

For: PLANNING AND REGULATION COMMITTEE – 12 JANUARY 2015

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

Request to withdraw notice of periodic review in accordance with the Environment Act 1995, on Land at Thrupp Farm Radley.

Division Affected: Kennington and Radley

Contact Officer: Kevin Broughton Tel: Oxford 815272

Location: Land at Thrupp Farm, Radley.

District Council Area: Vale of White Horse District Council

Background

1. Oxfordshire County Council made a Prohibition Order on the Land at Thrupp Farm Radley on 1 November 2012 which does not take effect until the order is confirmed by the Secretary of State.
2. In order to assess whether the Prohibition Order should be confirmed, the Secretary of State held a public Inquiry which commenced on 18 March 2014. The Inquiry was arranged through the National Planning Casework Unit (NPCU).
3. During the Inquiry the applicants produced new evidence to suggest that due to a letter not having been sent within the required timeframe the initial ROMP review conditions had been granted by default on or about 27 July 2000. The County Council was not able to find any evidence that the letter had been sent and so accepted the position that the permissions were in place by default. It seemed to the Council that following the introduction of the new evidence at the Inquiry the Prohibition Order was unlikely to be granted. The Inquiry closed on 15 May 2014. However, the Secretary of State has not yet issued his decision and from correspondence received from the NPCU it seems all options are being considered.
4. Until the Growth and Infrastructure Act 2013 the County was locked into a review cycle which required it to do a periodic review every 15 years. However, the 2013 Act gave a discretion on the part of MPAs as to when reviews were to take place.
5. We considered that the 15 year review should take place because the conditions are not suitable, particularly as they have never been subject of an Environmental Impact Assessment (EIA). The further review was due to take place on 28 July 2015 at the earliest and the County Council issued a notice

requiring the submission of a ROMP (Review of Old Mineral Permission) application by that date.

6. Doubt was cast on the inclusion of the relevant plan in the serving of that notice. For the avoidance of doubt, the County Council re-served the notice giving until 21 August 2015 for the submission of a ROMP (Review of Mineral Permission) application.
7. The applicants therefore need to submit an application supported by an Environmental Statement within one year of that date. Failure to do so will mean that the permission will go into suspension and if it remains in suspension for two years the County Council will again come under a duty to serve a prohibition order in accordance with regulation 52 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.
8. Having started the Review procedure, the applicant and Council must comply with the statutory time limits. An applicant can apply to postpone the review date on the ground that the existing conditions are satisfactory. No such application has been made in this case, although an informal request for a deferral has been received. Other than by granting an application for postponement, the Council has no discretion to grant any extension to the statutory time limits. It is considered the only way to defer the process is to withdraw the Review Notice requiring a ROMP Application by 21 August 2015. This would not prevent the Council issuing a Review Notice at a later date.

Applicant's Request for Deferral of Review

9. The agent for one of the operators made a request, originally on 5 November and most recently on 9 December 2014, to defer the date by which the ROMP application needs to be made. They requested that the review be delayed until such time as the decision on the ROMP prohibition is known.
10. An email dated 8 December 2014 from David Jones at the NPCU to the land owner's agent (Douglas Symes) (Annex 1) suggested that the decision on the ROMP prohibition might not be as straightforward for the NPCU as the Council had anticipated. It appears that they are considering all the options.
11. In those circumstances it is appropriate that we revisit our position and re-consider whether it remains appropriate to be proceeding with the review, as if the Prohibition Order is confirmed, even in part, then no review will be required (or even possible) over any prohibited area.
12. Having spoken to the local member, he requested that the decision be brought to Planning & Regulation Committee.

Reasons for Not Withdrawing the ROMP Review Notice

13. There is some eight months before the application is due to be submitted. Once in suspension there is a further two years in which the application can be

submitted before the duty to make a prohibition order is triggered. This is adequate time in which to carry out an EIA and submit a planning application.

14. The purpose of ROMPs is to bring outdated planning permissions up to date in order that they can be properly worked and restored. Leaving the site with planning conditions that are in place by default and have not been subject to an EIA would be contrary to this purpose.

Reasons for Withdrawing the Review Notice

15. As yet there is still no specific date as to when the decision on the ROMP prohibition order will be made. The Review process allows the applicant one year to submit an application before the site goes into suspension. The applicant is unlikely to carry out an EIA on a site that might be prohibited in any event and so the one year's notice is being eroded. In this case it is already down to eight months and the decision has still yet to be made. The most recent communication from the NPCU seems to indicate that the decision is still some weeks away. It is accepted by officers that the EIA process is a costly and lengthy one, and the current uncertainty about the status of the site explains the applicant's reluctance to commence this process until after the Secretary of State issues his decision on the Prohibition Order.
16. The National Planning Practice Guidance (NPPG) states that "Mineral planning authorities should usually only seek a review of planning conditions when monitoring visits have revealed an issue that is not adequately regulated by planning conditions, which the operator has been made aware of and has not been able to address." As mineral extraction is not currently taking place at the site there have been no such issues raised. However, were the site to operate under the current conditions, the Council would consider that extraction was not adequately regulated.
17. The National Planning Policy Framework requires Local Planning Authorities to be positive and proactive, and to seek solutions rather than problems. Whereas a review of the site should be sought as soon as possible, it could be seen to be unreasonable to ask for a review of a site on which a prohibition order is undecided. Further, if the Prohibition Order is confirmed over any of the site, then the area for Review will need to be amended.

Conclusion

18. The decision as to whether to withdraw the Review Notice is finely balanced. On the one hand there is the need to bring the site under modern planning conditions taking into account the findings of an EIA. On the other hand there is the need to act reasonably and not require the applicant to carry out a potentially unnecessary EIA, nor involve the Council in the review of a permission which may yet be extinguished or varied by a Prohibition Order.
19. On balance I believe that the most sensible option for the County Council would be to withdraw the notice of the ROMP review until the decision on the ROMP prohibition order has been made. The need for a review would then be

reassessed in light of the Secretary of State's decision and, if appropriate, a Notice of Review issued at that point`.

RECOMMENDATION

- 20. It is RECOMMENDED that the notice of the ROMP review for Thrupp Farm, Radley be withdrawn and the position reassessed once the Secretary of State's decision on the ROMP Prohibition Order has been made.**

BEV HINDLE

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

December 2014

Annex 1

From: Dave Jones <Dave.Jones@communities.gsi.gov.uk>
Date: 8 December 2014 10:51:15 GMT
To: "dks@dksymes.co.uk" <dks@dksymes.co.uk>
Subject: RE: Radley - 95034

Dear Mr Symes

Thank you for your e-mail. Unfortunately, the case has proved to be highly problematic and complex requiring considerable legal input. I am still waiting to hear from our lawyers so we are still some weeks away from issuing a decision at the present time.

Yours sincerely

Dave Jones | Senior Planning Manager – South Team| National Planning Casework Unit | Department for Communities and Local Government | ☎ 0303 444 8027 | ✉ Dave.Jones@communities.gsi.gov.uk | ✉ 5 St Philip's Place, Colmore Row, Birmingham B3 2PW | For NPCU General Enquiries: ☎ 0303 444 8050 | ✉ npcu@communities.gsi.gov.uk