

For: PLANNING & REGULATION COMMITTEE – 28 JULY 2014

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

**Development proposed:**

Revised restoration to nature conservation rather than agriculture, retention of Sandy Overburden Material mound (north of Area I), retention of the majority of the bunds and retention of some of the associated concrete structures to the remaining unrestored ash lagoons (Areas G & H/I) and the settling and discharge pond area east of the Oxford to Didcot railway line, without complying with Conditions A11, A17 & A18 of planning permission SUT/RAD/5948/12-CM

**Division Affected:** Kennington and Radley

**Contact Officer:** Chris Flavin **Tel:** 01865 815042

**Location:** Radley Ash Disposal Site, Thrupp Lane, Radley

**Application No:** MW.0056/13 (P13/V0880/CM)

**Applicant:** RWE NPOWER PLC

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

**Date Received:** 11/04/2013

**Consultation Period:** 04/07/2013 to 25/07/2013 (second consultation)

**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 application MW.0056/13 be approved.

## Part 1 –Facts and Background

### Location

- 1 Radley Ash Disposal Site is located 700 metres to the south of the village of Radley and 500m east from the eastern outskirts of Abingdon.

### The Site and its Setting

- 2 The Radley ash disposal site covers an area of 161 hectares. The north-south railway line from Oxford to Didcot bisects the disposal site and marks the boundary between Phase 2 to the west of the railway and Phase 1 to the east of the railway. The main issues covered by the planning application relate to the Phase 2 area to the west of the railway. East of the railway the proposed changes only affect a small area comprising the settling and discharge pond area. The site lies within the Oxford Green Belt. Areas H/I lies within the River Thames flood plain (Flood zone 3). Area G lies partly within Flood zones 2 & 3. Radley Brook lies to the east of Area G and to the west of the railway line.
- 3 The site comprises former gravel workings that have been engineered to enable the formation of ash lagoons. These ash lagoons have been progressively filled with pulverised fuel ash (PFA) that has been piped to the site from Didcot Power Station.
- 4 The infilled ash lagoons in Phase 1 have been completely restored to agriculture and woodland, having dried out and stabilised some years ago. The Phase 2 ash lagoons to the west of the railway have not been fully restored and have only been partially filled with PFA. Some of the lagoons are nearer to completion than others; some still comprise areas of open water, whereas other parts such as the west of Area H have begun to dry out and comprise grassland and scrub. The site also contains settling and discharge ponds.
- 5 Although located within the red line area of this Section 73 planning application, it should be noted that the planning application does not affect the following areas in any way:
  - The Tuckwell's Processing Plant area (Thrupp Lane Quarry operated by Tuckwells)
  - The Local Wildlife Site (Lake E)
  - Lake L1 and the surrounding area
  - Area L and Area K (currently open pasture, these areas of unworked sand and gravel the subject of a ROMP on which a prohibition order has been served by the county council).
- 6 A Byway open to all traffic (BOAT) and the Sustrans cycle path (National Cycle Network) and right of way passes through the Phase 2 part of the site but the route is not affected by the proposals in this application.

7 To the north of the Phase 2 part of the site is agricultural land (arable and pasture) and Thrupp Lane which provides access to the site. To the south is the River Thames. To the far west of the site is the Barton Lane business park and the White Horse Leisure and Tennis Centre

8 The nearest residential properties are Thrupp Cottage, Thrupp Farm and Thrupp House, located 300m to the north west of Lake H/I.

### **Details of the Proposed Development**

9 The proposed variations to the existing planning permission (SUT/RAD/5948/12-CM) comprise the following:

- Revised restoration of Area G, H & I and to nature conservation instead of agriculture
- Retention of bunds that enclose/surround the unrestored ash lagoons and the retention of concrete structures
- Changes to final ground levels in filled ash lagoons
- Retention of Sandy Overburden Material mound (north of Area I),
- Permanent retention of two short sections of security fencing
- Restoration of settling and discharge pond area.

#### **Revised restoration of Area G, and Areas H & I to nature conservation instead of agriculture**

10 Instead of restoring Area G, Areas H & I and Area J to agriculture (grazing meadow), the proposal is to allow vegetation to continue to colonize the majority of the exposed ash surface naturally, a process which is already well advanced.

11 Where there are bodies of water remaining, the proposal is for these to be retained. The bodies of water, which fluctuate in size seasonally, are located in the southern half of Area G, in Area J and in the easternmost part of Area H & I (Lake H & I).

#### **Proposed retention of bunds surrounding the ash lagoons and concrete structures**

12 The proposal involves the permanent retention of the existing bund (embankment) around the south side of the H & I ash lagoon and the eastern side of the bund around Area G adjacent to Radley Brook. It should be noted that the retention of the rest of the bund surrounding Area G is already permitted under the current permission. It is also proposed to retain a small bund at the north-western corner of Area G to screen the Tuckwells Processing Plant area.

13 The proposal also includes the permanent retention of concrete structures that are necessary for the drainage of the area and containment of the deposited ash. These structures are part of the unrestored ash lagoons (Areas G & H/I)

and the settling and discharge pond area east of the Oxford to Didcot railway line.

- 14 A 10m wide breach is proposed to be excavated in the bund around the south side of H & I and in the bund to the south-east of Area G. Four of the five flood flap valve structures (one way pipes) in the bund would be retained and made to enable two way flow (within the bund around south side of H & I).
- 15 Another 10m wide breach in the bund (H & I area) is proposed opposite the railway underpass, on the eastern edge of Area H. A ditch would be extended along the eastern side of Area H to facilitate drainage from Area G and a footbridge would be provided over this to give continued pedestrian access to the railway underpass.

#### Changes to final ground levels in filled ash lagoons

- 16 The proposal is to keep the current ground levels in situ as they are. These levels differ from the existing approved drawing 1290/04B.
- 17 In the areas of the lagoons themselves, the proposed ground levels (currently in situ) are, on the whole, lower than those shown on the existing approved drawing 1290/04B.
- 18 The only additional proposed alteration to the current in situ levels, is the creation of a flow path for water along the east side of the lagoons which will run north to south.
- 19 As indicated in the Flood Risk Assessment, the applicant states that the flood water storage capacity in the restored ash lagoons as proposed will actually be greater than provided for in the existing approved restoration scheme, although there may be a small increase in localised flooding levels (approximately 150 mm) between the bund to the east of area G and the railway line embankment.

#### Retention of Sandy Overburden Material mound (located to the north of Area I)

- 20 The proposed retention of the Sandy Overburden Material (SOM) is largely due to the fact that it is no longer required for use as cover material on the filled ash lagoon.
- 21 The SOM mound is located to the north of Area I at its western end and to the south of the Sustrans route right of way. The SOM mound/bund comprises approximately 24,000 cubic metres of material. It measures 200 metres in length (from east to west), varies in width from 20 to 45 metres and is 5.5 metres in height.
- 22 Between the Sustrans route and SOM mound is a narrow strip of woodland which helps screen the mound from users of the Sustrans route.
- 23 Under the existing agricultural restoration proposals the intention had been for the SOM to be used as cover material on the filled ash lagoons. As no further

areas will be filled with ash the SOM is currently surplus to requirement. Under the current proposals, the SOM wouldn't be required for spreading over Area H/I because the intended afteruse here would be nature conservation instead of agriculture. Furthermore, valuable habitats have already developed on the Area H & I and therefore spreading the SOM now would result in their loss.

