For: PLANNING & REGULATION COMMITTEE – 7 SEPTEMBER 2020

By: ASSISTANT DIRECTOR FOR STRATEGIC INFRASTRUCTURE AND PLANNING

Serving of the Prohibition Order for the Review of the Mineral Planning Permission (ROMP) at Thrupp Farm and Thrupp Lane, Radley

Division Affected: Kennington and Radley

Contact Officer: David Periam **Tel:** 07824 545378

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

District Council Area: Vale of White Horse

RECOMMENDATION

It is RECOMMENDED that the Planning & Regulation Committee's previous conclusion from its meeting on 9 September 2019 (Minute 39/19) that mineral working on the Radley ROMP site has permanently ceased and that there is a duty to serve a Prohibition Order is not rescinded but that the service of the Prohibition Order is held in abeyance pending:

i) the progression and determination of application no. MW.0075/20 for processing plant, a conveyor and a Bailey Bridge for the removal of mineral extracted from part of the ROMP permission areas DD1 and DD2; and

ii) H. Tuckwell and Sons Ltd providing an update, accompanied by documentary evidence, on progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP permission areas DD1 and DD2 to the meeting of the Planning & Regulation Committee on 8 March 2021.

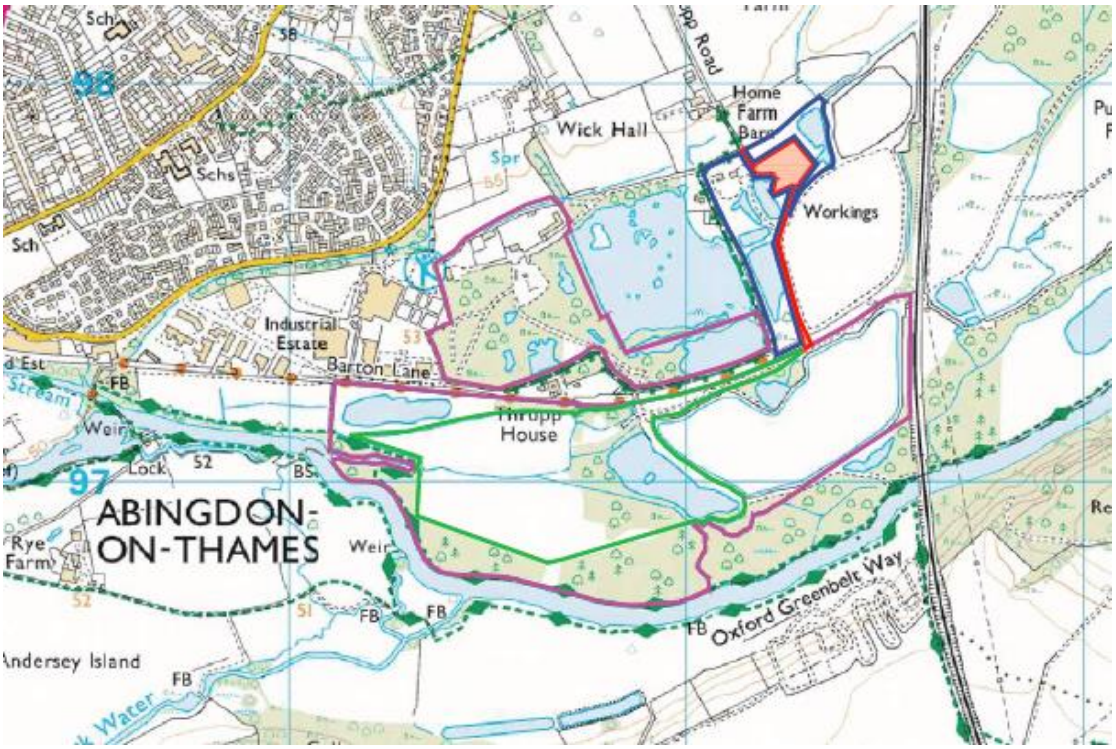
1. The committee will recall that at its meeting on 9 September 2019, a report was presented with regard to the Review of the Mineral Planning Permissions DD1 and DD2 at Thrupp Farm and Thrupp Lane, Radley (the Radley ROMP site) and whether or not mineral working had permanently ceased. This report is appended as Annex 1. Committee resolved that mineral working had permanently ceased and that accordingly there was a duty on the Mineral Planning Authority to serve a Prohibition Order on the Radley ROMP site.

