

Radley Parish Council further representations**Proposed prohibition order for ROMP areas DD1 and 2 (MW.00023/21). Representations by Radley Parish Council**

This submission takes account of recent events and supersedes earlier submissions.

	Page
A. Summary	1
B. Representations	2
B.1 Background	2
B.2 Why a decision is needed	2
B.3 The evidence for a full prohibition order being made	4
B.4 The evidence for a partial prohibition order being made	7
Annex 1 Map	8
Annex 2 Supplementary evidence	9
Annex 3 RPC letter about the case for a partial order	14

A. Summary

1. No gravel has been extracted from the ROMP area (ie the area covered by planning permissions DD1 and DD2) since about 2000.
2. The applicants have for many years professed an intention to resume extraction but have never done so.
3. This appears to be tactical, designed to prolong the life of other industrial uses which would otherwise be refused planning permission.
4. These tactics are blighting an area of huge potential for quiet recreation and nature conservation and preventing planning decisions being taken about future uses of the land
5. There is no convincing evidence of a genuine intention to extract and none has been produced since OCC's previous consideration of the issues on 7 September 2020.
6. There remains therefore a legal duty for OCC to proceed with their proposed prohibition order.

7. If OCC are uncertain about this for the whole ROMP area they should anyway proceed with a prohibition order for the part lying to the north of the disused branch rail line (see map at Annex 1). The case here is incontrovertible.

B. Representations

RPC believe that OCC should proceed with its proposed prohibition order, but failing that should make an order for the more limited area to the north of the disused rail line.

B.1 Background

DD1 and DD2 are two overlapping sites in Thrupp, Radley for which there are old minerals permissions. The operators are JCSL and Tuckwells. In 2015 OCC set in hand a Review of Old Minerals Permissions for these sites, hereafter referred to as the ROMP sites. The first step of the ROMP process should be the submission by the operators of an application and an Environmental Statement. This did not happen within the statutory deadline of 12 months with the consequence that the permissions were automatically suspended in November 2016.

After nothing further had happened OCC's Planning and Regulation Committee (the Committee) decided on 9 September 2019 that mineral extraction was unlikely to resume and that the Council was therefore under a legal duty to issue a prohibition order. This would rescind the existing permissions.

At their 1 June 2020 meeting, the Committee were advised by officers that there was new evidence which might be relevant to their decision to proceed with the prohibition order:

- a counsel's opinion obtained by the operators;
- a planning application by Tuckwells to process gravel from the ROMP area.

At their meeting on 7 September 2020 the Committee reviewed the position and resolved that the prohibition order should be 'held in abeyance' until their 8 March meeting pending:

- the progression and determination of the Tuckwells application for a plant to process extracted gravel;
- Tuckwells providing an update, accompanied by documentary evidence, on progress with regard to the work on the ROMP application and Environmental Statement.

B.2 The need for a decision

RPC recognise that the Committee's decision whether or not to proceed with the prohibition order must be based on specific legal grounds and that wider considerations are irrelevant.

What we ask is that, if the legal grounds are established, the Committee should proceed in a timely way and not be put off by any obfuscations or threats as to costs which might divert them from their statutory duty.

There are two particular reasons why this is important. On both there have been developments since the Committee's September meeting.

(i) The Radley Lakes Masterplan

The ROMP site lies in the Oxford Green Belt and wholly within the Radley Lakes area¹: exceptional for the potential it provides for natural life, healthy exercise, scenic beauty, peace and tranquillity so close to a large urban population.

A masterplan² is being prepared for the future of the Lakes area so this potential can be realised. A draft of the masterplan was published on 12 June 2020 for consultation first with a very wide range of stakeholders (including landowners) and then with the general public. Details are at <http://www.radleyvillage.org.uk/radley-lakes-public-engagement2/>

In the public consultation there was 'strong' or 'very strong' support from over 95% of respondents. There was also strong support from most stakeholders. The masterplan is now being finalised for publication in the Spring. A charitable trust 'The Radley Lakes Trust' has been registered with the Charity Commission and will take the lead on delivery.