- 24 The applicant has proposed that terracing and planting of trees takes place on and around the SOM mound in order to prevent and discourage the future use of the mound and surrounding area by motor bikes.

Retention of security fencing

- 25 Under the current planning permission the removal of security fencing is required upon the cessation of operations. The applicant considers that it is still bound by the requirements of the former Waste Management Licence and the Working Plan relating to site security carried forward into the Environmental Permit. The Working Plan provided for the various requirements of the Licence to be implemented including the maintenance of a fence of at least two metres in height or other appropriate measures around the full perimeter of the site or the working area. It formed part of the application for the Permit and the applicant believes that its requirements must therefore be presumed to have been carried over into the Permit unless the latter provides otherwise (which the applicant considers it does not).

- 26 It is stated that fences will continue to be required around Areas G, J(east), P and H/I for the following purposes:

- (1) In Area H/I, to ensure public safety in relation to the remaining water body;
- (2) To prevent unauthorised waste disposal in the filled ash lagoon areas (especially the dumping and "torching" of unwanted or stolen motor vehicles);
- (3) To prevent access by motorcycle scramblers;
- (4) To keep dogs out (especially relevant to the protection of birds); and
- (5) To regulate public access to ecologically fragile and sensitive parts of the site and limit the risk of vandalism and gross damage to the developing ecology of the filled ash lagoon areas.

- 27 The applicant advises that the existing fences comprise metal posts set in concrete footings, with a single width of chain-link extending to the full height of the mesh fence. The chain-link cannot be removed in part: to lower the fence it would be necessary to remove the chain-link completely and replace it with new mesh to an appropriate specification extending to the required new (lower) height. A possible compromise would be to remove the cranked tops of the posts and the three strands of barbed wire fixed to them, although this would still leave a fence over 2 metres high. The chain link mesh is unwieldy and

heavy to handle even when rolled up and will require access close to the line of the fence with a vehicle and/or mobile plant to remove it. If the existing security fences are to be removed then the complete removal of the posts should not be required: the posts could be cut off at an appropriate height and the lower parts and the footings re-used to support a lower replacement fence if this is cost-effective as compared with complete replacement with a new stock-proof fence set on wooden posts. The removal of the post footings would be particularly disruptive and damaging. Where the posts are to be removed completely, it is proposed to crop them off at ground level, as close as possible to the tops of the footings, which would be left buried.

- 28 The applicant states that its obligations to the landowners include compliance with the conditions of any applicable planning permission, including with regard to the removal of the security fences. The applicant notes that the Environment Agency's requirements for security fencing are less onerous than it had previously understood but considers it is still bound by the requirements of the Licence and the Working Plan relating to site security in respect of the areas now covered by the Permit (i.e. Areas G, H/I. J (east)/P and the settling and discharge pond area east of the main Didcot-Oxford railway) unless and until otherwise agreed with the Environment Agency. The applicant also notes that its general approach to replacement of the security fences with lower fences in the longer term is acceptable to Natural England.
- 29 It is proposed to retain indefinitely the two sections of existing security fence shown on application drawing UKP/DCD/0138/A having regard to their minimal visual impact, the practical difficulty of removing them and the large amount of incidental damage likely to be caused in doing so. It is also proposed that the fence to be erected around the north side of the SOM mound as part of the restoration proposals should remain indefinitely. The applicant considers that the objectives of nature conservation in Areas G and H/I would be best served by retaining the security fences in substantially their present form for a period of at least 5 years after the completion of other restoration works on the site, to allow habitats to develop with a minimum of disturbance. However, it notes that the County Council's interpretation of the provisions of the Town and Country Planning Act 1990 (as amended) in relation to the 5 year aftercare period means that the aftercare period would only commence on the completion of the removal of the security fences and their replacement where necessary with new fences. While the applicant does not accept that this is the correct interpretation of the relevant provision of the 1990 Act, it must make sure that it can practically implement its restoration and aftercare commitments with the limited resources available to it in the Radley area in the future. For this reason, faced with the probable deferment of the start of the aftercare period until after the removal of the security fences and without prejudice to its position on the definition of the aftercare period or the principle of whether and when the security fences need to be removed, it is proposed to remove the security fences and erect replacement agricultural type stockproof fences where necessary towards the end of the remaining phase of restoration works on the Radley ash disposal site.

- 30 The remaining phase of restoration works will follow as soon as possible after the grant of planning permission, subject to logistical and seasonal constraints. A benefit of undertaking the security fence removal at this stage will be the avoidance of the need for a further round of access into developing habitats with vehicles and heavy equipment, with consequential damage and disturbance, some years after the other restoration works are complete.
- 31 The applicant anticipates completing the security fence removal (and replacement where necessary) within approximately 18 months of the grant of planning permission, possibly much earlier, depending on the timing of the permission. It is proposed that a detailed scheme including the specification and alignment of replacement boundary fences should be submitted for the approval pursuant to a condition, after planning permission is granted. It would also be necessary to obtain the Environment Agency's approval as the Permit would still be in force at that stage. However, the applicant's previous concern about possibly being in breach of either the proposed planning conditions or the conditions of the Permit because of the potential conflict between their requirements if the surrender of the Permit were delayed is significantly mitigated by the Environment Agency's clarified position.
- 32 The applicant remains concerned that a normal stock-proof field boundary fence will be much more subject to malicious damage than the existing fences, less effective in preventing casual unauthorised entry and against motorcyclists, and unlikely to remain dog-proof, without frequent maintenance. The early removal of the security fences is unlikely to be welcome to the landowners, but the County Council's stated position that the commencement of the aftercare period would be delayed until after security fence removal leaves no other practical choice.
- 33 The details would be the subject of the scheme proposed above, but the following principles would apply:
1. The existing security fences will be removed except where shown as being retained on Drawing UKP/DCD/0138/A.
  2. Where the security fences are removed completely, and not replaced with a new fence on the same alignment, the metal posts will be cut off as close as reasonably practicable to the tops of the concrete footings, the footings will be left in position.
  3. Where the security fence is to be replaced with another form of fence on the same alignment, the existing metal posts may be cut down to the appropriate height for the new fence (approximately 1.2 m above local ground level) and the remaining portions and the footings re-used to support the new fence where the footings remain sound. This will only be done if it is cost-effective to do so, as compared with removing the existing posts down to the tops of the footings as per (2) above and providing a completely new stock-proof fence with wooden posts. Where the metal posts are retained, some new wooden posts may still be added

where necessary, especially as straining posts and at changes of direction.

4. Excepting only the possible use of the lower parts of existing metal posts, replacement fences will be substantially uniform with the fence already erected around the meadow area on filled Lake J (east)/P, comprising sheep-proof mesh topped with two strands of barbed wire.
5. New gates will be provided for maintenance access where necessary. These will be galvanised steel agricultural type, with galvanised steel posts, uniform with those already installed in Area J (east)/P.
6. Subject to the agreement of the Environment Agency, new boundary fences may not necessarily be provided along sections of the boundary where there are adequate existing natural barriers to entry which are at least as effective as the proposed replacement fences.

#### Restoration of settling and discharge pond area

- 34 All remaining plant, equipment and above-ground structures and all the existing pipe work at the outfall from the discharge pond into Pumney Farm Ditch would be removed. The existing settling and discharge ponds and the enclosing banks would remain. The gravel bank between the settling and discharge ponds forms part of the permanent drainage system: it will be left in situ to provide some protection against the discharge of any cenospheres released from within the adjacent Lake A or areas draining into it as a result of future works or flooding. The existing white plastic filter membrane on the gravel bank is perished and will be removed to avoid the plastic causing a litter problem as it continues to break up in the future. Water will continue to filter through the bank into the discharge pond as at present. The settling and discharge ponds will continue to have a function as part of the permanent drainage system for the parts of the Radley Ash Disposal Scheme site east of the railway, and are expected to develop some nature conservation value.

