

**Planning Report**

**For: PLANNING AND REGULATION COMMITTEE – 9 SEPTEMBER 2019**

**By: DIRECTOR FOR PLANNING AND PLACE**

**Re - Serving of the Prohibition Order for the Review of the Mineral Planning Permission (ROMP) at Thrupp Farm and Thrupp Farm, 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:** **Reserve 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 is provision in law for Mineral Planning Authorities to periodically review old mineral permissions (ROMPs) to see whether the conditions attached to the permissions provide adequate environmental control over the development such that they continue to operate to continuously high working and environmental standards. The power to review mineral permissions is discretionary but can be carried out at any time the Mineral Planning Authority may consider necessary provided the first review is at least 15 years after the date of the permission.
7. There are currently two ROMP sites at Radley. Both have conditions granted by deemed determination in 2000 and will be referred to as DD1 (Thrupp Lane) and DD2 (Thrupp Farm) 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. Permission DD1 relates to areas 3,4,5,9 and 10; and permission DD2 relates to areas 1, 2, 5, 6, 7, 8, 9 and 10. There is an overlap between the two which relates to areas 5, 9 and 10 only. Area 5 is the only area which hasn't been worked and so is the area from which sand and gravel could still be extracted if a ROMP review permission were in place.
8. A formal notice of review for the whole area covered by DD1 and DD2 was served on 9 October 2015 giving until 31 October 2016 for the submission of a ROMP application. The development is Schedule 1 development further to the provisions of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and so any application would also require to be accompanied by an Environmental Statement.
9. No ROMP application was received by that date and so the site entered into automatic suspension on 1 November 2016. A site in suspension cannot resume minerals development until such time as the relevant ROMP application and accompanying Environmental Statement if needed to accompany it has been submitted. No such application was received within the two years period following that date. It is now therefore the case, that should the Mineral Planning Authority consider that that mineral working on the site has permanently ceased, it will be under a duty to serve a Prohibition Order. It is considered by officers that the assessment as to whether mineral working on the site has permanently ceased should be considered when it appears to the Mineral Planning Authority that

minerals development has not occurred to any substantial extent for at least two years and in its view is unlikely to resume to any substantial extent. It may then conclude that it has permanently ceased.

10. The County Council previously served a Prohibition Order in 2012 on DD1 which was appealed and considered by an Inspector appointed on behalf of the Secretary of State at a Public Inquiry in 2014. The inspector did not uphold it after it was determined that there was a deemed permission from 2000 concluding that the County Council therefore had no power to make the Prohibition Order.

11. There are two positions open to the mineral planning authority:

- That mineral working at the site has permanently ceased and that therefore the duty to serve a Prohibition Order has arisen;
- That mineral working at the site has not permanently ceased and that therefore the duty to serve a Prohibition Order has not arisen

The decision as to whether mineral working on the site has permanently ceased is a matter of judgment based on the evidence before the Committee. Considerations of development plan policy, including the contribution that could be made through the permitted reserves to the Council's landbank of sand and gravel and the impacts of any associated traffic or other impacts on the amenity of local residents, are not relevant to the decision. Any Prohibition Order served requires subsequent confirmation by the Secretary of State.

### **Subsequent Permissions**

#### **Area 1:**

- 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. There are current undetermined applications before the District Council to extend the time periods for the temporary uses.

#### **Area 2:**

- A permission was submitted prior to the deemed decision, but it was determined after the date of the deemed decision. This allowed the use of the western part of the area as a contractors area for the filling of Lake H (Area 8).

#### **Area 3:**

- 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).

- 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.
- 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.
- 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. This permission has now lapsed.

**Area 4:**

- 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:**

- 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.
- 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 were discharged.
- 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.

A fuller site history of planning permissions granted is set out at Annex 2.