2. Subsequent to the committee meeting, the agent for the landowner contacted your officers and advised that the landowner, J. Curtis and Sons

Ltd & Sons Ltd, was in active negotiation with a mineral company, H. Tuckwell and Sons Ltd, with regard to them being the contractors for the extraction of the mineral from the Radley ROMP site and that work was actively being undertaken for the submission of a planning application for processing plant and a conveyor to transport the mineral from the ROMP permissions for processing at their yard on Thrupp Lane. This was reported to the Planning & Regulation Committee at its meeting on 9 December 2019 as an update on the minutes of the meeting on 9 September. A further update was given to the Planning & Regulation Committee at its meeting on 27 January under Chairman's Updates that no further substantive information had been received and it was confirmed that the service of the Prohibition Order would proceed. A further update was provided under Chairman's Updates to the meeting of the Planning & Regulation Committee on 9 March and again it was confirmed that no further information had been received.

3. Officers proceeded with drafting the Prohibition Order although this was held up by the need to try to establish the lessee interests in the J. Curtis and Sons Ltd's Yard industrial area of the site. The Covid-19 lockdown then came into effect shortly afterwards and officers were instructed to work from home and all site visits were suspended amid concerns that officers might either contract or pass on the virus during the service of notices.

4. A planning application was received from H. Tuckwell and Sons Ltd for processing plant, a conveyor and a Bailey Bridge to be used in association with the extraction of mineral from part of the area covered by the Radley ROMP site shown outlined in green on the extract from the submitted application Site Location Plan below.



5. This application has been validated, advertised and sent out to consultation. A Screening Opinion was formed which concluded that the application is EIA development i.e. an Environmental Impact Assessment would need to be carried out and an Environmental Statement submitted in support of the application. The applicant has subsequently sought a Screening Direction from the Secretary of State which would supersede the Screening Opinion formed by the Council and so, could conclude that the application is not EIA development. At the time of writing this report, the Screening Direction had not been made. As part of this application, the applicant has proposed that should planning permission be granted it be conditioned to provide five years for implementation in order to tie-in with the prospective re-commencement of extraction from the Radley ROMP site.

6. A report was prepared to the meeting of the Planning & Regulation Committee on 1 June 2020 advising of the receipt of this application and providing consideration of its relevance to the Council's previous decision that mineral working from the ROMP permission areas DD1 and DD2 had permanently ceased and recommending that the committee review its previous resolution. Between the committee report being published and the date of the committee meeting, further information was received via the applicant's agent which was a summary written statement (Annex 2) referring to a lengthy Counsel's opinion which was also supplied albeit on a confidential basis. That opinion had raised various points on which officers considered advice needed to be obtained from the Council's own Counsel before officers could reasonably advise the committee with regard to the information contained therein. Given the late receipt of the information, it had not been possible to obtain further Counsel's opinion on behalf of the Council prior to the committee meeting and therefore the committee deferred consideration of the matter to its next committee meeting on 20 July 2020. If members were minded to do so then officers would not progress service of the Prohibition Order pending the outcome of members' consideration of the item at that committee meeting.

7. No report was presented to Committee on 20 July 2020 as Counsel's advice to officers had been that further discussions should first be held with the applicant with regard to their intentions for the site and there had not been sufficient time for these to take place and produce a report to the committee meeting.

8. A meeting was held with H. Tuckwell and Sons Ltd and their agent on 12 August 2020. The programme for the submission of the application for the review of conditions for the ROMP permissions DD1 and DD2 as advised further to that meeting is as follows:

    - Autumn 2020: Piezometers installed and a long term hydrological sampling and monitoring programme will start.
    - Consultancy costs for ROMP / EIA established.

- Winter 2020 – Winter 2021: EIA investigations for ROMP including ecological, noise, hydrological, landscape and visibility surveys.
- Winter 2021 to Spring 2022: ROMP Application and Environmental Statement prepared.
- Spring 2022: Pre-submission consultation held for the ROMP Application, with the general public, Parish Council and other relevant stakeholders.
- ROMP Application submitted.

