

PLANNING & REGULATION COMMITTEE

MINUTES of the meeting held on Monday, 6 September 2021 commencing at 2.00 pm and finishing at 4.57 pm

Present:

Voting Members: Councillor Geoff Saul – in the Chair

Councillor Richard Webber (Deputy Chair)
Councillor Judy Roberts
Councillor Robin Bennett
Councillor Felix Bloomfield
Councillor Yvonne Constance OBE
Councillor Imade Edosomwan
Councillor Mohamed Fadlalla
Councillor Stefan Gawrysiak
Councillor David Rouane
Councillor Les Sibley
Councillor Ian Snowdon

Other Members in Attendance: Councillor Bob Johnston (for Agenda Item 6 and 7)

Officers:

Whole of meeting G. Warrington and J. Crouch (Law & Governance); D. Periam (Strategic Infrastructure and Planning)

Part of meeting

Agenda Item	Officer Attending
8	N. Richmond (Strategic Infrastructure and Planning)

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, together with a schedule of addenda tabled at the meeting and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda, reports and schedule, copies of which are attached to the signed Minutes.

18/21 **DECLARATIONS OF INTEREST - SEE GUIDANCE NOTE OPPOSITE** (Agenda No. 2)

With regard to Items 6 and 7 Councillor Constance advised that although she had previously chaired meetings of the Minerals and Waste Cabinet Advisory Committee she had no individual knowledge of either item prior to reading the officer report and therefore intended to participate in discussion and voting on both items.

19/21 MINUTES
(Agenda No. 3)

The minutes of the meetings held on 19 April 2021 and 18 May 2021 were approved and signed.

20/21 PETITIONS AND PUBLIC ADDRESS
(Agenda No. 4)

<i>Speaker</i>	<i>Item</i>
Roger Thomas Richard Dudding County Councillor Bob Johnston Nick Dunn James Lodge)) 6. Serving of the Prohibition Order) (ROMP) at Thrupp Farm and) Thrupp Lane, Radley)
Roger Thomas Richard Dudding County Councillor Bob Johnston Nick Dunn James Lodge)) 7. Application No. MW.0075/20 –) Thrupp Lane, Radley))

21/21 SERVING OF THE PROHIBITION ORDER FOR THE REVIEW OF THE MINERAL PLANNING PERMISSION (ROMP) AT THRUPP FARM AND THRUPP LANE, RADLEY
(Agenda No. 6)

As resolved at the meeting of the Planning and Regulation Committee on 8th March 2021, the Committee now considered a report (PN6) providing an update on progress with regard to the work on the application and Environmental Statement for the review of conditions for the ROMP areas DD1 and DD2.

Having presented the report Mr Periam confirmed that be understood a partial order could be served.

Speaking on behalf the Friends of Radley Lakes Roger Thomas advised that although members of the Committee had received a number of detailed papers about this item which all looked very complicated and technical it was in fact very simple. The Radley ROMP site was covered by a number of separate mineral planning permissions, granted at different times between 1954 and 1992. Those different areas had different histories with some worked out many years ago, but never

restored and others, where extraction had yet to even start - such as the Nyatt site, which was the subject of Item 7 on this agenda. Radley Parish Council was asking that a Prohibition Order be served on just two of these old permissions where extraction in both areas had been completed by 1979 at the latest. One had then been filled with waste but never properly restored and so a Prohibition Order would clarify the planning position and enable the County Council to require timely restoration.

The County Council's position was that a Prohibition Order could not be served on only part of a ROMP site whereas Government guidance said exactly the opposite and indeed went on to say that in some circumstances, probably including this one, there was a statutory duty on the authority to serve an order covering only part of a ROMP site. Obviously there had been some kind of misunderstanding over the legal position and he had hoped to have been able to discuss this with county officers before this meeting, but that hadn't been possible. The Committee obviously would not want to ask officers to do anything which wasn't supportable in law, so in his opinion there were two possible ways forward. One to amend its resolution so that the Council's intention to serve a Prohibition Order on areas where future extraction was planned was revoked, while maintaining that intention to serve on the two areas where extraction had definitely ceased. The other approach would be to defer a decision to allow time for discussion between officers and interested parties in order to resolve apparently conflicting views of the legal position. This all mattered because if a Prohibition Order was not served on the land which he had referred to above then restoration of those areas might not take place until 2043 - around 65 years after the completion of extraction and that quite simply was not how mineral planning was supposed to work.

