

Division Affected – Kennington and Radley

PLANNING & REGULATION COMMITTEE

8 MARCH 2021

SERVING OF THE PROHIBITION ORDER FOR THE REVIEW OF THE MINERAL PLANNING PERMISSION (ROMP) AT THRUPP FARM AND THRUPP LANE, RADLEY

Report by Assistant Director for Strategic Infrastructure and Planning

Contact Officer: David Periam **Tel:** 07824 545 378

Location: Land at Thrupp Lane and Thrupp Farm, Radley

District Council Area: Vale of White Horse

RECOMMENDATION

It is RECOMMENDED that:

- A) 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working on the Radley ROMP site has permanently ceased and that there is a duty to serve a Prohibition Order is not rescinded but that the service of the Prohibition Order is held in abeyance pending: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 and Regulation Committee on 19th July 2021.****

- B) Officers are instructed to investigate whether it is possible to serve a partial Prohibition Order should it be concluded that mineral working has permanently ceased over part but not all of the ROMP permission areas DD1 and DD2**

Executive Summary

1. As resolved at the meeting of the Planning & Regulation Committee on 7 September 2020, the report provides an update 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. The report also provides an update on the progress with planning 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. It is recommended that a further update report be provided to the meeting of the Planning & Regulation Committee on 19 July 2021.

Update

2. The Committee will recall that at its meeting on 19 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 – please see Figure 1 below). The Committee resolved that mineral working had permanently ceased and that, therefore, there was a duty to serve a Prohibition Order. On 7 September 2020, a further report was presented which is appended as Annex 1 (for full report and its annexes please see Planning & Regulation Committee pages on the County Council's website). The Committee resolved to hold service of the Prohibition Order in abeyance pending 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 an update from H. Tuckwell and Sons Ltd accompanied by documentary evidence of progress made with the ROMP conditions application and accompanying Environmental Statement to today's meeting .

