

Planning Report

For: PLANNING AND REGULATION COMMITTEE – 27 JULY 2015

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

**Re - Serving of the Review of Mineral Planning Permission (ROMP)
at Thrupp Lane and Thrupp Farm, Radley**

Division Affected: Kennington and Radley

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

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

District Council Area: Vale of White Horse

Recommendation: **Re-serve the review of two deemed determined ROMP permissions.**

Location (see site plan Annex 1)

1. The site is on the eastern outskirts of Abingdon, approximately 1km (0.6miles) south west of Radley village but within Radley Parish.

Site and Setting

2. The area is within the Oxford Green Belt. It is within an area of historic gravel extraction with open countryside beyond. The gravel extraction had been carried out by two companies: JS Curtis and Sons Ltd (Curtis), and H Tuckwell and Sons Ltd (Tuckwell) on two separate sites.
3. On the west it is bounded by the White Horse Leisure Centre and the Abingdon Science Park. On the eastern side, the site is bounded by the Oxford to Didcot Railway Line. The River Thames runs along the southern edge of the site. There is a Wetland Centre on part of the northern edge of the site; the rest is bounded by open countryside.
4. The area is accessed by two roads. Thrupp Lane is the current access to two concrete batching plants and other operations on the two former gravel extraction sites. The other access is via Barton Lane to the west, but this is not currently used. A Byway Open to All Traffic (BOAT) links Barton Lane and Thrupp Lane.

5. The nearest housing is a small group of houses called Thrupp Cottages. These sit alongside the BOAT and are surrounded on all sides by the area that is the subject of this report.

Background

6. There are currently two ROMP sites at Radley. Both have conditions granted by deemed determination and will be referred to as DD1 and DD2 for ease of reference. The area covered by DD1 can be seen on the attached Plan 1, and DD2 can be seen on Plan 2. Plan 3 shows the two ROMP areas and the areas where the two ROMP sites overlap. In order to interpret the site and understand the history of it, Plan 4 divides the land covered by both ROMP sites into 10 areas.
7. A review had already been sought by the County Council with the service of a review notice giving until 21st August 2015 for the submission of a ROMP application. Planning and Regulation Committee on 12th January 2015 authorised that the notice should be withdrawn and re-served following the receipt of the Inspector's decision on the prohibition order in relation to the area covered by DD2.
8. The Inspector's decision raised questions as to whether the notice should be re-served on the area covered by DD2 alone, whether there should also be a review of the area covered by DD1, or indeed whether it is expedient to review both sites together as a combined site. This report considers those questions and concludes that there is a need for a review and that the review should be of the combined area of DD1 and DD2.
9. An investigation into the history of the site has taken place and is attached in Annex 2. Both DD1 and DD2 were included on the list of active phase 2 sites and ROMP applications were made on that basis which led to the permissions being granted for both DD1 and DD2 by default.
10. These permissions have now been in place for around 15 years and the County Council can seek a review of the two default permissions: permission DD1 (which is deemed to have been granted on 1 July 2000) relates to areas 3,4,5,9 and 10; and permission DD2 (which is deemed to have been granted on 28 July 2000) relates to areas 1, 2, 5, 6, 7, 8, 9 and 10. Where two or more ROMP applications are made for the same site, the applications are to be treated as if they were a single application received on the date the later application was received. Therefore, it is considered that both ROMP applications should be treated as if they were determined by default on 28th July 2000.
11. The overlap relates to areas 5, 9 and 10 only. Area 5 is the only area of the overlap which hasn't been worked and is the area from which

sand and gravel will be extracted in future under the ROMP permissions.

Subsequent Permissions

Area 1:

12. Two permissions have been granted since July 2000, both by the District Council. The first is permission for temporary use of the buildings on site. This would not affect the need for a review nor the long term restoration of the site. The second is a Certificate of Lawful Use for a concrete batching plant. This would affect the long term restoration and aftercare of the site.

Area 2:

13. An application was submitted prior to the deemed decision, but it was determined after the date of the deemed decision. It must therefore relate to a planning permission that predates the deemed decision.

Area 3:

14. Part of the site is subject to a condition for a Section 73 application submitted on 12th February 1999 and approved on 5th February 2002. This allowed the use of the south western part of the area as a storage area of restoration material for the filling of Lake H (Area 8).
15. Planning permission was granted in January 2003 for the continuation of sand and gravel extraction up to 2007. This was submitted and permitted after the deemed decision that allows for the extraction of sand and gravel up to 31st December 2020.
16. Planning permissions were granted in May 2003 and January 2007 for the use of part of the site for ash disposal. A section 73 application was granted in August 2014 which allowed a change from agriculture to conservation restoration.
17. Planning permission was granted in July 2012 for the use of the plant site on part of Area 3, to process sand and gravel from part of the ROMP area DD2 (Areas 5,6 and 7) by using a conveyor route through areas 8 and 9.