Implementation of the masterplan requires agreements with the various landowners, All except one have entered into dialogue, The exception is JCSL, whose land includes the majority of the ROMP area, including its unexploited gravel reserves. Six times they have been invited to discuss and six times they have refused.

JCSL's unwillingness to consider a non-statutory agreement or understanding makes it all the more important that OCC pursue their statutory duties in respect of the proposed prohibition order.

ii) The Planning Inspector's decision on continued industrial uses on the JCSL site

Within the DD2 area is an industrial yard with buildings that have their origins in minerals extraction but have been used for unconnected purposes for several decades. These uses have been operating without planning permissions for some periods and with temporary permissions for others. They are in the green belt and generate traffic on Thrupp Lane which blights the wider area. More detail is on page 11.

On 2 December 2019 the Vale of White Horse District Council refused permission for further temporary use of these buildings for non-minerals purposes. The decision

¹ Defined on page 36 of the Radley Neighbourhood Plan

² Preparation of the masterplan was 'Community Action' 10 in the Radley Neighbourhood Plan 2018-2031

was appealed and on 18 November 2020 the Planning Inspector allowed the appeal. He did not consider he could reasonably disallow the uses while the buildings remained. If the buildings were no longer required for minerals purposes he said that was a matter for OCC to pursue as minerals authority, including through their duty to make a prohibition order.

The consequence of this decision is significant. Unless OCC carry out their statutory duty to make a prohibition order the Vale DC are unable able to make appropriate planning decisions for the future of this area of high local importance.

B.3 The evidence for the proposed prohibition order to proceed

RPC have previously expressed concern that officer advice might be relying on evidence which has not been made publicly available and which RPC has not had the chance to comment on. Those concerns remain. In the meantime the assessment below is based on the evidence that has been made available.

i) The legal tests needing to be met

The County Council are under a statutory duty to make a prohibition order if

- Planning permission has been suspended for two years for failure to provide an Environmental Statement or other relevant information, and;
- it appears to the council that minerals development has occurred but has permanently ceased.

The Council may assume that minerals development has 'permanently ceased' only when

- no minerals development has occurred to any substantial extent at the site for at least 2 years, and;
- it appears to the council, on the evidence available to them at the time when they make the order, that resumption to any substantial extent at the site is unlikely.

The wording of the last bullet point is important. The Committee's decision needs to be based on likelihood but not on certainty.

All of the above is statute. Additionally, Government guidance provides 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.

There are accordingly two questions to be answered;

- Has extraction ceased?
- Is extraction likely to resume?

ii) Has extraction ceased?

The current planning permissions for the ROMP area have their origins in one granted in 1954 (sic). This was only one year after the Coronation; food rationing was only just coming to an end; Len Hutton was still captaining the England cricket team; Stanley Matthews had just won the Cup Final for Stoke City.

Nearly 65 years later the gravel in Nyatt remains unextracted.

JCSL, the larger of the two minerals operators and the owners of Nyatt moved their extraction operations from the ROMP area to Sutton Wick in about 1990 and have extracted nothing in the ROMP area since³. Tuckwells, the other operator, have extracted more recently in the ROMP area - at Longmead, a relatively small site. This operation ended in about 2000 – a full twenty years ago.

There can therefore be no doubt that extraction has ‘ceased’.

iii) Is extraction likely to resume?

RPC has seen no hard evidence from the applicants that a resumption is likely.

Commercial strategy

The applicants have said their commercial strategy is to move their operations back from Sutton Wick to the ROMP area when the reserves at Sutton Wick are exhausted. But they are keeping their commercial options open and have recently applied for an extension of their Sutton Wick operations to exploit further reserves there.

The Tuckwells processing plant

The applicants contend that Tuckwells planning application for a minerals processing plant is evidence of their intention to extract. But that is unconvincing.

The application is a cut down version of one that led to a permission for processing in 2012. It lacks detail and prior consultation. Ecological surveys have not been carried out and as a result progress on determination has stalled. It is odd that Tuckwells made this application so far in advance of need. There is every appearance of it being a tactical device to help stave off a prohibition order rather than a genuine preparation for extraction.