#### **Proposed restoration to nature conservation instead of agriculture**

- 35 The applicant has explained that because of problems with the drainage ability of the Phase 2 ash lagoons, and the subsequent 'boggy' nature of the lagoons, it would be very difficult to carry out the earthmoving operations required to restore the site to a suitable agricultural standard (earthmoving operations requiring the use of heavy plant and machinery).
- 36 The Phase 2 ash disposal lagoons in question (Area G and Areas H/I) were constructed with a clay lining which has brought about increased water retention and given rise to a high moisture content in these lagoons. The phase 1 lagoons which have been restored for a number of years, were not lined with clay and therefore there was not such a problem with the issue of drainage and boggy ground.

- 37 The high moisture content in Areas G, H & I would mean that earthmoving plant would be at risk of being bogged down and restoration operations would have the potential to cause further problems such as ash runoff into the drainage system, which would cause pollution of the surrounding water environment.
- 38 The proposal to restore Areas G, H/I and J to nature conservation instead of agriculture would remove the need for earthmoving operations (overburden, subsoil and topsoil placement) and these areas would be left largely as they are in their current condition.
- 39 Because it has been so many years (at least 7) since Areas G, H/I and J were operational, nature has taken its course and natural colonisation of these areas has been able to successfully take place. These ash lagoons are already a significant ecological and biodiversity interest and therefore the applicant has made the case that it is preferable to preserve and enhance these habitats as an alternative the currently approved restoration to agriculture.
- 40 The habitats within Areas H & I comprise grassland, scrub, areas of boggy ground, areas of open water (some areas with seasonal fluctuation) and areas of naturally colonised trees. Pioneer tree species are well established in some areas and therefore the proposals involve extensive 'de-scrubbing', partly to enable some areas to be placed with cover material (soils) and partly to enable and encourage the development of ecologically valued grassland and scrub area. Ongoing management of the site would keep vegetation succession at bay and slow down the rate of tree growth.
- 41 Further to the above proposals, it is therefore proposed to amend the existing planning conditions A11, A17 & A18.
- 42 Condition A11 currently reads as follows:

*11. As the development proceeds the land shall be progressively filled, restored and landscaped in accordance with the scheme approved in writing by the Mineral Planning Authority, which scheme shall be reviewed at least every two years and which shall take into account the attached standard specification of the Ministry of Agriculture, Fisheries and Food in respect of filling and restoration of mineral workings, or in accordance with such other schemes as may subsequently be approved in writing by the Mineral Planning Authority and such scheme shall, among other relevant matters, include provision for:*

- (a) the progressive filling and restoration of the area to prevent partial filling or restoration of lakes (see also condition 12);*
- (b) the stripping and storing of all overburden and topsoil;*
- (c) the location and height of topsoil and overburden storage bunds;*
- (d) upon completion of any filling in the area West of the Oxford-Didcot railway line the use of all such overburden and topsoil to form the uppermost layer of the deposit on the site to an even level over the whole of the reinstated areas;*
- (e) the final levels, gradients and batters of the restored area;*
- (f) the natural or artificial drainage of the site;*
- (g) the retention of all hedgerows, trees and fencing;*

- (h) the fencing of the areas being filled;*
  - (i) the planting of trees and shrubs;*
  - (j) the planting of the restored land in accordance with good agricultural practice;*
  - (k) the maintenance following restoration of the land for five years.*
- 1 *This condition shall not apply to land east of the Oxford-Didcot railway (marked in a solid red line on approved plan 1196/005A) which shall be subject to the additional conditions included in Section C of this permission.*

The proposed change is to add at the end of the condition:

*Provisions (a) to (d) and (j) of this condition shall not apply to schemes for the final restoration of the areas shown hatched red on approved plan UKP/DCD/0119.*

The intention of this proposed change is to remove the requirement for restoration to agriculture in respect of the filled Lakes G and H/I and the settling and discharge pond area and to remove, for the avoidance of doubt, some requirements for the content of filling and restoration schemes which are irrelevant to the current stage of the project when filling with pulverised fuel ash has ceased.

43 Condition A17 is currently as follows:

*17. Upon the cessation of the operations hereby permitted in any one area the subject of this permission:-*

- (a) the restoration of that area shall be completed;*
- (b) all derelict materials and all buildings, plant and machinery and all structures of any kind whatsoever erected or placed on the land in the course of the operations in that area permitted or required by this permission, when no longer required for the purposes directly associated with the development in other areas to be restored, shall be removed from the land and the whole site left in a clean and tidy state and in a condition fit and ready for agricultural use or such other use as is included in any agreed scheme of filling and restoration.*

44 Condition A18 makes corresponding provision for the final restoration of the whole site on completion of all filling and related operations:

*18. Upon the cessation of all the operations hereby permitted: -*

- (a) all restoration shall be completed;*
- (b) all derelict materials and all buildings, plant and machinery and all structures of any kind whatsoever erected or placed on the land in the course of the operations in that area permitted or required by this permission, when no longer required for the purposes directly associated with the development, shall be removed from the land and the whole site left in a clean and tidy state and in a condition fit and ready for agricultural use or such other use as is included in any agreed scheme of filling and restoration.*

- 45 The proposed change is to add the following at the end of both conditions A17 and A18:

*Provision (b) of this condition does not require the removal of any structures located in the area shown hatched red on approved plan UKP/DCD/0119 which are identified as being retained in any approved scheme for the final restoration of all or part of that area.*

The intention of this proposed change is to allow existing earthworks and structures to be retained permanently, where they form part of the proposals for restoration. Pursuant to Conditions A11 and A18 (as they would be amended by the above) approval is therefore sought for the revised restoration scheme as set out in the application documents.

- **Part 2 – Other Viewpoints**

- **Third Party Representations**

- 46 Please refer to Annex 1 (below) for an overview of the Third Party Representations that have been received.
- 47 One of the landowners (of a large proportion of the part of the site that is affected by the proposed revisions to restoration) has objected to the proposed changes to the restoration of the site. The landowner has also said that he does not want bunds, wire, fencing, nor plant structures to be left on site and has asked that the proposals for nature conservation afteruse must be discussed in depth with the owners of the site, and in relation to the other areas close to the site.
- 48 County Councillor Bob Johnston, the local member for Kennington and Radley, has some concerns about the removal of Security Fencing at the site. Councillor Johnston believes that the existing Security Fencing around the site should be permanently retained because of the disruption that the removal operation will cause to wildlife and because of the danger that the ash lagoon areas would pose to any trespassers (who manage to get through or get over the proposed replacement fencing). Councillor Johnston has said that in his opinion the area is very dangerous and will be so for up to 100 years as the ash takes so long time stabilise.

- **Consultation Responses**

- 49 Please refer to Annex 1 for an overview of the consultation responses that have been received.

