

Further Addendum – Planning and Regulation Committee 23rd February 2026

Land at Thrupp Farm, Radley MW.0041/23

1. A further letter from letter from Taylor Wessing solicitors on behalf of a local resident was received on 12th February 2026 and is set out in Appendix 1 (copied previous letters are already included in the published Addendum to the committee report). Further e-mails have also been received by officers questioning the legal advice given by officers as informed by Counsel. The fundamental legal point being queried is with regard to whether the ROMP permissions DD1 and DD2 had ceased to have effect because no specific agreed extension of time for making the submission was received within a year of the service of notice of review of the conditions i.e. by 1st November 2016. If the permissions had ceased to have effect then there would no longer be any position for the council to consider the submission for the determination of conditions.
2. In the Addendum published with the committee papers, officers have referenced that whilst the membership of the committee has changed with the passage of time, at the meeting of the Planning and Regulation Committee on 18th July 2022, a report with regard to the Radley ROMP was considered. Paragraphs 32 and 33 of that report addressed the concern raised that the planning permissions DD1 and DD2 had ceased to have effect. Counsel's advice was obtained at that time on this point which informed the Officer report. Paragraphs 32 and 33 of that report are produced below:

32. Subsequent to the meeting on 6th September 2021, officers received representations from a member of the public drawing their attention to a ROMP site in North Lincolnshire. In this case, the court refused to include a site on the official list of ROMP sites after the date for inclusion expired because of the strict wording in the relevant legislation. The wording referred to stated that a planning permission not included in the first list shall "cease to have effect" on the day following the last date that an application may be made and there is no provision in statute to extend that date. The member of the public queried whether this similarly applied to the rules relating to submission of a ROMP Application, which states that where a ROMP review is underway, then the mineral permission shall cease to have effect on the day following the review date or on such later agreed date as may be agreed at any time in writing. As the review process allows for the postponement of the submission date to any date and at any point in the process, and as the Council has been and is in discussion with the developer as regards submission of the ROMP Application, members are advised that the strict regime referred to in the North Lincolnshire case does not apply.

33. However, the terms of the relevant statute are such that it is advisable to formally agree an extension to a specified date. This does not preclude the Council from extending that date in the future, but does make the position as to the making and accepting a ROMP application clear.

3. As set out in the published Addendum, the Resolution of the committee meeting on 18th July 2022 included that Officers seek to agree a date with H. Tuckwell and Sons Ltd. by which a ROMP Application would be submitted. In subsequent correspondence, the agent for H. Tuckwell and Sons Ltd. agreed to submit the ROMP application by 28th February 2023. The valid submission was received on 22nd February 2023.
4. The Counsel Opinion provided to the council in July 2022 which informed the officer advice to that committee meeting and so the committee's decision is set out in Appendix 2 along with the subsequent advice provided by exchange of e-mail with Counsel with regard to the more recent point raised with regard to the Vattenfall case which is

referenced in the original Addendum to the 19th January committee meeting and the more recent published Addendum.

5. It is clear that there is a difference of legal opinion between that provided by Counsel to the council and supported by your officers and that provided by third parties. It is not unusual for there to be contrary legal opinions provided with regard to Town and Country Planning matters. Such differences of legal opinion can arise when the law is open to interpretation. A definitive position is only likely to be reached should any party, the applicant or other party with an interest in the land or a third party, seek to challenge any decision the council takes on the ROMP application in the courts. It has been suggested by Taylor Wessing that a further counsel opinion be sought on whether the council has the jurisdiction to determine the ROMP application prior to the committee considering the officer report and its recommendation.
6. The option to defer consideration of the officer report for such a further legal opinion from Counsel is one that the committee can consider and the officer advice is that it is open to the committee to do having considered the legal points raised. A further counsel opinion would still be an opinion and no more a definitive position in law than that provided by the council's existing Counsel, that provided by Taylor Wessing or any other third party. The officer advice remains however that the Counsel opinion provided to the council has been provided by a barrister who specialises in environmental and planning law, her opinion is clear in the matter and the committee can reasonably rely on her advice in order to proceed to consider the officer report and its Recommendation. Should the committee defer consideration for further counsel opinion to be sought, there would be additional cost to the council and, whilst Taylor Wessing on behalf of their client have offered to fund this, this would not be appropriate any more than it would for it to be funded by the applicant or other party with an interest in the application site.
7. The applicant has the option of appealing against non-determination of the application and this will remain should the matter be deferred in order to seek further counsel opinion or for any other reason. The work associated with an appeal would incur further cost to the council and there would always be a possibility that the applicant or other third party may seek costs if the council is considered to have acted unreasonably, although the officer advice is that to date the council has not done so and the council may equally seek costs on the same basis. Similarly, should any decision made by the council be challenged in the courts there would be a risk of costs being awarded against the council but equally the council may successfully be awarded costs itself.
8. Taylor Wessing also raise concern with regard to that, if the committee proceeds to accept the officer Recommendation and refers the application to the Secretary of State for consideration of call-in for their own determination, the Secretary of State would be unlikely to call the application in and that officers should provide more advice to the committee. They refer to previous guidance provided in Minerals Planning Guidance 14: Environment Act 1995: review of mineral planning permissions as advising that the Secretary of State's call-in powers are used "sparingly". In other cases, such powers have typically been exercised in relation to planning applications which, for example: conflict with national policy; have effects beyond the immediate locality; give rise to national controversy; or involve interests of national security. They go on to state that whilst the ROMP Application is of significant local importance, it is not clear from the Committee Report how it would have effects that go beyond the immediate locality or otherwise meet the generally high threshold for call-in.
9. Whilst officers do not dispute the general pertinence of the above advice, MPG14 was in fact withdrawn as planning practice guidance on 7th March 2014 and replaced by the on-line planning practice guidance. The current planning practice guidance does not contain similar advice specifically in relation to ROMP applications. The planning practice guidance does contain general advice with regard to the call-in of planning applications

and the circumstances in which planning applications should be referred to the Secretary of State pursuant to the Town and Country Planning (Consultation) (England) Direction 2024. This applies to planning applications but does not reference being applicable to ROMP applications. The planning practice guidance goes on to say that the Direction is separate from, and does not affect or prejudice, the Secretary of State's general power under section 77 of the Town and Country Planning Act 1990 to direct that any particular planning application should be called in for determination by the Secretary of State.