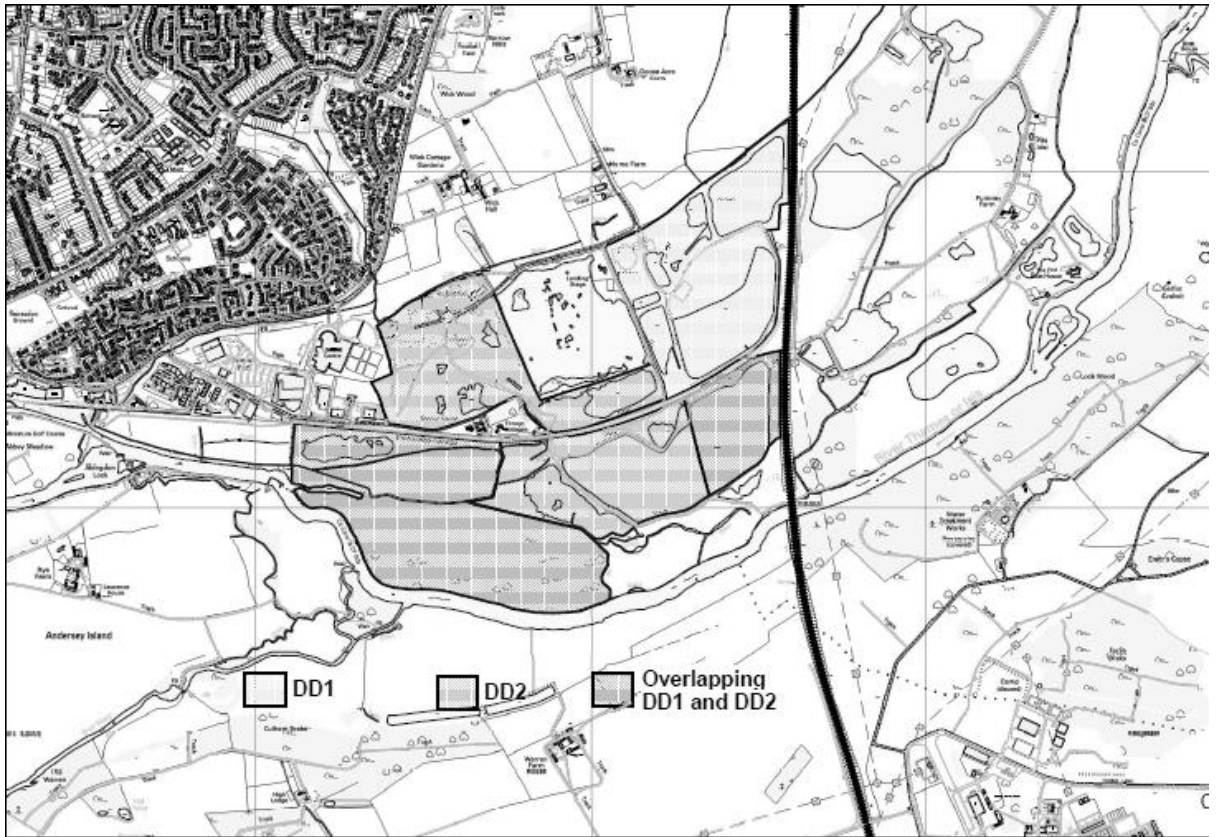


Figure 1: The Radley ROMP permissions site.

Update from the agent on behalf of the H. Tuckwell and Sons Ltd

3. An update has been provided by the agent (Annex 2) which is summarised as follows:

The works undertaken since August 2020 include:

- i) Winter Bird Survey;
- ii) Winter- Piezometers installed & water quality sampling started; and
- iii) Groundwater monitoring.

NB Information on these is attached at Annexes 3, 4 and 5 respectively. Please note that these are provided solely as documentary evidence (as requested by the Committee) of the progression of work that has been carried out to inform the ROMP application and Environmental Statement; they are not at this time put forward for debate as to any issues arising from the information which would be available for consultation and comment at such time as the application may be made.

4. The update advises that the timetable to have the application and Environmental Statement submitted, continues to be follows:
 - February- March 2021: costs for ROMP / EIA established;
 - 2021: EIA investigations surveys undertaken 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; and
 - Spring-Summer 2022: ROMP Application (Including Environmental Statement) submitted.
5. With regard to progress towards the determination of Planning Application MW.0075/20, it has been identified that further clarification on ecology is required, which requires extra spring/summer surveys to progress. An ecologist has been instructed to undertake these surveys.
6. The update advises that the planning application to extend Sutton Wick Quarry into Oday Area 1, was submitted in October 2020. If favourably determined in Spring 2021 this will give the quarry 12 months of extra reserves. A planning application is also being worked on to extend this quarry further as nominated in 2020 for allocation in the Oxfordshire Minerals and Waste Local Plan Part 2 Site Allocations. It is anticipated that this will be submitted in late 2021/ early 2022. This will provide Tuckwells with sufficient mineral while the ROMP Application is being determined.
7. The update goes on to suggest that in considering how best to advise the Planning Committee in considering pursuing the Prohibition Order, it is respectfully requested that consideration is given to the following past chain of events:
- This is the second attempt at service of a Prohibition Order. The first was quashed in 2014 by the Secretary of State who also awarded full costs against the County Council;
 - The current decision to serve a Prohibition Order was made at the meeting in September 2019. At this time, tangible evidence was provided of ongoing works by the agent who was acting for J. Curtis & Son's Ltd. It is understood that the agent provided this evidence in writing and presented it the Committee meeting. This evidence was disregarded. In contrast, the Prohibition Order was supported even though the recommendation was based on conjecture without any objective supporting evidence;
 - The agent provided further evidence to the Committee meeting in January 2020. This was also disregarded and the decision to progress with the Prohibition Order was again made without any objective supporting evidence;
 - The County Council's arguments for progressing with the Prohibition Order were assessed in May 2020 by legal Counsel who advised the agent that they considered that the Prohibition Order could not be sustained if put to the Secretary of State at another inquiry;
 - In September 2021, part of the justification for continuing with the Prohibition Order was to allow Planning Application Ref: MW.0075/20 to be determined. This argument is flawed, as the ROMP can be worked without Tuckwells yard. The use of this yard is simply an environmentally preferable option to using the existing road access and yard arrangements. As a result, the determination of Planning Application