The 2012 processing permission moreover lapsed without an ounce of gravel having been extracted, so a processing permission – even if granted – is hardly a good indicator of any intention to extract.

Representations on the draft Minerals and Waste Local Plan

³ JCSL statutory declaration April 2006

The applicants have said that they have made relevant representations in the context of the Minerals and Waste Local Plan (MWLP). RPC have now seen these. They do not appear to contain any new evidence in support of the applicants' intentions to extract in the ROMP area. If anything they cast further doubt on this, emphasising the extent of further resources at Sutton Wick and the need to exhaust these before other extraction options are pursued. Other material in the representations is mainly about the contribution which Tuckwells' reserves could make towards the extraction tonnages required by the MWLP. This is irrelevant as a matter of law to the decision which the Committee must now reach on the prohibition order.

Hydrological and ecological surveys

Since the Committee meeting on 7 September, the applicants have commenced ecological and hydrological surveys that would be required for an Environmental Statement. In their submission of 9 February they have reported progress on these but pointed out several more months further work would be required to provide meaningful results. They have argued that work to date is evidence of their intention to extract and it is unreasonable that they should carry out further work whilst the possibility of a prohibition order remains. They have pleaded for OCC to 'end the ongoing uncertainty'.

It would be possible to sympathise with this was it not for the decades of uncertainty the applicants have themselves caused by saying they will extract but without doing so – see below.

The past record

In the absence of hard evidence that extraction is likely to be resumed it is necessary to look behind the available evidence at previous events and what those events suggest about likely intentions. This is what OCC officers themselves said in earlier advice to the Committee⁴:

'OCC officers...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. In so far 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.'

There has been a long history of the applicants saying that they will resume extraction, but not in the event doing so. As shown in Annex 2 there has been a drip-by-drip process by which the applicants have gradually slipped the date of extraction being undertaken. In 1992 it appeared that extraction would be completed by 2002. Now, nineteen years later, extraction has not even started and the latest assessment by the applicants suggests completion in 2042⁵.

This progressive slippage has every appearance of being a calculated tactic to prolong the life of non-minerals commercial activity on the JCSL industrial site within

⁴ Advice to the Committee for their meeting on 27 July 2015dd the date

⁵ See MW.0075/20

the ROMP area. Each time it is 'extraction is running a bit later than we previously thought so just give us a bit longer to keep these industrial uses going'.

In summary there is no hard evidence that extraction is 'likely to resume' and much evidence that the applicants' statements to that effect cannot be taken at face value.

On that basis the Committee is under a statutory duty to proceed with the proposed prohibition order for the ROMP area.

B.4 The evidence for a prohibition order applying only to the north of the disused rail line

If the Committee are uncertain about proceeding with a prohibition order for the whole ROMP area, an alternative approach would be:

- to proceed now with a prohibition order for that part of DD2 lying to the north of the disused railway line (see map at Annex 1);
- to leave the proposed prohibition order for the remainder of the ROMP area (the whole of DD1 and part of DD2) in abeyance pending further evidence about the likelihood of extraction.

It is incontrovertible that this more limited area meets the statutory tests for a prohibition order.

Has extraction ceased? No mineral extraction has taken place in this area since 1979⁶.

Is extraction likely to resume? Mineral reserves in the area are accepted by the applicants to be exhausted⁷. There has been no suggestion that minerals would ever again be extracted there nor that the land would be needed for purposes ancillary to extraction. The hydrological surveys currently being carried out do not include this area. If minerals activity is ever to resume south of the disused railway line, processing and servicing would also take place to the south of the rail line – at the Tuckwells yard, as is proposed in their planning application for a processing plant.

There is therefore no reasonable basis on which a limited prohibition order could be contested. Proceeding with this area would enable OCC to make suitable requirements for site restoration and remove the current inability for the Vale DC to make planning decisions for the future of this area. The extent of blight would be reduced.