- **Part 3 - Relevant Planning Documents**

- **Relevant Development Plan and other policies**

- 50 Planning applications should be decided in accordance with the Development Plan unless material considerations indicate otherwise.
- 51 The Development Plan for this area comprises:
- Oxfordshire Minerals and Waste Local Plan (saved policies) (OMWLP).
  - The Vale of White Horse Local Plan (VLP)
- 52 Other documents that need to be considered in determining this application are:
- National Planning Policy Framework (NPPF)
  - PPS10 – Planning for Sustainable Waste Management
  - Draft Oxfordshire Minerals and Waste Local Plan (Core Strategy)
  - Draft VOWH Local Plan 2031
- 53 The Government’s National Planning Policy Framework was published on 27 March 2012. This is a material consideration in taking planning decisions. However, it does not contain specific waste policies as these will be published as part of the National Waste Management Plan for England. Until that plan is published and approved, PPS10 remains in force.
- 54 The Oxfordshire Minerals and Waste Core Strategy is at an early stage of preparation and as such the weight which can be given to the policies it contains is very limited. A consultation draft is out to consultation until 7 April 2014 and it is anticipated that it will be submitted to government for examination in March 2015.

### **Relevant Policies**

- 55 The relevant policies are:

#### Oxfordshire Minerals and Waste Local Plan (OMWLP) 1996

- PE7 (Development in the floodplain)
- PE13 (Restoration and afteruse)
- PE14 (Sites of nature conservation importance)
- W7 (Landfill Sites)
- W7 (g) (Landfill Sites and Green Belt)
- PE18 (Code of Practice)
- PB1 (Removal of plant and buildings)

#### The Vale of White Horse Local Plan (VLP)

- GS3 (Development in the Green Belt)
- DC13 (Flood risk)

#### Draft Oxfordshire Minerals and Waste Core Strategy OMWCS

- Policy C7 Biodiversity and Geodiversity
- Policy C3 Flooding
- Policy C5 General Environmental and Amenity Protection
- Policy C6 Agricultural land and soils
- Policy W6 Siting of waste management facilities

## **Part 4 – Analysis and Conclusions**

### **Comments of the Interim Deputy Director (Strategy and Infrastructure Planning)**

- 56 The key policy issues to consider in determining this application are:
- i. Green Belt Policy;
  - ii. Restoration and afteruse;
  - iii. Flood Risk.

#### **Green Belt Policy**

- 57 NPPF paragraph 79 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and paragraph 80 sets out the five purposes of the Green Belt. Paragraph 90 states that certain forms of development, including engineering operations, are not inappropriate in the Green Belt provided that they preserve the openness of the Green Belt and do not conflict with the purposes. Paragraph 87 states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances.
- 58 NPPF paragraph 81 refers to the importance of retaining and enhancing landscapes, visual amenity and biodiversity within the Green Belt.
- 59 VLP Green Belt Policy GS3 carries a presumption against development which would affect the openness of the Green Belt with certain exceptions of which the elements discussed below are not one. The supporting text to the policy states that the use of land in Green Belts has a positive role to play in fulfilling a number of objectives, which includes securing nature conservation and retaining/enhancing landscapes near to where people live.
- 60 OMWLP Policy W7 (g) states that development should not injure the visual amenities of the Green Belt or conflict with its purposes because of inappropriate siting, scale or design. Policy W6 of the OMWCS states that waste management facilities may be permitted in the Green Belt provided that very special circumstances are demonstrated.
- 61 The development proposed in the application is not for a new waste management site but rather variations to its restoration requirements.

Elements of this include the proposed retention of bunds, which were previously considered as temporary structures for the storage of materials to be used in site restoration, but for which permanent retention constitutes inappropriate development in the Green Belt pursuant to development plan policies and paragraphs 87 and 88 of the NPPF. Any permanent retention of the existing security fencing would also be inappropriate development. Despite the existing and proposed screening, these elements would encroach into the countryside and would conflict with preserving the openness of the Green Belt and also be visually intrusive. There would therefore be significant harm to the Green Belt. Accordingly, it falls to the applicant to demonstrate that “very special circumstances” exist to justify the proposed development. Very special circumstances will not exist unless the harm by reason of the development’s inappropriateness, together with any other harm, is clearly outweighed by other considerations.

Proposed restoration to nature conservation

- 62 The proposal to restore parts of the site to nature conservation after use instead of agriculture does not have any impact on the openness of the Green Belt, and the benefits of nature conservation gained from the proposal has the potential to contribute positively to this particular Green Belt objective as set out in the Vale Local Plan.

The proposed retention of the Sandy Overburden Material (SOM) mound and bunds to the east and north-west of Area G and south of Areas H/I

- 63 The proposed retention of mounds/bunds does not preserve or maintain the openness of the Green Belt and is therefore deemed to be inappropriate development. As such, the proposal can only be approved if there are very special circumstances.
- 64 Very special circumstances exist in this case because there are significant problems with all of the alternative options of what to do with the SOM mound and benefits to be gained over the approved restoration scheme through both its retention and that of the other bunds.
- 65 OMWLP policy PE18 and Draft OMWCS policy C5 protect local amenity. If the material in the bunds is not to be used for restoration purposes as proposed then the alternative of removing the material off site would generate a substantial volume of HGV movements on a road, Thrupp Lane, which is not suitable for this type of use. This would cause unacceptable disturbance to local residents and impact on the local road network, contrary to OMWLP policy PE18 and Draft OMWCS policy C5.
- 66 Due to the fact that a significant portion of the application site is in the floodplain, combined with the fact that large areas of the site, including the SOM mound, contain valued habitats or have protected species present (Great Crested Newts), there isn’t the option to deposit or ‘spread out’ the SOM elsewhere in the site. Deposit of the material in the floodplain would be contrary to OMWLP policy PE18 which states that filling should not raise the

floodplain and the NPPF Technical Guidance which states that landfill should not be permitted in Flood Zone 3b. Deposit of the material on an area of the site which is of nature conservation importance would risk damaging the nature conservation interest, contrary to OMWLP policy PE14. There are very clear biodiversity benefits to not spreading the material stored in all of the bunds proposed to be retained.

- 67 Having considered these factors it is therefore apparent that leaving the SOM material and that in the other bunds in their current locations, as opposed to spreading them as currently required, is the only viable option which will facilitate and enable the retention of the habitats in Areas G, H and I for nature conservation afteruse.
- 68 The combination of factors in this particular scenario and location therefore shows that very special circumstances exist, which justify the retention of bunds which impact on the openness of the Green Belt.
- 69 In considering the very special circumstances, another factor that has been considered is the presence of a narrow strip of woodland located between the SOM mound and the Sustrans Right of Way, which provides a good level of visual screening of that bund, the vegetation around the bund to the east of Area G and that to the south of Areas H/I. The retention of the mound to the north-western corner of Area G would also provide beneficial screening to the Tuckwell's mineral processing plant. Whilst these are beneficial in terms of addressing any visual impact, it is not considered that these in their own right can contribute to the demonstration of very special circumstances for development in the Green Belt.

#### The retention of concrete structures

- 70 These are mainly low level culvert structures and associated pipework built into the side of the enclosing ash lagoon bunds and they are close to ground level. It is therefore considered that the retention of these structures as modified would be beneficial, that they do not impact on the visual amenity of the area and do not have a significant effect on the openness of the Green Belt in this location. I also consider that the small pedestrian footbridge proposed would have little impact on the openness of the Green Belt, although details of this should be required to be submitted for approval by condition should planning permission be granted.

#### Changes to final ground levels in filled ash lagoons

- 71 The proposed alterations to the final levels of the filled ash lagoons are not considered to impact on the visual amenity of the area or the openness of the Green Belt. Indeed, the levels would be less than under the approved scheme.

