Neither Mr Benson nor his employees had seen other activities on the Land. Nor had there been track worn through the tall grass on the Land.
96. Mr Bowler had worked from 2003 for Dreweatt Neate, which merged in 2009 with Carter Jonas. In 2011 he moved to Strutt & Parker in Salisbury. He has been the land agent for Mr Nigel Allaway in relation to all of the land at Crabtree Farm, including the Application Land. He had also seen the stocktaking valuation notes dating back to 1996. He produced the documents referred to earlier in this report. And he explained that, following his attendance at a seminar on town or village greens in 2011, he had given the Owners advice (on 10 March 2011) that had led them to place a sign on the Land shortly afterwards.
97. He had seen walkers and dog walkers on the public path and on the circular path.

The use of the land: the evidence for the Objectors from those not appearing at the inquiry

98. As noted above, a number of statements were produced by employees of Gladman and by other professionals employed by Gladman, detailing visits that they had made to the Application Land on various dates between August 2012 and August 2013, in connection with the development of the housing proposal.
99. Of those who visited briefly, Mr Horsfield saw one dog walker on the circular path during a 10-minute visit in August 2012, and saw no one on a 10/15-minutes visit to the lay-by on the Highworth Road on a very cold day in December 2012. Mr Still, on a visit in March 2013, observed the Land from the lay-by for 10 minutes and from the Canada Lane gate for 5 minutes, and saw no one. Mr Hogg and Mr Black visited the Land, viewing it from the lay-by for 15 minutes, in March 2013, and saw no one. Mr Holladay and Mr Shepherd visited the Land with their colleague Mr Gregory, for a brief visit (of between 10 and 20 minutes) in October 2012. They saw one person walking a dog on the public footpath.

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100. Ms Smalley made a visit of 30 minutes on 20 December 2012, a wet and miserable day. She noted that the track had been muddy, suggesting regular use; and she saw four dog walkers, on the circular track. Ms Hayhoe visited the Land for approximately 45 minutes, on 13 January 2013, and saw a gentleman walking along the western side. Mr Hogg visited for about an hour on 4 December 2012; from the lay-by, he saw one dog walker on the circular track and one on the footpath, but he did not see anyone whilst he was actually on the Land.
101. The two ecologists were each on site for around two hours, carrying out surveys: Mr Woolly on 13 December 2012, and Mr Blackburn in the early morning on 27 August 2013. The former saw two or three walkers, either on the public footpath or the circular track; the latter saw three or four dog walkers. In one case, the dog was allowed to run into the centre of the site, while its owner remained on the path. Mr Blackburn returned to the site in the evening, to conduct a bat survey for 2½ hours, and saw two dog walkers on the circular path.
102. Ms Kirk visited the land on 18 December 2012, a pleasant but cold day, to carry out a tree survey around the edge of the Land. She saw no one on her visit. Mr Reeve was on the Land for 5 hours on 12 December 2012, a very cold day, carrying out a soil survey. He saw one dog walker on the public footpath, and possibly another on the circular track.
103. None of those giving written evidence saw any other activity on the Application Land.
104. It was made plain by Mr Petchey that those who had made the written statements summarised above could be made available at the inquiry if either the Applicant or I had wished to ask them any questions. In the event, none of the statements was challenged at the inquiry by the Applicant; and I therefore accord them the same weight as I would have done if those making them had attended in person.

Evidence in support of the Application

The case for the Applicant

105. On the original application form, in answer to the question 7 (headed "Justification for application to register the land as a town or village green"), the Applicant replied:

"Indulgence by a significant number of the inhabitants of Faringdon as of right in lawful sports and pastimes for a period of at least 20 years before permission was granted under section 15(2) of the Commons Act 2006 as witnessed by the 71 enclosed signed statements (questionnaires) showing use for: children playing, dog walking, blackberry picking, bird watching, picnicking, kite flying, people walking, sledging, rounders, football, scouts, skiing, drawing and painting, camping, general exercise, landscape appreciation, running / jogging, golf, ball games, infants school egg rolling, wildlife observation, wildflower study by a significant number of people over a period from 1960 to 2013.
106. As noted above, some 15 witnesses (including the Applicant himself) gave evidence at the inquiry in support of the Application. They were all courteously but thoroughly cross-examined by Mr Petchey, in particular as to their use of the Land in 2014. Some were extremely helpful, and had a clear and apparently accurate memory of what had occurred on the Land over the years; others were less certain, and had a more general

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impression of what they had done or seen. But I did not detect any deliberate falsification.

107. Generally, those who gave oral evidence had been familiar with the Land for many years – some since the 1950s (Mrs Metcalf), the 1960s (Mr Kelly, Mr Desborough) or the 1970s (Edwards, Mr T Stewart); most since the 1980s (the Applicant, Mr Butler, Mr Middleton, Mr Tutt, Mr Platt, Edwards, Mr Lee); and two since the early 1990s (Mr Bates, Mr Francis). Only one (Mrs Miller) had not known the Land for the whole of the relevant period; she had first arrived in 2010, but had been very familiar with the Land since then through her work as a childminder.
108. A number of the witnesses commented on the name of the Application Land. The Stewarts noted that it had been known as either Humpty Hill or Humpty Dumpty Hill; Edwards thought of it as Humpty Dumpty Field; Mr Kelly thought that the next field was Humpty Dumpty Hill. Mrs Metcalf thought that the Land itself was Humpty Dumpty Hill; in answer to questions, he observed that Cooper and Liddiard were both Faringdon names, but he had not heard them attached to this particular field. Mr Williams indicated that he had always known the Land as Humpty Hill and had never heard of either Cooper's Field or Liddiard's Field; Mr Lee said that he had never heard of any of those three names, although a neighbour of his (who had lived in Faringdon since the war) referred to it as Humpty Hill.
109. Not surprisingly, the evidence of many who appeared at the inquiry overlapped to a significant extent. I have therefore not attempted to record in full the evidence of each of the 15 witnesses, but to highlight the common themes that occurred. I do so principally by reference to the use of the Application Land – the activities actually indulged in by those giving oral evidence at the inquiry and their families; those in which they have themselves seen others taking part; and those described in the witness statements and questionnaires. I then consider the specific issue of the use of the Land for the grazing of cattle, as perceived by those using the Land for recreation. And finally I touch upon the identity of those using the Land. I have generally not referred to evidence that related solely to use of the Application Land prior to the 1990s.
110. I have recorded the principal activities in which the witnesses said that they had taken part, or seen others doing so; but not those they had not seen.

The use of the Land by those supporting the Application at the inquiry

111. Almost all of those giving oral evidence stated that they or members of their family had used the Application Land for dog walking (Mr Edwards, Mr Kelly, Mr Lee, Mrs Metcalf, Mr Middleton, Mrs Miller, Mr Platt, Mr T Stewart, Mr Tutt, Mr Williams) or for walking without a dog (the Applicant, Mr Butler, Mr Francis, Mr Middleton).
112. Another common use of the Land was by children playing, football (Mr Kelly, Mrs Metcalf, Mrs Miller, Mr Platt). Sometimes this took the form of informal kickabout; in one case erecting a tent; and in one case an unsuccessful attempt to use a tricycle. And sometimes the adults sat and watched while the children played (Mr Butler).

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113. Several referred to picnics (Mr Butler (although he was uncertain), Mr Desborough, Mr Francis, Mr Lee, Mrs Metcalf, Mrs Miller) – this may have taken the form of a formal picnic, but it was more likely to be sandwiches and crisps – several referred to using the top end of the field for this, because of the view. Enjoying the view generally, again particularly at the top of the field, or “relaxing” or teenagers “hanging out”, was also a repeated theme (Mr Butler, Mr Francis, Mr Lee, Mrs Miller, the Applicant, Mr T Stewart) – in some cases on specific types occasions, such as late summer evenings, bonfire night, or to watch the air displays at Brize Norton or Fairford.
114. A significant use of the Land, albeit seasonal, was blackberrying (Mr Butler, Mr Desbrough, Mr Francis, Mr Kelly, Mr Lee, Mrs Metcalf, Mr Middleton, Mrs Miller, Mr Platt, Mr T Stewart, Mr Tutt, Mr Williams). A few also referred to gathering sloes and crab apples. The main focus of this activity appeared to be the western and northern boundary hedges. Bird watching, and nature study generally, was mentioned by a few (Mr Francis, Mr Lee, Mr Middleton, Mrs Miller); along with wild flower collection (Mr Tutt).
115. More active pursuits on the Land included jogging or keep fit (the Applicant, Mr Francis, Mr Middleton, Mrs Miller). This was sometimes up and down the public path, sometimes round the circular path, and in some cases zig-zagging up the hill. A similar group took part in flying kites, planes, and frisbees – generally at the top, to avoid the pylon (Mr Francis, Mrs Metcalf, Mr Middleton, Mrs Miller, Mr T Stewart, Mr Williams). Almost everyone said that they had taken part in sledging whenever there was snow, and everyone had seen it taking place.
116. As for other activities, there was much discussion of egg rolling. This appeared to have been organised on annual basis, at least for a while, by Faringdon Infant School (in nearby Canada Lane). Evidence was given by Mr Bates that a competition had occurred in 1993 and 1996; and I was shown photographs of the 1996 event. And other events linked to the School had taken place on the Land (Mr Edwards)
117. It appeared that the geographical pattern of the use of the Land was very varied. Butler had “enjoyed the whole field”, not just the perimeter; the children had used the centre, and he and his wife the perimeter. He had enjoyed the good sunset from the high point in the middle of the field. Mr Desborough had varied his route, whereas Mr Edwards had kept to the paths. Before children, Mr Francis too had kept to the path, doing a full circle; but he occasionally cut across the middle, especially with a small child; and the children went all over the Land.
118. Mr Kelly said that, when walking the dog, he would sometimes keep to path, sometimes not; he usually used the circular path, but sometimes walked across to talk to other people. He would walk across the middle of the field to get to the blackberries, but sometimes failed to cross due to the long grass. Mr Lee would walk all over the Land, sometimes off the path, and sometimes into the longer grass. Mrs Metcalf would walk around or up and down the Land, varying her walk, and sometimes zig-zagging; her dog got bored always walking round path – most people would stay on the path, but she didn’t; but she did respect the growing crop. Sometimes she would stand at the top, throwing a Frisbee. Mr Middleton too had used the whole of the field; he too varied his walk each day – 50/50 round the track or across the middle. It also depended on the weather, as the worn track would get messy. Mrs Miller used

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the whole of the Land with no fixed route; the children with her (she was a childminder) went all over it, using the paths for racing; the older children looked at the view from the top.

119. Mr Platt had used the entire field; Labradors would go all over the field, sometimes on the path, and sometimes down the middle. He occasionally walked after dark, and would then stick to the path. He explained that the apparent track shown on the aerial photographs is due to a spring – hence the boggy patches. The Applicant tended to use the top of the hill, throwing a ball to his dog in the middle, and typically doing a few laps of the field. Mr Tutt also used the whole field; he generally stuck to the track, with his dog, doing a circuit to maximise the length of a walk; but he would go to the edge to get blackberries. Mr Williams walked around the perimeter path, but also often walked into the centre – to get sufficient exercise without climbing hill, and to minimise dog straying onto neighbouring fields.
120. Mrs Metcalf, Mr Middleton and Mr Tutt – each of whom lived in the area of housing alongside the eastern boundary of the Land – used both entrances to the Land. Others consistently used one entrance or the other, depending on which was nearest to their house.
121. As for the frequency of use, this too varied. Mr Lee, Mr Middleton (while he had a dog), Mrs Miller and Mr Platt visited 2-3 times a day. Mrs Metcalf visited most days; and Mr Middleton (without his dog) 2-3 days per week. Mr Butler and Mrs Miller used the Land weekly. Mr Francis, and Mr T Stewart use it around twice a month, as did Mr Desborough, although he now uses it only very occasionally. Mr Kelly used it 3 to 4 times a year, walking a dog; and the Applicant “several times a year”. Mr T Stewart said that he had visited the Land more as a child and a teenager.
122. Finally, a few had sometimes crossed the Land en route from one point to another. Thus Mr Bates used the Highworth Road entrance in the course of walks to the open country beyond; Mr Desborough had walked from that entrance across the field and on into the town; Mr Kelly had walked across it on his way to the infant school; and Mrs Miller had crossed it as part of a longer jogging circuit to Coxwell.