The suggestion of a limited order was made by RPC at the Committee's meeting on 7 September but the Parish Council's representative was given the wrong 'Zoom' link and could not clarify what was suggested and the proposal was misunderstood by committee members. Following the meeting RPC wrote as in Annex 3 to put this right. The key points are:

⁶ JCSL statutory declaration, April 2006

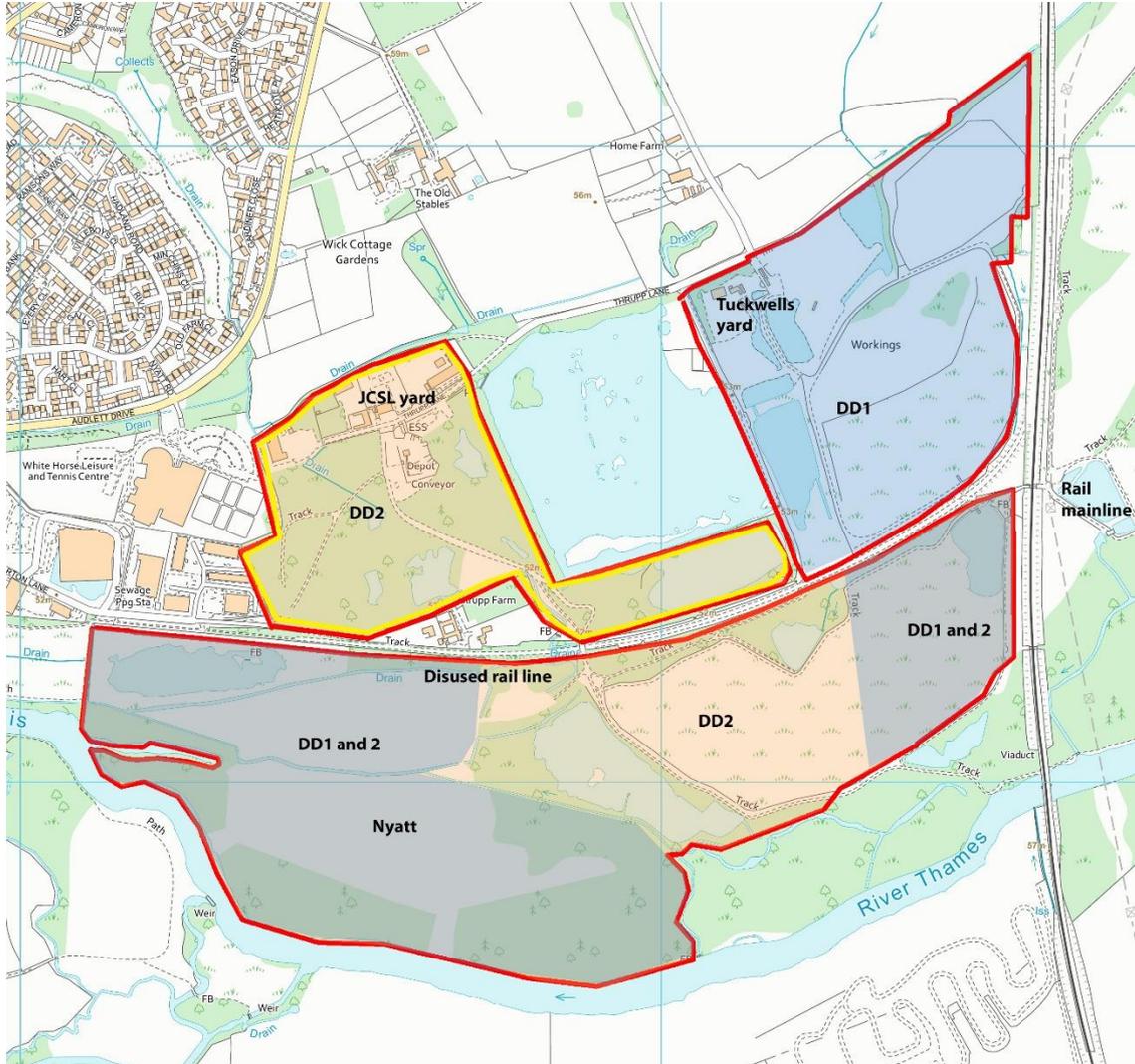
⁷ Ibid

The area to be covered: this would be a discrete part of DD2, easily delineated by reference to the disused rail line. On a previous occasion OCC encountered difficulties when proceeding with an order for DD1 which included an overlapping area that was also in DD2. In this case there is no such overlap. See map at Annex 1.