Councillor Constance asked Mr Thomas to clarify the emphasis he had made regarding cessation of work in those 2 areas in 1979 and that the County Council would be able to make a prohibition order on those 2 areas whereas our advice was that the EIA would not be capable of being assessed.

Mr Thomas replied that it was not clear to him that the EIA for the Nyatts site was intended to cover those areas and he was not aware of plans to extend that assessment over areas of land they had no interest in.

Mr Periam added that officers had been advised of work being undertaken by the operator for the submission of the application for the review of conditions. However, that in itself was not a submission but an indication that they were doing some work and it was impossible to say what would eventually be put forward until an application had been received although the expectation was that everything in the relevant areas would be included.

Richard Dudding spoke on behalf of Radley Parish Council whose position remained as in its submission of 6 July namely that a prohibition order should not be made for most of the ROMP area but that an order should be made for the north-western part of the area. Where minerals remained that would enable extraction to proceed with suitable modern conditions and where minerals were exhausted and had been now for 40 years enable that land to be restored and future uses decided on their merits. That outcome was not just desirable but sound in law. Officers had still not looked

properly at this solution and their current advice did not address the points put forward by Radley Parish Council but relied on a counsel's opinion, which the Parish Council believed to be unsound. In their view the advice did not correctly describe the statutory tests for a prohibition order to be made; did not correctly assess the facts to see whether those tests had been met and did not report what had been said to Parliament about the purpose of the legislation. The key points about that legislation were that it did not require a prohibition to cover the whole of a ROMP area but quite deliberately allowed a partial approach, to cater for a ROMP area with split control and circumstances and created a duty to make a prohibition order where the statutory test was met, not just a power. This was to avoid blight through inaction.

Circumstances now before the Committee were that the ROMP area was in split control, with good progress towards a ROMP application in one part but not in the other. The latter part clearly met the statutory test for a prohibition order, having no remaining minerals and no evidence of mineral activity resuming. The land could easily be delineated and that there would be continued blight if no action was taken. It was quite clear to them that there was a duty to serve a prohibition order for this part of the ROMP area and they urged the Committee not to make a decision today based on the advice submitted as they considered that to be unsound but instead resolve to proceed with a prohibition order for the north-western area alone or defer a decision pending further advice. If the latter course was decided upon then the parish council would consider commissioning its own counsel's opinion.

Responding to Councillor Bennett Mr Dudding advised that although the county council had been impressed by the evidence submitted in support of the studies undertaken it was quite clear from, for example, the bird survey that clearly none of it related to the north west area.

Councillor Johnston speaking as local member stated that he had been involved with this site since 1982 during which time the area had been blighted. Having regard to the officer report and the comments from the earlier speakers, which he endorsed he considered safest thing to do was defer a decision in order to resolve the legal issues.

Officers confirmed that if a decision was taken to defer then the County Council would need to decide if another legal opinion might be required.

Nick Dunn speaking on behalf of H Tuckwell and Sons reminded the Committee that this was the second attempt at serving a Prohibition Order on the Thrupp Farm ROMP the first having been quashed in 2014 by the Secretary of State who had awarded full costs against Oxfordshire County Council. As detailed in the current Committee Report, Tuckwells had made significant financial investments in the ROMP, at the cost of tens of thousands of pounds and would continue to make further significant investments over the coming months, to deliver a ROMP Application and Environmental Impact Assessment.

The key legal test to quash the Prohibition Order was that if 'evidence of a genuine intention to extract minerals for the ROMP' had been provided. It was clear from the Committee Report that your Planning Officer and legal advisor had recognised that this legal test had been met and with no legal justification for the Order they

welcomed the officer recommendation for its revocation. In considering that recommendation the summary of your Council's legal opinion in Paragraph 21 of the Committee Report was key. That advice did not support a full or partial Prohibition Order and recognises that the Secretary of State would almost certainly refuse to confirm the Prohibition Order, in the light of the evidence provided with a significant risk of costs being awarded against the Council should the Prohibition Order proceed. That advice echoed a Legal Opinion sought by Tuckwells which had been provided to your Officers. Pursuing the Prohibition Order had resulted in 2 years of uncertainty and extra costs for Tuckwells, at a time when they have been making significant financial investments in the ROMP and so they were requesting that this ongoing uncertainty should end and an evidence-based decision made today to quash the Prohibition Order, as recommended by your officers.

Mr Dunn then responded to questions from:

Councillor Bennett – Tuckwells controlled the ROMP but there was recognition that because the ROMP was a whole area that restoration and management of the unrestored areas was a requirement of the ROMP. Tuckwells were lessees and John Curtis the owners. He agreed with the assessment that it was unlikely that no more mineral would be found in the north west area but if partial prohibition order were served that would sever access to the site which was why the application at Item 7 needed to be approved.