Use of the Land by others, seen by those supporting the Application at the inquiry

123. In addition to their account of how they and their families had used the Application Land, those giving oral evidence at the inquiry also described what they had seen of the Land being used by others.
124. All the witnesses stated that they had seen the Land being used by others for dog walking. Some said they had seen people walking on the Land without dogs (the Applicant, Mr Butler, Mr Desborough, Mr Lee, Mrs Metcalf, Mr Platt). As noted above, some walked round the edge of the field, but not all (Mr Middleton, Mrs Miller). Mrs Miller noted that dogs don't always keep to path; half do, but half run in the middle – it depends on the breed. Mr Desborough had seen walkers going all over the field; but Mr Butler observed that visitors to Faringdon just used the footpath, whereas the locals used the whole field.

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125. A number noted that they had seen children playing (the Applicant, Mr Desborough, Mr Edwards, Mr Lee, Mrs Metcalf, Mr Tutt) – sometimes on bicycles (Mr Platt). Mr Tutt noted that mums and toddlers sometimes stopped on their way home across the field, and played for a little. Many had seen picnics (Mr Butler, Mr Francis, Mr Kelly, Mr Lee, Mrs Miller, Mr Tutt); Mr Tutt particularly noted children having picnics, mainly at the top of the hill.
126. Many had seen other people jogging across the Land or taking other forms of exercise (the Applicant, Mr Butler, Mr Francis, Mr Kelly, Mr Lee, Mr Middleton, Mrs Miller, Mr Platt, Mr Tutt). Some joggers used the footpath; some used the circuit; and some cut across the middle (Mr Platt, Mr Tutt).
127. Some had seen informal football being played (Mr Kelly, Mr Lee, Mr Middleton, Mrs Miller, Mr Platt, the Applicant, Mr T Stewart) – one noted that such games meant that it was necessary to keep a dog under control. Mr Kelly said that the long grass made no difference. People had been observed the Land being used for occasional golf practice (Mr Butler, Mr Middleton, Mr T Stewart, Mr Williams). Mr Kelly had seen people with cricket bats and tennis rackets, and heard noise, but no-one had seen actually cricket.
128. Many had seen people flying kites or model aircraft (the Applicant, Mr Butler, Mr Francis, Mr Kelly, Mr Lee, Metcalf, Mr Middleton, Mrs Miller, Mr Tutt, Mr Williams), although several said that this was rare (Mrs Miller, Mr Williams), or not regular (Mr Kelly); and several referred to an elderly gentleman flying plane a few years ago.
129. Everyone said that they had seen the land being used for sledging in the winter. And the Applicant and Mr Tutt had also seen skiing and snowboarding.
130. Many people had observed others blackberrying, which was said to be very popular (Mr Butler, Mr Francis, Mr Kelly, Mr Lee, Mrs Metcalf, Mr Middleton, Mrs Miller, Mr Platt, Mr T Stewart, Mr Tutt, Mr Williams). One also mentioned the picking of crab apples. And school children had been seen on nature walks (Mr Middleton).
131. As to less energetic pursuits, teenagers had used the Land for “hanging out”, usually at the top of the hill, in the evenings and the school holidays (the Applicant, Mr Platt); one witness had observed courting couples. Others had been seen drawing, painting, photographing flowers (Mr Lee, Mr Tutt), or bird watching (Mr Butler, Mrs Metcalf, Mr Middleton, Mr T Stewart, Mr Williams). Mr Francis and the Applicant said that people simply visited the Land to enjoy the view.
132. Mr Edwards said that there had been a battle re-enactment, once or twice
133. Mrs Metcalf’s house (at 13 Orchard Hill) looks over the Land; she can see diagonally across it from her bedroom windows. She said that, more often than not, she could see someone walking over the field, especially on the western side. And very often she had seen someone parked in the lay-by on Highworth Road, especially in the evening. Even after dark, she had seen people on the Land, with torches.
134. Mr Middleton also looks over the Application Land; from his house at 17 Beech Close it was possible to see the bottom 5/8 of the Land. He had seen lots of dog walkers in the middle of the field, and lots of people using the middle of the field. There was quite a lot of football, mainly by the bottom stile and 100m into the field, with a ball occasionally coming into his garden; the grass was not too long, even just before it was

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cut, and it was still possible to play – largely kickabout. He had also seen aeroplanes, remote control helicopters, generally at the bottom end of the field; and they too had ended up in his garden on two or three occasions.

135. Mr Tutt lives near the Land, at 22 Orchard Hill, but said he was not a gazer. He noted that there had been a hole in the hedge opposite the end of Elm Road; he had maintained the hedge there with the permission of the landowner.

Use of the Land for agriculture, as perceived by those using it for recreation

136. All of the witnesses appearing on behalf of the Applicant were asked about agricultural activity on the Application Land, and whether it had ever interfered with their use of it.
137. Mrs Metcalf noted that the grass was long for about two months; as she put it, it was not special grass, you think it won't be cut, but it is. Dogs and children run through the long grass, and tend to flatten it (Mr Williams, Mrs Metcalf, Mrs Miller). Mr Platt and Mr Tutt both stated that they respected the farmer's crop, and try to avoid treading down, but dogs go all over; they go through the hay, and owners often followed (also Mr Middleton). Mr Francis said that the long grass had not affected the use of the Land a lot, especially at the top end (where the grass was not as long); in any event, long grass was exciting for small boy. The comments at paragraph 111 above are also relevant in this context.
138. A number of the witnesses had seen the hay crop being taken. Mr Lee noted that when the tractor was working, they just walked up and down the footpath. Mr Platt had seen workers (contractors, he presumed), and observed that it was nice to see the grass being cut for hay; kids loved to see tractors. Mrs Metcalf admitted that children had played with the bales. Mrs Millar had seen such activity in at least three years out of the five years she had known it. Those working on the Land had been happy for her to be there, and she (and the children with her) had kept out of their way.
139. More generally, a number of witnesses stated that the agricultural operations had not interfered with their recreational activities (the Applicant, Mr Desborough, Mr Edwards, Mr Francis). Mr Butler had seen farmworkers clearing drains – but, again, that had been no interruption to his use of the Land.
140. Mr Bates and Mr Butler said that they had not seen any crops.
141. All the witnesses were asked if they had seen dung being spread; none had. But Mr Platt had once seen the Land sprayed with compost granules.
142. There was much evidence as to cattle that may have been on the Application Land. Mr Butler had seen cattle on one or two occasions, half way down west side. A number of others had seen cattle, although they differed in their recollection of when they had been present. Mr Tutt recalled that they had been there for one or two years in the early to mid 1980s; the Applicant thought that they had been there in the late 1980s; and Mr Platt recalled six male heifers in around 1989. Mr Desborough thought they had been there before 1991; they could not have been in 1996/97, as he took his grandchildren on the Land then, and would have remembered. Mr Edwards said they had been there two or three times in his lifetime, definitely before 1996. Mr Williams also thought they had been present earlier. Mr Platt agreed; the cows had not been

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there in 1996/97, as he would have recalled the manure. Mr Tutt thought it would have been 1991 at the latest, as he had a skittish dog in later years, which would have chased them. Mr Lee thought they were in the early 1990s.

143. As to the effect of the cattle being present, Mr Williams noted that his dog and the cows had co-existed, except when the cows congregated at a particular point, when the dog would simply avoid them; the cattle were not interested in the dogs, or vice versa. He also recalled the cows being in the north-west corner, and elsewhere. Mr Butler agreed that the cattle had never stopped them; Mr Lee said that they had had no impact on his use of the Land, as his dog was used to cows. Mr Platt admitted that his dog had once herded the cows up the hill, and then walked round the herd; after that, the cows had left them alone. Mr Tutt noted that the cattle had not restricted the use of the Land, although their presence had meant that his dog got less exercise.
144. Others did not recall having seen any cattle (Mr Bates, Mr Francis, Mr Kelly, Mrs Metcalf, Mr Middleton). Mr Kelly accepted that one explanation for that could have been that he was using the Land less; another witness noted that there had been cattle in another field, further along the hillside.
145. Mr T Stewart did not recall any cattle, but had been working in Oxford in 1996/97; Mrs Miller too did not recall any cattle, but had only lived in the area since 2010.

Encounters with owners

146. The witnesses were all asked whether they had encountered the owners of the Land or their employees or agents. Mr Butler had seen operatives on farm vehicles, but not been challenged.
147. Mr Lee said that the farmer had stopped children playing with the bales; but that that had not been a general prohibition. He had also been told by the owner of the lower field (on horseback) to keep to footpath, but not by the owner of the Application Land, which was much more used. Mr T Stewart had met the farmer on a number of occasions; he had never been asked to leave or to stop his activities; sometimes he had simply swapped sides to get out of way. Mr Tutt and Mr Williams had seen the landowner, but not directly encountered him.
148. Some said that they had never been denied access to the Land or challenged whilst on it (Mr Francis, Mr Kelly, Mr Platt). Others simply stated that they had never seen the landowner (the Applicant, Mr Bates, Mr Butler, Mr Edwards, Mrs Metcalf, Mr Middleton, Mrs Miller).

Change over the years

149. The witnesses were all asked whether the way in which the Land had been used had changed over the last two decades. Mr Butler, Mr Francis, Mrs Metcalf, Mr Platt, the Applicant, and Mr T Stewart all said that it had not. As Mr Edwards put it, it was simply a vacant field. Mr Desborough, Mr Lee, Mrs Miller, and Mr Williams considered that the use of the Land had not changed, but had increased over the years. Mr Middleton too thought that there had been no change, but noted that the owners had cut back the hedge hard – there were less blackberries than there had been.

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The identity of the users of the Application Land for recreation

150. On the original application form, in answer to the question 6 (headed "Locality or neighbourhood within a locality in respect of which the application is made"), the Applicant simply indicated "The Town of Faringdon".
151. There seems to be no disagreement that the Civil Parish of Great Faringdon¹⁸ was and is a locality for the purposes of the 2006 Act, and that its boundaries had not changed at any material time.
152. A map was subsequently produced showing a red line drawn tightly round the present built-up area of Faringdon.¹⁹

Uses of the Land: evidence in the form of statements or questionnaires

153. As noted above, there were around 85 people providing either witness statements, questionnaires or both. They were not able to be questioned at the inquiry, but I note that there was no suggestion by the Objectors that such evidence should be simply ignored. And in any event it accorded entirely with the oral evidence that I have examined with some care in the preceding sections of this report.
154. As to the questionnaires, the Applicant explained in answer to my questions that they had been handed out by him, and by Mr Williams and two others. They had selected the respondents on the basis that they were known to them. Mr Williams said that he had been given the area from Highworth Road to Beech Close; he knocked on doors, and gave a questionnaire to anyone who had lived in the area for 10 years or more (not all were accepted) – he did not return if there was no answer at the first attempt.
155. This does not prove that all of those in the area close to the Application Land had used it, or that none of those outside that area had done so.
156. I have not undertaken a complete analysis of all of the activities recorded in the statements and the questionnaires. In both cases, they relate to:
 - activities actually indulged in by those providing the evidence;
 - activities indulged in by members of their families; and
 - activities they had seen others indulging in.
157. The activities thus recorded, in one or more of those three headings, included the following principal ones:
 - walking with a dog;
 - walking for general recreation;
 - children playing;
 - bird watching, nature study, enjoying the view;
 - blackberrying; and

¹⁸ So called to distinguish it from Little Faringdon, a small hamlet just north of Lechlade.