Vires: there is nothing in the legislation saying that a prohibition order has to apply to the whole of an area being considered as part of a ROMP process. An order may apply to 'any land' where the statutory tests have been met. At a meeting with RPC on 10 May 2019 the OCC case officer himself raised the possibility of the order applying to part only of the ROMP area. The officer advice to the Committee meeting on 9 September 2019 Committee (para 18) again implied that this was an option.

RPC's view remains that a prohibition order should be made for the whole ROMP area but also asks the Committee to give careful and serious consideration to this more limited suggestion.

Annex 1 Map



The ROMP area is delineated with a red line.

The area to which a limited prohibition order would apply is delineated with a yellow line.

The planning permissions (currently suspended) are shaded as follows

- DD1 pale blue
- DD2 pale flesh
- DD1/2 overlap a murky combination

Annex 2: Evidence about the likelihood of extraction resuming in the ROMP area

This annex contains supplementary material, which was originally contained in RPC's submission to the Committee meeting on 7 September 2020.

(i) RPC comments on counsel's opinion that a prohibition order should not proceed⁸

The main arguments advanced by counsel are set out below in italics, followed by RPC's comment.

OCC's advice to the P&RC gave excessive weight to the guidance that a prohibition order should normally be made if an Environmental Statement has not been submitted within two years. This does not remove the need to look critically at the other evidence

It was quite correct for OCC's advice to the Committee to refer to this guidance, which creates a presumption towards a prohibition order being made in the absence of an Environmental Statement. There is also much other relevant evidence that the statutory tests for a prohibition order have been met - see (iii) below.

The other evidence is that minerals extraction has not ceased and that is the view that the Secretary of State would take

RPC disagrees. Again, see (iii) below.

OCC have been swayed by arguments from local residents about considerations that are irrelevant.

This is untrue. The officer advice to the P&RC stressed that their decisions must be based on the statutory tests. It did not refer to any irrelevant factors or to views from local residents. The representation made at the meeting by RPC were based solely on relevant factors, not on the desirable uses of the site. The RPC speaker at the meeting stressed to the Committee that wider issues cannot be taken into account.

OCC have failed to meet with the minerals operators to understand the evidence about their intentions

It is understood that a meeting has since taken place. By contrast OCC officers have not met with RPC and JCSL has repeatedly refused to do so.

⁸ RPC requested but was refused the full counsel's opinion. This section is based on the summary that has been provided

If OCC make an order and it is not confirmed by the Secretary of State, OCC might have to pay costs

That might be so, but it is hardly an argument for making the wrong decision. If OCC believe that the statutory tests are met they are under a legal duty to make a prohibition order. There is no discretion.

(ii) The Tuckwells planning application

In 2014 the Secretary of State made a decision in relation to an earlier prohibition order that would have applied to part of the ROMP area (DD2). Shortly before (in 2012) Tuckwells had been granted planning permission for a plant to process gravel extracted from the ROMP area. Although the decision on the order was based on other factors the Inspector's report said that this planning permission was evidence of a genuine intention to extract minerals.

In April 2020 Tuckwells made an application for a similar processing plant. It has been suggested that if OCC proceed with a prohibition order an Inspector might similarly regard this as evidence of a genuine intent to extract and not confirm the order.

In RPC's view this is a curious suggestion. The 2012 planning permission was not in the event acted on and the permission lapsed without an ounce of gravel having been extracted. In retrospect the Inspector got it wrong. The lesson of 2014 is surely that a planning permission to process gravel cannot be regarded as credible evidence that minerals extraction will follow, especially in the absence of a ROMP application and Environmental Statement.