Area 4:

18. Planning permissions were granted in May 2003 and January 2007 for the use of part of the site for ash disposal.

Areas 8 and 9:

19. In May 2002 a Section 73 planning permission was granted for a variation of a scheme submitted in February 1999, prior to the deemed determination of the conditions and granted in February 2002, after the deemed determination of the conditions.

20. In October 2001 details pursuant to conditions 5, 13 and 15 to SUT/RAD/5948, a permission granted in February 1982, well before the deemed determination in 2000.
21. A section 73 application was granted in August 2014 which allowed a change from agriculture to conservation restoration. This permission has been implemented and the site is being restored to nature conservation.

The Need for a Review of the Mineral Permissions

22. The Section 73 and details pursuant applications relate to planning permissions that were approved prior to the deemed determination of the ROMPs in 2000. This means that there are various permissions with varying conditions, all of which seek to regulate the operation of both DD1 and DD2 and it is not clear which might take precedence. It is possible that the Section 73 and details pursuant applications were, at the time, invalid applications because the ROMP permissions that were determined by default (in July 2000) superseded the original permissions to which these Section 73 applications relate. Whether that is the case or not, it shows that there is a clear need for the conditions over all parts of the site to be reviewed. Any submission of updated conditions for review would need to be accompanied by an Environmental Statement (ES) and therefore the applicant would have to carry out an Environmental Impact Assessment (EIA) assessing the potential environmental effects of working the mineral and identifying any necessary mitigation measures.
23. For areas 5, 9 & 10 the conditions approved by default on both ROMP permissions apply. ROMP sites cannot be reviewed more frequently than every 15 years. For both DD1 and DD2 (including area 5) the earliest date a review could take place is the date 15 years after the ROMP decisions were last determined - which is 28th July 2015. The applicant has to have 12 months' notice of the first review date.
24. However, there is no longer a statutory requirement for a review to be carried out at all. The National Planning Practice Guidance (NPPG) at paragraph 192 states that Mineral Planning Authorities (MPA) should only seek review of planning conditions where 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 there is currently no mineral extraction taking place, the guidance is not entirely applicable however, it is clear to the MPA that a review of the terms of the applicable conditions (i.e. the default conditions) has revealed that the site is not adequately regulated by planning conditions and therefore we will be making the operator aware of this so that this may be addressed through the review process itself. There seems to be no other way to ensure that the conditions are appropriately reviewed. This is further supported by the fact that there would appear to be two sets of "competing" ROMP

conditions and that an applicant, arguably, cannot at present work the site without complying with both sets of conditions. The review process allows for one set of updated conditions to be submitted covering more than one mineral permission on the same site and that this can also be accompanied by one Environmental Statement.

Response from Planning Agent for Tuckwell

25. The agent for Tuckwell was given the opportunity to comment on the planning history of the ROMP areas prior to this report coming before the committee. He has said that the review is unnecessary at this time as Tuckwell do not intend to work the site further until the Sutton Wick quarry has been completed and so a review at this time would lead his client to pay for an EIA that will serve no purpose as would any council officer time spent considering it. He believes that as yet the committee has been given no logical reason why a review is needed now.
26. He has made four suggestions which he says will avoid unnecessary expenditure and unproductive work. The full response has been placed in the Members Resource Room.

Suggestion 1 – Do nothing: The Growth and Infrastructure Act 2013 does not require a review every 15 years, as was previously the case and it should be carried out at a time when it is more appropriate.

27. This option would leave in place two planning permissions that were permitted by default, which have not been the subject of an EIA, and which have competing conditions on the overlapping area of land that both permissions seek to work. This would also leave in place the conditions attached to the s73 permissions that have been granted since 2000. Subject to the clearance of any remaining details pursuant to conditions for these permissions the area could be worked. I am not satisfied that the existing conditions are adequate modern conditions for mineral working. Once the review letter is served the applicant will have the opportunity to request postponement of the review to a revised date giving reasons as to why working the mineral under the current conditions is acceptable. The County Council would have to consider any such request and respond to it.

Suggestion 2 – Tuckwell enter into a Unilateral Undertaking not to commence working the quarry until the sand and gravel at Sutton Wick quarry, and any extension thereof becomes exhausted.