9. At the meeting it was also advised that H. Tuckwell and Sons Ltd had an agreement with the landowner, J. Curtis and Sons Ltd, to work the ROMP permission mineral and so to progress the application for the Review of the conditions on the ROMP permission areas DD1 and DD2. It was advised that this agreement did not extend to the part of the ROMP permissions area known as The J. Curtis and Sons Ltd's Yard where a number of former mineral working associated buildings exist which have for a number of years been occupied by small businesses subject to temporary planning permission from the Vale of White Horse District Council. The District Council refused application for further temporary planning permission for these uses in 2019 and this is now the subject of appeal to the Secretary of State. It is understood that the District Council's decision to refuse permission took into account the resolution of this committee that mineral working had permanently ceased. Nonetheless it is confirmed that this area will need to be included in the application for the review of conditions and the accompanying Environmental Statement.

10. It was advised at the meeting that the ROMP area would be worked following H. Tuckwell & Sons Ltd existing mineral extraction being completed at Sutton Wick which under the two present planning permissions (MW.0098/18 and MW.0099/18) is required to cease by 1 March 2022 with restoration by 1 March 2025 and by 31 December 2027 with restoration by 31 December 2028 although it is possible that all extraction could be completed earlier. Further areas for extraction at Sutton Wick were being put forward as part of the Oxfordshire Minerals and Waste Local Plan Part 2 Site Allocations (OMWLP) plan process and at the meeting your officer asked if planning applications for these extension sites were then applied for and permitted, regardless of whether or not they were included in the adopted plan, would this then delay the extraction of the ROMP permission further?

11. In response it was advised that it is proposed to exhaust the mineral reserves at Sutton Wick before commencing mineral extraction at the Radley ROMP site: H.Tuckwell and Sons Ltd need to ensure an uninterrupted supply of mineral is available for the maintenance of their business. The current mineral reserves at Sutton Wick are insufficient to maintain this supply, should it be up to 5 years before mineral extraction commences at the Radley ROMP site. As a result, four areas at Sutton Wick have been identified which contain commercially viable mineral reserves that can be worked within acceptable environmental constraints. It is proposed to submit a planning application for the first of these areas in

the autumn of 2020. Planning applications for the other areas will follow starting in approximately 2021. The precise submission dates will be based on the market conditions at that time and the progress with the ROMP review of conditions application. Should H. Tuckwell and Sons Ltd be able to commence working the mineral from the Radley ROMP site sooner, it may be that the other areas identified at Sutton Wick will not be required and production will shift to the Radley ROMP site. This will be based on a commercial decision made at that time.

12. Comments have also been received from Radley Parish Council (Annex 3).

Discussion

13. The decision that mineral working had permanently ceased in ROMP permission areas DD1 and DD2 which led then to the duty to serve the Prohibition Order was made at the meeting of this committee on 9 September last year. At that time, the committee did not have before it any new information with regard to the intentions of the applicant/landowner actively progressing any proposals to work the remaining mineral in the ROMP permission areas other than it was intended to follow on from the existing workings of H. Tuckwell and Sons Ltd at Sutton Wick. The situation now is materially different as the application for the conveyor and related development has been submitted and is out for consultation and will come before this committee for determination in due course subject to the Secretary of State's Screening Direction. As set out above further information has now been provided with regard to the applicant's programme for the submission of the review of mineral conditions application for the ROMP permissions and its view on the service of a Prohibition Order. The position of Radley Parish Council in the matter has also now been provided as set out above.

14. There is also an ongoing appeal against the refusal of planning permission for the temporary uses in the J. Curtis and Sons Ltd's yard area although this is a matter for the determination of the Secretary of State and is not considered to be material as to determining whether mineral working has permanently ceased.

15. The additional information summarised in paragraph 12 above would need to be taken into account by the Secretary of State in deciding whether or not to confirm the Prohibition Order if it were to now be served further to the committee's resolution of 9 September 2019. This is because the Secretary of State will have to take into account everything that is before them at the time they assess whether or not working has permanently ceased and this will take into account information that wasn't before the Council at the time the Council made that decision.

16. In order to protect the Council's position at any appeal, it is considered that any material consideration that has now come to the Council's notice is taken into account and weighed in the balance as to whether mineral working has permanently ceased prior to issuing a Prohibition Order.

Therefore the Council must review its previous decision that mineral working had permanently ceased from the ROMP permission areas DD1 and DD2 in the light of the evidence now before it.