If the recent (2020) Tuckwell's application for processing was driven by a genuine concern to be in a position to process minerals from the ROMP area, it is difficult to understand why it was made while permission to extract gravel from the area remained suspended, no detailed plans for its resumption were in place and no Environmental Statement had been prepared or submitted. It is also notable that the application is lacking in detail with several errors and inconsistencies and has not been preceded by any consultation with local interests. It appears to RPC that the application was more a device to influence decisions on the prohibition order than a genuine attempt to prepare for resumed extraction.⁹

Since the application, moreover, an important new factor has arisen. At the end of May 2020, in the context of the Vale Local Plan 2041, Arnold White Estates put forward a major development proposal in Radley for 600 new homes, an energy park and a country park. The energy park is fundamental to the carbon neutral credentials of the proposal. It would be on the Tuckwells site and would make it impossible to process minerals there.

The Vale have yet to decide whether to sift the proposed site into the next stage of the Local Plan, but the promoters of the site can be expected to pursue it at

⁹ Despite these misgivings about the reasons for the application RPC recognise that it needs to be addressed on its merits and submitted comments on 13 August.

inquiry even if it is not supported by the Vale. If that happened, it is difficult to see how minerals processing and hence extraction could go ahead.

In summary there are several reasons why the Tuckwells application for processing does not show that minerals extraction is likely to resume.

(iii) The relationship between proposed extraction and the JCSL industrial yard

This yard falls within the ROMP area. Buildings in the yard were originally constructed, it is said, to service mineral extraction, and are subject to a condition requiring their removal once no longer needed for that purpose (i.e. once mineral extraction has ceased).

From the 1970s onwards, buildings in the yard started to be used for a variety of light industrial purposes unconnected with minerals, sometimes with temporary permissions and sometimes unauthorised. The yard is in Green Belt and has very poor road access, so it is highly unlikely that these uses would have been permitted if it was not for the prospect that the yard might later be needed for minerals purposes.

In 1992, there was an appeal by JCSL against enforcement notices issued by VWHDC in respect of these non-mineral uses. The Inspector decided that the uses could continue while mineral extraction was still taking place. He also decided that a ten-year period (i.e. until **2002**) would probably be sufficient to complete the extraction.

And so it might have been, had JCSL not decided to relocate their mineral extraction operation at Radley entirely, to another JCSL quarry at Sutton Wick. The reasons for ceasing extraction at Radley are not wholly clear but can perhaps be inferred from what followed.

In the ensuing years JCSL have continued to assert that they will extract the gravel at Radley but, bit by bit, have put back the stated timing of completion and used this to justify extension of the non-minerals uses in their yard.

In 2003, at which time extraction had not restarted, they said to the VWHDC that they needed until **2023** to complete it.

In 2011 a start had still not been made and they said they needed until **2026**.

It was also in 2011, that Tuckwells made their application to process gravel extracted from the area. The application said that JCSL would apply for modern planning conditions for the extraction site by September 2012, that these would be agreed in two years and that extraction would follow. Again no extraction happened

The new 2020 planning application for processing does not explain this delay other than to say that applying for modern planning conditions took longer than expected. However, it does say that it will be up to 5 years before gravel at Nyatt starts to be extracted and that completion may take a further 16 years.

Potentially this means completion of extraction in **2042**. This is a full 40 years after the date the Inspector allowed for in 1992.

The key point is that JCSL have had a commercial incentive to keep the possibility of future extraction alive indefinitely, but not actually to undertake the extraction - since completion of the extraction would remove the case for any further temporary non-minerals permissions.

The link between minerals extraction (or rather the failure to extract minerals) and the industrial yard is still apparent today.

In December 2019 the Vale DC refused permission for continuation of the temporary uses at the JCSL yard. In June 2020 JCSL appealed against this decision, arguing inter alia

- Notwithstanding previous suggestions that mineral extraction related to the appeal site would not recommence, an application for plant in conjunction with mineral extraction has been submitted to allow mineral extraction to recommence, as has always been the intention;
- The basis of the committee decision in refusing this application was the serving of a Prohibition Order which is flawed, both in terms of whether such an order could be served, but also now with the decision to review the decision to serve an order;
- Given that mineral extraction will continue, the very special circumstances required for development in the Green Belt are met;

It does not take too much reading between the lines to detect a strategy by JCSL that links three planning processes currently in train. The application for a processing plant looks to be a device designed to derail OCC's prohibition order. The derailing of the prohibition order looks to be a device designed to overturn VWHDC's refusal of continued permissions for non-minerals uses on their industrial site.