**Discussion**

12. As set out above, the key consideration for the County Council as Minerals Planning Authority is whether the minerals development permitted by the ROMP permissions has permanently ceased. It is therefore necessary to weigh the evidence available both for and against this. The national Planning Practice Guidance in paragraph states:

*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.*

*Paragraph: 210 Reference ID: 27-210-20140306*

13. At the Public Inquiry in 2014, the appellant stated that it was intended to recommence mineral working. The inspector took the view that this was good evidence in support of the case that the minerals development had not permanently ceased at that time in area DD1. At that time there was also the extant unimplemented permission in Area 3 for the plant site for the processing of the mineral from Areas 5, 6 and 7 should it be worked. This permission was not implemented by the permitted commencement date of July 2017 and so has now lapsed.
14. In exchanges of correspondence with the interested parties/landowners, they have consistently maintained their position that they do intend at some point to recommence mineral working which it has also been stated would be after the cessation of other permitted mineral working at Sutton Wick. The two current permissions at Sutton Wick require mineral working to cease on 1 March 2022 (the CAMAS land) and 31 December 2027.
15. It is now five years since the Public Inquiry closed. No mineral working was carried out in the area the subject of the ROMP review before the site went into automatic suspension in November 2016. There has been no submission of an application for a review of the conditions, the permission for the plant site which would have been available to process the mineral has lapsed and no application has been made for any alternative. The Council has no other evidence of there being any intention to recommence the minerals development beyond the consistent statements of the intention to recommence following the cessation of mineral working at Sutton Wick. In my view, this stated position is inconsistent with the apparent reluctance to engage and submit a review of the ROMP permissions for determination such that, if it were intended to recommence the working of mineral, it was ready to go whenever the workings at Sutton Wick, which does not hold extensive remaining reserves, had ceased.
16. The national Planning Practice Guidance seems clear and straightforward that it is reasonable to assume after two years suspension that mineral working has permanently ceased. No mineral working has occurred at the ROMP site and it is now two years and ten months since the site went into suspension. Although the interested parties/landowners have maintained a consistent position of the intention to resume working at the cessation of the Sutton Wick mineral extraction sites, other than exchanges of correspondence, they have not taken what seems the obvious opportunity presented to them by the County Council and submitted an application for the review of the ROMP site conditions with an accompanying Environmental Statement.

It is not unreasonable for the County Council as Minerals Planning Authority to take the view that this is contrary to the interested parties/landowners' expressed intentions and provides evidence of a different intention.

### **Conclusion**

17. It is concluded that, on the balance of evidence, the minerals development has permanently ceased and that the duty to serve a Prohibition Order has arisen. The service of a Prohibition Order and its subsequent confirmation by the Secretary of State would provide certainty as to the possibility of mineral working resuming at the ROMP site. However, it would not prevent any subsequent planning applications being made in the normal way for the working of the mineral reserves.
18. The officer view is that it is considered that whilst parts of the site have been worked out, parts restored and parts contain unworked reserves, it would be consistent and for the avoidance of any doubt to serve a Prohibition Order over the whole ROMP site.
19. The interested parties/landowners will have a right of appeal against the service of a Prohibition Order and it is anticipated that if this right is exercised it would lead to a further Public Inquiry at which the Council would have to give evidence and most likely would choose to instruct Counsel to represent it. There would therefore be costs to the Council in doing so and it is also possible that, if it were found that the Council had acted unreasonably such as to have led the appellants to incur costs, costs could be awarded against the Council, as was the case following the 2014 Public Inquiry. However, it is not considered that the Council has to date acted unreasonably in seeking the review of the permissions deemed to have been granted in 2000 and that this should be a reason not to proceed to consider this report and any other additional evidence that may be reported to the committee meeting orally, and so consider whether or not, mineral development has permanently ceased.

### **RECOMMENDATION**

20. It is **RECOMMENDED** that it be determined that mineral working on the site has permanently ceased and that accordingly there is a duty on the Mineral Planning Authority to serve a Prohibition Order of the mineral permissions covering areas DD1 (Plan 1) and DD2 (Plan 2).

**SUSAN HALLIWELL**  
Director for Planning and Place

**August 2019**