28. Again this would leave the site subject to competing planning permissions that do not contain conditions that would be acceptable for modern working of a quarry.
29. Once the review letter is served, the applicant will have a year in which to submit the ROMP application. If they have not submitted the application in that time, the site will go into automatic suspension for

two years during which time the site cannot be worked. If at the end of that period the applicant has not submitted an application, the County Council will be under a duty to serve a prohibition order if the County Council consider that mineral working at the site has permanently ceased. If it is concluded that the mineral working has not permanently ceased, the area would remain in suspension until an application was submitted.

30. It is therefore not necessary to seek a suspension by way of a legal agreement. In any event, this would only secure the position for 5 years, as after five years any party can apply to modify the terms of an agreement at which point the working of the site would be governed to the existing, unsatisfactory conditions.

Suggestion 3 - Tuckwells may enter into a Unilateral Undertaking not to work the quarry until an EIA has been provided and new conditions have been approved

31. This is a variation of Suggestion 2, but tied directly to the provision of an EIA and the agreement of new conditions. As with Suggestion 2, this would be the situation any way if the site were to go into suspension and therefore the same concerns apply.

Suggestion 4 – OCC would serve the notice and Tuckwell respond by proposing a single condition along the lines of “no development shall take place within the site.” When the time comes to start the development a Section 73 application would be made to change the condition and this would trigger EIA.

32. I do not believe that a condition that effectively takes away the planning permission to which it relates would be lawful as it would not appear to meet the tests of a condition, nor would it be providing the site with effective modern conditions. Such a condition would in any instance clearly affect the working rights and so the economic viability of operating the site and as such the County Council would also need to serve separate notice that unreasonable prejudice did not arise. There would be a right of appeal to the Secretary of State against both the condition and this notice.
33. It must also be remembered that this is not an application for a new site, this is an application for existing quarry workings that have been partly worked out. The proposed condition, even if it were reasonable, would only address the unworked part of the site. The rest would be able to be left unrestored.

Conclusion on Tuckwell agent’s Suggestions

34. None of the suggestions satisfactorily address the need to review the out of date planning conditions that were approved by default without being supported by an EIA. All are based on the premise of keeping

the planning permission extant but with no intention to work the quarry at any foreseeable date.

35. If the applicant does not keep to the review timetable the site will go into automatic suspension, and once in suspension for two years the County Council will be under a duty to consider serving a prohibition order on the ROMP site.

Areas to Be Covered in the ROMP Review

36. The purpose of a ROMP review is to ensure proper planning control of mining sites and Schedule 14 of the Environment Act 1995 defines a mining site as: "in a case where it appears to the mineral planning authority to be expedient to treat as a single site the aggregate of the land to which any two or more mineral permissions relate, the aggregate of the land to which those permissions relate; and in any other case, the land to which a mineral permission relates;"
37. The question for OCC is whether or not it is expedient to include both ROMP permissions in this latest ROMP review or whether the ROMP should be limited to one or other of the original ROMP sites.
38. Both DD1 and DD2 have areas that have been worked out and parts of which are covered by later permissions. The two applications had been considered to be two separate sites in the previous ROMP review, but in the course of the Inquiry into the prohibition of the site now referred to as DD2, it became clear to the MPA that the two sites were so closely tied as to be appropriate to treat them as a single site.
39. The mineral would be worked in area 5 (DD1 and DD2), area 6 (DD2) and area 7 (DD2). It would be conveyed over area 8 (DD2) and into area 3 (DD1) for processing. The process of extracting the mineral would involve land covered by both permissions.
40. There are two companies (Curtis and Tuckwell) involved in the area, and although Tuckwell appeared at the Inquiry in its own right as an objector to the prohibition order, both companies asserted at the Inquiry that they were working in partnership to extract the mineral and process it.
41. In paragraph 8.15 and 8.16 of appeal decision NCPU/PROH/U3100/71261 the Inspector concluded that there would be an issue of natural justice if the prohibition for one ROMP area were to prevent the working of material under the other ROMP area.
42. If area DD1 is not reviewed along with DD2, then the Council would be concerned that the set of conditions granted for DD1 on 28 July 2000 for area 5 would remain in place notwithstanding that new conditions had been determined under a review of the DD2 ROMP area. In order to work area 5, OCC officers consider that all the conditions relating to

area 5 in both of the ROMP default decisions would have to be complied with, supporting the need for both DD1 and DD2 to be reviewed together as a single site.