#### Permanent retention of two short sections of security fencing

- 72 The permanent retention of the two short sections of security fencing does not preserve or maintain the openness of the Green Belt and is therefore deemed

to be inappropriate development. As such, their proposed retention can only be approved if there are very special circumstances.

- 73 For these two particular sections of fencing, it is considered that very special circumstances exist, which justify their retention because the two sections of fence are surrounded by trees and shrubs and any attempt to take down and remove the fence would result in the loss of vegetation and damage to the surrounding habitat in these locations, contrary to OMWLP policy PE14.
- 74 Further justification that has been put forward for the permanent retention of the two sections of fencing is that they are very well screened and not visible from the surrounding areas. In the case of the section of fencing located between the eastern edge of Area G and the main line railway (Oxford to Didcot), the fence is hidden from view between two embankments as well as being surrounded by trees and overgrown vegetation. Therefore, it has a very limited impact on the openness of the Green Belt. Whilst this is beneficial in terms of addressing any visual impact, it is not considered that this in its own right can contribute to the demonstration of very special circumstances for development in the Green Belt.

#### **Restoration and afteruse policies**

- 75 OMWLP Policy PE13 states that mineral workings and landfill sites should be restored to an afteruse appropriate to the site's location and its surroundings. OMWLP Policy W7 sets out criteria against which proposals for landfilling should be assessed and has the principal aim of securing satisfactory restoration with the least possible harm to the environment. Policy PB1 of the OMWLP requires the removal of equipment associated with waste disposal sites when no longer required.
- 76 The proposal accords with OMWLP PE13 as the site would be restored to an afteruse that is appropriate and beneficial to the location and surroundings. Of particular importance and relevance is the fact that the proposed nature conservation afteruse compliments the existing nearby Local Wildlife Site (Lake E) as well as the existing restored ash lagoon areas east of the railway.
- 77 The proposal accords with OMWLP W7 because of the benefits and enhancements to biodiversity that the proposal brings. Furthermore, given the site's location and surroundings, the proposal is well suited to the area.
- 78 The structures to be retained would continue to play a valuable role in the control of water and so the development of the biodiversity interest of the site and also the impact of water flow from the site downstream.
- 79 OMWLP policy PE14 states that sites of nature conservation importance should not be damaged. The proposal accords with this policy as the proposed nature conservation afteruse of the site will enhance biodiversity and the ecological value of the site, particularly so given the wider site's characteristics and the surrounding habitats that exist.

- 80 Draft OMWCS Policy C7 Biodiversity and Geodiversity states that mineral and waste development should conserve and where possible enhance biodiversity. Draft OMWCS policy C6 relates to agricultural land and soils, however it seeks to protect only agricultural land classified as best and most versatile. As parts of the site have been clay-lined resulting in poor drainage, it is not considered that this site would be capable of a high quality agricultural restoration. Therefore, the proposal is not contrary to policy C6.
- 81 Objection has been received from one of the landowners to the proposed change from agricultural restoration to nature conservation. Despite raising these comments with the applicant (RWE Npower), the County Council has not been informed about any further discussions having taken place between the landowner and RWE Npower.
- 82 Whilst the RWE Npower will clearly need the agreement of the landowner to implement the varied development, should planning permission be granted to this application, this is the situation with any planning application and so in itself is not a reason for refusal. Having considered the points raised by the landowner, I am of the view that the proposed change of restoration from agriculture to nature conservation is acceptable and indeed beneficial in land use planning terms. In response to the landowner's other comment, a planning condition will ensure that all wire, plant structures and security fencing will have to be removed (other than in the two locations where the applicant has sought permanent retention of two sections of fence), should planning permission be granted.
- 83 It is quite apparent that the proposal contributes to the enhancement of local habitats and therefore the proposal accords with draft OMWCS Policy C7.
- 84 Some concern has been raised by both the applicant and consultees with regard to the timing of the removal of the rest of the existing security fencing which it is considered is beneficial both in terms of restricting access to developing habitats and in relation to an existing problem with unauthorised motorcycle access to the site. The existing planning permission requires the removal of all structures which includes the fencing and its replacement by stock proof fencing. I do not consider that it would be acceptable in the long term for the majority of the security fencing to be permanently retained in its current form; it would be inappropriate development in the Green Belt and would have ongoing visual impact and so harm. It is not normal practice for security fencing of the type existing to be retained to facilitate the development of habitats and Natural England has advised that it can be replaced after two to three years as part of the management of the site, although it has been accepted that elements of the existing fence including the lower parts of the existing posts could be re-used if appropriate. It is also advised that a description of the work to be conducted is submitted for approval, alongside any required mitigation measures. The applicant has accepted that the details of fence removal and replacement can be provided for by schemes to be submitted for approval pursuant to conditions. Whilst the applicant has set out its ideas on what such proposals should include, the details will be matters for

consideration should permission be granted to this application with such conditions attached when the detailed schemes are submitted for approval.

- 85 The applicant has queried the County Council's interpretation of the legal requirements with regard to commencement of the aftercare period. Schedule 1 to the Town and Country Planning Act 1990 as amended for aftercare states: "the aftercare period means a period of five years from compliance with the restoration condition or such other maximum period after compliance with that condition that may be prescribed; and in respect of any part of a site, the aftercare period shall commence on compliance with the restoration condition in respect of that part." It is considered the removal of the existing fences (other than those elements which it is proposed to retain permanently) and their replacement is part of the overall restoration of the site and so the aftercare period cannot commence until this has been completed.
- 86 It should be stressed that the applicant would not be required to put up the replacement fencing along the entire length of all sections of the existing security fencing. The new fencing would only be required in the locations where it would be necessary to prevent access to the main areas of the restored site from the nearby Rights of Way (such as the Sustrans route and the Thames path). With regard to the concerns raised about the unauthorised access to the SOM mound part of the site by motorcyclists, it should be noted that additional planting, fencing and terracing measures have been proposed by the applicant. The submission of further details of these measures and their implementation, which would be required by planning condition, would ensure that the SOM mound could no longer be used by unauthorised motorcyclists.
- 87 The Environmental Permit requires that the ash disposal site is secured but the Environment Agency has clarified that there is flexibility and it would be unlikely to object should they be approached to replace it with a lower alternative e.g. robust post and rail fence and that the problem cited with regard to unauthorised access by motorcyclists also happens at other landfill sites.
- 88 Furthermore, there is the risk, which the applicant acknowledges, that the longer it is left before attempting to remove the security fence, the more established and overgrown the habitats on site, the greater the potential for damage to the habitats and disturbance to wildlife, and the more difficult the fence removal and replacement operations might be.
- 89 Whilst it is noted that the applicant considers the removal and replacement of fences could be completed within 18 months of permission be granted, taking the above into account and the advice of Natural England and others with regard to the need to prioritise the protection of the developing biodiversity, I consider that it is appropriate that any planning permission be conditioned to require the removal of the existing fence within 6 months of the surrender of the Environmental Permit or by 31/12/2017, whichever is earlier and its subsequent replacement. If the Environmental Permit hasn't been surrendered by 31/12/2017 then, given the comments of the Environment Agency set out above, it would seem that the replacement fencing on the site would enable the applicant to continue to comply with the requirement of the Permit to seek

to secure the site. Conditions should also be attached to any planning permission requiring detailed schemes to be submitted for approval for the removal of the existing fence other than those elements necessary to be retained where impacts on biodiversity cannot be otherwise mitigated and its replacement incorporating any such elements and also how the works will be carried out to otherwise mitigate any adverse impacts.