10. There is then no specific guidance on the circumstances in which a ROMP application which is referred to the Secretary of State is likely to be called-in for their own determination. As set out in the committee report, the officer thinking behind recommending referral to the Secretary of State is that it seems that a circumstance exists with regard to this site which was not foreseen when the ROMP legislation came into effect in the 1990s and which similarly does not sit easily with the requirements placed on the Council by the ROMP legislation and the EIA Regulations. There is, in addition, a lack of legal authority on the correct interpretation of Schedule 14, paragraph 7. This lack of legal clarity is of significant national importance because of the legal consequences. Should the committee resolve to refer the ROMP application to the Secretary of State then the officer intention is that a covering letter would be provided with Counsel input to explain clearly to the Secretary of State the situation that pertains, that this is an unusual situation on which there is a lack of clear planning practice guidance and law as to how to proceed, and that in such a circumstance it does warrant the Secretary of State's consideration as to whether to intervene.
11. Finally, reference is made in paragraph 96 of the committee report that if the application were to be determined and it be concluded that the conditions restrict working rights and it be concluded that unreasonable prejudice will arise there would be a liability on the council as Mineral Planning Authority for compensation. The officer advice is that the scale of such compensation for a site containing an estimated one million tonnes of sand and gravel is likely to be of the order of several million pounds which would have to be met from the public purse and that this is a material consideration in the determination of the ROMP application.
12. As regards the use of the phrase "within time" as used in the addendum to the meeting of 19 January 2026, was effectively a 'short-hand' reference to a course of conduct by the Council that led it to determine that it could agree a date for submission of an application 'at any time' in accordance with Paragraph 7 of Schedule 14 and as set out in greater detail in the advice set out at Appendix 2 below.
13. The Council maintains that it is satisfied with the decision that was made in July 2022, but given the argument that has been forwarded by the objectors and on the basis that it is a point of national importance, a revised recommendation is proposed.
14. A revised recommendation is proposed

It is RECOMMENDED:

A That in the absence of there being a clear position in law to refuse the application to determine the conditions to which planning permission numbers DD1 and DD2 are to be subject due to an absence of authority on the effect of Schedule 14 paragraph 7 of the Environment Act 1995 and despite the significant adverse effect identified through the loss of irreplaceable and priority habitats, refer the application to the Secretary of State to consider whether to call the application in for their own determination;

B Should the Secretary of State decline to call the application in for their own determination, authorise the Director of Economy and Place to consider how to

proceed with the determination of the application including as appropriate consideration of the conditions set out in Annex 4 and provide a further report to the committee.

Appendix 1 – Taylor Wessing Letter

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Date
12 February 2026

Our reference
DEL108.U5/UJTb

Your reference
MW.0041/23

Representations on the ROMP application with the reference MW.0041/23 (for determination of conditions to which the mineral permissions will be subject relating to the land at Thrupp Farm, Radley, Abingdon, Oxfordshire) (the "ROMP Application")

Dear Mr Periam

1. Background

- 1.1 We act for the owner of the Wick Hall Estate, Radley, Abingdon, OX14 3NF (our "**Client**").
- 1.2 We write on behalf of our Client further to our letter of 18 January 2026 (our "**January Letter**"), which was submitted prior to the meeting of the Planning and Regulation Committee (the "**Committee**") on 19 January 2026. A report to the Committee was published in advance of that meeting (the "**Committee Report**"). Due to overrunning of the previous agenda item, consideration of the ROMP Application was postponed to the next meeting scheduled for Monday 23 February 2026 (the "**February Committee Meeting**").
- 1.3 Notwithstanding the representations made on behalf of our Client and others, there remains a fundamental question regarding the legal status of the mineral permissions which are the subject of the ROMP Application. We explained in our January Letter that these permissions appear to have ceased to have effect on 1 November 2016 in accordance with paragraph 7 of Schedule 14 to the Environment Act 1995 (the "**1995 Act**") and accordingly it is not open to the County Council to determine new conditions for these minerals permissions pursuant to the ROMP Application.
- 1.4 As the County Council is aware, paragraph 7 provides that where no ROMP application has been served by the review date (or by such later date as may at any time be agreed upon in writing between the applicant and the authority), the relevant mineral permission

shall cease to have effect (except insofar as it imposes any restoration or aftercare condition) on the day following the review date or later agreed date. In this case the review date was 31 October 2016.

1.5 Since our January Letter we have reviewed the Addenda to the Committee Report (the "**Addenda**") and have been provided with a copy of the legal opinion by Nina Pindham of No5 Chambers dated 1 July 2022. This additional information does not, in our view, resolve the fundamental question above but rather raises further questions. We understand that the County Council intends to take further legal advice and accordingly we set out below the questions we consider must be answered (and our view in relation to the same) in order for the County Council to reach a sound conclusion on how to proceed. We continue to urge the County Council to defer any further steps in relation to the ROMP Application until all such matters have been resolved in full.

2. Question 1: What was the status of the minerals permissions as at 1 November 2016?

2.1 Neither the County Council nor its legal advisors appear to have engaged with the question of the status of the minerals permissions **as at 1 November 2016**, this being the day after the review date. This is fundamental as, if appears to be the case, the minerals permissions ceased to have effect on this date then there would appear to be no legal basis for subsequently treating the minerals permissions as in effect and capable of being the subject of the ROMP Application.

2.2 We consider it clear that paragraph 7 of Sch 14 operated to bring the minerals permissions to an end on 1 November 2016 on the basis that on the review date:

(a) No ROMP application had been served on the County Council, with the ROMP Application in fact not being submitted until 26 January 2023.

(b) No later date for service of the ROMP application had been agreed between the County Council.