43. The permission for the Tuckwell processing plant on Area 3 (MW.0001/12) which was granted on 9 July 2012, will expire within 5 years of that date if work is not commenced such that it can be implemented. Given that this processing plant is intended to process the mineral worked from Areas 5, 6 and 7 of the ROMP site, it seems sensible to proceed with the review of the conditions, as at present the site cannot be appropriately worked without complying with both sets of conditions granted under the ROMP permissions of 28 July 2000 as both of these impose conditions on area 5. If the review does not proceed soon then the applicant will not be able to work the site and may lose the benefit of the processing plant consent.
44. It is also the case that by proceeding with the review at this stage, the applicant will have to consider how it intends to work areas 5, 6 and 7, and the processing plant together..
45. In her report, the Inspector considered that the fact the applicant said they were going to work the site was sufficient evidence that the site will be worked. However, OCC officers are not entirely in agreement with this assessment and believe that the applicant's actions are as relevant to assessing whether they intend to work the site as any statements they make in this regard. Insofar as time limits are missed or permissions are allowed to expire, then where these are contrary to the applicant's expressed intentions then they may provide evidence of a different intention.

Conclusion

46. On 28 July 2015 the planning permissions for the two ROMP areas will have been in place for 15 years having been granted as deemed determinations. The two ROMP areas overlap and are co-dependent in terms of the extraction and processing of the mineral as proposed by the two operators. Other planning permissions have been granted on the sites, in particular there have been section 73 applications relating to permissions that had, at the time they were granted, been superseded by the deemed determinations. The County Council should therefore seek a review of the whole ROMP area covered by deemed determinations DD1 and DD2. This review should be sought as soon as possible in line with the wishes of the Planning and Regulation Committee.

Recommendation

47. **It is RECOMMENDED that a review of the planning permissions for areas DD1 and DD2 at Thrupp Lane and Thrupp Farm, Radley**

be sought and notice of the review of mineral planning conditions served as soon as possible.

