

Division Affected – Kennington and Radley

PLANNING AND REGULATION COMMITTEE

21st September 2026

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

Update 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 20th July 2026, the committee considered Agenda item 6 along with addendum 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 resolved as follows:

that the Committee unanimously deferred determination of the application to obtain further independent legal advice.

2. Officers instructed David Forsdick KC in the matter. His opinion is set out in Annex 2. His conclusion is as follows:

Conclusion

38. *I have reached a clear conclusion that the legislation does not allow the permission here to be revived after para 7 is triggered. That seems consistent with*

all the relevant case law, the statutory purposes, the words used and the overall logic of the statutory scheme.

39. *On the facts, there are some areas which the Applicant should be given the opportunity to comment on. Further, given the change in position of the Council since the report to committee on this central issue, the Applicant should be given the opportunity to comment on this Opinion and Mr Jones' Opinion and especially the key paragraphs quoted above.*

3. The "para 7" referred to is paragraph 7 of Schedule 14 to the Environment Act 1995 which states as follows:

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.

4. Mr Forsdick's Opinion is therefore aligned with that of Gregory Jones KC provided by a third party, which was included in the addendum to the committee meeting on 20th July 2026, and which is that the Council has no jurisdiction to determine the application. It is not aligned with the Opinion of Nina Pindham, which was provided to the Council previously and which was that an extension of time for submission of an application for the determination of conditions could be agreed at any time and was not time-limited as to when such agreement may be made.
5. In short, the advice is that as the ROMP application was not submitted by the first review date, which is 31 October 2016 and further, that as no extension of the date for submission was agreed before 31 October 2016, the mineral permission ceased to have effect on that date and cannot be revived by any agreement made after that date.
6. Officers have invited the applicant to comment as recommended by Mr Forsdick and the committee will be updated with any response received prior to or at the committee meeting.
7. As previously advised, any legal opinion obtained remains an opinion on the law and a definitive position on the law can only be provided through a decision of the courts following a legal challenge that may be made to any decision made on the application. However, the weight of legal opinion obtained from Counsel by the Council and third party clearly supports the position that the submission of an application for the determination of

conditions was made after the relevant planning permissions ceased to have effect and outside the time period when an extension of time could be lawfully agreed. Therefore, permissions DD1 and DD2 only now remain extant insofar as the existing planning conditions require restoration and aftercare.

8. Unless the Committee wishes to defer a decision for a further legal opinion to be obtained or to allow the applicant to make further representations, the decision now before it is whether to conclude that the Council has no jurisdiction to determine the application. Whilst there is no binding English authority directly determining the point, on the basis of the advice received, officers advise that the Council should not purport to approve or determine conditions on an application which it has no jurisdiction to entertain.
9. The Committee is therefore not being asked to determine the planning merits of the proposed conditions, or to choose between the alternative recommendation options previously set out in the 20th July 2026 report. However, those matters remain relevant, because they will need to be considered in the event that the applicant appeals the recommended decision or there is some other challenge to the Council's decision.
10. The arguments relating to the imposition, or omission, of a condition preventing development in areas of irreplaceable or priority habitat are fully set out in the report to Committee of 20th July 2026. Members' attention is also brought to the decision in *HSE v Wolverhampton City Council* [2022], which concluded that, when making its decision, a local authority had to take into account as one of the material considerations the compensation that it might have to pay. In the event the Council later determines the merits of the application and recommends proposed conditions for consideration at appeal, any compensation exposure would need to be weighed lawfully alongside the statutory ROMP framework, the development plan, national policy, the EIA conclusions and the environmental harm identified. However, because officers are recommending that the Council has no jurisdiction to determine the application, members are not being asked to make an assessment on the planning merits of the application at this meeting.
11. If the committee concludes that it does not have jurisdiction to determine the application then it simply needs to conclude as such. Mr Forsdick's advice is that the relief to the applicant to such decision would be through appeal to the Secretary of State.
12. At any such appeal the Inspector would first need to consider the jurisdiction point and whether there is a valid application capable of being determined. The council would make submissions on this point in accordance with the committee's decision. If an Inspector were to accept jurisdiction, the planning merits of the application and the proposed conditions would then be considered. Accordingly, in the event that an appeal is lodged, officers would bring a further report to Committee so that members could consider the appropriate conditions and the Council's position on the planning merits of the application. Such a decision would be needed to enable the council to make submissions to any such appeal.