2.3 It follows from the above, applying paragraph 7, that the minerals permissions to which the ROMP Application relates ceased to have effect on 1 November 2016. Subject to our comments at paragraph 3 below, we do not consider that this point can be open to debate. However, it is essential that the County Council reaches its own definitive conclusion about the legal status of the mineral permissions as of 1 November 2016 to inform any decision on the ROMP Application. Failure to do so risks resulting in a fundamental legal error in the determination or otherwise of the ROMP Application. The question of whether the minerals permissions could subsequently be treated as being in effect is a separate matter which we consider at paragraph 4 below.

3. Question 2: Was an extension of time agreed before the review date?

3.1 We understand that no extension of time to submit a ROMP application was agreed between the applicant and the County Council before the review date of 31 October 2016, whether by reference to a specific future date for submission or generally.

3.2 This is apparent from the 1 July 2022 legal opinion of Nina Pindham which records that the County Council had reviewed all correspondence with the applicant and that the only relevant exchange identified was an email from the applicant to the Council on 1 December 2015 requesting an extension of time to submit a ROMP application, to which a Senior Planning Council Officer responded "*you are aware of the timetable for providing a ROMP*

application which is to 31st October 2016. Therefore, it is considered that there is sufficient time available for the Environmental Impact Assessment to be carried out and the submission made by the due date." This extract, if anything, appears to be a refusal of an extension of time and certainly cannot be read as agreement that a ROMP application could be served on a date later than 31 October 2016.

- 3.3 The absence of an agreement between the County Council and the applicant for an extension of time is also reflected in the officer's report to the 18 July 2022 meeting of the Committee which recommended that officers seek to agree a date with the applicant by which a ROMP application will be submitted – i.e. at this point some 5+ years after the review date no later date had been agreed.
- 3.4 We have reviewed various reports to the Committee concerning the minerals permissions dating back a number of years. While it is apparent that, from at least 2019-2020 onwards, there were discussions between the County Council and the applicant regarding the submission of a ROMP application (in the context of a potential prohibition order) we have not found any reference to an extension of time having been agreed between the applicant and the County Council prior to the review date such that, on 1 November 2016, the minerals permits would have remained in effect.
- 3.5 We have since our January Letter had the benefit of seeing the Addenda which states, for the first time so far as we are aware, that there is in fact correspondence between the applicant and the County Council within time (i.e. before the review date of 31 October 2016) pursuant to which it was agreed that a ROMP application may be submitted at a later date.
- 3.6 The Addenda does not provide any further detail regarding the correspondence. However, the existence of such an agreement appears to be inconsistent with both the understanding of the author of the 1 July 2022 legal opinion, on whose advice the County Council relies, and previous reports to the Committee. Given the significance of this point, we would urge the County Council to disclose the correspondence relied upon and report it to the Committee in full. A failure to do so risks misleading the Committee as to the factual position and, in turn, whether or not the minerals permissions remain in effect such that the ROMP Application can be entertained.

4. Question 3: Could an extension of time be agreed *after* the review date?

- 4.1 It appears from the 1 July 2022 legal opinion that the County Council has been advised that the minerals permits did not cease to have effect on 1 November 2016 on the basis that paragraph 7 provides that the County Council and the applicant may "at any time" agree that a ROMP application can be submitted at a later date. On this interpretation, the review date could pass without agreement that a ROMP application could be submitted at a later date and the County Council could subsequently – potentially years or decades following the review date – agree with the applicant that a ROMP application may be submitted.
- 4.2 We understand why this interpretation may be attractive given the phrase "at any time"; however, it fundamentally fails to engage with the status of the minerals permissions between the review date and the future date when an extension to submit a ROMP application is agreed. We consider paragraph 7 to be unambiguous that minerals permissions cease to have effect on the day after the review date where no later date to submit a ROMP application has been agreed. Having ceased to have effect, it cannot be possible to in the future agree a date for a ROMP application to be submitted, as the

minerals permissions that would have been the subject of such an application have been extinguished.

- 4.3 The County Council appears to have taken the position on 1 November 2016 that, rather than ceasing to have effect, the minerals permissions instead entered into a dormant state of some description but remained sufficiently "live" that they could be the subject of a future ROMP application if and when a later date for submission of such a ROMP application was agreed.
- 4.4 It appears that the County Council misinformed itself at this juncture and applied Regulation 54 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (which provides for a site to be put into suspension where a ROMP application has been submitted but without an environmental statement) rather than paragraph 7 of Schedule 14 to the 1995 Act (which as explained above provides that a minerals permission will cease to have effect where a ROMP application has not been submitted and no later date for submission has been agreed). This is reflected in the County Council's letter of 11 November 2016 advising the applicant of the "suspension" of the site.
- 4.5 The County Council's approach was incorrect in law as suspension was not possible in this case given that no ROMP application had been made. This is confirmed by the 1 July 2022 legal opinion with which, in this regard, we agree. However, rather than correcting this error, the County Council appears to have perpetuated the error by continuing on the basis that the minerals permissions were suspended or otherwise dormant (rather than no longer being in effect per paragraph 7) and accordingly were capable of being the subject of a future ROMP application.
- 4.6 It appears to us that the County Council's approach is unsound. The 1995 Act does not provide any statutory mechanism to suspend or make dormant a minerals permission when paragraph 7 of Schedule 14 is engaged. Nor does it provide any statutory mechanism to subsequently "revive" a minerals permission which has ceased to have effect, whether through agreement at a later date that a ROMP application may be submitted or otherwise. We do not believe that that such a mechanism can be read into paragraph 7, which is clear that a minerals permit will cease to have effect on the day after the review date where no ROMP application has been submitted or later date for submission agreed.
- 4.7 In our view, it would be absurd to read paragraph 7 in a manner which allowed for a later date for submission of a ROMP application to be agreed at any time at all, including after the review date. As noted in our January Letter, this would create widespread uncertainty for land use planning as it would allow minerals permissions which had been extinguished to be brought back into effect years or decades after the review date, in circumstances where extraction activities have long since ceased and the use or nature of the site has moved on. This is manifestly inconsistent with the "evident statutory purpose" of the 1995 Act as identified in *R v North Lincolnshire Council ex p. Horticultural and Garden Sales (Humberstone Ltd)* [1998] Env LR 295 which is that "there should be certainty and finality as to the sites enjoying mineral planning permission".
- 4.8 As explained in our January Letter, we consider that a more appropriate and reasonable interpretation of paragraph 7 is that a later date for submission of a ROMP application may be agreed at any time before the review date. This is consistent with the principle established in the Scottish case, *Vattenfall Wind Power Ltd v Scottish Ministers* [2009] CSIH 27, which found that any agreement to extend time must be made before the expiry of the prescribed period. This case concerned planning time periods and statutory

provisions which are materially similar to paragraph 7, including the reference to an extension which may "at any time be agreed".