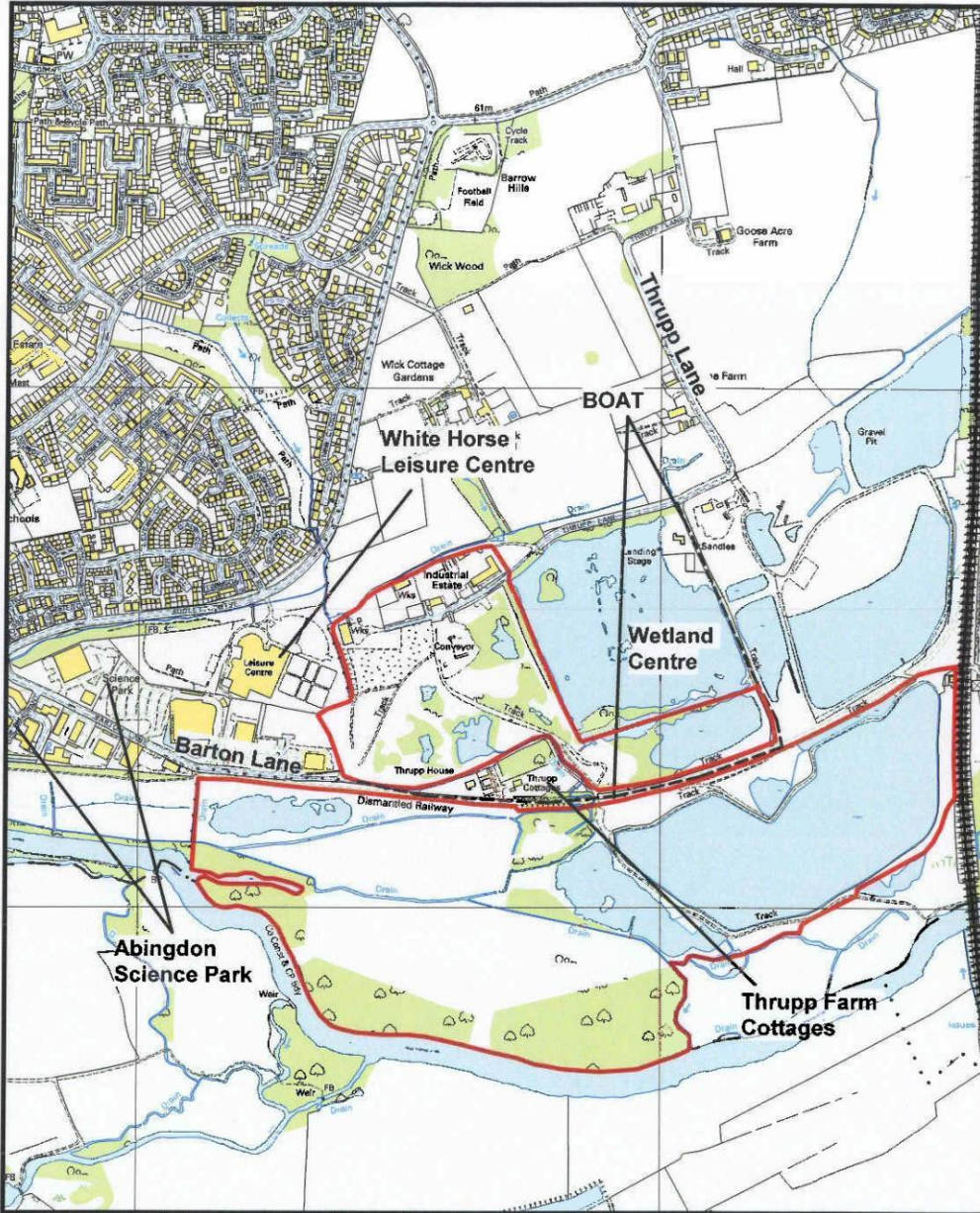
BEV HINDLE

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

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. The agent for the company with the interest in working the mineral for the area was given the opportunity to comment on the Planning history of the site and his views have been included in this report.