MW.0075/20 is not material to the ROMP, although it does show a genuine intention to extract minerals for the ROMP Area (as recognised by the Inspector in 2014);

- The current agent spoke at the September 2020 Committee meeting requesting that Prohibition Order should be quashed. The case presented was that sufficient evidence had already been provided, while there was no evidential basis to support the Prohibition Order. The agent highlighted that delaying a decision until March 2021 was '*kicking the can down the road*' at the expense of creating more ongoing uncertainty and costs for Curtis and Tuckwells; and
 - Regardless of the extensive evidence provided before the September 2020 Committee meeting, a decision was made not to rescind the Prohibition Order. At Tuckwells' further expense, this has resulted in this update and reports providing, again, evidence of the works to date towards the ROMP Application.
8. The evidence Tuckwells has provided to date clearly demonstrates that significant financial investment has, and continues to be, made in the ROMP Area as well as that spent on Planning Application MW.0075/20 to date. This investment has been made at a time when there is a significant economic downturn caused by the ongoing pandemic which may take many years to remedy.
 9. As a Mineral Planning Authority (MPA) the County Council has a duty to support sustainable mineral development and ensure a sufficient supply of aggregate in the County. This is what is being proposed at the Thrupp Lane ROMP.
 10. To achieve sustainable mineral development the MPA must work with and not against the Mineral Industry. In light of the positive planning approach required throughout the NPPF (2019) any further decision to continue with the Prohibition Order must, to be reasonable and therefore necessary, be based on tangible evidence.
 11. In light of the extensive cost and extent of the detailed evidence Tuckwells have provided to date, when compared against the complete lack of tangible evidence to support the Prohibition Order, the applicant is of the opinion that the County Council would not be acting reasonably by continuing to pursue the Prohibition Order.
 12. The agent therefore requests that the Committee supports Tuckwells and the sustainable supply of minerals from a site that already has planning permission by ending this ongoing uncertainty and unnecessary costs and make an evidence based decision to quash the Prohibition Order.

Other updates since the committee's meeting on 7 September 2020

13. As set out above, it has been identified that further ecological surveys need to be carried out to inform the decision making process for planning application no. MW.0075/20. The season for these will be April/May 2021. There will then

be a need for the results to be considered as to any points arising and then submitted to the Council for further consultation prior to determination. It is therefore anticipated that the application may not be reported to this committee for determination until its meeting on 19 July 2021. In the meantime, therefore, the Committee cannot give consideration to any comments made by any party on the planning merits of the application.

14. A request for a Screening Direction from the Secretary of State has been issued with regard to application no. MW.0075/20 which concluded that the application is not EIA development, contrary to the council's own Screening Opinion. An Environmental Statement is not, therefore, required to be produced to accompany the application.

15. Since the Committee's meeting in September 2020, an appeal against the refusal of planning permission for the further temporary use of the buildings in the area known as the Curtis's Yard, which is in the northern part of the ROMP permissions area (Area DD2), has been heard and allowed by an inspector appointed by the Secretary of State. Temporary planning permission was granted on 18 November 2020 subject to two conditions:

1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this decision.

2) The premises shall be used for purposes within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

16. Whilst it was not a matter for before the inspector to rule on the likelihood of further mineral extraction being carried out pursuant to the ROMP permissions, the inspector does reference a former condition attached to the mineral permission from 1954 which stated that:

All plant, buildings, foundations and machinery shall be removed from the site by the operator at such time as the Local Planning Authority, after consultation with the operator, is satisfied that they are no longer required for the purpose of working gravel.