- 4.9 The Addenda suggests that the County Council has since considered *Vattenfall* but concluded that it differs from the current case as in *Vattenfall* there was no planning permission in existence and so no property rights under consideration. We do not agree that there is a distinction as in the current case there is also no planning permission in existence, the minerals permissions in question having ceased to have effect on 1 November 2016. However, even if that were not the case, we consider that the principle in *Vattenfall* is at least persuasive, if not directly relevant, to applications under Sch 14 of the 1995 Act and we would urge the County Council to give it due consideration in taking further advice on whether an extension to submit the ROMP Application could be agreed after the review date.
- 5. Question 4: What is the status of the ROMP Application if the minerals permissions have ceased to have effect?**
- 5.1 If the County Council concludes that the mineral permissions have ceased to have effect, as we consider must be the case for the reasons above, the ROMP Application will become incapable of determination. We therefore recommend that the County Council should consider how to deal with the ROMP Application procedurally in such circumstances.
- 5.2 It is our view that the ROMP Application was likely never valid from the outset as the minerals permissions to which it purports to relate had ceased to exist. Local planning authorities have no discretion to determine planning applications which fail to comply with statutory validation requirements. Section 327A of the Town and Country Planning Act 1990 (the "**1990 Act**") provides that local planning authorities must not "entertain" an application that fails to comply with statutory requirements. Validity is therefore a matter of law, not discretion. We consider that this principle applies equally to applications to determine the conditions of a minerals permission under Sch 14 of the Act (in the same way as it applies to an application to amend or vary the conditions of an existing planning permission pursuant to the 1990 Act).
- 5.3 According to the Committee Report, the ROMP Application was validated on 22 February 2023. Given the statutory position that no invalid application can be entertained, we consider that an erroneous validation should be capable of reversal. This is a view shared by legal commentators.¹ This would result in the ROMP Application being invalidated and the application and associated fee being returned to the applicant.
- 5.4 The reversal of validation must be possible to give effect to the intention of the statute. If an application is validated but a procedural error or legal deficiency is later revealed, it must be open to the authority to correct that error. To allow a legal deficiency to persist just because validation has already occurred cannot be right. We are not aware of the County Council having taken any legal advice on the steps that should be taken if the ROMP Application is in fact invalid, despite concerns about its validity having been raised on behalf of our Client and in other third party representations. We would encourage the County Council to do so, as it may be that the most appropriate route is to simply reverse the validation and return the ROMP Application to the applicant.
- 5.5 The above approach may appear onerous but it does not mean that the applicant cannot continue to pursue its proposals for extraction activities at the ROMP Application site. Indeed, it is open to the applicant at any time to submit an application for planning

¹ See for example the following commentary: [Solid foundations: avoiding problems with registration and validation - No5 Barristers' Chambers](#)

permission for mining operations. Such an application could be informed by, and reuse where appropriate, the material already prepared by the applicant for the ROMP Application. As was the case in *R v North Lincolnshire County Council*, it would be open to the County Council to agree with the applicant, through a planning performance agreement or otherwise, the timescales within which any such application would be determined to provide the applicant with certainty that the process will be brought to a conclusion. This may well be the safest option for both the applicant and the County Council and appears to us to be a reasonable position to take, noting that the applicant was aware that the application was required to be submitted by 31 October 2016 and elected not to do so.

6. Question 5: Is there a realistic prospect of the ROMP Application being referred to the Secretary of State?

- 6.1 The Committee Report proceeds on the basis that there is an absence of a position in law to refuse the ROMP Application. It accordingly sets out the recommendation of officers in two parts: (i) to refer the ROMP Application to the Secretary of State for its consideration as to whether it will call in the application for determination; and (ii) should the Secretary of State decline to call in the application, to authorise the Director of Economy and Place to determine the conditions to which the minerals permissions will be subject which will not include conditions restricting development in areas of irreplaceable and priority habitats (the "**Recommendations**").
- 6.2 We are concerned that the Committee Report does not properly inform the Committee with regards to the legal position, noting that the finding there is no position in law to refuse the ROMP Application does not take into account the possibility that the ROMP Application was never valid and should be returned to the applicant for the reasons we outline above.
- 6.3 Even if that were not the case, we remain concerned that the Committee Report may erroneously lead the Committee to believe that referral to the Secretary of State is a panacea to both the County Council's reluctance to approve an "*unacceptable significant adverse effect...through the loss of irreplaceable and priority habitats*" and to the legal and procedural irregularities. The Committee Report presents referral to the Secretary of State as a reasonable basis on which to proceed, while failing to inform the Committee about matters such as the grounds on which the Secretary of State could call in the ROMP Application and, crucially, the likelihood of the Secretary of State exercising such powers.
- 6.4 The 'Minerals Planning Guidance 14: Environment Act 1995: review of mineral planning permissions' states at paragraph 66 that the Secretary of State's call-in powers are used "sparingly". In other cases, such powers have typically been exercised in relation to planning applications which, for example: conflict with national policy; have effects beyond the immediate locality; give rise to national controversy; or involve interests of national security. Whilst the ROMP Application is of significant local importance, it is not clear from the Committee Report how it would have effects that go beyond the immediate locality or otherwise meet the generally high threshold for call-in.
- 6.5 Further, should the Secretary of State decline to call in the ROMP Application, the Recommendations would require the Director of Economy and Place to determine the conditions, rather than referring the matter back to the Committee. To leave the Recommendations as they stand risks, in our opinion, amounting to a virtual determination of the ROMP Application. The combination of an unlikely call-in and automatic Director determination effectively removes meaningful Committee oversight of the final outcome. Accordingly, should the County Council reach a different view to us on whether the ROMP Application is valid and capable of determination, we suggest that the Committee Report is supplemented to ensure the Committee is properly advised of the realistic prospects of

call-in and to provide for the matter to be returned to the Committee in the event the ROMP Application is not called-in, should the Committee resolve this to be appropriate.