Councillor Gawrysiak – with regards to timing for a workable Romp application an EIA took time and ecology needed to be at least 2 years old in order to be viable. Furthermore, if a problem occurred as part of the process then that would need to be addressed. He hoped an application would be ready for submission by spring 2022 but if problems occurred then that might be delayed. The intention was to bring forward plans to include restoration of parts of the site that have not yet been restored with conditions attached to control what was done.

Councillor Roberts – he would not support a partial order on the north west area as the opportunity needed to be taken to deal with the site as a whole and by doing so provide regulatory control to ensure restoration of the whole area including the north west section but if the site were severed then that control might not be there. Permissions with attached conditions went with the land and requiring the landowner to comply so there would be a regulatory control that restoration would happen.

Councillor Constance – the ROMP would give the ability to control restoration of the whole site. Severance of the site could create an extra and unnecessary set of problems. The programme for submission was definite with a genuine intent to extract material.

James Lodge, the Managing Director at H Tuckwell and Sons advised that the Thrupp Farm ROMP area was owned by J. Curtis and Sons Ltd who previously worked the site and the reason for the issuing of the current Prohibition Order was a perceived inactivity by this Landowner to progress the ROMP. That, in fact, was incorrect as Tuckwells and the Landowner had been involved in a detailed negotiation to agree a legal contract. That contract had been agreed allowing

Tuckwells the sole right to work the remaining 1 million tonnes of sand and gravel and restore the land to lakes with biodiversity and amenity benefits. To achieve that Tuckwells needed to first submit the ROMP application to agree modern planning conditions - that application was being prepared. They had and continued to heavily invest in the ROMP Application with evidence of that provided to and accepted by County Council officers. It was clear to him and County officers that the legal test had been met as 'a genuine intention to extract the mineral' had been provided and as a result, there was no legal justification or mechanism by which this order could be pursued. In his view, the evidence provided was even stronger now than it had been in 2014 when the Prohibition Order had been quashed and costs awarded against the County Council. He asked that the Committee give due regard to the extensive works and investment Tuckwells had made in the ROMP Application; recognise that the legal test to quash the ROMP had been met; and so support your officer recommendations.

Mr Lodge confirmed the response from Mr Dunn regarding the suggested timetable for submission of the ROMP application. Regarding restoration of the ROMP area of extraction that would certainly be in his company's hands and capabilities. Regarding the rest of the area that would need to be the subject of further discussion between the landowner and us as operators but there would be a legal obligation to comply with restoration requirements for the site, which would need to be met by us or the landowner or both.

Responding to questions from members officers confirmed that a decision had been taken to secure a ROMP application which needed to deal with the whole area including Curtis' industrial yard. That application would include conditions requested by the applicant and conditions that the County Council would impose but it was not possible at this time to predict what those might be but restoration would be a requirement. Although it would be possible to apply a partial order our advice was that that would not be the best course of action. The Council made a decision or determination to consider the whole area as a single site under the 1995 Environmental Act but sitting alongside that were the 2017 EIA regulations which specifically related to ROMP applications and stated that should be treated as a whole site. The officer assessment had been that it needed to cover the whole site and severing the site presented risks and was not considered a sensible or reasonable approach. It was not possible to say what the operator would do if a partial order was served but it was likely that they would appeal.

Following a long debate it was **RESOLVED** (on a motion by Councillor Gawrysiak seconded by Councillor Constance and carried by 11 votes to 1) to defer a decision to the July 2022 meeting of the Committee with the expectation being that the operator would by that time have submitted a ROMP application accompanied by an Environmental Statement for the whole of the Radley ROMP permissions area.

22/21 USE OF THE EXISTING PROCESSING PLANT SITE TO PROCESS SAND AND GRAVEL FROM THE NEARBY 94 ACRE REVIEW OF OLD MINERAL PERMISSION (ROMP) SITE (REF: DD1 AND DD2), THE INSTALLATION OF A FIELD CONVEYOR SYSTEM TO THE SITE BOUNDARY AND ANCILLARY FACILITIES FOR THE TRANSPORTATION, STORAGE AND PROCESSING OF THE SAND AND GRAVEL AND THE USE OF AN EXISTING HAUL ROAD - THRUPP LANE, RADLEY, ABINGDON, OXON, OX14 3NG.- APPLICANT: H TUCKWELL AND SONS LTD - APPLICATION NO: MW.0075/20

(Agenda No. 7)

The Committee considered an application (PN7) setting out proposed use of the existing processing plant site to process sand and gravel from the nearby 94 acre Review of Old Mineral Permission (ROMP) site along with installation of a field conveyor system to the site boundary and ancillary facilities for the transportation, storage and processing of the sand and gravel and the use of the existing haul road.