As the committee is aware, the most recent conditions for the ROMP permission were approved by default in 2000. This condition is no longer included.

The relevant condition is now condition 2 which states:

The development shall cease no later than 21 February 2042 and restoration shall be completed by 21 February 2043, and all buildings, plant and equipment associated with this development shall be removed by 21 February unless otherwise agreed with the MPA.

However, the implication is that the inspector was of the view that the County Council as Mineral Planning Authority could pursue the removal of the

buildings with the operator when they were no longer required for the purposes of working gravel. The mechanism to now achieve their earlier removal would be the service of the Prohibition Order, albeit that that would, as previously be advised, not have effect until confirmed by the Secretary of State

17. Radley Parish Council has also provided further comments which are appended as Annex 6 and summarised as follows:

- i) No gravel has been extracted from the ROMP area (i.e. the area covered by planning permissions DD1 and DD2) since about 2000.
- ii) The applicants have for many years professed an intention to resume extraction but have never done so.
- iii) This appears to be tactical, designed to prolong the life of other industrial uses which would otherwise be refused planning permission.
- iv) 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
- v) 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.
- vi) There remains therefore a legal duty for OCC to proceed with their proposed prohibition order.
- vii) If OCC are uncertain about this for the whole ROMP area they should anyway proceed with a prohibition order for the part of the area lying to the north of the disused branch rail line. The case here is incontrovertible.

18. The Parish Council accepts that the decision on whether to proceed with the Prohibition Order must be based on specific legal grounds. However, they reference two specific items of new information since the committee's meeting in September 2020:

19. **i)The Radley Lakes Masterplan**

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

A masterplan is being prepared for the future of the Lakes area so its 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.

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 John Curtis and Sons Ltd (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 time 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.

20. **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.

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 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 mineral 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 to make appropriate planning decisions for the future of this area of high local importance.

Discussion

21. 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 2019. At that time, the committee did not have before it any new information

with regard to the intentions of the operator/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 at the committee's meeting on 7th September 2020 was considered to be materially different as the application for the conveyor and related development had been submitted and was out for consultation and would come before this committee for determination in due course. Further information had also 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 was also provided.

22. As resolved at the Committee meeting on 7 September 2020, the agent for H. Tuckwell and Sons Ltd has provided an update on the progress made with the work to inform the ROMP permission application and Environmental Statement, and examples of some of the work carried out have been provided as documentary evidence for example records of the winter bird survey. It is therefore the case that the committee now has before it additional evidence which supports the contention that the application is now being progressed. Radley Parish Council has also provided further representations as set out above and appended to this report casting continued doubt over the likelihood of the application being progressed, the ongoing uncertainty that the situation sets for good planning and the future of the area including the development of the Radley Lakes Masterplan and advocating that the County Council continue with its duty to serve the Prohibition Order. Amongst the points made by the Parish Council is the possibility of the council considering a partial Prohibition Order for the area to the north of the disused railway line, this being part of the DD2 permission area where the Curtis's Yard is situated which was the subject of the recent appeal decision.
23. As the Committee has been previously advised, the Secretary of State would need to take into account the updated information provided since the committee meeting on 7th September 2020 in deciding whether or not to confirm the Prohibition Order if it were to now be served further to the committee's resolution of 9th 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 necessarily take into account information that wasn't before the Council at the time the Council made that decision.
24. As also previously advised, 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 keep under 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.