17. Whilst the consideration of the conveyor and related development application is at an early stage and no view can be taken at this time on the merits of the application and whether planning permission for it should be approved or refused, it is material to the Council's assessment of whether or not mineral working pursuant to the ROMP permissions has permanently ceased. When the previous Prohibition Order was served in 2012, there was at that time a planning permission in place for very similar development to that now proposed in this new application. That application expired without being implemented and so at the time that the report was written to the Planning and Regulation Committee on 9 September 2019, it was considered that the absence of any such extant permission weighed in favour of the conclusion that the mineral working had permanently ceased (please see paragraph 15 of Annex 1).

18. Although the 2012 Prohibition Order was quashed for other reasons, in her report, the planning inspector appointed by the Secretary of State did give consideration as to whether or not she was of the view that mineral working had permanently ceased. The relevant section of her report is as follows:

"Whilst the PPG advises that there are unlikely to be many cases in which, after two years' suspension, the MPA could not be considered to be acting rationally in assuming permanent cessation, this does not mean there can be no cases of this kind. Therefore, despite the two years' suspension of permissions, it needs to be considered whether the working of minerals at Thrupp Farm is likely to resume.

Although the Thrupp Farm mineral has not been worked since the Enforcement Notice in 1995, once the enforcement issue was resolved, JCSL (J. Curtis and Sons Ltd) consistently made clear that it would resume work at Thrupp Farm, after the mineral reserves at Sutton Wick were worked out. The arrangement for the remaining reserves (Area F) to be worked by HTSL and processed at HTSL's Thrupp Lane plant demonstrates an intention to work Thrupp Farm. HTSL (H. Tuckwell and Sons Ltd) obtained planning permission in 2012 for this development and, in consideration, forwent its claim to a CLEUD and demolished existing plant on its site. HTSL has a reasonable expectation that it will be allowed to work the estimated 0.85 to 1 million tonnes of remaining reserves. A PO would put this in doubt.

Whilst Mr John J. Curtis and Sons Ltd made a Statutory Declaration in 2006 suggesting that work had been completed in 1990, I accept that this was a reference to the minerals dug to supply the Tarmac concrete plant and not a reference to all reserves within the ROMP site having been worked out. If there were no viable remaining reserves worthy of working, HTSL would not have gone to the expense and trouble of obtaining the 2012 planning permission.

Therefore, for the reasons given, I conclude that the winning/working/depositing of minerals at the Thrupp Farm ROMP site has not permanently ceased. Consequently, for the purposes of considering whether to confirm the PO, the tests have not been met and the PO should not be confirmed."

19. In the light of the previous inspector's view and the weight she attached to the then extant permission for the conveyor and processing plant, it does seem that, if the Council were to proceed with the Prohibition Order prior to the determination of the current application and it were to be appealed, then the Council could find itself in a similar position again at a Public Inquiry. A further planning inspector may similarly consider a grant of planning permission further to this new application would be a material consideration that would weigh against supporting the Council's position that mineral working had permanently ceased. In such circumstances, and in light of the previous inspector's view, it is your officer's assessment that any planning permission that may be granted pursuant to this new planning application would be a material consideration in its assessment.

20. However, the new planning application only references the extraction of mineral from part of the Radley ROMP site; it does not provide any support of the intention to further work mineral from the rest of the site. No case is being put forward in the new application with regard to the working of mineral from the rest of the Radley ROMP site and its restoration including the J. Curtis and Sons Ltd's Yard area. Therefore members may wish to consider whether or not the submission of this new application means that the previous conclusion that mineral working has permanently ceased needs to be reconsidered once the application has been determined by the County Council.

21. The situation with regard to the submission of the ROMP application for the review of conditions on permissions DD1 and DD2 and the Environmental Statement required to accompany it is that a programme has now been provided for this work to be carried out commencing in the coming autumn with a view to the operator being in a position to make the submission post-Spring 2022, although no specific date for the submission has been provided in the programme. Such a programme was not before the Council when it determined that mineral working had permanently ceased at its meeting on 9th September 2019. It has also been advised that the intention would be for the mineral under the ROMP permissions to be worked once mineral extraction had ceased at H. Tuckwell and Sons Ltd's current mineral extraction areas at Sutton Wick, the current latest permitted date there for the cessation of extraction being 31 December 2027. If further planning applications were to be made and approved for further workings at that location, a commercial decision would be made as to whether or not the other areas identified at Sutton Wick will be required and production moving to the Radley ROMP site.