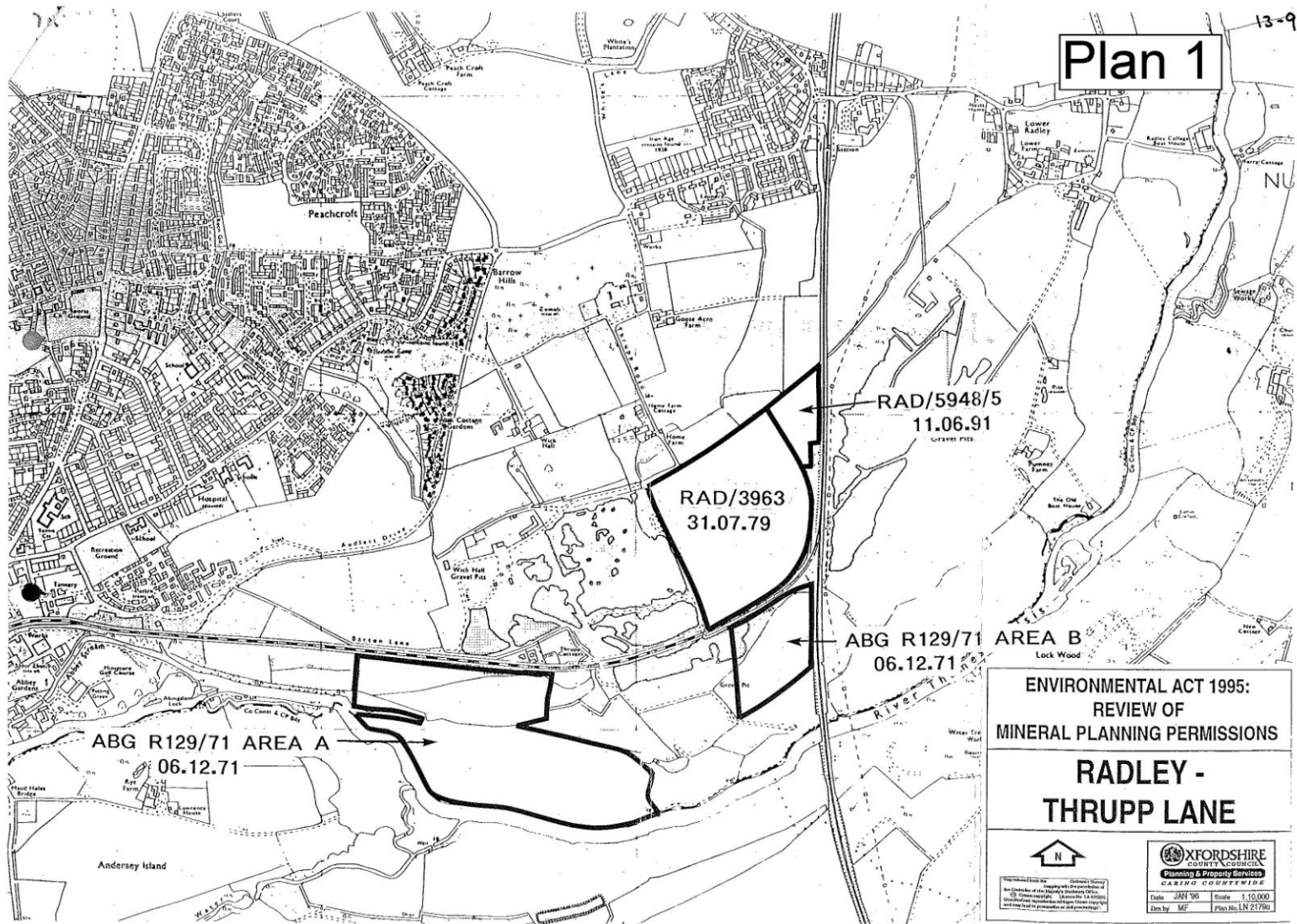
Annex 1 - Site Context



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.
Oxfordshire County Council Licence No 100023343 2014