25. If it is considered that the evidence provided does support the position that work is now being progressed towards the submission of the ROMP conditions application and accompanying Environmental Statement then the committee could take the view as advocated on behalf of H. Tuckwell and Sons Ltd that the evidence now before it is that mineral working has not permanently ceased and that it should rescind its decision to serve the Prohibition Order. Alternatively, the committee could take the view that the evidence provided supports that progress has been made towards such a submission but that it remains unconvinced that that is not yet sufficient to change its position that mineral working has permanently ceased. In the latter situation, the committee could then decide to proceed with the service of the Prohibition Order. However, it could alternatively decide to continue to hold the service of the Prohibition Order in abeyance pending a further update at a later committee meeting.
26. As set out in the report to the committee on 7 September 2020, the application for the conveyor and associated development (MW.0075/20) is also a material consideration in the committee's deliberations. The extraction of mineral from the ROMP permission area is not dependent on permission being granted for this application but they are clearly related and it is material to the Council's assessment of whether or not mineral working pursuant to the ROMP permissions has permanently ceased. This will not now come to this committee for determination earlier than its meeting on 19 July 2021 due to the need for further ecology surveys to be carried out in the spring/early summer. It would then seem appropriate for the committee to consider continuing to hold the service of the Prohibition Order in abeyance pending the determination of that application
27. The Committee is reminded as previously 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. The owner/operator is cooperating with the Council in providing additional information, which is not behaviour that can be characterised as unreasonable.
28. An issue which has not been considered previously is whether a partial Prohibition Order could be made i.e. only over part of the site. The suggestion from Radley Parish Council is that such a partial service could be carried out over the land to the north of the disused railway line. This includes the area known as Curtis's Yard where the buildings are located where the temporary planning permission for their continued use of the buildings for a further five years was granted on appeal as set out in paragraphs 15 and 16.
29. Officers have previously advised the committee 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.

30. It does seem to be the case that there is no contention that there are any remaining workable mineral reserves in the land to the north of the disused railway line and that on that basis mineral working in this area of ROMP permission area DD2 has permanently ceased. The work carried out to date on behalf of H. Tuckwell and Sons Ltd does appear to relate to the area where there are known to be remaining mineral reserves to the south of the disused railway line. It is therefore recommended that if the committee is minded to resolve to continue to hold the service of the Prohibition Order in abeyance pending a further update report on the ROMP application submission and the determination of application no. MW.0075/20, it also resolve that officers investigate the possibility of the service of a partial Prohibition Order and advise the committee further on this at the same committee meeting. It should though be considered that the implication of serving of a partial Prohibition Order would be that the committee considers that mineral working may not have permanently ceased in the remaining area of the ROMP permissions area.

Financial Implications

30. Not applicable as the financial interests of the County Council are not relevant to the determination of planning applications.

Legal Implications

31. The legal implications of the decisions available to the committee are considered in the report.

Comments checked by:

Jennifer Crouch, Principal Solicitor (Environmental) (Legal)

Equality & Inclusion Implications

32. In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between different groups. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

Conclusion

31. It is considered that the update and documentary evidence provided does support the contention that work is being progressed on the submission of the ROMP permissions application submission and associated Environmental

Statement. At this time however, it is not considered that this is sufficient for the committee to change its decision that mineral working has permanently ceased.

32. It is therefore recommended that the committee continue to hold the service of the Prohibition Order in abeyance pending the determination of application no. MW.0075/20 and a further 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 19 July 2021. It is also recommended that the committee instruct officers to investigate whether it is possible to serve a partial Prohibition Order should it be concluded that mineral working has permanently ceased over only part of the ROMP permission areas.

Recommendation

It is RECOMMENDED that:

- A) 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 and Regulation Committee on 19th July 2021.**
- B) Officers are instructed to investigate whether it is possible to serve a partial Prohibition Order should it be concluded that mineral working has permanently ceased over part but not all of the ROMP permission areas DD1 and DD2**

RACHEL WILEMAN

Assistant Director for Strategic Infrastructure and Planning

Annexes:

Annex 1 – Report to Planning and Regulation Committee
7th September 2020

PN6

Annex 2 – Update from agent for H Tuckwell and Sons Ltd

Annex 3 – AD Ecology report and survey update

Annex 4 - Hafren Water report and survey update

Annex 5 – BCL Consultants report and survey update

Annex 6 – Radley Parish Council further representations

Background papers:

Nil (All annexes available to view on the County Council's Planning and Regulation committee and application websites (MW.0023/21).

February 2021