### **Flood Risk (Development in the Floodplain)**

- 90 The NPPF Technical Guidance requires all development in Flood Zone 2 or 3 to be accompanied by a Flood Risk Assessment (FRA) which should demonstrate how flood risks will be managed and that the risk to flooding elsewhere will not be increased. OMWLP PE7 states that mineral and waste development should not harm groundwater levels, water quality or increase the risk of flooding. VLP Policy DC 13 states that where a risk of flooding is identified, proposals will not be permitted unless an adequate flood risk assessment has been made, which shows that the possible effects on flood risk elsewhere (flows, storage capacity, run-off) are acceptable. Draft OMWCS policy C3 states that waste development should only take place in areas of flood risk where areas of lower flood risk have been explored and discounted and where a FRA is able to demonstrate that the risk of flooding is not increased. The opportunity to increase flood storage capacity in the flood plain should be taken where possible.
- 91 Areas H & I are located within the River Thames floodplain and accordingly the planning application was submitted with a Flood Risk Assessment. This concludes that the proposals would not result in a significant increase to flood risk, and thus the proposed development accords with the NPPF, OMWLP PE7 VLP Policy DC13 and Draft OMWCS policy C3
- 92 The Environment Agency do not object to the proposals and have said that they are satisfied that retaining the bund along the eastern edge of Areas H&I, including the bund section at the south east corner of Areas H&I, will not have a significant impact on velocities and flood depths locally.
- 93 The EA have also said that the following aspect of the proposal is acceptable: the flow route through Areas H&I and the 10m wide lowered section of bank that will be drained by gravity into an existing wetland ponded area below Area H & I and then onward to the River Thames.
- 94 In terms of the Sequential Test, it is a fact that the ash disposal is already permitted and exists on this site. Whilst the development permitted was for waste disposal in flood zones 2 and 3, the current application is that a lesser development be carried out in that no more ash disposal would take place and the stored materials in the bunds would not now be spread as part of the restoration works. The development proposed as a variation to the approved restoration requirements therefore cannot practically be re-located anywhere else at all including in a less vulnerable flood zone.

- 95 There would be wider sustainability benefits to the local community from the development being permitted through the development of biodiversity at the site. The Environment Agency has no objection on flood risk or any other ground. There are clearly no reasonably available alternative sites and it is therefore considered that the development passes the Sequential test.

### **Other matters**

- 96 The Rights of Way Officer has no objection but has asked whether the drainage of the BOAT could be addressed and also whether an additional right of way, to link the Radley Lakes area with the Thames path (from the terminus of the old railway line running east towards the Thames Path) could be created. There is no clear evidence to indicate that the drainage problems of the BOAT are linked to this site, but an informative could be attached to any permission asking that the applicant investigate this issue. The creation of an additional right of way is also not directly linked to this application in order to make it acceptable, but again an informative could be attached asking that the applicant discuss this with the Rights of Way Officer. Objection has also been received from a local resident with regard to the SOM mound which it is suggested contributes to flood water gathering for too long and becomes fetid. It is suggested that as far as possible this matter be addressed through a requirement for drainage measures to be included in the detailed scheme for the SOM mound.

### **European Protected Species**

- 97 Please refer to Annex 2 for comments relating to the legal duty of Local Planning Authorities to have regard to the Conservation of Species & Habitats Regulations 2010. European Protected Species are present on site.

### **Conclusions**

- 98 In summary, the proposal will make a positive overall contribution to the Radley Lakes area with the nature conservation afteruse bringing valuable benefits to biodiversity. The non-implementation of restoration to agriculture has enabled natural colonisation of the site and the creation of habitats that support a wide range of flora and fauna in accordance with OMWLP policy PE14.
- 99 With regard to the proposed retention of the SOM mound and other bunds, the very special circumstances that justify a bund in a Green Belt location have been examined in detail. It is quite apparent that the alternative options of how to remove the SOM mound would lead to conflict with other policies, and ultimately the biodiversity benefits that will arise from not spreading the material over Areas H & I can only be realistically achieved if the mound remains. It is considered that in the context of this location and the benefits resulting from the variations proposed to biodiversity, very special circumstances have been demonstrated for making an exception to Green Belt policies.

## **Recommendation**

100. It is **RECOMMENDED** that planning permission be approved for application MW.0056/13 subject to conditions to be determined by the Deputy Director for Environment & Economy (Strategy & Infrastructure Planning) but to include the following:
1. Development to be built in accordance with the plans and details of the development.
  2. Hours of operation 07.00 to 18.00 Mon-Fri and 07.00- 13.00 Sat and no operations Sundays or Bank or Public Holidays.
  3. Remove derelict materials, buildings, plant/machinery within 12 months.
  4. Restoration of the site shall be completed by December 31<sup>st</sup> 2015 (other than the removal of the existing security fencing)
  5. No access to the site shall be used other than Routes 1 to 4 shown on Drawing No. UKP/DCD/0139/A.
  6. No further additional import or disposal of Pulverised Fuel Ash (PFA) shall take place at the site.
  7. No extraction or export of PFA from the site shall take place.
  8. Submission, approval and implementation of a revised habitat management plan.
  9. Annual aftercare site meeting to be arranged each year by the occupier of the land
  10. Detailed written annual aftercare review and programme to be submitted and implemented.
  11. Detailed security fence removal scheme to be submitted, approved and implemented (to include method of dismantling and measures to mitigate adverse impacts on the biodiversity of the site)
  12. Security fence replacement scheme to be submitted, approved and implemented.
  13. Security fence removal scheme to be submitted, approved and implemented
  14. Security fence to be removed no later than 12 months after the surrender of the EA Environmental Permit for the site or by 31/12/2017 whichever is the earlier.
  15. Fencing replacement implementation to be completed no later than one month from the date of the completion of the removal of the existing security fencing.
  16. SOM Mound Landscaping and Protection Scheme to be submitted, approved and implemented (with details of terracing, planting, fencing and drainage).
  17. Construction Phase Traffic Management Plan scheme to be submitted, approved and implemented.
  18. Ecology survey update to be submitted, approved and any works implemented if works do not commence within 12 months of the date of consent.

## **Reasons for Approval**

The proposed development is in accordance with the provisions of policies

W7 (other than part g), PE7, PE13, PE14, PE18 & PB1 of the Oxfordshire Minerals and Waste Local Plan 1996 and policy DC13 of the Vale of White Horse Local Plan. The permanent retention of structures including mounds and two sections of the existing security fencing are considered to be inappropriate development in the Green Belt contrary to policies W7 g) of the Oxfordshire Minerals and Waste Local Plan 1996 and GS3 of the Vale of White Horse Local Plan but it is considered that very special circumstances have been demonstrated to justify making an exception to Green Belt policy.

## **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.

Whilst dealing with this planning application the applicant was advised to make the following improvements to the application:

-To withdraw tree and shrub planting proposals from the planning application in order to maximise the potential benefits for biodiversity on the site (in response to recommendations made by consultees).

-The original proposal wasn't clear about what was being proposed for the SOM mound. The applicant was advised to provide additional details regarding the SOM mound and its proposed retention. The submission of additional details were recommended – details which clearly indicated the proposed retention of the SOM mound, as well as the explanation of very special circumstances behind the SOM mound's retention in the Green Belt.

