

Division Affected – Kennington and Radley

PLANNING AND REGULATION COMMITTEE

20th July 2026

Application for determination of the conditions to which a planning permission is to be subject (Permission numbers DD1 and DD2)

Report by Planning Development Manager

Contact Officer: David Periam

Location: Land at Thrupp Farm, Radley, Abingdon, Oxfordshire Grid Ref: SU 51539 97065

OCC Application No: MW.0041/23

VOWH Application No: P23/V0630/CM

District Council Area: Vale of White Horse

Applicant: H Tuckwell and Sons Ltd

Application Received: 22nd February 2023

Consultation Periods: 23rd March 2023 – 24th April 2023
15th August 2024 – 15th September 2024
6th March 2025 – 5th April 2025
26th June 2025 – 26th July 2025

1. Members will recall that at the meeting of the Planning and Regulation Committee on 23rd February 2026, the committee considered Agenda item 5 along with addenda for the determination of conditions to which a planning permission is to be subject (Permission numbers DD1 and DD2) (the Radley ROMP application) (Annex 1). The committee unanimously resolved as follows:

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 for them to determine.

2. The Director of Economy and Place referred the application to the Secretary of State by letter dated 5th March 2026 (Annex 2). The response on behalf of the Secretary of State was received by letter dated 29th May 2026 (Annex 3). The Secretary of State declined to call the application in for his own determination citing that he considers that the application does not raise matters of more than local importance and there is no other material consideration that alters this view in respect of the ROMP Application. He is content that it should be determined by the Mineral Planning Authority.
3. Given that the Secretary of State has not called-in the application for his own determination, part b) of the committee resolution of 23rd February 2026 now comes into effect.
4. Members will recall that at the committee's meeting on 23rd February 2026, legally privileged advice was provided to them in private session. Following the receipt of this advice, the committee debated the Agenda item. This included consideration of the national importance of the ROMP application that was before them; the obscurity of the law in this particular area meaning that further legal opinions were only opinions; as well as how Area 'C' of the ROMP site would be managed into the future if it proved that it would not be able to be excavated. It was commented that the Council found itself in a difficult situation and referring the application to the Secretary of State seemed sensible to provide clarity on ROMP issues.
5. Along with declining to call-in the application for his own determination, the Secretary of State did not provide a substantive view on the issues raised in the Council's referral letter, including the interaction between the ROMP statutory framework, national and development plan policy relating to the protection of irreplaceable and priority habitats, and the potential compensation consequences of imposing conditions which restrict working rights. The decision not to call in the application should not be treated as legal advice or as an endorsement of any particular interpretation of Schedule 14 to the Environment Act 1995.
6. Members will also recall that at its meeting on 23rd February 2026, it heard conflicting points of view supported by legal opinion about the scope and meaning of "at any time" in Schedule 14, paragraph 7 of the Environment Act 1995 with regard to when an extension of time for the submission of a ROMP application could be agreed and that the benefit of any related mineral permission would cease to have effect other than with regard to restoration or aftercare conditions in the absence of any such agreed extension of time. The Council and the applicant agreed a later date after the first ROMP review date, relying on the ability in Schedule 14, paragraph 7 of the Environment Act 1995 to agree a later date in writing "at any time". Local residents have advanced the alternative interpretation that "at any time" means only at any time before the first review date expires. Schedule 14 to the Environment Act 1995 and the national planning practice guidance are the principal national statutory and guidance framework for ROMP reviews, but there is no national

legal precedent directly determining the correct interpretation of “at any time” in this context. The Council has obtained counsel’s advice on the point. That advice supports the view that the Council’s interpretation is lawful but recognises that the point has not been authoritatively determined by the Courts.