Mr Periam presented the report.

Roger Thomas accepted that, if the Nyatt mineral was going to be extracted, then it would need to be processed but there were, though, some big unanswered questions about this application. Firstly, why was this permission needed now? Extraction wasn't planned to start until perhaps 2025 so why was this permission needed so far in advance? To an onlooker, it didn't make sense and the officer report did not help much in that regard. In due course, the Committee would be considering a ROMP application for modern planning conditions to cover the Nyatt extraction. That application had to be accompanied by an Environmental Statement covering all the environmental impacts of the Nyatt quarrying, including processing but, because the processing arrangements were being dealt with separately, they wouldn't be covered by the Statement which again made no sense. Oxfordshire County Council had requested an Environmental Statement for the present application, but as Tuckwell had successfully appealed that the environmental impacts of this application hadn't been fully assessed. Arrangements for extraction and processing were, in effect, a single operation so why were they being considered in isolation from each other? This was bound to cause problems as the conveyor only ran to the edge of Tuckwell's land so how would material be moved from the quarry to the start of the conveyor, a distance of around a kilometre? All this meant that it was impossible to see things in the round so how could the public be assured that, in terms of the environment and the community, this was the best option for processing? An Environmental Statement would have looked at alternatives but this application did not do that. If the decision was to grant permission then it should be made very clear that the permission was entirely without prejudice to future decisions on the best processing arrangements and all options for processing needed to be reviewed, once the full ROMP application for the quarrying and its Environmental Statement were available.

Speaking for Radley Parish Council Richard Dudding advised that if minerals were to be extracted in the ROMP area the Parish Council's view had always been that the Tuckwells yard would be the most suitable location for servicing the operations and processing the minerals once extracted. Nevertheless, they had concerns about the

application and a year ago had registered an objection to it. Since then there had been developments namely that it had become clearer that Tuckwells had a genuine intention to extract minerals at Nyatt. Secondly county officers have said that this application for processing should be determined now without waiting for the related application for extraction. The parish council still felt that was not the best approach as the two were inter-connected but needed to address the application as it stood today. Third, Tuckwells had indicated a willingness to work with the local community and the Radley Lakes Trust and although there was nothing in writing it was hoped they would confirm their intentions to do that in their statement to the Committee at this meeting. The parish council in particular hoped that they would confirm their intention to work co-operatively with the Radley Lakes Trust on implementation of the Radley Lakes Masterplan; build and manage their proposed bailey bridge and conveyor across the old disused railway spur in a manner which allowed safe pedestrian access along this much used historic path, which was of great importance to the masterplan and provide, as part of the site restoration, a new permissive path across their land from Thrupp Lane to the railway spur shortly before it joined the Byway Open to All Traffic. The Parish Council asked the Committee to satisfy itself on these three points and, if they resolved to grant permission, bind them into the approval documentation.

He then responded to questions from:

Councillor Bloomfield – if the application was not considered now then the likelihood was that an appeal would be submitted on grounds of non-determination.

Councillor Gawrysiak – protection of the existing footpath was vital in order to maintain safe access as this was a well walked footpath. The parish Council hoped that when the Tuckwell site was restored it would include a new permitted path which had been proposed some years before but there was now an opportunity to move that forward.

Councillor Bob Johnston endorsed the comments made by Richard Dudding adding that he couldn't see any reason to refuse the application but would like to see 2 additional conditions requiring wheelwash facilities and improved screening to be approved in writing between the applicants and the Planning Authority.

Nick Dunn for the applicants. Allowing access with plant to the ROMP Area with the ability to then transport mineral back by conveyor to Tuckwells yard at Thrupp Lane clearly provided an environmentally preferable option when compared to refusal of the application which would mean access to and from the site passing close to properties at Thrupp Farm and requiring the use of Thrupp Lane resulting in an unnecessary increase in noise and HGV movements and their associated emissions. That was clearly something which needed to be avoided if possible. Referring to some very late comments from a third party, principally on Newts, it was not clear to him from those comments whether the author had had sufficient training. He queried the methodology used in the surveys which they claimed to have done and asked why they had been undertaken in the first place. What was clear, however, was that this third party had accessed the land without consent from the Landowner whereas in contrast, the ecological assessments they had provided had been undertaken by two professional ecological consultants with a combined 60+ years' experience who

were both full Members of the Chartered Institute of Ecology and Environmental Management; Chartered Environmentalists and held protected species survey licenses, including that for Great Crested Newts and who had clearly detailed the standardised methodologies used.