-The applicant was also asked to provide additional details and confirmation of what the proposals involved with regard to the existing security fencing on site. This turned out to be the temporary short term retention of security fencing and, for two particular lengths of fence, their permanent retention (which then also required the justification of very special circumstances in a Green Belt location).

BEV HINDLE

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

July 2014

### **Third Party Representations**

#### **Local Member: County Councillor Bob Johnston**

Has made the following comments:

-On the East Side of the railway the fencing has been left in situ without any problems and security on what is very dangerous substratum has been maintained.

-It appears that the national heritage body wants the fencing on the Western side of the railway removed, why is unclear. The area is very dangerous and will be so for up to 100 years as the ash takes many years to stabilise.

-The removal of the fencing would be very disruptive to the evolving wild life and leave a large area open to trespassers who would be in peril of their lives.

#### **Local Resident**

No objection but has made the following comments:

-Agrees with the proposed revised restoration but wishes to see the SOM bund removed, levelled off and restored to as near to the original landscape as possible.

-The proposed SOM bund is unsightly and unnatural on the landscape

-Because of the bund and adjacent ground levels, flood water gathers for too long, gets trapped and becomes fetid. This then becomes a breeding ground for some very unpleasant flies quite apart from the smell.

Leaving the SOM bund as it is provides an ideal area for anti-social behaviour from motorcyclists looking for ramps. It is therefore detrimental both to the local residents and the people enjoying the walks along the Sustrans route. Walkers would enjoy their route much more if the bund were removed and a view restored.

#### **Landowner**

The landowner objects to the changes to the existing restoration requirement (to agriculture and removal of structures and bunds) and planning conditions.

Does not want bunds, wire, fencing, nor plant structures to be left on site

Have asked that the proposals for nature conservation after use must be discussed in depth with the owners of the site, and in relation to the other areas close to the site.

### **Consultation Responses**

#### **Vale of White Horse District Council**

No objection

**Environmental Health (Vale of White Horse District Council)**

No comments

**The Environment Agency**

No objection -are satisfied that retaining the bund along the eastern edge of Areas H&I, including the bund section at the south east corner of Areas H&I, will not have a significant impact on velocities and flood depths locally.

Detailed EA comments are as follows:

To mitigate the risk floating cenospheres are mobilised from Areas H&I during a flood event and the proposal includes a temporary lightweight polypropylene boom across the 10m wide lowered section of the bund and remaining 12 culvert outlets, until there is sufficient reed growth in the vicinity. This appears appropriate and could be picked up as part of aftercare compliance.

The flow route through Areas H&I and the 10m wide lowered section of bank will be drained by gravity into an existing wetland ponded area below Area H&I and then onward to the River Thames. We consider this acceptable.

Following comments are in relation to the revised Restoration Proposal dated March 2013:

-3.2.6 - sump not necessary as ephemeral lakes and ponds are valuable habitats for amphibians and invertebrates (including BAP priority species) and periodic drying out prevents colonisation by fish.

-3.2.9 – clay is not really suitable for bird nesting. If the steep slope is a mix of clay and sand it may be suitable but in order to offer bird nesting habitat, the slope may need to be faced with a more porous and lightweight material which can be excavated

-Tables 3.1 and 3.2 – *Alnus inacna* is a non-native species and should not be planted on the site. This species could be replaced with the rare native Black Poplar (*Populus nigra* var ssp. *Betulifolia*) where site conditions are suitable. All planting should use plants of local genetic provenance

-3.4.10 – shrub clearance should take place outside the bird nesting season and 'debris' clearance only carried out if the debris is not natural material and the clearance is required for conveyance. In channel debris offers habitat variability.

-3.5.4 – banks of the new ditch should not be uniform and if possible, the channel should meander rather than be straight as this will offer a variety of in channel conditions. The channel profile should incorporate a low flow channel and the high and low flow channel beds should be lined with appropriate sized gravel. Any planting of the ditch should use locally native species of local genetic provenance.

**Radley Parish Council**

No objection & no comments on the two main periods of consultation

Comments relating to the proposal to permanently retain two sections of security fencing

- The removal of the existing security fences would be most disruptive to the restoration which has already taken place
- Firmly believes that the fencing must be retained in place to protect wildlife, and restrict the access for motorbikes onto sensitive wildlife habitats

**Natural England (NE)**

Main two periods of consultation

No objection (initial holding objection removed following the submission of additional ecological information)

Comments relating to the submission of Habitat Management Plan proposals dated December 2013

- Satisfied that proposed restoration to nature conservation instead of agriculture is extremely beneficial to local biodiversity.
- Since the 5 year management is a relatively short period it is very important the adopted management practices are apt and effective.
- All restoration and management strategies should be applied and maintained at a high level in order to create a stable future environment (especially important due to lack of long term management).

Security fencing comments

Natural England initially said that the retention of security fences throughout both Areas G and H/I (to safeguard developing habitats from uncontrolled public access) would be a very important aspect of the five year aftercare management strategy.

However, NE has subsequently said that they would encourage the replacement of security fencing with stock proof fencing although they also concur that the reduction in height of the existing security fence and the retention and re-use of the lower parts of the posts would be appropriate.

However, regarding the actual works to be carried out, Natural England advise that an assessment of the areas surrounding the fencing is conducted before works begin, to ensure no adverse damage is caused to the developing biodiversity from the fences' construction. Additionally, no materials should be left at the site outside working hours. This is especially important since Great Crested Newts (GCN), a European Protected Species (EPS), are known to be present in both of the affected areas, G and H/I. If GCN are detected at any time during the construction of the new fencing, works must cease immediately and advice must be sought from an appropriately licensed ecologist. It would also be beneficial to supply construction workers with an illustrated fact sheet to aid in GCN identification. For additional advice on EPS I refer you to Natural England's Standing Advice on protected species:

<http://www.naturalengland.org.uk/ourwork/planningdevelopment/spatialplanning/standingadvice/default.aspx>

Furthermore, details of the alternative fencing to be used should be supplied to the Local Authority prior to works, to ensure that it is fit for purpose. It may also be beneficial to implement fencing that would still facilitate a degree of green transport links between the surrounding landscape and areas G and H/I.

NE has advised that there are issues to consider with this change in the restoration strategy:

-It is important that the developers ensure that it is clear that areas G and H/I are of restricted public access, especially for the sandy overburden material (SOM) heaps within area H/I, that have been known to be used for motorbike scrambling.

-It is advised that if trespassing becomes an issue following changing the fencing that action to develop a mitigation strategy is developed, to ensure that the preservation of the habitats in these areas are safe guarded.

-With reference to the actual removal and changing of the fences, it is advised that areas G and H/I are evaluated regularly by a competent ecologist, to identify the optimum time to make the changes (year 2 or 3) depending on the extent of land and habitat development, and that this is agreed with the local authority. It is also advised that a description of the work to be conducted is presented, alongside any required mitigation measures. Additionally, it is noted that there are great crested newts (GCN) present at both areas G and H/I; it is important to consider the implication any construction works would have on GCN populations at the site as well as subsequent potential public access is appropriate with regard to this species.

-Welcome the retention of the SOM mound and the long term prospect of land improvement.

-Recommend that if permission is granted, the County Council should secure from the applicant measures to enhance the biodiversity of the site (bat roosting opportunities, installation of bird nest boxes, or use of native species in the landscape planting).

## **OCC Ecologist**

### Main two periods of consultation

-No objection (initial holding objection removed following the submission of additional ecological information, including mitigation measures). Comments are as follows:

-The retention of fencing around the ash lagoons could be beneficial for biodiversity, especially for reducing disturbance to wading and breeding birds from visitors and dogs.