7. Next steps

- 7.1 We understand that the Committee will consider the same Committee Report and Recommendations at the February Committee Meeting as were prepared for last month's meeting.
- 7.2 This does not preclude officers from presenting updates by way of a further addenda to the Committee Report including on the legal issues raised in this letter. We would urge the County Council not to rush this process, but to ensure that the complex legal issues surrounding the ROMP Application are fully considered. It may well be appropriate and necessary for a decision on the ROMP Application to be deferred until full advice on the legal position can be put before the Committee to inform its decision making. Notwithstanding the existing Recommendations in the Committee Report, officers should ensure that it is made clear to the Committee that deferral is an option open to members and supported by officers (if that is the case).
- 7.3 We would also be grateful if this letter would be passed on to the Committee.

8. Conclusion

- 8.1 Failure to consider the fundamental legal issues which surround the ROMP Application exposes the County Council to avoidable challenge (by both the applicant and third parties) and associated costs. We urge the County Council to obtain comprehensive legal advice on the legal status of the ROMP Application before taking any further steps, including on the question of whether the ROMP Application should be treated as invalid and the applicant invited to submit a fresh application for planning permission for mining operations. It should be made expressly clear to the Committee that it is open to members to defer consideration of the ROMP Application until these matters have been resolved.
- 8.2 We trust that the County Council will give the legal issues the serious consideration they require and we should be grateful to receive a response to the questions posed in this letter. To the extent that we or our Client can be of any further assistance in resolving these matters please do not hesitate to contact Kate Little (K.Little@taylorwessing.com) and Emma Tait (E.Tait@taylorwessing.com) of this firm.

Yours sincerely



Taylor Wessing LLP

Enclosed

TWL to the County Council dated 18 January 2026

Appendix 2 – Counsel Advice to Oxfordshire County Council

Advice provided 1st July 2022

Introduction and Background

1. I am instructed by Ms Jennifer Crouch for and on behalf of the Director of Law & Governance of Oxfordshire County Council (“the Council”) in relation to the review of mineral permissions concerning two former minerals working sites (Radley – Thrupp Lane, and Radley – Thrupp Farm, collectively “the site”). Viable deposits of sand and gravel lie within the site and H. Tuckwell & Sons Ltd is presently in the process of putting together an environmental statement to accompany a ROMP application so as to work out the remainder of the deposits.
2. As I have previously advised on this matter, I do not propose to repeat any of the relevant background details here. It suffices to note the latest position, being the decision made at the Council’s Planning and Regulation Committee meeting of 6 September 2021 to defer a decision on whether to make a partial prohibition order over the parts of the site which were not going to be worked out to the July 2022 meeting of the Committee, with the expectation being that the operator would by that time have submitted the ROMP application accompanied by an environmental statement for the whole of the site. The date of the July meeting to which the decision is deferred is 18 July 2022.
3. Following this decision, officers received correspondence from the Parish Council and from one particular respondent, Mr Roger Thomas. Mr Thomas reviewed the case of R v North Lincolnshire Council ex p. Horticultural and Garden Sales (Humberside Ltd) [1998] Env LR 295 and argues that the effect of paragraph 12 of Schedule 13 of the Environment Act 1995 (“the 1995 Act”) (as applied in the case of North Lincolnshire) applies to the present situation under Schedule 14 of the 1995 Act. Despite the harshness of the outcome, the judge held (“with regret, but without hesitation”) in that case that the statute meant precisely what it said, and that the permission had been statutorily extinguished. Here the operator has not made an application as required within the statutory time limit. Thus, in his opinion the wording “ceases to have effect” in paragraph 7 of Schedule 14 means that the extant planning permission falls away.
4. For completeness, I note the process carried out by the Council (in accordance with Schedule 14) was as follows:

- (1) the review notice was served on 13 October 2015 setting out that the first review date was 31 October 2016.
- (2) the written reminder, which is required to be sent 4 weeks before the first review date was not served. I have previously advised that I do not consider that this was fatal to the process in light of all the circumstances and applicable case law.
- (3) A letter notifying the District Council and owners of the suspension of the site was sent on 11 November 2016.

5. Instructing solicitor's view is that Schedule 14 operates as follows:

- (1) Paragraph 4 allows the Council to serve a notice informing the operator of the date by which they have to submit a ROMP application (the Council has done this);
- (2) Paragraph 5 enables the operator to apply for that date to be postponed by up to 3 months (the operator has not done this);
- (3) Paragraph 6 sets out the 'rules' around making and determining a ROMP application;
- (4) Paragraph 7 set out what happens if a ROMP application is not made.

6. I highlighted a difference in relevant Schedules to the 1995 Act above. Instructing solicitors note the use of the words "or by such later date as may at any time be agreed upon in writing between the applicant and the authority" in paragraph 7 of Schedule 14 does not appear in paragraph 12 of Schedule 13. I pause here to confirm my view this means that, notwithstanding the statutory framework for extension of time in paragraph 5 of Schedule 14, the Council and operator are able to agree a later date for submission of a ROMP application "at any time". The consequences of this are dealt with below in my advice.

7. However, I am instructed that the Council has reviewed all of the correspondence with the operator and its advisers since 13 October 2015 and has not found anything that it is confident considers complies with either paragraphs 5 or 6 of Schedule 14 to the 1995 Act.

8. There was one email exchange that the Council considers warrants my opinion. This consists of an email exchange between the Council and John Salmon, the agent for the applicant. Mr Salmon emailed the Council on 1 December 2015 and in paragraph 6 asked for an extension of time: "Would you be willing to agree an extension of time to provide the ROMP conditions...". No date was actually proposed, and Kevin Broughton, Senior Planning Officer, responded for the Council: "you are aware of the timetable for providing a ROMP application which is to 31st October 2016. Therefore it is considered that there is sufficient time available for the Environmental Impact Assessment to be carried out and the submission made by the due date."