22. The Written Statement setting out the operator's Counsel's Opinion attached at Annex 2 in summary is as follows:

i) That the Council's decision on whether mineral working has permanently ceased should be made on an evidential basis;
ii) that the ROMP legislation providing for the service of a Prohibition Order is designed to prevent mineral working occurring without modern conditions being in place which would not be the case here;
iii) that the submission of the ROMP application and Environmental Statement with the related costs to all parties should not be carried out too early prior to re-commencement of mineral working otherwise the information in the Environmental Statement would become out of date and have to be re-done;
iv) that the position with regard to the working of the ROMP permissions has been consistently one that it would follow on from the cessation of mineral working at Sutton Wick;
v) that the Council has attached too much weight in its decision to the representations of local residents including that further mineral working would not be viable when there are up to 1 million tonnes of remaining reserves;
vi) the application made for the conveyor and associated development, the work on the ROMP application and the submissions to the OMWLP process (including that the Tuckwell's Yard at Thrupp Lane should be designated as Safeguarded Mineral Infrastructure partly in order to process the mineral from the ROMP permissions area) all need to be properly considered before any decision is made;
vii) Criticisms are made of the officers' advice to the committee in the report of 1 June 2020 on any potential costs award and that the use of the conveyor would not be the only possible mechanism for the removal of mineral from the ROMP permissions area.

23. The ROMP permissions DD1 and DD2 are in suspension and so it is true that no further mineral working could be carried out if and until such time as a ROMP application for the review of conditions has been made and approved. This would be the same legal position for any ROMP permission which was in suspension.

24. It is correct that the evidence base for the Environmental Statement would in part be time-sensitive, for example, species surveys will only be valid for a relatively short time period as creatures will potentially move into areas that they weren't previously present in and can do so over relatively short time periods. It is fair comment therefore that carrying out this work too far in advance of the re-commencement of mineral working would be abortive work that would need to be re-commissioned and some weight should be attached to this.

25. The programme now provided by the applicant for the ROMP application and the confirmation of the intention to work the mineral following-on from the cessation of the Sutton Wick workings subject to any further permissions being granted at that site and a commercial decision being

made as to whether to then move to work the Radley ROMP site, are material considerations and so evidence that should be taken into account in any decision made with regard to whether mineral working has permanently ceased. It should be noted though that whilst dates have been provided for the work leading up to the submission of the ROMP application, no specific date has been set out in the programme for the actual submission other than the programme indicates it will follow on from pre-submission consultation in the spring of 2022. The Council cannot gainsay what has been put forward. Likewise, the position put forward on the re-commencement of mineral working subject to permission being granted to the ROMP application and the cessation of the permitted workings at Sutton Wick.

26. Representations with regard to the safeguarding of the existing Tuckwell's Yard and further working areas at Sutton Wick have been made to the Council as part of the OMWLP process, however this remains at an early stage and at this time there is no certainty that any new sites put forward would or would not be included in the Plan.

27. Representations made by third parties including from the local community are material to the consideration of whether mineral working has ceased and it is a matter for this committee as to what weight to attach to them in the balance taking into account the representations made by the applicant/landowners and any other material considerations. It is officers' understanding that there are remaining mineral reserves of around 1 million tonnes within the ROMP permission areas DD1 and DD2.

28. The position with regard to the current application for the conveyor and related development has been set out above. However, for clarity, this is only one proposed mechanism for the removal of the extracted mineral and the working of the mineral from the ROMP permission areas is not dependent on permission being granted to this application and its implementation.

29. The committee should note that in so far as the site owner is concerned, a Prohibition Order is an analogous order to a Compulsory Purchase Order and so costs do follow 'success', unless there are exceptional reasons for not awarding costs. It is also the case that an award may be reduced if the objector has acted unreasonably and caused unnecessary expense in the proceedings. At present the owner/operator is cooperating with the Council in providing additional information, which is not behaviour that can be characterised as unreasonable.

30. The comments of Radley Parish Council attached at Annex 3 are summarised as follows:

    i) Minerals extraction has ceased. That has been so for about 20 years.
    ii) The issue is whether it is 'likely' to 'resume to a substantial extent'.

iii) The operators have failed to make an application for renewed extraction together with an Environmental Statement, and there is no evidence of an acceptable one being 'on the way'.
iv) JCSL own the area of potential extraction. They have had and continue to have a commercial incentive to promise they will extract but not actually to do so.
v) The credibility of evidence as to future extraction must be judged against their past record of not acting on their stated intentions.
vi) They have steadily put back the prospective date for completion of extraction. What was once 2002 has, bit by bit, slid to 2042.
vii) This record provides compelling grounds for concluding that 'resumption [of extraction] to any substantial extent at the site is unlikely'.
viii) Counter evidence is not provided by the Tuckwell's processing application nor by the other sources cited by the operators' counsel.
ix) On the basis of the available evidence OCC remain under a duty to issue a prohibition order.