¹⁹ Including also Jespers Hill and some of the parkland to the north of the Church.

- sledging and tobogganing.

158. Some provided more detail – for example, walking with particular dogs, or after dark; playing particular kinds of games; watching flying at the air shows. And some mentioned other activities, such as kite flying. And many gave details of the frequency of taking part in or observing particular activities, or the period over which such observations had been made.
159. By and large, however, as already noted, the pattern of activities recorded in the written evidence reflected both the pattern recorded in the oral evidence at the inquiry and the pattern I observed on my visits.

Summary and conclusions

The general pattern of use of the Land

160. There can be no doubt that, throughout the relevant period, since 1991, the general use of the Application Land has been as a grass meadow. That is, the grass has grown, getting gradually longer, and was cut each year, baled, and taken away as a hay crop. The relevant agricultural processes would have each taken several hours on several days over the course of a week or two, during the summer.²⁰ There has been almost no other use of the Land for other forms of agriculture – such as the growing of wheat, vegetables, or other crops – and in particular no use that would have required the Land to be ploughed.²¹ It was, in laymen's terms, simply a grass meadow.
161. Most of the time, the growing grass presented no obstacle to the use of the Land for general recreation – including, in particular, walking round the various paths (that is, the public footpath between the two gates, and the circular path, and the less well-used outer path hard up against the edge of the field). The Owners, members of their family, and those working for them, had therefore not surprisingly seen people using the paths.²² Those visiting the Land in connection with the housing proposal had also seen people using the paths.²³ One or two had occasionally seen people not on the paths.²⁴ As the grass became longer, it became more difficult to walk elsewhere.²⁵
162. While the harvesting were taking place, the Owners and their families and agents generally saw people just on the public footpath; people elsewhere were sometimes told to get back to the path.²⁶ And children had sometimes played with the hay bales.²⁷
163. The Owners and those supporting them were also well aware that the Land was used for sledging.²⁸ It did not appear that any serious attempt had been made to prevent or

²⁰ See paras 58-60, 65, 80, 93 above.

²¹ See para 76.

²² See paras 67, 71, 78, 82, 85, 90, 94, 97.

²³ See paras 99-102.

²⁴ See paras 71, 82, 85.

²⁵ See para 71.

²⁶ See paras 67.

²⁷ See paras 68, 78, 82, 90, 94.

²⁸ See paras 68, 78, 82.

restrict this. They made little mention of blackberry picking²⁹ – although the blackberry season would have occurred after the hay crop had been gathered in, so that there would have been less cause for visits to the Land for farming purposes. They had heard of the egg rolling, but not seen it.³⁰

164. This pattern of use, as perceived by the Objectors, generally fits with the pattern of uses noted by those giving evidence, oral or in writing, in support of the Application. This largely focussed on

- walking (with or without a dog);³¹
- children playing, and informal football;³²
- less strenuous activities, such as bird watching, nature study, enjoying the view, and generally “hanging out”, “lounging about” or “chilling”;³³ and
- seasonal activities – blackberrying, other fruit gathering, sledging and tobogganing.³⁴

165. It appears that the egg-rolling, although much talked about, probably occurred only on one or two occasions (in 1993 and 1996) during the relevant period.³⁵ And there may have been a battle re-enactment on one occasion.³⁶

166. Those supporting the Application indicated that these activities took place all over the Land; the walking was predominantly on the public footpath and the circular path, but by no means exclusively so.³⁷ And the agricultural activities had not significantly interfered with the recreation – as the grass became taller, it would be more difficult to go through, but children and dogs did, and sometimes adults.³⁸ While the harvesting was taking place, those indulging in recreation on the Land simply kept out of the way; and they had not been told to desist.³⁹

167. I consider, on the balance of probability, that walking took place predominantly but not exclusively on the circular path; to a lesser extent on the outer path – which must have been made by someone – and to some extent also elsewhere on the Land. I myself saw some people using the centre of the field, and I should be very surprised if some people did not from time to time cut across the middle, if only for variety. And of course children and dogs tend to go all over a field; and adults will sometimes follow them.

168. Other activities – such as relaxing, enjoying the view, children playing, sledging – clearly took place all over the Land.

²⁹ See para 68.

³⁰ See para 91.

³¹ See paras 111, 124, 133, 134, 157.

³² See paras 112, 125-128, 134, 157.

³³ See paras 113, 131, 157.

³⁴ See paras 114, 115, 129, 130, 157.

³⁵ See paras 116.

³⁶ See para 132.

³⁷ See paras 117-120, 131.

³⁸ See paras 137, 138.

³⁹ See paras 138, 147, 148.

Occasional use by cattle

169. I said earlier that there had been “almost” no use for other forms of agriculture because there was much discussion of the use of the Application Land for the grazing of cattle. It seems that there can be no doubt that the Land was used for cattle, almost certainly on two occasions.⁴⁰ And there was little dispute that they would have been present from May/June through to September/October.
170. However, there was at the inquiry a significant disagreement between the parties as to which years they were there. The Owners and their family are clear that the cows were on the Land in 1996 and 1997.⁴¹ Those giving evidence in support of the Application, however, tended to suggest that the cattle had been present at various days between “early to mid 1980s” and “early 1990s”. The two accounts are impossible to reconcile. However, on the balance of probabilities, I am inclined to agree with the 1996/97 date. I do so because of the circumstantial evidence provided by the Owners – in particular as to the rounding up of the animals by Mrs Allaway James on her horse.⁴² That also tends to fit with the documentary evidence – for example, the lack of invoices for baling in those years⁴³ – although that is not conclusive.
171. However, it seems probable that the presence of the cattle made no great impact on the recreational use of the Land in those two years. Ten or so cows would not take up a great deal of the Land; walkers and those using the Land for other purposes would simply avoid them. And one witness suggested that they tended to congregate at the edge of the field, to benefit from the shade and keep out of the wind.⁴⁴
172. Obviously, if I am wrong in my deductions as to the timing of the cattle, they would have been on the Land before the start of the relevant period, in which case their presence would be irrelevant for present purposes.

Conclusion

173. I thus conclude that there was low level agriculture on the Application Land throughout the period from 1991 to 2013. This took the form of:
- probably, the grazing of ten or so dry cattle for a few months in 1996 and 1997; and
 - the taking of an annual hay crop in other years.
174. I also conclude that there was abundant use of the Land throughout the period for informal recreation, taking the form of
- walking (with or without a dog);
 - children playing, and informal football;

⁴⁰ See paras 66, 71, 73, 77, 81, 84, 142.

⁴¹ See paras 66, 77, 81, 84.

⁴² See paras 83, 81, 84.

⁴³ See para 60.

⁴⁴ See para 81.

- less strenuous activities, such as bird watching, nature study, and enjoying the view; and
- seasonal activities (notably blackberrying and other fruit gathering, and sledging and tobogganing).

175. The principal activity, walking, took place primarily on the paths, but not exclusively so.

176. I also consider that the owners of the land must have been aware – insofar as they turned their minds to it – that such recreational activities were taking place, and took only cursory steps to prevent or restrict it. Further, insofar as there was any conflict between the agriculture and the recreation, it was very low level, and neither significantly impeded the other.

The sign

177. I conclude that there was a sign, at least at the southern end of the footpath, from some unknown date in or after April 2011, permitting use of the Land. No precise date seems to have been agreed; but I note that the application for registration was submitted on 18 April 2013, and that everyone before and at the inquiry proceeded on the basis that the relevant 20-year period was from 1991 to 2011. I therefore conclude, on the balance of probabilities, that the sign was erected on or after 18 April 2011, less than two years before the application for registration – so that it was at least possible that section 15(3) of the 2006 Act could apply.

The consequences in law

178. Firstly, this is a classic case of land being used for “dog walking and playing with children” which may be, in modern life, the main function of a village green.⁴⁵

179. Second, the use of the paths on the Application Land, without or without dogs, may be partly attributable to an actual or emerging right of way – actual, in the case of the public footpath up the east side of the Land, and possibly emerging in the case of the circular path around the other sides. However, that applies only in the case of those entering at one gate and leaving at the other, in the course of a longer walk (or jog) from A to B.

180. It seems to me likely that many of those living broadly to the south of the Land will have entered it from the Highworth Road, taken a circular walk, down one side and back up the other, and back home again. Many of those living to the north will have similarly taken a circular walk entering and leaving by the Canada Lane entrance. This is borne out not only by observation of how people use open space generally, but also by the presence of the paths cutting the corners by the two entrances – which must have been created and used by some one.

181. Thirdly, I conclude that this pattern of use is a classic example of recreation and low-level agriculture existing happily side-by-side. There is no doubt that the Owners knew, both by direct observation and from the reports of those working with and for them, that the Land was being used by people who were in effect trespassers.

⁴⁵ See *Carnwath J in Stead*, quoted in *Sunningwell* (see para 35 above).

182. This reflects the pattern of land use described in the 18th century case of *Fitch v Fitch*:

"The inhabitants have a right to take their amusement in a lawful way. It is supposed, because they have such a right, the plaintiff should not allow the grass to grow; there is no foundation in law for such a position. The rights of both parties are distinct, and may exist together."⁴⁶

This was supported by Lord Hoffmann in *Oxfordshire*, in the context of the rights of the parties that might co-exist after registration of land as a town or village green:

"I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with sports and pastimes for the purposes of section 22 [of the 1965 act] if in practice they were not."⁴⁷

183. That conclusion, and the dictum in *Fitch v Fitch*, were in turn adopted by Lord Walker in *Redcar*:

"I see great force in the ... passage quoted. Taking a single hay crop from a meadow is a low-level agricultural activity compatible with recreational use for the late summer and from then until next spring."⁴⁸

And it may be noted that that tends to suggest that the recreation might be interrupted by the hay crop, whereas the evidence in this case is that the interruption was minimal.

184. Nor was the interruption to recreation by the grazing of cattle any more substantial. The grazing occurred on the Land, if at all, for around four months in two years. And those using it for other purposes simply avoided the cows – no doubt putting their dog on a lead where appropriate.

185. Fourthly, whilst the owners occasionally intervened to restrict the use of the land other than the footpath, and to prevent damage to the bales, I do think that the recreational use of the Application Land was either permitted or forbidden, until the sign was erected in 2011. Until that date, therefore, such use of the Land was "as of right"; after that date, it was by permission – at least in respect of those entering from the southern end of the path, and quite possibly others.

186. Fifthly, I consider that those using the Application Land are likely to have come largely from the Civil Parish of [Great] Faringdon. No doubt the Land was predominantly from the parts of Faringdon nearest to the Land, but that will always be true in the case of any open space at the edge of a built-up area. I think it unlikely that more than a handful will have come from outside Faringdon.

Overall conclusion and recommendation

187. I consider that there is ample evidence showing on the balance of probability:

- (a) that the Application Land, as a whole, has been used for twenty years by the inhabitants of Great Faringdon Civil Parish for lawful sports and pastimes, up to the date of the erection of the sign in 2011; and

⁴⁶ (1792) 2 Esp 543, per Heath J at p 54.

⁴⁷ *Oxfordshire CC v Oxford CC* [2006] 2 AC 674, HL, at [51].

⁴⁸ *R (Lewis) v Redcar and Cleveland BC* [2011] 2 ACC 70, SC, at [28].

(b) that such use has been "as of right".

188. I therefore consider that the Application Land is eligible to be registered as a town or village green, and I recommend that the register under the 2006 Act be amended accordingly.