7. The Secretary of State also provided no substantive consideration or advice on the interpretation of Schedule 14, paragraph 7 of the Environment Act 1995, including the scope and meaning of the words “at any time”. The absence of comment from the Secretary of State should not be interpreted as resolving the legal issue either way.
8. It therefore falls to the Council as Mineral Planning Authority (MPA) to determine the application without further insight or guidance having been provided by the Secretary of State on the matters set out above. One option would be to seek a further legal opinion prior to the determination of the conditions on the effect of Schedule 14, paragraph 7 of the Environment Act 1995 and whether the agreed extension of time was lawful. However, any further opinion would not provide a definitive answer: only a decision of the Courts could finally determine the point. If the extension was lawful, the committee must determine the conditions to be attached to the ROMP permission. If the extension was not lawful, the benefit of the mineral permission would cease to have effect for the winning and working of minerals, save in relation to restoration and aftercare conditions, which would remain enforceable according to their terms.
9. As recorded in the Minutes of the committee’s meeting on 23rd February 2026 and as set out in paragraph 4 above, additional legal advice would be a further opinion to be considered alongside the advice already obtained by or submitted to the Council, by the applicant and local residents. It would not provide a definitive answer to the lawful position. The legal issue remains one of statutory interpretation under Schedule 14 to the Environment Act 1995 and, in the absence of identified binding precedent, can only be resolved definitively by the Courts. The committee should therefore proceed on the basis of advice received by the Council that they may determine the application before it.
10. Unless the committee wishes to defer a decision for a further legal opinion to be obtained then it must now determine the conditions. The conditions provided to the committee by officers previously with minor amendments to reflect comments raised in representations to the committee meeting on 23rd February are attached as Annex 4. The key question is whether or not the following condition should be included in those determined:

No development shall take place in areas of irreplaceable or priority habitats as recorded in ES Appendix C Ecological Impact Assessment V2 or Radley Gravel Pits Local Wildlife Site.

11. Should the Committee conclude that, in the planning balance, this condition is necessary to protect irreplaceable and priority habitats, to comply with national policy in NPPF paragraph 193 and the development plan policies set out in OMWCS policy C7 and VLP1 policy CP 46, and that a reasoned conclusion on the significant effects of the development on the environment has been reached, then this condition should be included. Attaching this condition would require the Council to issue a separate notice alongside the decision notice advising that the effect of the determined conditions is to restrict working rights

and that, in the MPA's opinion, unreasonable prejudice will arise and that there is a liability on the MPA for compensation. Such compensation is likely to be substantial and the Council has no reserves specifically allocated for that purpose. Compensation exposure is capable of being a material consideration in the planning balance, but it must be weighed lawfully alongside the statutory ROMP framework, the development plan, national policy, the EIA conclusions and the environmental harm identified. The Council's Strategic Finance Business Partner has commented on this liability in the Financial Implications paragraph of this report. The applicant would also have a right of appeal to the Planning Inspectorate in relation to this and any other condition imposed.

12. As a public body, the Council is entitled to take into account the cost to the public of imposing conditions where the consequence of that is that the Council may be liable to pay compensation and treat that as a material consideration in the planning balance. Should the committee consider that, in the planning balance, the compensation and financial consequences for the Council outweigh the harm to irreplaceable and priority habitats and the conflict with development plan policies and national policy set out in NPPF paragraph 193, OMWCS policy C7 and VLP1 policy CP 46, and having reached a reasoned conclusion on the significant effects of the development on the environment, then it should not include this condition. There would then be no need to issue the separate notice alongside the decision notice. A decision not to include the condition would be open to challenge by way of judicial review by a third party. Given the absence of identified binding precedent on the Schedule 14 issue, the contrary legal opinions already advanced, and the ecological harm identified, the officer advice is that such a challenge is a risk. A successful challenge could result in the decision being quashed.

Financial Implications

13. If the application is determined and it is concluded that the conditions restrict working rights and give rise to unreasonable prejudice, the MPA may be liable to pay substantial compensation to the applicant under the ROMP compensation provisions.
14. The Council does not currently hold any budget or reserves specifically allocated to meet such a liability. The Council's insurance also does not cover this liability.
15. This compensation could amount to potentially a material amount to the Council. Therefore, such financial exposure needs to be carefully considered.

