

**PROHIBITION ORDER FOR THE REVIEW OF OLD MINERAL PLANNING PERMISSION
THRUPP FARM AND THRUPP LANE**

SUMMARY OF COUNSEL'S OPINION

1. The ROMP process is designed to prevent active sites from operating without modern conditions. There is no danger of Thrupp Farm being operated without modern conditions which safeguard the environment. There is no need or purpose for a Prohibition Order in this case.
2. The PPG test for issuing a Prohibition Order states 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 word "rational" is taken from public law (judicial review) terminology. It does not mean that the MPA should assume that working has ceased. They must look at the evidence, even after two years. This is what the Inspector said, very clearly, in 2014 (Recommendation 4.38 and 4.39). The Secretary of State, looking at the evidence, agreed with her. The evidence has only got stronger since 2014.
3. The Inspector at the Inquiry in 2014 reached two conclusions. One was procedural, that the ROMPs had been determined in July 2000 by default. But the other conclusion was a judgment on whether mineral extraction at the site was likely to resume, or whether it had permanently ceased. She found that it was likely to resume. The evidence upon which she based that judgment is the same today, and there is up to date evidence to confirm it.
4. There is no purpose to be served in conducting a ROMP too early, or the Environmental Statement that goes with it. A ROMP review costs around £50,000 for the landowner to complete. It also represents a significant cost in time and Officer effort to the Council. There has never been any point in the companies spending high costs on ROMP reviews and particularly an ES when the likely date of reopening the site was still many years away, so that the environmental information would be very out of date at the time of reopening and the company would have to prepare a further updated ES with the associated additional cost.
5. Curtis and Tuckwell have consistently maintained their position that they do intend to recommence mineral working at Thrupp Farm after the cessation of the permitted mineral working at Sutton Wick. The timetable is clear, and the reason for waiting to do the ROMP at Thrupp Farm is clear and justifiable.
6. The Council has been swayed by representations from local residents. The same representations were made to the Inspector - that the land should be restored to an environmental habitat, and that further extraction on the ROMP area was not viable, in the opinion of the residents. The Inspector rejected those arguments as being irrelevant, or not based on evidence. Those same arguments cannot be given more weight at this time. They are still incorrect. Mr Periam, the Council's Officer has confirmed the 0.850 to 1.0 million tonnes of recoverable mineral reserve at the site in the Report dated September 2019.

7. There are three powerful strands of new evidence, which only confirm the conclusions of Inspector Ord, which have not been considered by the Committee to date:

- The 2020 planning application for the conveyer 27 April 2020
- The 2020 planning application for the ROMP
- Submissions to the Mineral Plan.

The Committee must consider all three new strands of evidence, which have been set out in some detail on behalf of the companies.

8. The Committee has been misled to date as to the position on costs in a Prohibition Order Inquiry. The Council was forced to pay three full costs awards in the Inquiry in 2014 for getting things wrong. Costs in a PO Inquiry are analogous to a Compulsory Purchase Order challenge, and they follow the event automatically. The only relevance of unreasonableness is if the objector behaves unreasonably, whereby the Council's automatic costs might be discounted. The award of costs against the Council is not dependent upon any "unreasonable behaviour" on their part, which is what the Committee have been told in the Report of September 2019. This needs correcting, so that the Committee understands the full consequences of confirming a PO.

9. The two companies have asked repeatedly for a discussion with the Council before any decision is made to serve a PO. This opportunity has not been offered. The agents of the companies have both expressed their concerns in writing that the Council seem to be determined to serve a PO and perpetuate the problem without any consideration of alternative ways to find a solution. The National Planning Policy Framework requires Local Planning Authorities to be positive and proactive, and to seek solutions rather than problems.

10. The latest Report dated May 2020 does suggest that the Committee should revisit their decision to serve the PO while the latest plant application is being validated and until it has been determined. There is a suggestion, however that the ROMP can only feasibly be worked if the mineral is conveyed to and processed in the Tuckwell site. The Officer suggests that only part of the ROMP mineral would be processed at Tuckwell's site and that there is still doubt over the intention to extract the rest. This is a factual inaccuracy, which would require correction before the Report is placed before the Committee. The Officers should obtain the correct evidence from the landowners and operators before the Report is put before Committee, and a failure to do so would be to mislead them.

11. It is also important to reiterate that the latest Report only deals with one out of the three most recent strands of relevant new evidence, as highlighted above. It remains silent on the progress of the ROMP application and timetable, and it does not mention the submissions to the Waste Plan. These are matters that the Committee should also understand and take into consideration.

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26 May 2020