9. Accordingly, officers are of the view that a ROMP application has not been made and no extension of time has formally been agreed between the parties. I agree. I certainly do not consider this email correspondence would satisfy a court that it is an agreement to an extension in writing.
10. The question therefore becomes whether there is any other agreement in writing to delay submission, and particularly, whether the decision of the Committee might amount to an agreement in writing for paragraph 7 of Schedule 14, or whether there is any other reason why the courts would consider the permission cannot be said to be extinguished.
11. A final matter arises. Regulation 54 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”) puts a ROMP site into suspension where an environmental statement has not been submitted with a ROMP application. It is only once a site then remains in suspension for two years that the duty to make a prohibition order arises, but only where the authority is satisfied that the winning and working of minerals has permanently ceased. It appears to those instructing to say that suspension only applies where, as is set out in reg 54(1), the authority (or the Secretary of State or an inspector) is dealing with a ROMP application (or an appeal arising from a ROMP application).
12. In light of the above I am instructed to advise on the following:
 - a) The effect of paragraph 7 of Schedule 14 and does *North Lincolnshire* apply to the interpretation of paragraph 7;
 - b) Whether suspension under reg. 54 possible if no ROMP application has been made;
 - c) If I consider that the permissions DD1 and DD2 have ceased to have effect, or that *R V North Lincolnshire* is persuasive of the fact that this is the likely effect of Paragraph 7, advice is sought on what action the Council should take and what challenges might be faced;
 - d) Whether Mr Thomas’ interpretation is correct, that is, is it the case that the Council cannot now determine any ROMP application despite its public statement at P&R Committee that it intends to consider the ROMP application which the operator has said they intend to submit in June or July of this year;
 - e) Whether either the statements at P&R Committee or any of the correspondence supplied amount to an agreement in writing such that the effect of paragraph 7 is delayed, and if so, can Counsel confirm the date (for the purposes of that agreement in writing) by which she considers a ROMP application must be made;
 - f) If the effect of the *North Lincolnshire* is that paragraph 7 means that the permissions have ceased to have effect and no ROMP application may now be

lawfully made and determined (or that the application of Para 7 is delayed until a date agreed in writing for the submission of a ROMP application), the Council would propose that Counsel prepares a legal opinion to be given to the operator (in advance of the next committee meeting at which a decision is intended to be made), setting out the position and asking them for their opinion of the legal position;

- g) Should the Council decline to consider any ROMP application on the basis that as a result of Paragraph 7 the extant permission no longer exists, does the operator have any means of challenging the Council's decision other than via judicial review;
- h) If the Council accepts and determines a ROMP application, is the Council vulnerable to judicial review from an objector who considers that, as set out by Mr Thomas, the permission ceased to have effect when the first review date expired without submission of a ROMP application and that the Council had not power to determine a ROMP application from the operator;

Advice

13. I can be quite clear at the outset. The Council cannot declare that under paragraph 7 of Schedule 14 the permissions relating to the entire Radley ROMP site cease to have effect. There are a number of reasons for this which I deal with in more detail below. But the key point is this: the statute entitles the Council to agree an extended deadline to serve the application under paragraph 6 of Schedule 14 of any date at any time. That agreement can be made tomorrow with a deadline of ten years from now: the statute gives that much discretion to the Council. It need only be exercised in a Wednesbury rational manner.

14. The procedure here, as opposed to that in the North Lincolnshire case, was carried out under Schedule 14. The statutory language is materially different. It therefore follows that the case is of limited relevance, though I accept entirely Mr Thomas' point that the same language used in one part of a statute ought to be interpreted the same elsewhere in the statute unless the context indicates otherwise. He is absolutely correct. But the Council's decision has to be based on the relevant statutory language, applied to the relevant facts.

15. Starting with the statutory language, paragraph 7 of Schedule 14 states:

“Where no application under paragraph 6 above in respect of a mining site has been served on the mineral planning authority by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the authority, each mineral permission—

(a) relating to the site; and

(b) identified in the notice served in relation to the site under paragraph 4 above,

shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date.”

16. For completeness, in comparison, paragraph 12 of Schedule 13 says:

“A relevant planning permission which relates to a Phase I or II site not included in the first list shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which an application under sub-paragraph (1) of paragraph 6 above may be made in respect of that site”

17. Further, under paragraph 5 of Schedule 14 if, within the period of three months of the mineral planning authority having received an application under paragraph 5 (or within any agreed extended period), the authority have not given notice to the applicant of their decision on the application, the authority shall be treated as having agreed to the first review date being “postponed” to the date specified by the applicant in their submission (paragraph 5(5)). Paragraph 6(8) contains a provision to similar effect in relation to the conditions: the conditions specified in the application being proposed are given statutory effect if the authority does not determine the application in time.

18. There is no option to extend time in Schedule 13 and it has no relevance here. The two Schedules serve entirely different purposes. Schedule 13 operates as the imperative initial review of old mineral permissions, which would not be subject to modernised conditions. A strict regime was therefore accordingly imposed. Whereas Schedule 14 applies to any subsequent periodic review of permissions which have already been through the modernisation process. I therefore do not consider Schedule 13 further. Schedule 14 allows any minerals planning authority to agree an extended date “at any time...in writing”. There is nothing to stop the Council from writing to the applicant here and formally agreeing an extension to a specified date to make the application. That is advisable to put the matter beyond doubt, secure the Council’s position against a potential judicial review from objectors, and cease any further hares from running (on this matter at least). I make this suggestion because in my view as a matter of public law the applicant would have several grounds to challenge a decision by the Council to declare the permissions ceased to have effect. In making this statement I have taken into account that statutory language always applies irrespective of the behaviour, statements, or agreements made by any individual actors and irrespective of any perceived or actual unfairness that may arise. The law, as always, takes precedence.