CHARLES MYNORS

PhD, FRTPI, FRICS, IHBC, Barrister

25 September 2015

Humpty Hill, Faringdon: report by Dr Charles Mynors to Oxfordshire County Council – page 30

In the matter of the Local Government Act 1972
and the Commons Act 2006
And in the matter of land at Humpty Hill,
Faringdon, Oxfordshire

**Report to Oxfordshire County Council
on the determination of
Application NLREG 33
to register as a town or village green
land at Humpty Hill, Faringdon**

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25 September 2015

Chambers ref: 6990/11
— Report 1a

County Solicitor & Head of Law
Legal Services
Oxfordshire County Council
County Hall
New Road
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OX1 1ND

Our ref ERK/CJD/GLA.276-3

Your ref NL Reg 33/Humpty

16 October 2015

By email only
Richard.Goodlad@Oxfordshire.gov.uk
Katherine.Skinner@Oxfordshire.gov.uk

Dear Mr Clark

In the matter of an application to register Humpty Hill, Faringdon as a town green

We are instructed to act on behalf of Gladman Development Limited, Charles Frances Nigel Allaway and Rosemary Pollock (the "Objectors").

We ask that this letter be put for the attention of the members at the Planning & Regulation Committee meeting on Monday 19 October 2015.

This is another case where an application has been made to register farm land as a town or village green. Rather than reject the claim as misconceived Dr Mynors, the Inspector, has recommended registration. As demonstrated below he was wrong to do so.

Unfortunately, Dr Mynors has not engaged with the Objectors' submissions made to the inquiry and his Report is flawed. The decision of course is for the Planning and Regulation Committee and is not for the Inspector. However so far from it being open, in the light of the Inspector's Report, for the Committee to decide to **register** the land as a town or village green, what it should do is to decide to **reject** the application.

The first error that Dr Mynors made is as to legal basis of the application. As explained at paragraph 26g of the Report by the County Solicitor & Head of Law & Culture, the Inspector concluded that the application fell to be considered under section 15 (3) on the basis that the relevant 20 years use was down to 2011. In fact (in accordance with what Lewison LJ said in *R (Newhaven Port and Properties Limited v East Sussex County Council* [2014] QB 282 at paragraph 29), the application fell to be considered under section 15 (2), on the basis that the permissive use between 2011 and 2013 fell to be disregarded. This was explained to the Inspector at the inquiry and set out in Appendix 2 to the Objectors' closing submissions. In this case what is a clear error can be argued not to make any difference, but it does go strongly to support the suggestion made above that in writing his Report the Inspector did not engage with what the Objectors were saying.

The second error is this. *R (Barkas) v North Yorkshire Council* [2015] AC 195 is a new case in which the Supreme Court had to consider what the requirements were for registration of a new town or village green.

Lord Carnwath said (see paragraph 65 of his speech)

... in cases of possible ambiguity, the conduct must bring home to the owner not merely that "a right" is being asserted, but that it is a village green right.

What makes the assertion of a "village green right" (or a "town green right" in the case of a town) different from an ordinary right is that it is exercised in connection with a village (or, in the case of a town), a town.

Sometimes, as Dr Mynors will have appreciated, a smaller area can be taken but in the present case the relevant area put forward by the Applicant was Faringdon and Dr Mynors proceeded on this basis. Faringdon is quite a small town but it still has a population at the last census of 7,121. There was oral evidence on behalf of the Applicant from 15 people; and there were, additionally, 73 evidence questionnaires (some of the makers of which had also made written statements) and 38 written statements. 111 (i.e 73 +38) is 1.56%. Moreover the great majority of those who have produced questionnaires or statements live within 200 yards of the site.

The Objectors' point was clearly put to Dr Mynors as members will see if they look at the Objectors' closing submissions available in the Members' Resource Room (it is only necessary to look at paragraphs 28 and 29 of the closing submissions).

Accordingly in the required sense the use was not by the inhabitants of Faringdon; and use was not by a significant number of these inhabitants.

However Dr Mynors does not address the submission. What he does is to consider the question of where those who have used the land at paragraph 186 and says:

... I consider that those using the application land are likely to have come largely from the civil parish of [Great] Faringdon. No doubt the [use] was predominantly from the parts of Faringdon nearest the land, but that will always be true in the case of any open space at the edge of a built up area.

Thus we don't know the reason for why he disagrees with the Objectors. This would not matter if he is right and they (and apparently Lord Carnwath) were wrong: this is a matter the Committee will have to decide. In that context it would be helpful for members to have in mind the case of *Steed* (1995) 75 P & CR 487, an earlier case decided by Carnwath J (as he was then) decided that use by those who lived near to the claimed town green could not say that their use was referable to the town of Sudbury in which they lived. It is only necessary for members to look at the headnote to get the point:

Held, dismissing the application ... Use of the land is not enough. It must be accompanied by an assertion of right and be linked to a right claimed by the inhabitants of a particular locality ... the evidence presented [did not] link the use to a right claimed by reference to any particular locality.

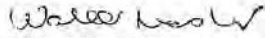
Just to be clear, there was no doubt in *Steed* that the use was by the inhabitants lived in Sudbury in the nearby streets (p505) to the application site.

This is a sufficient for the Committee to reject Dr Mynors's Report. However there is a third error into which he fell.

If members go to the land they will see "on the ground" that it is used by local people to carry out a circular walk. This is because their feet have worn down the grass. This circular path is described by

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Yours sincerely



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1999



2004





14 The Pines
Faringdon
Oxon
SN7 8AU

Rob Stewart

20th October 2015

Richard Goodlad, Principle Solicitor
For the attention of Nick Graham
Chief Legal Officer and Monitoring Officer
Corporate Services
Oxfordshire County Council
County Hall, New Road
Oxford, OX1 1ND

RE: In the matter of the Humpty Hill Town Green, Faringdon. On behalf of The Friends of Humpty Hill

Dear Mr Clark,

I received from your office today a copy of a representation made to Oxfordshire County Council by Walker Morris LLP of behalf of Gladman Developments and the Allaways (the Objectors).

My comments on the representations and on the action of Walker Morris LLP are as follows:

1. Walker Morris have suggested that Dr Mynors "*did not engage with the Objector's submissions*". Dr Mynors is an extremely experienced Inspector and Barrister who I understand has reported on several Town and Village Green applications. He held a 5 day public enquiry and took 6 months to produce his report. As such I believe that this suggestion by Walker Morris is beyond ridiculous.
2. Walker Morris have suggested that Dr Mynors has made a mistake in his judgement of the legal basis of the application. For the sake of completeness perhaps this point could be clarified. It is, however, irrelevant to the outcome of Dr Mynors' report. Humpty Hill remains eligible to be registered as a Town Green.
3. Walker Morris have suggested that the usage of Humpty Hill was not by the inhabitants of Faringdon (in the required sense) and that the usage was not by a significant number of these inhabitants. They have justified this, as they did during the enquiry, with a mathematical representation. That being that only 1.56% of the population gave evidence of some sort to the enquiry. Neither the legislation nor the any of the case law require a numerical demonstration of usage. It is only Walker Morris who have suggested this. In fact the case law makes clear (*McAlpine Homes*) that usage needs only to be by a significant number of people, not a considerable or substantial number. It was Dr Mynors himself, acting for Staffordshire in the *McAlpine Homes* case who submitted 'what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.' This was held by Sullivan J and has become case law. As such, the question of whether or not the usage was by "a significant number" of inhabitants falls to the Inspector's judgement. Surely Dr Mynors, more than anybody, is suitable to make this judgement. Based on the witnesses evidence of both their own usage, and the usage they saw by others, Dr Mynors has correctly concluded that the usage is both significant and by the inhabitants of Faringdon. It should also be noted that the enquiry was made aware of the existence of an online petition against Gladman's planning application on the site. The petition was signed by over 1000 people. Over 300 people also left online comments. These comment were submitted to the enquiry.

4. Walker Morris have suggested that Dr Mynors has made a mistake in his judgement of the usage of the paths around Humpty Hill. They quote the *Laing Homes* case. Dr Mynors specifically references this case and the *Oxfordshire (Trap Grounds)* and *Summingwell* cases at paragraph 36 of his report. These are the authorities on the matter of path usage in relation to town and village greens. Dr Mynors then goes on to describe and discuss the paths of Humpty Hill, referring to them some 83 times throughout his report, before drawing his conclusion. Again it falls to the Inspector's judgement as to how the usage of paths can and does contribute to usage of a town or village green. Dr Mynors clearly gave the matter a great deal of consideration and correctly concluded that much of the usage did contribute to that of a village green. Walker Morris also suggest that Dr Mynors failed to assess the usage which took place off the paths. One can only assume they have not fully read his report. Dr Mynors clearly make this assessment in his description and discussion throughout his report and draws his conclusions.
5. Walker Morris have attached poor quality photographs to their representation email. They have suggested that better quality photographs are available in the Objectors bundle. This is not correct. In fact, the attached photographs and those in the Objectors bundle have been produced in a low resolution. A lower resolution than Google naturally prints out at! The resolution chosen by Walker Morris shows the informal path around Humpty Hill, but fails to show all the other man made paths across the site. In my opinion this was a deliberate action in an attempt to mislead the Inspector. If the council wish to view high-resolution images they can be found in the Applicant's bundle. Along with an additional photograph from 1996.
6. The last point Walker Morris raise is with regard to cattle. They criticise Dr Mynors judgement with regard to this matter. They incorrectly state that Dr Mynors concluded that there were cattle on the field during 1996/7. In fact Dr Mynors stated that he thought this most probable. This is not a conclusion, and there is no need for one, because, as Dr Mynors found, any cattle that may have been present probably did not interfere with the usage by the inhabitants.

This application was made some two and a half years ago. Throughout that period Walker Morris have used bluff, bluster and bullying to attempt to defeat it. They raised a ridiculous objection to the updating of a map of the site. Their formal objection was inaccurate and misleading. During the public enquiry there was smoke, mirrors, red herrings and blind allies. On two occasions evidence which should have been submitted 3 weeks prior to the enquiry was "*found in the bottom of a filing cabinet*" and their Barrister's summing up was what soap operas are made of.

Outside of this process the site has been subject to a planning application which failed and is allocated as Local Green Space in the Faringdon Neighbourhood Plan. Walker Morris and Gladman have been their usual selves during these processes, attempting to bully the Neighbourhood Plan Steering Committee, the Town Council and the Vale of the White Horse District Council.

And now they appear to have established a route of appeal to an Inspector's report by submitted a last minute veiled threat of legal action. And a poorly written submission at that. Just another act of bullying. Frankly if they want a QC's opinion.....why have they not commissioned one?

I welcome the County's suggestion that this matter be referred back to Dr Mynors for his opinion and I request that my submission be forwarded to Dr Mynors for his consideration as well.

Sincerely,

Rob Stewart

In the matter of the Local Government Act 1972 and the Commons Act 2006
And in the matter of land at Humpty Hill, Faringdon, Oxfordshire

**Application NLREG 33
to register as a town or village green land at
Humpty Hill, Faringdon:
supplementary report to Oxfordshire County Council**

1. I was appointed by Oxfordshire County Council under section 111 of the Local Government Act 1972 to hold a public local inquiry into an application that has been made to it as registration authority under the Commons Act 2006 for the registration as a town or village green of land known as Humpty Hill, Faringdon, Oxfordshire ("the Application Land", or simply "the Land"), and to advise the Council as to how to determine it.
2. In my main report, I concluded as follows:
 - (a) that the Application Land, as a whole, had been used for twenty years until at least April 2011 by the inhabitants of Faringdon Civil Parish for lawful sports and pastimes;
 - (b) that such use had been "as of right" throughout the relevant period.
3. I therefore considered that the Application Land was eligible to be registered as a town or village green, and I recommended that the register under the 2006 Act be amended accordingly.
4. In this supplementary report I consider briefly various points that have been made in representations by the Objectors, and responses to those points from the Applicant.