-Support the removal of tree planting from the proposals. This should be beneficial for retaining the biodiversity value of the site.

-It would have been preferable if the applicant was able to include a Long Term Management Plan in the proposals.

Comments relating to the submission of Habitat Management Plan proposals dated December 2013

-In the absence of long term management in the proposal (i.e. provided by the applicant), the applicant/landowner is encouraged to explore whether there are opportunities for long term management with conservation organisations such as the Earth Trust. The site could form part of a large nature reserve of great benefit to biodiversity and local communities.

-Agree with Earth Trust comments (response dated 21<sup>st</sup> January 2014) that suggest minor amendments to the proposed restoration scheme.

-Suggest the imposition of biodiversity/ecology related conditions if permission is granted.

### **Transport Development Control**

No objection but have recommended a planning condition requiring a construction management plan to be submitted, to ensure that there is effective control over how construction and HGV movements affect the Thrupp Lane. In recent years locals have raised a number of concerns relating to Thrupp Lane, namely the volume of HGV traffic and the need for ongoing maintenance.

### **Rights of Way**

No objection but have made the following comments:

-Drainage problems in the area mean that the Byway Open to All Traffic along the south side of Radley Lakes often floods for considerable periods of time making it unusable. Have therefore asked whether it would be possible for the proposal to incorporate improvements that could resolve this.

-Have asked whether the applicant and landowner would be willing to provide a right of way, to link the Radley Lakes area with the Thames path (from the terminus of the old railway line running east towards the Thames Path).

### **BBOWT**

No objection (initial holding objection removed after additional information provided).

-Support the proposed nature conservation afteruse. Preferred approach would be for long term 20 year management.

### **The Earth Trust**

#### Main two periods of consultation

Support the proposed nature conservation afteruse and have made the following comments about enhancing the proposals:

-Must ensure that there is effective protection for Great Crested Newts (GCN) during the proposed works.

- Need for continued site management beyond the statutory 5 year aftercare period to prevent the site from progressing through the successional stages that would lead to a loss of structural diversity and the existing biodiversity.
- Costs and methods for long term habitat management should be included in the aftercare plans.

Comments relating to the submission of Habitat Management Plan proposals dated December 2013

- Support RWE npower's plans for restoration to nature conservation rather than agriculture and consider this is fitting for an area which forms part of the Radley Gravel Pits Local Wildlife Site.
- Restoration plan goes a long way to achieving significant benefits for wildlife. Suggest a number of minor changes to the management proposals to further enhance these benefits.

**Friends of Radley Lakes**

Objection if the existing security fences are to be removed earlier than the end of the aftercare period.

Have made a number of detailed comments (as below) and have emphasised the importance of future management of the site and the diminished ecological value of the PFA areas that would occur if the continued colonisation of trees and shrubs take place:

-Proposals for the Radley Phase II PFA Lagoons provide an important opportunity to re-create herb-rich grassland.

-Already areas of G, H & I are developing into Birch and Willow woodland, which are much less bio-diverse than the grassland they replace.

-The use of grazing animals or the mechanical removal of scrub and herbage as part of a continuing management plan for the site must be considered. It is likely that in future, the PFA particles will consolidate sufficiently to permit machines such as mowers to drive over the PFA surface in order to remove scrub and to make hay cuts.

Objection is made to any requirement for the removal of the existing security fencing due to the potential adverse impact on developing biodiversity.

Area G

The proposed plantation areas G, H & J are not necessary.

Areas H & J are being colonised naturally by a variety of shrub and herb species, already.

Area G is presently a valuable area of grassland on the raised part of G. For example, Yellow Wort (*Blackstonia Perfoliata*) a species listed on the Oxon Rare Plants Register was found there in 2012. Tuckwells' works are already concealed from the south and southeast by the elevated part of Lagoon G.

Section 3.2.6 <sup>(2)</sup> "A sump will be created so that aquatic life can survive." This pond should be as large as is feasible with gently sloping banks (<5% slope) so that a

wide variation of water depth is provided, as varying habitat for aquatic species, so as to ensure that as the water level varies, each species can move to its preferred depth. This shallow margin would also provide foraging habitat for wading birds.

#### Area H & I

The proposed plantation areas L & K are unnecessary as this Lagoon is already being colonised by tree species. As replacement for these plantations, some areas of naturally colonised woodland could be left uncut in subsequent management of the site.

#### Comments relating to the submission of Habitat Management Plan proposals and proposed security fencing retention dated December 2013

- All security fencing around Lakes G, H & I should be retained at least until the end of the five-year aftercare, and that what happens thereafter should be subject to review at that point.
- Any decision about the long-term treatment of the fences should only be taken in the context of an overall strategic vision for the management of the area as a whole.
- The whole area is part of a Local Wildlife Site (LWS), noted for the diversity of habitats which it includes. The existence of these fenced areas, which are physically inaccessible to dogs, pedestrians, cyclists and motor-cyclists, makes an important contribution to the overall biodiversity of the LWS, and this will increasingly be the case as the habitats in the fenced areas mature. The protection provided by the fences is especially important for ground-nesting birds, which are otherwise very vulnerable to disturbance.
- Strongly of the view that removal of the fences before there is an overall vision for the future management of the area as a whole would certainly be premature, and could well limit options and compromise the scope for achieving the best possible long-term outcome for the LWS area as a whole.
- Removal of the fences could lead to incursions by 'off-road' motorcyclists. This has already been a persistent problem, with a variety of undesirable consequences, on unfenced areas of Radley Lakes.

### Biodiversity Informatives

- If any protected species [e.g. bats, badgers, dormice, otters, water voles, reptiles, amphibians, 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
- A Habitat Regulations licence from Natural England for great crested newts is required to make this permission lawful.
- 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, grassland] should take place between 1st March and 31st August inclusive to prevent committing an offence under the Wildlife & Countryside Act 1981 (as amended).

### Other Informatives

1. Mud and other debris must not be dragged or in any way deposited upon the public highway, therefore, it is recommended that wheel washing facilities are provided and utilised on site.
2. This development will require an Environmental Permit under the Environmental Permitting (England and Wales) Regulations 2010 from the Environment Agency, unless a waste exemption applies. The applicant is advised to contact the EA's National Customer Contact Centre (NCCC) on 03708 506506 to discuss the issues likely to be raised.
3. The Environmental Protection (Duty of Care) Regulations 1991 for dealing with waste materials are applicable for any off-site movements of wastes. The developer as waste producer therefore has a duty of care to ensure all materials removed go to an appropriate permitted facility and all relevant documentation is completed and kept in line with regulations.
4. If any waste is to be used on site, the applicant will be required to obtain the appropriate waste exemption or permit from the EA. The applicant is advised to contact the Environment Management team at NCCC Office on 03708 506506 or refer to guidance on our website <http://www.environment-agency.gov.uk/subjects/waste>
5. Any chemical or fuel storage containers on the site shall be sited on an impervious surface with bund walls; the bunded areas shall be capable of containing 110% of the container's or containers' total volume and shall enclose within their curtilage all fill and draw pipes, vents, gauges and sight glasses. There must be no drain through the bund floor or walls.

6. The applicant is requested to discuss the creation of an additional right of way to link the Radley Lakes area with the Thames path (from the terminus of the old railway line running east towards the Thames Path) with the Rights of Way Officer.

#### 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.