31. It is true that no mineral working has been carried out for many years and that little information had been provided post the previous public inquiry with regard to any work being carried out on the ROMP application for the review of conditions and the previous permission for the conveyor and related development was allowed to lapse. The national Planning Practice Guidance is that there are unlikely to be many cases in which, after 2 years' suspension, the mineral planning authority would not be acting rationally in assuming that working had permanently ceased. The previous lack of activity with regard to the submission of the ROMP application for the review of conditions must though clearly be considered against any evidence that mineral working has not permanently ceased. This does include that evidence now provided and set out above that the application has now been submitted for the conveyor and related development and that there remains an intention on behalf of the applicant/landowners to bring forward the ROMP application for the review of conditions in accordance with the programme provided and for working to then re-commence following the cessation of mineral working at Sutton Wick. It would seem unlikely that the costs involved in bringing forward the application for the conveyor and related development and the ROMP application with the associated Environmental Statement would be incurred if there were no serious intention to carry out substantial further mineral working. The landowners are of course entitled to seek to lawfully maximise any benefit from the land.

Conclusion

32. It is considered that there is evidence before the Council which leads to a need to review the committee resolution of 9 September 2019 that mineral working has permanently ceased. It is considered that the key elements are:

i) The submission of the new planning application for processing plant, a conveyor and a Bailey Bridge to take the mineral extracted from part of the Radley ROMP site to the H. Tuckwell and Sons yard off Thrupp Lane;
ii) The programme of works provided for the submission of the application for the review of conditions on the Radley ROMP site and accompanying Environmental Statement along with the confirmation that it is intended that the mineral working would recommence on completion of the mineral workings at Sutton Wick subject to a further commercial decision being made;

33. The outcome of the new planning application for the conveyor and related development is at this time unknown and no assumption can at this time be made as to what this may be as the committee cannot prejudice its determination of the application. The timing of it being brought forward for determination will also vary depending in part on whether the Secretary of State concludes in the Screening Direction that the development is EIA development.

34. At this time, the information provided with regard to the work on the review of conditions application is limited, being the information set out at Annex 2 and summarised above and the programme of works for putting together the application and associated Environmental Statement and the mineral working at the Radley ROMP site following on from that at Sutton Wick. It is considered that the representations made on the OMWLP at the stage the plan process is at carry limited weight in the consideration of whether mineral working has permanently ceased from the ROMP permissions.

35. Against this must be set that there has been no submission of the review of conditions application to date and no documentary evidence provided in support of the programme that has been set out and the link to the workings at Sutton Wick. The Parish Council is of the opinion that little weight should be attached to the information now provided for the review of conditions for the ROMP permissions application or for the application now made for the conveyor and related development, and that the Council should remain of the opinion that mineral working has permanently ceased and so that the service of the Prohibition Order should proceed.

36. Nonetheless, there is more information before the Council than there was in September 2019 and in the absence of any clear evidence to the contrary, it has to be taken in good faith. This might be considered to be new evidence that there is actual intent to work the mineral at least within the part of the Radley ROMP site cited in support of the conveyor and related development application and shown in green on the submitted application Site Location Plan.

37. The purpose of the ROMP procedures is not to prevent the working of mineral for which planning permission has been granted historically, but that if it is worked that it is subject to modern conditions. Whilst certainty

with regard to the future of the land which has not now been worked for mineral for many years is an important consideration the Council does now have evidence that supports the argument that mineral working could be recommenced at the site and that work on bringing forward the application for modern conditions is now programmed.

38. The officer advice is that the Council should not at this time rescind its previous position that mineral working has permanently ceased and that therefore it is under a duty to serve the Prohibition Order. However, pending the progression and determination of application no. MW.0075/20 for the conveyor and related development and to H. Tuckwell and Sons Ltd providing an update, accompanied by documentary evidence, on progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP permission areas DD1 and DD2 for consideration by this committee at its meeting on 8 March 2021, the Council hold the service of the Prohibition Order in abeyance and review the position further at that committee meeting.

RACHEL WILEMAN
Assistant Director for Strategic Infrastructure and Planning

August 2020