A. Legal basis for the application

5. The statutory definition of a town or village green is in section 15 of the 2006 Act, which, so far as relevant, when first enacted provided as follows:

"(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where—

 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.

Humpty Hill, Faringdon: supplementary report by Dr Charles Mynors to Oxfordshire Council – page 1

(3) This subsection applies where—

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
- (b) they ceased to do so before the time of the application but after the commencement of this section; and
- (c) the application is made within *the period of two years beginning with the cessation referred to in paragraph (b)*.

(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied—

- (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.

6. Section 15 came into force on 6 April 2007. With effect from 1 October 2013, the Growth and Infrastructure Act 2014 amended section 15 of the 2006 Act, to substitute for the words in italics the words “the relevant period”, but that amendment (and the insertion of subsection (3A)) did not apply where the cessation in question occurred before 1 October 2013.
7. Section 15(2) of the 2006 Act thus makes it clear that, for the Application Land to be eligible to be registered as a town or village green by virtue of that subsection, it must have been used throughout a period of 20 years:
 - by a significant number of the inhabitants of a locality or of a neighbourhood within a locality, and
 - for lawful sports and pastimes,
 - as of right.
8. Normally, that 20-year period will continue up to the date of the submission of an application for registration.
9. However, in some cases qualifying use may have taken place for 20 years but subsequently be permitted – so that it becomes no longer “as of right”. In that case, by virtue of subsection (7), land may still be registered at any time, provided that the relevant use is as a fact continuing at the date of the application, and is otherwise qualifying; the permission is simply disregarded.
10. Alternatively, land may have been used in a qualifying manner for twenty years, but then cease to be so used, for example because the landowner explicitly permits, forbids or physically prevents its use by local people. In that case, provided the cessation occurred before 1 October 2013, the land will still be eligible for registration – under subsection 15(3) of the 2006 Act as originally enacted – provided the application for registration is made within two years of the cessation.
11. In this case, the Application was made on 18 April 2013.
12. It is said that a sign was erected in mid-2011 at the southern end of the Application Land, at the entrance from Highworth Road, permitting the use of the Land. If the

Humpty Hill, Faringdon: supplementary report by Dr Charles Mynors to Oxfordshire Council – page 2

effect of that sign was that all otherwise qualifying use of the Land after that date was no longer “as of right”, qualifying use could not have continued up to the date of the application for registration.

13. However, because the reason why the use of the land would not have been “as of right” would have been merely that it would have been “permitted” from the date of the sign being erected, the Land would now still be eligible for registration – by virtue of section 15(7)(b) – provided that it could be shown that
 - it had been used in the appropriate manner for 20 years until the date on which the sign was erected, and
 - such use continued (disregarding the permission) from that date until the date of the application.
14. Alternatively, an application for registration could succeed – by virtue of section 15(3) – if made within two years after the date on which the use ceased to be as of right, because of the permissive sign.
15. I accept that the analysis in my main report differs from the analysis above, in that the former omitted any reference to section 15(7). However, the result is in practice identical; and the omission is of no significance in this particular case – save that it means that it is of less importance to determine the precise date on which the sign was erected.

B. The nature of the right being asserted

16. I concluded at paragraph 186 of my main report that those using the Application Land are likely to have come largely from the Civil Parish of [Great] Faringdon, and that it was unlikely that more than a handful will have come from outside Faringdon.
17. It is pointed out by the Objectors that the population of Faringdon is around 7,121, and that the total number of those producing written evidence in one form or another was only 111; and it is said that this is not use by a significant number of the inhabitants of Faringdon. On that basis, the conduct of those using the land was not such as to bring home to the landowners that a town or village green right was being asserted.
18. The first point to make in this connection is that the 111 people who provided written evidence will in many cases have represented couples or families. In a few cases forms were completed by both husband and wife; but not in many others. And very few children completed them as well as their parents. Secondly, as in all such cases, no one suggested that those filling in the forms or questionnaires were all those who use the land – there will have been others, who could not be bothered to fill in the form, or who were out when the applicant’s representatives called. The number of those actually using the land at one time or another is thus likely to have been significantly in excess of 111 – by what factor is entirely a matter of conjecture.
19. Thirdly, as a matter of impression, this is a well-used piece of land. I have seen the land on several occasions; I have read the written evidence. And I have been involved, in one way or another, in around 40 cases where land has been claimed to be a town or village green. This is one of the more convincing I have come across – purely in

Humpty Hill, Faringdon: supplementary report by Dr Charles Mynors to Oxfordshire Council – page 3

terms of factual evidence as to use by local people. And the landowners were hardly taken by surprise; they were well aware that the land was being used; it would have been remarkable if it had not been.

20. It is true that, as I observed in my main report, no doubt the predominant use of the Land will have been by those from the parts of Faringdon nearest to the Land, but that will always be true in the case of any open space at the edge of a built-up area. But the law has always recognised that there can be greens linked to towns as well as villages; and this seems to me to be a good example. And it cannot be the case that land has to be used equally by people from all parts of the town or village in question.
21. I also observe that arguments very similar to those now being deployed in this case were raised by the objectors in *R v Staffordshire County Council (ex parte McAlpine Homes)*; they failed.

C. The nature of the recreational use of the Land

22. I concluded in my main report that there had been abundant use of the Application Land throughout the relevant period for informal recreation, taking the form of
 - walking (with or without a dog);
 - children playing, and informal football;
 - less strenuous activities, such as bird watching, nature study, and enjoying the view; and
 - seasonal activities (notably blackberrying and other fruit gathering, and sledging and tobogganing).
23. I noted that the principal activity, walking, took place primarily on the paths, but not exclusively so. The Objectors urged at the inquiry, and still urge, that use of the paths should be excluded altogether.
24. I expressed my view that, firstly, this was a classic case of land being used for “dog walking and playing with children” which may be, in modern life, the main function of a village green, as noted in *Sunningwell*.
25. Secondly, however, I noted that the use of the paths on the Application Land, without or without dogs, may have been partly attributable to an actual or emerging right of way – actual, in the case of the public footpath up the east side of the Land, and possibly emerging in the case of the circular path around the other sides. However, that applied only in the case of those entering at one gate and leaving at the other, in the course of a longer walk (or jog) from A to B.
26. I thus considered that it was likely that many of those living broadly to the south of the Land would have entered it from the Highworth Road, taken a circular walk, down one side and back up the other, and back home again. Many of those living to the north would have similarly taken a circular walk entering and leaving by the Canada Lane entrance. This was borne out not only by observation of how people use open space generally, but also by the presence of the paths cutting the corners by the two entrances – which must have been created and used by some one.

34. I see no reason to revise that conclusion.

Overall conclusion and recommendation

35. I thus remain of the view that there was ample evidence showing on the balance of probability that the Application Land, as a whole, had been used for twenty years by the inhabitants of Great Faringdon Civil Parish for lawful sports and pastimes, up to the date of the erection of the sign in 2011; and that such use was "as of right".
36. I therefore still consider that the Application Land is eligible to be registered as a town or village green, under either section 15(2) or section 15(3), and I recommend that the register under the 2006 Act be amended accordingly.

CHARLES MYNORS

PhD, FRTPI, FRICS, IHBC, Barrister

30 October 2015

In the matter of the Local Government Act 1972
and the Commons Act 2006
And in the matter of land at Humpty Hill,
Faringdon, Oxfordshire

**Application NLREG 33
to register as a town or village green
land at Humpty Hill, Faringdon:
Supplementary report to
Oxfordshire County Council**

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30 October 2015

Chambers ref: 6990/11
— Report 2

PLANNING & REGULATION COMMITTEE – 30 NOVEMBER 2015

POLICY ANNEX (RELEVANT DEVELOPMENT PLAN AND OTHER POLICIES)

Oxfordshire Minerals and Waste Local Plan 1996 – Saved Policies (OMWLP):

POLICY SD1: SAND AND GRAVEL - LANDBANKS

Separate landbanks will be maintained for sharp sand and gravel and for soft sand at levels which accord with current Government advice and with the current regional apportionment.

POLICY PE2: LOCATION AND CONTROL OF MINERAL WORKINGS

Planning permissions for mineral working will not be granted outside the areas identified in this Plan unless:

- (a) the working would be acceptable under policy SD2, or
- (b)
 - (i) the proposal satisfies the policies of the Structure Plan and this Local Plan, and
 - (ii) in the case of sand and gravel, the apportioned supply from the county cannot be met from within the areas identified, or
 - (iii) in the case of other minerals, the demand cannot be met from within areas which are identified in the Plan.

POLICY PE3: BUFFER ZONES

Appropriate buffer zones will be safeguarded around mineral working or waste disposal sites for protection against unacceptable losses of residential or natural amenity.

POLICY PE4: GROUNDWATER

Proposals for mineral extraction and restoration (including waste disposal) will not be permitted where they would have an impact on groundwater levels in the surrounding area which would harm existing water abstraction, river flow, canal, lake or pond levels or important natural habitats. Proposals must not put at risk the quality of groundwater.

POLICY PE8: ARCHAEOLOGY

Before determining an application for mineral extraction the County Council will normally require the applicant to carry out a preliminary archaeological assessment to determine the nature and significance of any archaeological remains. The County Council may, subject to the results of this initial assessment, require an archaeological field evaluation of the site to determine the appropriate means for mitigating the impact of extraction on the archaeological resource.

POLICY PE11: RIGHTS OF WAY AND PUBLIC ACCESS

The rights of way network should be maintained and individual rights of way retained in situ. Diversions should be temporary, safe and convenient and should be reinstated as soon as possible. Any proposal for permanent diversion should fulfil the functions of recreational and communications use of the right of way. Improvements to the rights of way network will be encouraged.

POLICY PE12: RIGHTS OF WAY AND PUBLIC ACCESS

In appropriate cases general public access will be sought to restore mineral workings; where this is required, planning permission will not be granted until its provision and long-term management has been secured.

POLICY PE13: RESTORATION, AFTER-USE AND NATURE CONSERVATION

Mineral workings and landfill sites should be restored within a reasonable timescale to an after-use appropriate to the location and surroundings. Proposals for restoration, after-care and after-use should be submitted at the same time as any application for mineral working. Planning permission will not be granted for mineral working or landfill sites unless satisfactory proposals have been made for the restoration and after-use, and means of securing them in the long-term.

POLICY PE14: RESTORATION, AFTER-USE AND NATURE CONSERVATION

Sites of nature conservation importance should not be damaged. Proposals which would affect a nature conservation interest will be assessed by taking into account the importance of the affected interest; the degree and permanence of the projected damage; and the extent to which replacement habitat can be expected to preserve the interest in the long-term.

POLICY PE18: PLANNING APPLICATIONS

In determining applications covered by this Plan the County Council will:

- (a) have regard to the appropriate provisions of the Code of Practice in Annex 1, which is part of this Plan; and
- (b) regulate and control development by the imposition of conditions on the grant of permission. Where this cannot satisfactorily be done, appropriate planning obligations will be sought.

POLICY PB1: PLANT AND BUILDINGS

The County Council will require processing plants, other necessary buildings and industries associated with a mineral working to be sited, designed, landscaped and maintained so as to minimise environmental disturbance. Any permission will be limited to the life of the mineral working or in the case of a waste disposal site, be subject to conditions requiring that the building or equipment is removed when no longer required in association with waste disposal.

POLICY PB2: PLANT AND BUILDINGS

The County Council will normally require the removal of all processing plant, buildings and associated machinery within 24 months of extraction being completed or expiry of the permission, whichever is the sooner.