Annex 3. RPC letter of 11 September 2020 about a partial prohibition order

RADLEY PARISH COUNCIL

CLERK: Mrs Jane Dymock
Tel: Oxford (01865) 864360
E-Mail: clerk@radleyparish.org
www.radleyvillage.org.uk.

c/o 73 Eaton Road
Appleton
Abingdon, Oxon
OX13 5JJ
11 September 2020

Councillor Jeannette Matelot
Chairman Planning and Regulation Committee
Oxfordshire County Council

OCC Planning and Regulation Committee, 7 September: Radley prohibition order

I am sorry that Richard Dudding, the parish council's speaker, was unable to access the Planning and Regulation Committee meeting on 7 September. There seems to have been a problem with the link he was given.

The Council's note was read out very ably by Graham Warrington, but there was no opportunity for questions. This was particularly unfortunate because one of the committee members, Cllr Judy Roberts, was clearly interested in the parish council's closing suggestion. The relevant text is below.

'However, we have a suggestion. The area to the north of the disused railway has no gravel and no one is claiming that it is needed in connection with gravel. OCC could proceed anyway with a prohibition order for this area even if they believe that the area to the south of the railway justifies a further review of the evidence. This is a second best but would be progress'.

Because there was no opportunity for members to ask about this, I think there might have been some misapprehension as to what was suggested and hence an opportunity missed.

As you know the ROMP area consists of two overlapping areas DD1 and DD2. We were not suggesting that the prohibition order might apply to just one of these (which was a source of trouble for OCC on an earlier occasion), but that it might – as a fall-back - apply to the area north of the disused railway. This area comprises the JCSL industrial site; an adjacent area of grassland, ponds and scrub; and Bullfield Lake, which adjoins Thrupp Lake. The area was one of the very first to be worked for gravel and the reserves have long since been exhausted. No one is claiming that there is any future intention to extract or to carry out ancillary activities.

There is of course an issue as to whether an order could in law apply to a specified part of the ROMP area but not to the whole. When this was raised in the meeting with Jennifer Crouch we don't think she had understood quite what was being suggested. We thought there was no question about this ability. When Richard Dudding met with Kevin Broughton (then the case officer) on 10 May 2019, Kevin said that one of the issues he was actively considering was whether a prohibition order, if made, should apply to the whole ROMP area or to only part of it.

It seems anyway likely that OCC will need to give some specific consideration to the area we are talking about. Your officers' paper (para 9) says it falls outside the area for which there is

an agreement or proposed agreement between JCSL and Tuckwells. That being so Tuckwells seem to have no mandate to prepare an environmental statement or ROMP application for this land.

A prohibition order for this area would seem incontestable and would significantly reduce the current extent of blight. This would help with implementation of the Radley Lakes masterplan, which is of great potential benefit to the local communities, but also with planning decisions. 'Temporary' industrial uses, inappropriate to the green belt and served by an unsafe road access, have been allowed to continue pending the expiry of minerals permissions. This situation risks continuing for another 20 years or more. A prohibition order would enable OCC to apply suitable restoration conditions and the Vale District Council to consider future land uses on their merits and in accord with normal green belt policy.

The Parish Council's position remains that a prohibition order should be made for the whole ROMP area. That is the more straightforward proposition and we believe is justified in law. However, if that is not for any reason possible, or is not possible without further review, we believe there would be merit in proceeding anyway without further delay to the more limited area described.

We are very ready to explain the suggestion further to your officers. But we thought it right to clarify the suggestion to you as committee chair and also to Cllr Judy Roberts, who was seeking elucidation on our proposal.

I am copying this letter to Cllrs Johnston and Roberts and to Graham Warrington and David Periam.

Yours sincerely



Clerk to the Council

Cc Councillor Bob Johnston
Councillor Judy Roberts
Graham Warrington
David Periam