Scale:1:10,000


Plan 1



**ENVIRONMENTAL ACT 1995:
REVIEW OF
MINERAL PLANNING PERMISSIONS**

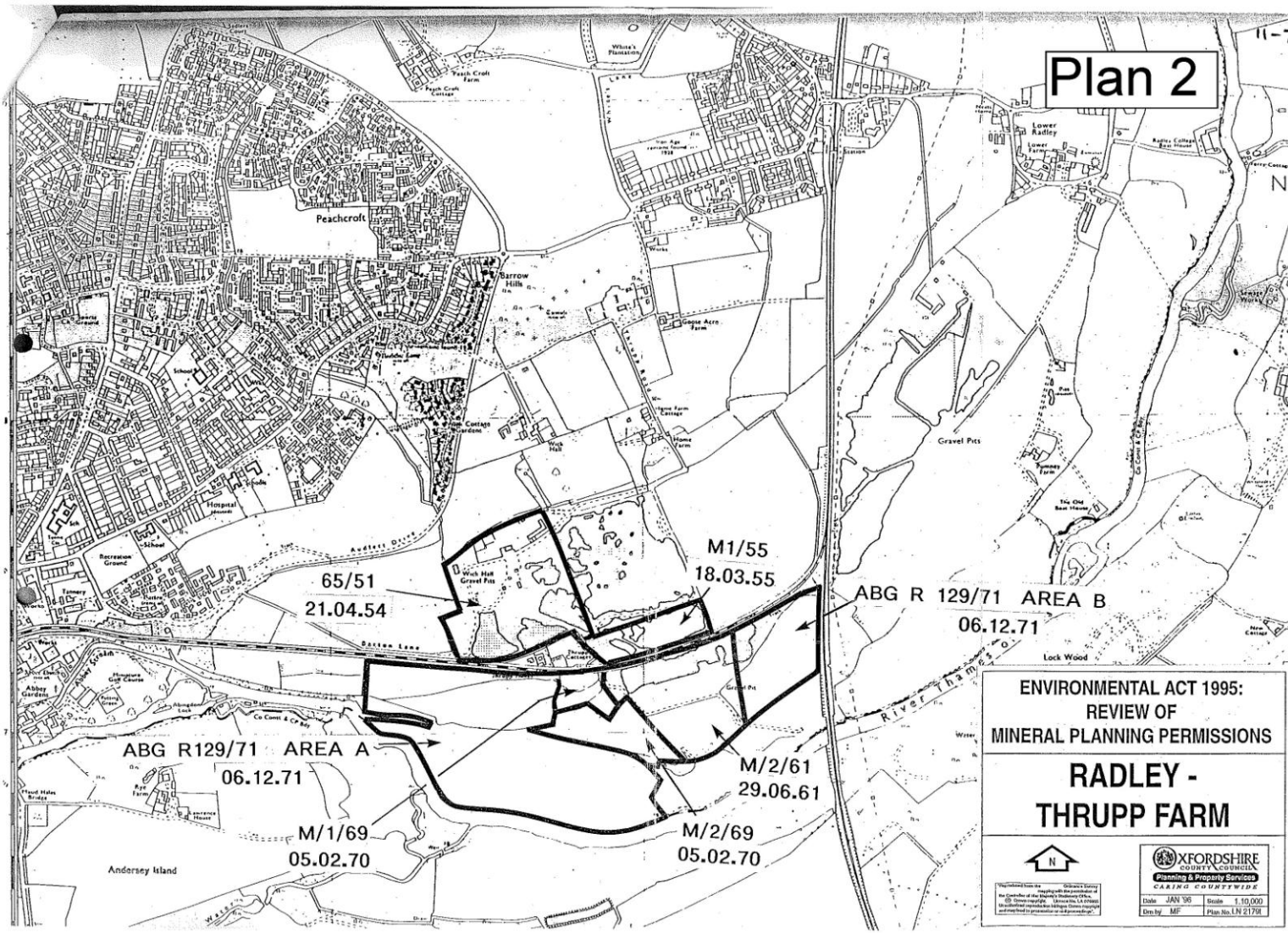
**RADLEY -
THRUPP LANE**



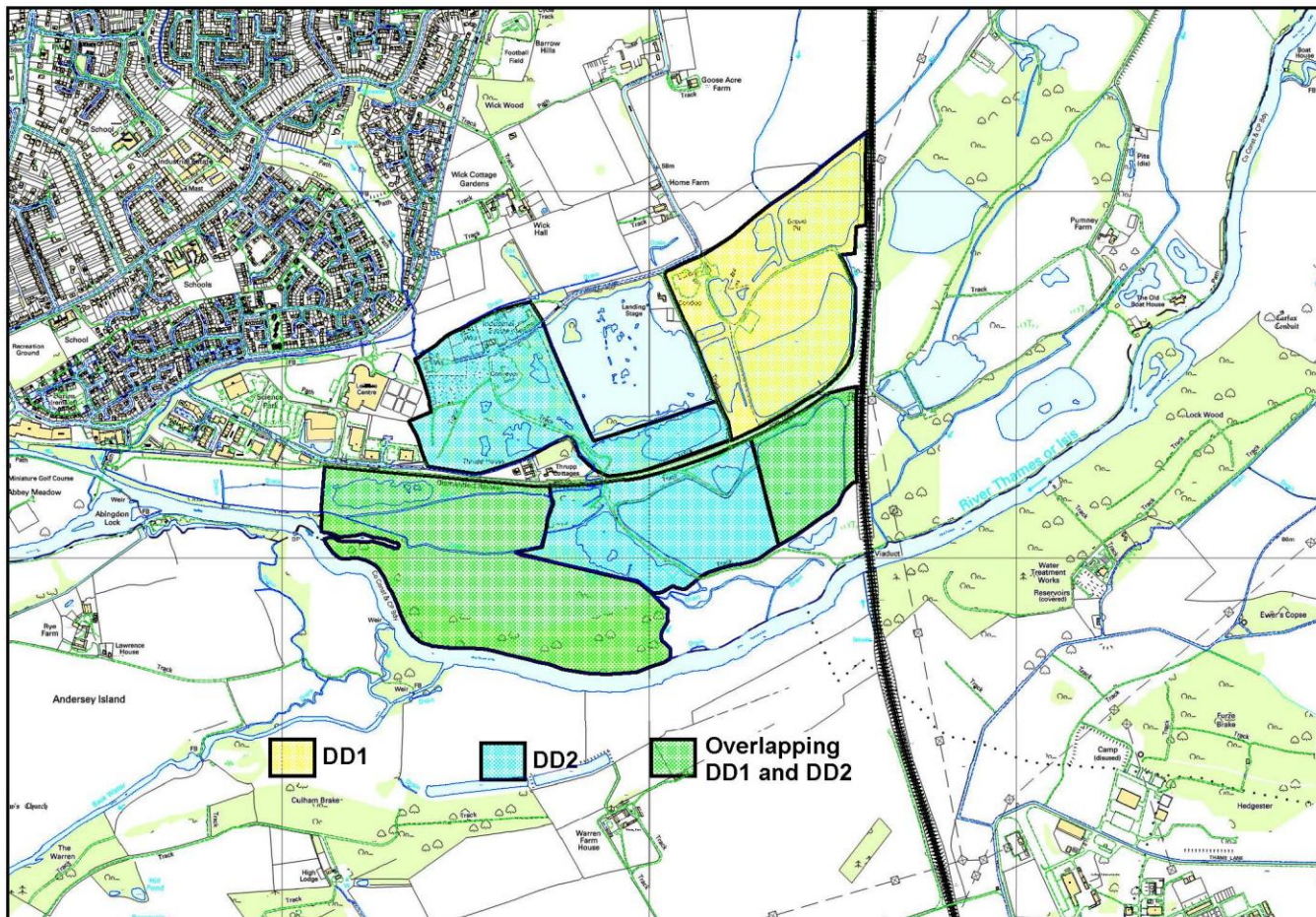
 **XFORDSHIRE COUNTY COUNCIL**
Planning & Property Services
CARING COUNTYSIDE

Date: JAN 96 Scale: 1:10,000
 Drawn by: MF Plan No: LN 2179a

Information on this map is derived from the Ordnance Survey MasterMap data. It is not intended to be used for navigation or other purposes.