Financial Implications

13. If, when the application is determined, 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. It is the view of officers that the council will be liable for compensation which is estimated to be in the region of £6m to £8m.

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. Therefore, the cost would need to be met from General Balances held by the council and would likely need to be replaced impacting on the council's ability to set a balanced budget. Therefore, the risk of such financial exposure needs to be carefully considered.
15. If the Committee concludes that it does not have jurisdiction to determine the application, there would be no direct compensation liability arising from the Council determining conditions under Schedule 14. There remains a financial risk if the applicant challenges that position, including appeal or other litigation costs. There is also a residual risk that an Inspector or Court could take a different view of jurisdiction and that, if conditions were ultimately determined elsewhere which restrict working rights, compensation exposure may still fall on the Council as Mineral Planning Authority. Should an appeal be lodged with the Secretary of State, there would also be the possibility of costs being awarded against the Council for unreasonable behaviour in the conduct of the appeal, following an application by the appellant.

Legal Implications

16. The principal legal implications are addressed in the report to the committee dated 20th July 2026 attached as Annex 1 and in the advice from Mr Forsdick KC attached to this report.
17. 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 remains 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 advice of Mr Forsdick is that the effect of paragraph 7 is that as the application was not submitted by the first review date, and as there is no evidence of an agreement to amend the date for submission of the application prior to the date of the first review date, the council has no jurisdiction to determine the application. This is contrary to the counsel's advice previously reported to the council. However, as there is no binding decision on this point, any decision on the interpretation of paragraph 7 remains open to challenge.
18. The applicant may appeal a decision by the council that it has no jurisdiction to determine the application. If jurisdiction of the appeal is accepted, the application would also be determined at that appeal, and the Council would be a party to that appeal.
19. The Committee is not being asked to determine the planning merits of the proposed conditions at this meeting. If the applicant appeals or the Council's jurisdictional position is otherwise challenged, the council will have to come to a view as to how it would have determined the application for its submissions

to an appeal. These would need to be addressed in a further report in the event an appeal is lodged.

Equality & Inclusion Implications

20. 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.

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

22. 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

23. It remains the case that there is no definitive judicial authority resolving the statutory interpretation issue discussed above and in the previous committee reports and addenda. The Secretary of State, when invited to do so, provided no guidance on that issue. The Committee must therefore reach its own decision on whether the Council has jurisdiction to determine the application. The officer advice is that the weight of legal opinion before the Committee supports the recommendation that the application for the determination of conditions was made outside the lawful time period further to Schedule 14 paragraph 7 of the Environment Act 1995, and that permissions DD1 and DD2 only remain extant insofar as they impose restoration and aftercare conditions. Therefore, the officer advice is that the Council does not have jurisdiction to determine the conditions and should resolve accordingly.

24. As the decision set out in Recommendation 1 below may be subject to appeal or other legal challenge, members should note that the planning merits of the proposed conditions are likely to need to be considered at that stage. If that occurs, officers would bring a further report to Committee, so that members can consider the appropriate conditions and the Council's position on the merits at that time. Members are not being asked to decide those matters at this meeting.

RECOMMENDATION 1

Based on the weight of legal opinion, it is RECOMMENDED that the Committee concludes that the time period for the submission of

application no. MW.0041/23 for the determination of conditions to which planning permissions DD1 and DD2 are to be subject was outside the lawful time period further to the provisions of Schedule 14 paragraph 7 of the Environment Act 1995, and that the Council does not have jurisdiction to determine the application.

RECOMMENDATION 2

It is further RECOMMENDED that the Committee notes that, if the applicant appeals or there is a challenge to Council's jurisdictional position, a further report would be brought to Committee to enable members to determine the Council's position on the merits of the application and the conditions that it would consider appropriate for the Council's submissions to any appeal or other challenge.

**David Periam
Planning Development Manager**

Annexes: Annex 1: Report to Planning and Regulation Committee
 and addenda 20th July 2026
 Annex 2: Opinion of David Forsdick KC dated 1st
 September 2026

**Annex 1 – Report to Planning and Regulation Committee and
addenda 20th July 2026**

Annex 2 - Opinion of David Forsdick KC dated 1st September 2026