19. In legal terms, a clear and obvious legitimate expectation has been raised that the Council has agreed an extension to submit the application in principle. So the full force of paragraph 7 does not yet apply because an extension exists, albeit there is no specified date. The reason I consider a clear deadline to that extension is required is because the statute states

that the agreement to extend is to be to “such later date as may at any time be agreed upon in writing between the applicant and the authority”. But the failure to specify a date is not fatal because the statute also says this agreement can be made at any time. As I said above, if agreement is forthcoming that time can be tomorrow or any date in the future.

20. There is a particular danger of legal challenge here as the law on legitimate expectations is continuously developing. This means the courts have historically applied the legal duty to ensure fairness whenever the established categories require expansion. Even now however, the settled law is clear on what would happen in these circumstances. The Council cannot, as a matter of law, in the circumstances declare that the permission ceases to have effect based on paragraph 7 of Schedule 14.
21. Where a clear and unambiguous undertaking (this does not mean a formal legal undertaking) has been made, the authority giving the undertaking will not be allowed to depart from it unless it is shown that it is fair to do so (Re Finucane’s application for judicial review [2019] UKSC 7 per Lord Kerr). Here the relevant undertaking is that the Council will entertain the ROMP application being progressed by the applicant. Prejudice is also a factor in determining whether a legitimate expectation has arisen, and here the extensive list of work the applicant has already carried out in relation to the environmental statement helpfully provided in my instructions proves beyond doubt that huge prejudice would be caused (not to mention the loss of valuable planning permission).
22. Those instructing also raised human rights considerations and I agree that there would potentially also be a breach of A1P1 of the ECHR (as enshrined domestically through the Human Rights Act 1998, “the 1998 Act”) and possibly Article 8. “Possessions” as used in A1P1 are not limited to physical goods (Gasus Dosier-und Fordertechnik GmbH v The Netherlands (1995) 20 EHRR 403) and will include the benefit of planning permission here in light of the lengthy case law on the meaning of “possessions”. Any interference with these rights must be “in the public interest”. The public interest here is, in my view, set out in national and local planning policy. That is to exploit the nation’s minerals wherever they are found provided that can be made acceptable as a matter of planning. I cannot see how declaring permission to be of no effect could be considered to be of benefit to the wider public. Finally on the human rights point, s.3 of the 1998 Act provides that all legislation must be must be read and given effect in a way which is compatible with the Convention rights so far as possible. This means the courts would read paragraph 7 in the applicant’s favour, as noted earlier by those instructing.

23. Turning to reg. 54 of the 2017 Regulations, this provides (so far as relevant):

“54.— Suspension of minerals development

(1) Where the authority, the Secretary of State or an inspector is dealing with a ROMP application or an appeal arising from a ROMP application and notifies the applicant or appellant, as the case may be, that—

(a) the submission of an environmental statement is required under regulation 11(1), 13(3) or 14(5), then such notification must specify the period within which the environmental statement and compliance with regulation 20(6) is required; or

(b) a statement should contain further information under regulation 25(1), then such notification must specify the period within which that information is to be provided.

(2) Subject to paragraph (3), the planning permission to which the ROMP application relates shall not authorise any minerals development

if the applicant or the appellant does not—

(a) write to the authority or Secretary of State within the 6 week or other period agreed pursuant to regulation 11(4), 13(6) or 14(7);

(b) submit an environmental statement and comply with regulation 20(6) within the period specified by the authority or the Secretary of State in accordance with paragraph (1) or within such extended period as is agreed in writing;

(c) provide additional information within the period specified by the authority, the Secretary of State or an inspector in accordance with paragraph (1) or within such extended period as is agreed in writing; or

(d) where a notification under regulation 6(5), 7(3), 15(3) or 16(3) has been received, provide the additional information requested within 3 weeks beginning with the date of the notification, or within such extended period as may be agreed in writing with the authority or Secretary of State, as the case may be.

(3) Where paragraph (2) applies, the planning permission shall not authorise any minerals development from the end of—

(a) the relevant 6 week or other period agreed in writing as referred to in paragraph (2)(a); and

(b) the period specified or agreed in writing as referred to in paragraph (2)(b), (c), and (d),

until the applicant has complied with all of the provisions referred to in paragraph (2) which are relevant to the application or appeal in question.”

24. ROMP application is defined in reg. 2 of the 2017 Regulations as:

“an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under—

(a) paragraph 2(2) of Schedule 2 (registration of old mining permissions) to the 1991 Act;

(b) paragraph 9(1) of Schedule 13 (review of old mineral planning permissions) to the 1995 Act; or

(c) paragraph 6(1) of Schedule 14 (periodic review of mineral planning permissions) to the 1995 Act.”

25. It follows that where there is no application to the Council to determine the conditions to which a planning permission is to be subject (as here under paragraph 6 of Schedule 14) reg. 54 is not triggered.

Conclusion

26. The effect of paragraph 7 of Schedule 14 means that the Council is entitled to agree an extension at any time (including now and in the future). If it does not agree to an extension, then paragraph 7 would be triggered.

27. North Lincolnshire applies to the interpretation of paragraph 7 insofar as the language should be read consistently across the entirety of the 1995 Act unless otherwise indicated.

28. Suspension under reg. 54 is not possible if no ROMP application has been made because the statutory wording is clear: "Where the authority, the Secretary of State or an inspector is dealing with a ROMP application or an appeal arising from a ROMP application". If there is no application, reg. 54 does not apply.

29. I do not consider the relevant permissions have ceased to have effect because the statutory language allows an applicant and authority to work out a bespoke timeline between themselves (quite unlike the regime at issue in North Lincolnshire). That said, a belt and braces approach warrants a clear and unambiguous confirmation in writing that an agreement to extend time for the submission of the ROMP application to a specified date exists between the Council and the applicant here.

30. It follows that the Council can determine the ROMP application in line with its public statement at Committee that it intends to consider the ROMP application that will be submitted.