POLICY SC3: THE SUTTON COURTENAY AREA

Planning permission will not be granted unless a routeing agreement has been secured to:

- (a) encourage heavy goods traffic to use the Didcot Northern Perimeter Road;
- (b) prevent heavy goods traffic from entering the villages of Sutton Courtenay, Appleford and Long Wittenham except for local access; and
- (c) limit the use of Culham Bridge to heavy goods vehicles serving local markets in the eastern parts of Abingdon and eastwards along the A415.

POLICY SH2: TRANSPORT

Planning permission will not be granted for mineral extraction or waste disposal, including development which would intensify existing workings, where the development would lead to a significant increase in traffic in Sutton or prolongation of significant traffic intrusion, unless the Sutton bypass has been constructed and brought into use. If necessary, weight restrictions will be placed within the village following construction of the bypass.

Oxfordshire Minerals and Waste Local Plan Core Strategy – Proposed Submission Document (OMWCS):

POLICY C1: SUSTAINABLE DEVELOPMENT

A positive approach will be taken to minerals and waste development in Oxfordshire, reflecting the presumption in favour of sustainable development contained in the National Planning Policy Framework and the aim to improve economic, social and environmental conditions of the area.

Planning applications that accord with the policies in this plan will be approved, unless material considerations indicate otherwise. Where there are no policies relevant to the application, or relevant plan policies are out of date, planning permission will be granted unless material considerations indicate otherwise, taking into account whether:

- any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the proposed development when assessed against the National Planning Policy Framework; or
- specific policies in the National Planning Policy Framework indicate that the development should be restricted.*

*For example, those policies relating to sites protected under the Birds and Habitats Directives (NPPF paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

POLICY C2: CLIMATE CHANGE

Proposals for minerals or waste development, including restoration proposals, should take account of climate change for the lifetime of the development from construction through operation and decommissioning. Applications for development should adopt a low carbon approach and measures should be considered to minimise greenhouse gas emissions and provide flexibility for future adaptation to the impacts of climate change.

POLICY C4: WATER ENVIRONMENT

Proposals for minerals and waste development will need to demonstrate that there would be no unacceptable adverse impact on or risk to:

- The quantity or quality of surface or groundwater resources required for habitats, wildlife and human activities;
- The quantity or quality of water obtained through abstraction unless acceptable alternative provision can be made; and
- The flow of groundwater at or in the vicinity of the site.

Proposals for minerals and waste development should ensure that the River Thames and other watercourses and canals of significant landscape, nature conservation or amenity value are adequately protected.

POLICY C5: LOCAL ENVIRONMENT, AMENITY AND ECONOMY

Proposals for minerals and waste development shall demonstrate that they will not have an unacceptable adverse impact on:

- the local environment;
- human health and safety;
- residential amenity and other sensitive receptors; and
- the local economy;

including from:

- noise;
- dust;
- visual intrusion;
- light pollution;
- traffic;
- air quality;
- odour;
- vermin;
- birds;
- litter;
- mud on the road;
- vibration;

- surface or ground contamination;
- tip and quarry-slope stability;
- differential settlement of quarry backfill;
- subsidence; and
- the cumulative impact of development.

Where necessary, appropriate separation distances or buffer zones between minerals and waste developments and occupied residential property or other sensitive receptors and/or other mitigation measures will be required, as determined on a site-specific, case-by-case basis.

POLICY C6: AGRICULTURAL LAND AND SOILS

Proposals for minerals and waste development shall demonstrate that they take into account the presence of any best and most versatile agricultural land.

The permanent loss of best and most versatile agricultural land will only be permitted where it can be shown that there is a need for the development which cannot reasonably be met using lower grade land, taking into account other relevant considerations.

Development proposals should make provision for the management and use of soils in order to maintain soil quality, including making a positive contribution to the long-term conservation of soils in any restoration.

POLICY C7: BIODIVERSITY AND GEODIVERSITY

Minerals and waste development should conserve and, where possible, deliver a net gain in biodiversity.

The highest level of protection will be given to sites and species of international nature conservation importance (e.g. Special Areas of Conservation and European Protected Species) and development that would be likely to adversely affect them will not be permitted.

Development that would be likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other development) will not be permitted except where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the Site of Special Scientific Interest and any broader impacts on the national network of Sites of Special Scientific Interest.

Development that would result in the loss or deterioration of irreplaceable habitats, including ancient woodland and aged or veteran trees, will not be permitted except where the need for and benefits of the development in that location clearly outweigh the loss.

Development shall ensure that no significant harm would be caused to:

- Local Nature Reserves;
- Local Wildlife Sites;

- Local Geology Sites;
- Sites of Local Importance for Nature Conservation;
- Protected, priority or notable species and habitats.

Development that would result in significant harm will not be permitted, unless the harm can be adequately mitigated or, as a last resort, compensated for to result in a net gain in biodiversity (or geodiversity) or, if the impact cannot be fully mitigated or compensated for, the benefits of the development on that site clearly outweigh the harm.

All proposals for mineral working and landfill shall demonstrate how the development will make an appropriate contribution to the maintenance and enhancement of local habitats, biodiversity or geodiversity (including fossil remains and trace fossils), including contributing to the objectives of the Conservation Target Areas wherever possible. Satisfactory long-term management arrangements for restored sites shall be clearly set out and included in proposals. These should include a commitment to ecological monitoring and remediation (should habitat creation and/or mitigation prove unsuccessful).

POLICY C8: LANDSCAPE

Proposals for minerals and waste development shall demonstrate that they respect and where possible enhance local landscape character, and are informed by landscape character assessment. Proposals shall include adequate and appropriate measures to mitigate adverse impacts on landscape, including careful siting, design and landscaping.

Great weight will be given to conserving the landscape and scenic beauty of Areas of Outstanding Natural Beauty (AONB) and high priority will be given to the enhancement of their natural beauty. Proposals for minerals and waste development within an AONB or that would significantly affect an AONB shall demonstrate that they take this into account and that they have regard to the relevant AONB Management Plan. Major developments within AONBs will not be permitted except where it can be demonstrated they are in the public interest. Development within AONBs shall normally only be small-scale, to meet local needs and should be sensitively located and designed.

Where adverse impacts cannot be avoided or adequately mitigated, compensatory environmental enhancements shall be made to offset the residual landscape and visual impacts.

POLICY C9: HISTORIC ENVIRONMENT AND ARCHAEOLOGY

Proposals for minerals and waste development will not be permitted unless it is demonstrated, including where necessary through prior investigation, that they or associated activities will not have an unacceptable adverse impact on the historic environment.

Great weight will be given to the conservation of designated heritage assets: Blenheim Palace World Heritage Site; scheduled monuments; listed buildings;

conservation areas; historic battlefields; registered parks and gardens; and non-designated archaeological assets which are demonstrably of equivalent significance to a scheduled monument; and the setting of those assets.

Where an application would affect a non-designated heritage asset, the benefits of the proposal will be balanced against the scale of harm to or loss of the heritage asset and its significance.

Where, following assessment of an application, the loss (wholly or in part) of a heritage asset is considered acceptable in principle, the applicant will be required to record and advance understanding of that asset, proportionate to the nature and level of the asset's significance, and to publish their findings.

Proposals for mineral working and landfill shall wherever possible demonstrate how the development will make an appropriate contribution to the conservation and enhancement of the historic environment.

POLICY C10: TRANSPORT

Minerals and waste development will be expected to make provision for safe and suitable access to the advisory lorry routes shown on the Oxfordshire Lorry Route Maps in ways that maintain and, if possible, lead to improvements in:

- the safety of all road users including pedestrians;
- the efficiency and quality of the road network; and
- residential and environmental amenity, including air quality.

Where development leads to a need for improvement to the transport network to achieve this, developers will be expected to provide such improvement or make an appropriate financial contribution.

Where practicable minerals and waste developments should be located, designed and operated to enable the transport of minerals and/or waste by rail, water, pipeline or conveyor.

Where minerals and/or waste will be transported by road:

- a) mineral workings should as far as practicable be in locations that minimise the road distance to locations of demand for the mineral, using roads suitable for lorries, taking into account the distribution of potentially workable mineral resources; and
- b) waste management and recycled aggregate facilities should as far as practicable be in locations that minimise the road distance from the main source(s) of waste, using roads suitable for lorries, taking into account that some facilities are not economic or practical below a certain size and may need to serve a wider than local area.

Proposals for minerals and waste development that would generate significant amounts of traffic will be expected to be supported by a transport assessment or transport statement, as appropriate, including mitigation measures where applicable.

POLICY M2: PROVISION FOR WORKING AGGREGATE MINERALS

Provision will be made through policies M3 and M4 to enable the supply of aggregate minerals from land-won sources within Oxfordshire to meet the requirement identified in the most recent Local Aggregate Assessment throughout the period to the end of 2031.

Permission will be granted for aggregate mineral working under policy M5 to enable separate landbanks of reserves with planning permission to be maintained for the extraction of minerals of:

- at least 7 years for sharp sand and gravel;
- at least 7 years for soft sand;
- at least 10 years for crushed rock;
in accordance with the annual requirement rate in the most recent Local Aggregate Assessment.

POLICY M3: PRINCIPAL LOCATIONS FOR WORKING AGGREGATE MINERALS

The principal locations for aggregate minerals extraction will be within the following strategic resource areas, as indicated on the Minerals Key Diagram:

Sharp sand and gravel

- The Thames, Lower Windrush and Lower Evenlode Valleys area from Standlake to Yarnton;
- The Thames and Lower Thame Valleys area from Oxford to Cholsey;
- The Thames Valley area from Caversham to Shiplake.

Soft sand

- The Corallian Ridge area from Oxford to Faringdon;
- The Duns Tew area.

Crushed rock

- The area north west of Bicester;
- The Burford area south of the A40;
- The area east and south east of Faringdon.

Specific sites for working aggregate minerals will be identified within these strategic resource areas in the Minerals & Waste Local Plan: Part 2 – Site Allocations Document.

POLICY M4: SITES FOR WORKING AGGREGATE MINERALS

Specific sites for working aggregate minerals within the strategic resource areas identified in policy M3, to meet the requirements set out in policy M2, will be

allocated in the Minerals & Waste Local Plan: Part 2 – Site Allocations Document, in accordance with the following criteria:

- a) consideration of the quantity and quality of the mineral resource;
- b) achieving a change over the course of the plan period in the balance of production capacity for sharp sand & gravel between the strategic resource areas in western & southern Oxfordshire to more closely reflect the distribution of demand within the county;
- c) priority for the extension of existing quarries, where environmentally acceptable (including taking into consideration criteria d) to m)) and after consideration of criterion b), before working new sites;
- d) potential for restoration and after-use and for achieving the restoration objectives of the Plan in accordance with policy M10;
- e) suitability & accessibility of the primary road network;
- f) proximity to large towns and other locations of significant demand to enable a reduction in overall journey distance from quarry to market;
- g) ability to provide more sustainable movement of excavated materials;
- h) avoidance of locations within or significantly affecting an Area of Outstanding Natural Beauty;
- i) avoidance of locations likely to have an adverse effect on sites and species of international nature conservation importance and Sites of Special Scientific Interest; in the case of locations within the Eynsham / Cassington / Yarnton part of the Thames, Lower Windrush and Lower Evenlode Valleys area, it must be demonstrated that there will be no change in water levels in the Oxford Meadows Special Area of Conservation and the proposal must not involve the working of land to the north or north east of the River Evenlode; in the case of locations within the Corallian Ridge area, it must be demonstrated that there will be no change in water levels in the Cothill Fen Special Area of Conservation;
- j) avoidance of locations likely to have an adverse effect on designated heritage assets, including World Heritage Sites, Scheduled Monuments and Conservation Areas, or on archaeological assets which are demonstrably of equivalent significance to a Scheduled Monument;
- k) avoidance of, or ability to suitably mitigate, potential significant adverse impacts on:
 - i. locally designated areas of nature conservation and geological interest;
 - ii. local landscape character;
 - iii. water quality, water quantity, flood risk and groundwater flow;
 - iv. agricultural land and soil resources;
 - v. local transport network;

- vi. land uses sensitive to nuisance (e.g. schools & hospitals);
 - vii. residential amenity & human health; and
 - viii. character and setting of local settlements;
- l) potential cumulative impact of successive and/or simultaneous mineral development, including with non-mineral development, on local communities;
- m) ability to meet other objectives and policy expectations of this Plan (including policies C1 – C11) and relevant policies in other development plans.