Furthermore, the site had been visited this summer by the County Council's ecological advisor and a planning officer who had walked the site to assess the issues raised and these concerns had not been upheld. There had since been two further submissions, which continued to be contested by both your ecological advisors and the trained ecologists who undertook the surveys. In summary the Newts had been adequately surveyed and considered in the planning application. Nevertheless, as a failsafe, in the unlikely event that newts or other animals were found, Planning Conditions 13 would require that:

'a suitably Qualified Ecologist will be present prior to works commencing, to ensure that no animals are present. Should they be found, the Ecologist shall move them to a safe location.'

In light of the extensive specialist technical input into, and support, for this Planning Application and the protection offered by Condition 13 there was clearly no material technical reason to refuse or delay this application on ecological grounds and asked that the Committee take an evidence-based approach and support the officer recommendations, recognising the benefits this development would provide. In conclusion he thanked County officers and their advisors for the time and effort they had put into this application over the last 14 months.

He then responded to questions from:

Councillor Webber – a similar permission some eight years before had lapsed because no legal agreement had been secured. That had now been done evidencing the commitment of the company to the operation.

Councillor Gawrysiak – the request for conditions with regard to wheelwashing and screening as raised by Councillor Johnston were acceptable as was the S106 permissive path provision. Protection of the existing path would be required under quarry safety regulations.

Councillor Bennett – the application had been submitted now to allow it to be added to the EIA.

James Lodge for the applicants noted that the proposals sought to renew a planning application previously granted by OCC in 2012. That had lapsed before it was commenced but the only fundamental change was the inclusion of a bailey bridge but, unlike the 2012 Application, the current application had resulted in objection from some in the local community and so he had spoken to representatives of the Friends of Radley Lakes and Thrupp Lane residents and could now confirm that access on the Old Branch Line would not be severed. He was also in the process of purchasing the Old Branch Line and was discussing provision of a car park, as proposed in the Radley Lakes Masterplan with the local community. He recognised the importance of the Old Branch Line, which was why he had proposed a permissive path to join

Thrupp Lane when the site was restored. He was in regular and positive discussion about the management of restored areas as they arose and had opened discussions about restoration of the ROMP area and how that could be incorporated into the Radley Master Plan and had discussed with those residents living closest to the ROMP Area about the need to avoid HGVs passing their properties and as a result their support for the Application. He was confident that he had addressed objections raised by the local community and would continue to do so going forward to maximize the ecological and amenity benefits from his land and the ROMP Area and help deliver the vision of the Radley Lakes Master Plan. He also thanked officers and their advisors for their work on this application and urged the Committee to support their recommendation.

RESOLVED: (on a motion by Councillor Webber, seconded by Councillor Gawrysiak and amended with their consent by Councillor Roberts and carried unanimously) that subject to the applicant first entering into a section 106 agreement for the provision of a permissive path to provide a link between Thrupp Lane and the disused railway line as part of the restoration of the site that planning application no. MW.0075/20 be APPROVED subject to conditions to be determined by the Assistant Director for Strategic Infrastructure and Planning to include those set out in Annex 1 to the report PN7 subject to additional conditions and informative to secure:

- Provision of wheelwashing facilities;
- Details of screening for the site to be submitted for prior approval (amendment to Condition 10);
- The period for commencing the development be reduced from 5 years to 3 (amendment to Condition 2);
- Informative that Tuckwells work co-operatively with the Radley Lakes Trust on implementation of the Radley Lakes Masterplan.

23/21 PROGRESS REPORT ON MINERALS AND WASTE SITE MONITORING AND ENFORCEMENT

(Agenda No. 8)

The Committee considered a report (PN8) on the regular monitoring of minerals and waste planning permissions for the financial year 1st April 2020 to 31st March 2021 and on progress with regard to enforcement cases.

Neal Richmond presented the report together with a detailed résumé of the work of the enforcement team.

RESOLVED: that the Schedule of Compliance Monitoring Visits set out at Annex 1 to the report PN8 and the Schedule of Enforcement Cases at Annex 2 also to PN8 be noted

..... in the Chair

Date of signing