31. I consider the statements at Committee (as recorded in the relevant documents) amount to a partial agreement such that the effect of paragraph 7 is put in abeyance. There is clearly an agreement, though the date (for the purposes of serving the application) has not been specified and there is nothing directly between the applicant and the Council which serves that purpose. To be clear, public statements, in writing, and a lengthy period of correspondence concerning an application, clearly indicate there is an agreement in place but it would put the matter beyond doubt if a simple agreement to submit the application by X date was put down in writing directly between the Council and the applicant.

32. The effect of North Lincolnshire is not that paragraph 7 means that the permissions have ceased to have effect and no ROMP application may now be lawfully made and determined. Schedule 14 allows for a far more flexible approach to be taken between the parties; that approach simply is not available under Schedule 13.
33. It follows that the Council cannot decline to consider any ROMP application on the basis of paragraph 7. If that happened the operator would have a large number of legitimate grounds of challenge to the Council's decision via judicial review.
34. To put the Council's acceptance and determination of the ROMP application beyond the scope of an application for judicial review from an objector, I advise a simple agreement be made as set out above.
35. I trust that I have addressed the question posed by those instructing. If I may be of any further assistance please do not hesitate to contact me in the usual way.

Advice provided 15th January 2026

Third Party Representation received on which Counsel Advice was sought:

REDACTED

15. January 2025

Dear David,

I write to you as the officer in charge of the Radley ROMP and copying in the Chair and Vice Chair of the Committee prior to the meeting

It is clear from your report that OCC officers feel that the ROMP application should not be approved, because of the level of ecological harm involved. I intend to address this issue on Monday at the committee meeting.

There are, however, also legal reasons why, on Monday, the application should be dismissed (or, more strictly, should not be entertained).

It has previously been suggested that the planning permissions in question "ceased to have effect" on 1 November 2016 in the light of the fact that no ROMP application at all had been submitted by the review date of 31 October 2016.

OCC took counsel's advice on this point, and was advised that the words "at any time" in para. 7, Sch. 14, Environment Act 1995, allowed OCC and the applicant to agree a new review date, even long after the original review date had passed.

We have received informal advice on this from an experienced planning counsel. As part of that, our attention has been drawn to the case of *Vattenfall* (2008). I attach a photocopy of a report on it. This is a Scottish case, but involves the same statutory language as is found in the English planning statutes. The case was about the time frame for lodging a planning appeal and it turned on the interpretation of the words:

"Within such period as may be prescribed by regulations or a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority."

The planning authority failed to make a decision within the prescribed period of four months. The applicant then had six months in which to lodge an appeal, but did not do so. Some significant time after the expiry of the six months, the applicant and the local authority made (or purported to make) an agreement in writing to extend the time within which a decision could be made. After the planning authority failed to make a decision in the extended period, the applicant then lodged the appeal, but this was rejected by Scottish Ministers as being out of time.

The court rejected the argument that an applicant and local planning authority can agree a new period for making a decision, when that agreement is made after the end of a period defined by law. This was despite the fact that the relevant statutory power to extend time could be exercised *at any time* (see paragraph 6). As one would expect, the right to appeal having arisen in 2004, it could not be appealed in 2008.

The parallels with the Radley ROMP are clear. If *Vattenfall* is right, it is clear that the mineral permissions which OCC is proposing to consider on Monday have ceased to have effect. The first review date was 31 October 2016. Para. 7, Sch. 14 says that, if no ROMP application is submitted by the review date or "by such later date as may be agreed [etc]" then the permission ceases to have effect on the following day. *Vattenfall* is clear authority for the proposition that any agreement to extend time must be made before the expiry of a prescribed period.

Your Counsel was apparently unaware of *Vattenfall* which accordingly was not considered in the advice; if *Vattenfall* is correct, the advice must be wrong.

It is not possible to extend the time for making a decision on a ROMP application when the old mineral permissions involved have already ceased to have effect. As one would expect, the mineral permissions having ceased to be of effect in 2016, they cannot be revived by an agreement to extend time in 2022.

Such an interpretation accords with both the purpose of the ROMP legislation (which was to bring 'certainty and finality' to the question of which sites enjoy mineral permission) and with logic. OCC's interpretation, if upheld, could lead to widespread uncertainty, because it opens up the possibility of long-dead mineral permissions being revived, simply by a mineral planning authority and an operator agreeing to a new review date, even many years after the original review has passed and the permission have lapsed.

This could give rise to all manner of undesirable consequences, such as mineral extraction being recommenced in locations where it is plainly inappropriate, because of changes in circumstance since the old permissions were extinguished for failure to submit a ROMP application in time.

This is, in fact, exactly, the position at the Radley ROMP. Since 2016, when the permissions lapsed, the ecological value of the proposed extraction area seems likely to have increased significantly, and awareness of the need to protect and maintain biodiversity has certainly grown substantially, including at the level of law and policy. The ROMP legislation is designed precisely to prevent the recommencement of extraction in such a situation.

In summary, OCC has no basis for proceeding to consider the ROMP applications on Monday. OCC needs to consider the implications of *Vattenfall* for what it proposes to do. In all the circumstances, we suggest that OCC should take further advice from a KC who is experienced in minerals planning, before proceeding any further.

Please let me know if you would like to discuss any of the above.

Yours sincerely,

Andrew Coker

REDACTED

Counsel Advice:

First, the correspondence between the parties at the relevant time indicates the Council implicitly accepted an extension within time notwithstanding the failure to specify a precise date. A broad interpretation of "at any time" is capable of accommodating these unusual circumstances. Indeed such an interpretation of the specific legislation in question is arguably legally mandatory in order to protect Article 8 and A1P1 rights for reason 2 below: Marleasing confirms that legislation must be read in a way that renders it compatible with such rights. *Vattenfall* concerned an extension which was only granted after time had run out and there were no acquired rights at issue.

Second, following on from that, I do not consider *Vattenfall* is at all relevant. It concerns a right to appeal a refusal which the appellant failed to take up in time. No property rights were lost. Here the matter concerns an extant permission that would be lost. The courts will take a different approach to interpretation based on the very different legal context of these two situations.

Advice provided 6th February 2026

Counsel advice in relation to Taylor Wessing letter dated 18th January 2026 is that no new points had been raised further to the above advice.