POLICY M5: WORKING OF AGGREGATE MINERALS

Permission will be granted for the working of aggregate minerals within the sites allocated further to policy M4 provided that the requirements of policies C1 – C11 are met.

Permission will not be granted for the working of aggregate minerals outside the sites allocated further to policy M4 unless the requirement to maintain a steady supply of aggregate in accordance with policy M2 cannot be met from within those sites. The criteria in policy M4 will be taken into consideration in the determination of planning applications for aggregate minerals working in locations not allocated under policy M4.

Permission will exceptionally be granted for the working of aggregate minerals outside the sites allocated further to policy M4 where extraction of the mineral is required prior to a planned development in order to prevent the mineral resource being sterilised, having due regard to policies C1 – C11.

Prior to the adoption of the Minerals & Waste Local Plan: Part 2 – Site Allocations Document, permission will be granted for the working of aggregate minerals where this is required in order to maintain landbanks in accordance with policy M2 and taking into consideration the criteria in policy M4 and provided that the requirements of policies C1 – C11 are met.

Notwithstanding the preceding paragraph, permission for working of ironstone for aggregate use will not be permitted except in exchange for an agreed revocation (or other appropriate mechanism to ensure the non-working) without compensation of an equivalent existing permission in Oxfordshire containing potentially workable resources of ironstone and where there would be an overall environmental benefit.

POLICY M8: SAFEGUARDING MINERAL RESOURCES

Mineral Safeguarding Areas will be defined in the Minerals and Waste Local Plan: Part 2 – Site Allocations Document, covering the following mineral resources:

- Sharp sand and gravel in the main river valleys, including the strategic resource areas identified in policy M3, and other areas of proven resource;
- Soft sand within the strategic resource areas identified in policy M3;
- Limestone within the strategic resource areas identified in policy M3;
- Fuller's earth in the Baulking – Fernham area.

Mineral resources in these areas are safeguarded for possible future use. Development that would prevent or otherwise hinder the possible future working of the mineral will not be permitted unless it can be shown that:

- The site has been allocated for development in an adopted local plan or neighbourhood plan; or
- The need for the development outweighs the economic and sustainability considerations relating to the mineral resource; or
- The mineral will be extracted prior to the development taking place.

Mineral Consultation Areas, based on the Mineral Safeguarding Areas, will be defined, identified and updated when necessary in the Minerals and Waste Annual Monitoring Reports.

POLICY M10: RESTORATION OF MINERAL WORKINGS

Mineral workings shall be restored to a high standard and in a timely and phased manner to an after-use that is appropriate to the location and delivers a net gain in biodiversity. The restoration of mineral workings must take into account:

- the characteristics of the site prior to mineral working;
- the character of the surrounding landscape and the enhancement of local landscape character;
- the amenity of local communities, including opportunities to enhance green infrastructure provision and provide for local amenity uses and recreation;
- the capacity of the local transport network;
- the quality of any agricultural land affected;
- flood risk and opportunities for increased flood storage capacity;
- bird strike risk and aviation safety;
- any environmental enhancement objectives for the area;
- the conservation and enhancement of biodiversity appropriate to the local area, supporting the establishment of a coherent and resilient ecological network through the landscape-scale creation of priority habitat;
- the conservation and enhancement of geodiversity; and
- the conservation and enhancement of the historic environment.

Planning permission will not be granted for mineral working unless satisfactory proposals have been made for the restoration, aftercare and after-use of the site, including where necessary the means of securing them in the longer term.

Proposals for restoration must not be likely to lead to any increase in recreational pressure on a Special Area of Conservation.

Cherwell Local Plan 1996 (retained policies)

POLICY TR7: MINOR ROADS

Development that would regularly attract large commercial vehicles or large numbers of cars onto unsuitable minor roads will not normally be permitted.

Cherwell Local Plan 2011-2031

POLICY ESD 10: PROTECTION AND ENHANCEMENT OF BIODIVERSITY AND THE NATURAL ENVIRONMENT

Protection and enhancement of biodiversity and the natural environment will be achieved by the following:

- In considering proposals for development, a net gain in biodiversity will be sought by protecting, managing, enhancing and extending existing resources, and by creating new resources
- The protection of trees will be encouraged, with an aim to increase the number of trees in the district
- The reuse of soils will be sought
- If significant harm resulting from a development cannot be avoided (though locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then development will not be permitted
- Development which would result in damage to or loss of a site of international value will be subject to the Habitats Regulations Assessment process and will not be permitted unless it can be demonstrated that there will be no likely significant effects on the international site or that effects can be mitigated
- Development which would result in damage to or loss of a site of biodiversity or geological value of national importance will not be permitted unless the benefits of the development clearly outweigh the harm it would cause to the site and the wider national network of SSSIs, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity
- Development which would result in damage to or loss of a site of biodiversity or geological value of regional or local importance including habitats of species of principal importance for biodiversity will not be permitted unless the benefits of the development clearly outweigh the harm it would cause to the site, and the loss can be mitigated to achieve a net gain in biodiversity/geodiversity
- Development proposals will be expected to incorporate features to encourage biodiversity, and retain and where possible enhance existing features of nature conservation value within the site. Existing ecological networks should be identified and maintained to avoid habitat fragmentation, and ecological corridors should form an essential component of green infrastructure provision in association with new development to ensure habitat connectivity
- Relevant habitat and species surveys and associated reports will be required to accompany planning applications which may affect a site, habitat or species of known or potential ecological value
- Air quality assessments will also be required for development proposals that would be likely to have a significantly adverse impact on biodiversity by generating an increase in air pollution
- Planning conditions/obligations will be used to secure net gains in biodiversity by helping to deliver Biodiversity Action Plan targets and/or meeting the aims of

Conservation Target Areas. Developments for which these are the principal aims will be viewed favourably

- A monitoring and management plan will be required for biodiversity features on site to ensure their long term suitable management

POLICY ESD13: LOCAL LANDSCAPE PROTECTION AND ENHANCEMENT

Opportunities will be sought to secure the enhancement of the character and appearance of the landscape, particularly in urban fringe locations, through the restoration, management or enhancement of existing landscapes, features or habitats and where appropriate the creation of new ones, including the planting of woodlands, trees and hedgerows.

Development will be expected to respect and enhance local landscape character, securing appropriate mitigation where damage to local landscape character cannot be avoided. Proposals will not be permitted if they would:

- Cause undue visual intrusion into the open countryside
- Cause undue harm to important natural landscape features and topography
- Be inconsistent with local character
- Impact on areas judged to have a high level of tranquillity
- Harm the setting of settlements, buildings, structures or other landmark features, or
- Harm the historic value of the landscape.

Development proposals should have regard to the information and advice contained in the Council's Countryside Design Summary Supplementary Planning Guidance, and the Oxfordshire Wildlife and Landscape Study (OWLS), and be accompanied by a landscape assessment where appropriate.

Vale of White Horse Local Plan (VLP) 2011

POLICY DC9: NEIGHBOURING AMENITY

Development will not be permitted if it would unacceptably harm the amenities of neighbouring properties and the wider environment in terms of:

- i) loss of privacy, daylight or sunlight;
- ii) dominance or visual intrusion;
- iii) noise or vibration;
- iv) smell, dust, heat, gases or other emissions;
- v) pollution, contamination or the use of or storage of hazardous substances; and
- vi) external lighting.

Vale of White Horse Local Plan 2031 Part 1: Strategic Sites and Policies Submission Document (VOWHLPD)

CORE POLICY 1: PRESUMPTION IN FAVOUR OF SUSTAINABLE DEVELOPMENT

Planning applications that accord with this Local Plan 2031 (and where relevant, with any subsequent Development Plan Documents or Neighbourhood Plans) will be approved, unless material considerations indicate otherwise.

Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant planning permission unless material considerations indicate otherwise, and unless:

- i. any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the National Planning Policy Framework taken as a whole, or
- ii. specific policies in the Framework indicate that development should be restricted.

CORE POLICY 44: LANDSCAPE

The key features that contribute to the nature and quality of the Vale of White Horse District's landscape will be protected from harmful development and where possible enhanced, in particular:

- i. features such as trees, hedgerows, woodland, field boundaries, watercourses and water bodies
- ii. important landscape settings of settlements
- iii. topographical features
- iv. areas of features of cultural and historic value
- v. important views and visually sensitive skylines, and
- vi. tranquillity and the need to protect against intrusion from light pollution, noise and motion

Where development is acceptable in principle, measures will be sought to integrate it into the landscape character and/or the townscape of the area. Proposals will need to demonstrate how they have responded to the above aspects of the landscape character and will be expected to:

- vii. incorporate appropriate landscape proposals that reflect the character of the area through appropriate design and management
- viii. preserve and promote local distinctiveness and diversity and, where practical, enhance damaged landscape areas.

High priority will be given to conservation and enhancement of the natural beauty of the North Wessex Downs AONB and planning decisions will have regard to its setting. Proposals that support the economy and social wellbeing of communities located in the AONB, including affordable housing schemes, will be encouraged provided they do not conflict with the aims of conservation and enhancement.

CORE POLICY 45: CONSERVATION AND ENHANCEMENT OF BIODIVERSITY

A net gain in Green infrastructure, including biodiversity, will be sought either through on site provision or off-site contributions and the targeted use of other funding

sources. A net loss of Green infrastructure, including biodiversity, through development proposals will be resisted.

Proposals for new development must provide adequate Green Infrastructure in line with the Green Infrastructure Strategy. All major applications must be accompanied by a statement demonstrating that they have taken into account the relationship of the proposed development to existing Green Infrastructure and how this will be retained and enhanced. Proposals will be required to contribute to the delivery of new Green Infrastructure and/or the improvement of existing assets including Conservation Target Areas in accordance with the standards in the Green Infrastructure Strategy and the Habitats Regulations Assessment.

West Oxfordshire Local Plan 2011

POLICY BE2: GENERAL DEVELOPMENT STANDARDS

New development should respect and, where possible, improve the character and quality of its surroundings and provide a safe, pleasant, convenient and interesting environment.

Proposals for new buildings and land uses should clearly demonstrate how they will relate satisfactorily to the site and its surroundings, incorporating a landscape scheme and incidental open space as appropriate.

A landscape scheme accompanying detailed proposals for development should show, as appropriate, hard and soft landscaping, existing and proposed underground services, a phasing programme for implementation and subsequent maintenance arrangements.

Proposals will only be permitted if all the following criteria are met:

Quality of Development and Impact upon the Area:

- a) the proposal is well-designed and respects the existing scale, pattern and character of the surrounding area;
- b) new buildings or extensions to existing buildings are designed to respect or enhance the form, siting, scale, massing and external materials and colours of adjoining buildings, with local building traditions reflected as appropriate;
- c) the proposal creates or retains a satisfactory environment for people living in or visiting the area, including people with disabilities;
- d) existing features of importance in the local environment are protected and/or enhanced;
- e) the landscape surrounding and providing a setting for existing towns and villages is not adversely affected;
- f) in the open countryside, any appropriate development will be easily assimilated into the landscape and wherever possible, be sited close to an existing group of buildings.