Filipp Skiffins, Finance Business Partner, (Filipp.skiffins@oxfordshre.gov.uk)

Legal Implications

16. The principal legal implications are addressed in the report. The application must be determined within the statutory framework for periodic review of mineral planning permissions in Schedule 14 to the Environment Act 1995. There is an unresolved issue of statutory interpretation concerning the words "at any time" in Schedule 14, paragraph 7. No binding national precedent has been identified which directly determines that point. The Council's interpretation is supported by counsel's advice but remains open to challenge. Members may also take into account the compensation provisions which may

apply where determined conditions restrict working rights and, in the MPA's opinion, unreasonable prejudice arises. A decision to include or omit the habitat protection condition may be susceptible to judicial review by a third party, and any condition imposed may be appealed by the applicant. Members should therefore ensure that the reasons for the decision are clear, that the statutory tests for conditions are applied, and that a reasoned conclusion is reached.

Jennifer Crouch, Principal Solicitor (Regulatory Team),
(Jennifer.crouch@oxfordshire.gov.uk)

Equality & Inclusion Implications

17. In accordance with Section 149 of the Equality Act 2010, in considering this proposal, due regard has been had to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

18. It is not however considered that any issues with regard thereto are raised in relation to consideration of this application.

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

Conclusion

20. There is no definitive judicial authority resolving the statutory interpretation issue discussed above and in the previous committee report and addenda. The Secretary of State has provided no guidance on that issue and the refusal to call in the application should not be treated as resolving it. The committee must therefore reach its own lawful planning judgment on the conditions now before it. The officer advice is that the identified loss of irreplaceable or priority habitats, the relevant development plan and national policy framework, and the EIA conclusions are material considerations. The substantial compensation and financial implications for the Council is also a material consideration. If, having weighed those matters, the Committee concludes that the financial implications for the Council outweigh the impact on irreplaceable and priority habitats, the conditions set out in Annex 4 should be determined without the following condition:

No development shall take place in areas of irreplaceable or priority habitats as recorded in ES Appendix C Ecological Impact Assessment V2 or Radley Gravel Pits Local Wildlife Site.

If the Committee concludes that the loss of irreplaceable or priority habitats outweighs the financial implications for the Council, the conditions set out in Annex 4 should be determined with the above condition included and a

separate notice should be issued alongside the decision notice advising that the effect of the determined conditions is to restrict working rights and that, in the MPA's opinion, unreasonable prejudice will arise and that there is a liability on the MPA for compensation.

RECOMMENDATION

It is RECOMMENDED that the Committee weigh the loss of irreplaceable and priority habitats, the relevant development plan and national policy framework, the EIA reasoned conclusion, the statutory ROMP compensation provisions and the financial implications for the Council. Having done so, and having reached a reasoned conclusion on the significant effects of the development on the environment, the committee should determine the application by selecting either option A or option B below:

- A. Application no. MW.0041/23 for determination of the conditions to which a planning permission is to be subject (Permission numbers DD1 and DD2) be APPROVED subject to the conditions set out in Annex 4 but omitting the following condition:**

No development shall take place in areas of irreplaceable or priority habitats as recorded in ES Appendix C Ecological Impact Assessment V2 or Radley Gravel Pits Local Wildlife Site; OR

- B. Application no. MW.0041/23 for determination of the conditions to which a planning permission is to be subject (Permission numbers DD1 and DD2) be APPROVED subject to the conditions set out in Annex 4 including the following condition:**

No development shall take place in areas of irreplaceable or priority habitats as recorded in ES Appendix C Ecological Impact Assessment V2 or Radley Gravel Pits Local Wildlife Site.

**David Periam
Planning Development Manager**

Annexes: Annex 1: Report to Planning and Regulation Committee and addenda 23rd February 2026
 Annex 2: Letter to the Secretary of State 5th March 2026
 Annex 3: Letter from the Secretary of State 29th May 2026
 Annex 4: OCC officer suggested conditions