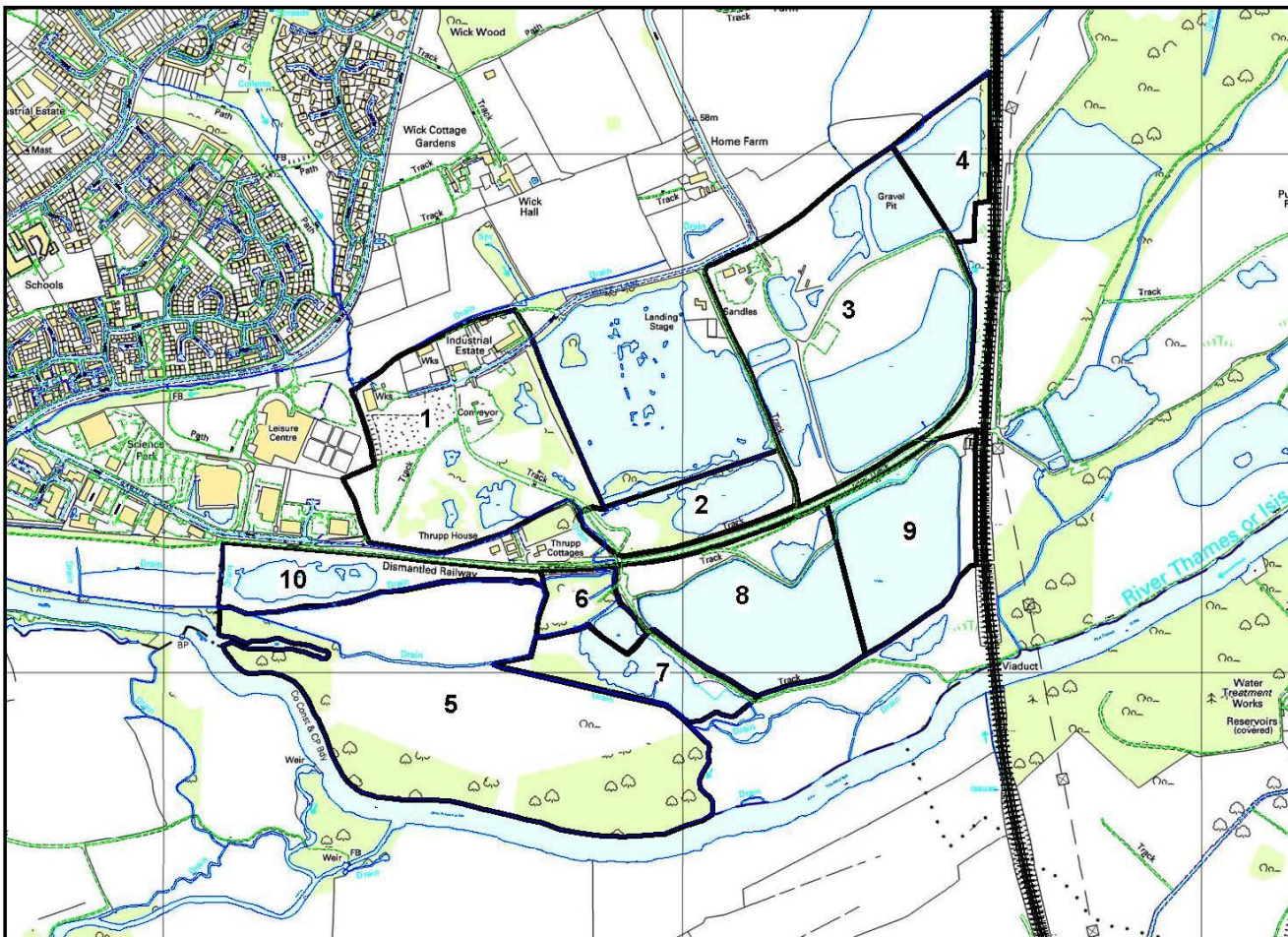
ROMPs



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.
Oxfordshire County Council Licence No 100023343 2014

Scale:1:10000

Areas for ROMP Review



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.
Oxfordshire County Council Licence No 100023343 2014

Scale:1:10000