Crime:

- g) good design has been used to help reduce the opportunities for crime.

Energy and Resources:

- h) regard has been given to:
 - i) principles of energy and resource conservation;
 - ii) provision for sorting and storage facilities to facilitate recycling of waste.

POLICY BE3: PROVISION FOR MOVEMENT AND PARKING

Development should make provision for the safe movement of people and vehicles, whilst minimising impact upon the environment. Within built-up areas priority should be given to pedestrians, cyclists and public transport.

Proposals will only be permitted if all the following criteria are met:

- a) safe and convenient circulation of pedestrians and cyclists, both within the development and externally to nearby facilities, with provision to meet the needs of people with impaired mobility as appropriate;
- b) safe movement of all vehicular traffic both within the site and on the surrounding highway network;
- c) provision for the increased use of public transport as appropriate to the scale of development;
- d) provision for the parking of vehicles, including bicycles and motorcycles, in accordance with the standards in Appendix 2.

Development which would have a significant impact on the highway network will not be permitted without the prior submission of a Transport Assessment.

POLICY BE8: DEVELOPMENT AFFECTING THE SETTING OF A LISTED BUILDING

Development should not detract from the setting of a listed building.

POLICY BE19: NOISE

Planning permission will not be granted for:

- a) housing and other noise sensitive development if the occupants would experience significant noise disturbance from existing or proposed development;
- b) development including the use of land, if because of the noise it will create, the occupants of housing and other noise sensitive development would be exposed to significant noise disturbance, unless there is an overriding need for the proposal which cannot be met elsewhere.

POLICY NE1: SAFEGUARDING THE COUNTRYSIDE

Proposals for development in the countryside should maintain or enhance the value of the countryside for its own sake: its beauty, its local character and distinctiveness, the diversity of its natural resources, and its ecological, agricultural, cultural and outdoor recreational values.

POLICY NE3: LOCAL LANDSCAPE CHARACTER

Development will not be permitted if it would harm the local landscape character of the District. Proposals should respect and, where possible, enhance the intrinsic character, quality and distinctive features of the individual landscape types.

POLICY NE6 – RETENTION OF TREES, WOODLANDS AND HEDGEROWS

Planning permission will not be granted for proposals that would result in the loss of trees, woodlands or hedgerows, or their settings, which are important for their visual, historic or biodiversity value. Removal will only be allowed where it can be demonstrated that the proposed development would enhance the landscape quality and nature conservation value of the area.

POLICY NE7: WATER ENVIRONMENT

Development should not have an adverse impact on the water environment. Initiative which seek to restore or enhance the natural elements of this environment will be supported.

POLICY NE9: SURFACE WATER

New development or intensification of existing development will not be permitted where the additional surface water run-off would result in adverse impacts such as an increased risk of flooding, river channel instability or damage to habitats, unless appropriate attenuation and pollution control measures are provided.

POLICY NE13: BIODIVERSITY CONSERVATION

In determining planning applications, the Council will seek to safeguard, maintain and enhance priority habitats and species within the District. Development proposals should include measures to mitigate any effects upon features of nature conservation value, including where appropriate the provision of compensatory habitats or management.

POLICY NE14: SITES OF NATURE CONSERVATION OR GEOLOGICAL IMPORTANCE

Development that is likely to adversely affect a Special Area of Conservation, National Nature Reserve or Site of Special Scientific Interest will not be permitted. On locally designated sites of nature conservation importance, development that

would damage biodiversity or geological interest will not be permitted unless the importance of the development outweighs the local value of the site and the loss can be mitigated.

NB This policy also applies to Candidate Special Areas of Conservation (SACs), proposed Special Protected Area (SPA) sites and proposed Sites of Special Scientific Interest (SSSIs); such sites are afforded the same protection as those which are designated.

POLICY NE15: PROTECTED SPECIES

Development that would have an adverse effect on a site supporting a specially protected species will not be permitted unless damage to the ecological interest can be prevented through the compliance with conditions or planning obligations.

POLICY T1: TRAFFIC GENERATION

Proposals which would generate significant levels of traffic will not be permitted in locations where travel by means other than the private car is not a realistic alternative.

POLICY TLC8: PUBLIC RIGHTS OF WAY

The existing public rights of way network will be safeguarded and, where appropriate, improved access to the countryside will be sought, with additional public rights of way for walkers, horseriders and cyclists.

The Draft West Oxfordshire Local Plan

POLICY EH1: LANDSCAPE CHARACTER

The quality, character and distinctiveness of West Oxfordshire's natural environment, including its landscape, cultural and historic value, tranquillity, geology, countryside, soil and biodiversity, will be conserved and enhanced.

New development should respect and, where possible, enhance the intrinsic character, quality and distinctive natural and man-made features of the local landscape, including individual or groups of features and their settings, such as stone walls, trees, hedges, woodlands, rivers, streams and ponds. Conditions may be imposed on development proposals to ensure every opportunity is made to retain such features and ensure their long-term survival through appropriate management and restoration.

Proposals which would result in the loss of features, important for their visual, amenity, or historic value will not be permitted unless the loss can be justified by appropriate mitigation and/or compensatory measures which can be secured to the satisfaction of the Council.

When determining development proposals within or impacting upon the Cotswolds Area of Outstanding Natural Beauty, great weight will be given to the conservation of the area's landscape and scenic beauty.

Special attention and protection will be given to the landscape and biodiversity of the Lower Windrush Valley Project, the Windrush in Witney Project Area and the Wychwood Project Area.

POLICY EH2: BIODIVERSITY

The biodiversity of West Oxfordshire shall be protected and enhanced to achieve an overall net gain in biodiversity, including by:

- giving sites and species of international nature conservation importance and nationally important sites of special scientific interest the highest level of protection from any development that will have an adverse impact;
- requiring a Habitats Regulation Assessment to be undertaken of any development proposal that is likely to have a significant adverse effect, either alone or in combination, on the Oxford Meadows SAC, particularly in relation to air quality and nitrogen oxide emissions and deposition;
- protecting and mitigating for impacts on priority habitats and protected species and their importance individually and as part of a wider network;
- avoiding loss, deterioration or harm to locally important wildlife and geological sites and sites supporting irreplaceable habitats (including ancient woodland and aged or veteran trees), UK priority habitats and priority species, except in exceptional circumstances where the importance of the development significantly and demonstrably outweighs the harm and the harm can be mitigated through appropriate measures and a net gain in biodiversity is secured;
- ensuring development does not prevent the achievement of the aims of the Conservation Target Areas (CTAs);
- promoting the preservation, restoration and re-creation of priority habitats, ecological networks and the protection and recovery of priority species populations, particularly within the CTAs;
- taking all opportunities to enhance the biodiversity of the site or the locality, especially where this will help deliver networks of biodiversity and green infrastructure and UK priority habitats and species targets and meet the aims of Conservation Target Areas.

All developments will be expected to provide towards the provision of necessary enhancements in areas of biodiversity importance.

POLICY EH6: ENVIRONMENTAL PROTECTION

Proposals which are likely to cause pollution or result in exposure to sources of pollution or risk to safety, will only be permitted if measures can be implemented to minimise pollution and risk to a level that provides a high standard of protection for health, environmental quality and amenity. The following issues require particular attention:

Air quality

The air quality within West Oxfordshire will be managed and improved in line with National Air Quality Standards, the principles of best practice and the Air Quality Management Area Action Plans for Witney and Chipping Norton.

Contaminated land

Proposals for development of land which may be contaminated must incorporate appropriate investigation into the quality of the land. Where there is evidence of contamination, remedial measures must be identified and satisfactorily implemented.

Hazardous substances, installations and airfields

Development should not adversely affect safety near notifiable installations and safeguarded airfields.

Artificial light

The installation of external lighting and proposals for remote rural buildings will only be permitted where:

- i) the means of lighting is appropriate, unobtrusively sited and would not result in excessive levels of light;
- ii) the elevations of buildings, particularly roofs, are designed to limit light spill;
- iii) the proposal would not have a detrimental effect on local amenity, character of a settlement or wider countryside, intrinsically dark landscapes or nature conservation.

Noise

Housing and other noise sensitive development should not take place in areas where the occupants would experience significant noise disturbance from existing or proposed development.

New development should not take place in areas where it would cause unacceptable nuisance to the occupants of nearby land and buildings from noise or disturbance.

Water resources

Proposals for development will only be acceptable provided there is no adverse impact on water bodies and groundwater resources, in terms of their quantity, quality and important ecological features.

Waste

Planning permission will be granted for appropriately located development that makes provision for the management and treatment of waste and recycling, in accordance with the Oxfordshire Joint Municipal Waste Strategy and local waste management strategy.

POLICY EH7: HISTORIC ENVIRONMENT

All development proposals should conserve or enhance the special character and distinctiveness of West Oxfordshire's historic environment, and preserve or enhance the District's heritage assets, and their significance and settings.

Proposals affecting non-designated heritage assets, such as locally listed buildings, will be assessed on the basis of the significance of the heritage asset and the scale of harm or loss to that heritage asset. The Council's Conservation Area Appraisals should be used as a guide when assessing the significance of a heritage asset.

Proposals that will lead to harm to the significance of a designated or non-designated heritage asset or its setting will be resisted, unless a clear and convincing justification can be made to outweigh that harm.

Proposals that will lead to substantial harm to or total loss of the significance of a heritage asset or its setting, will be refused, unless the harm is outweighed by substantial, demonstrable public benefits or all the four tests set out in the NPPF are met*

*Paragraph 133 of the NPPF:

1. There is no viable use of the heritage asset that can be found in the medium term, including through marketing to find alternative owners
2. The heritage asset is preventing all reasonable uses of the site
3. Public support for or ownership of the asset is demonstrably not possible; and
4. The harm or loss is outweighed by the benefits of bringing the site back into use

POLICY OS4: HIGH QUALITY DESIGN

High Design quality is central to the strategy for West Oxfordshire. New development should respect and contribute to local distinctiveness and, where possible, enhance the character and quality of the surroundings and should:

- demonstrate high quality, inclusive and sustainable design with the provision of a safe, pleasant, convenient and interesting environment where the quality of the public realm is enhanced and the likelihood of crime and fear of crime is reduced; and
- not harm the use or enjoyment of land and buildings nearby including living conditions in residential properties; and
- demonstrate resilience to future climate change, particularly increasing temperatures and flood risk, and the use of water conservation and management measures; and
- preserve or enhance areas, buildings and features of historic, architectural and environmental importance, including unlisted vernacular buildings and habitats of biodiversity value; and

- enhance local green infrastructure and its biodiversity, including the provision of attractive, safe and convenient amenity open space commensurate with the scale and type of development, with play space where appropriate.

Designers of new development will be expected to provide supporting evidence for their design approach. They should have regard to specific design advice contained in supplementary planning guidance covering the District. The West Oxfordshire Design Guide, landscape Assessments, Conservation Area Appraisals and Cotswolds AONB guidance documents are key tools for interpreting local distinctiveness and informing high design quality.

POLICY T7: PARKING PROVISION

The Council will work with partners to provide, maintain and manage an appropriate amount of off-street public car parking, particularly to support our town and village centres and to address issues of congestion and air quality.

Parking in new developments will be provided in accordance with the County Council's adopted parking standards and should be sufficient to meet increasing levels of car ownership.

Proposals for new off street public car parking areas will be supported in accessible locations where they would help to ensure the continued vitality and viability of town centres, where they would support visitor and tourist facilities and attractions or where the local environment is being seriously damaged by on-street parking and alternative parking provision is essential.

Development proposals which significantly increase car parking demand will be expected to make appropriate public car parking provision or equivalent financial contributions.