PLANNING AND REGULATORY COMMITTEE
NOTICE OF MEETING

Date:	**Wednesday, 23 September 2015**
Time	**10.30 am**
Place:	**Ashcombe Suite, County Hall, Kingston upon Thames, Surrey KT1 2DN**

Contact:	**Cheryl Hardman or Rianna Hanford, Room 122, County Hall**
Telephone:	**020 8541 9075, 020 8213 2662**
Email:	cherylh@surreycc.gov.uk, rianna.hanford@surreycc.gov.uk

[For queries on the content of the agenda and requests for copies of related documents]

APPOINTED MEMBERS [12]

Tim Hall (Chairman)	Leatherhead and Fetcham East;
Keith Taylor (Vice-Chairman)	Shere;
Ian Beardsmore	Sunbury Common & Ashford Common;
Mr S Cosser	Godalming North;
Carol Coleman	Ashford;
Jonathan Essex	Redhill East;
Margaret Hicks	Hersham;
Mr D Munro	Farnham South;
George Johnson	Shalford;
Ernest Mallett MBE	West Molesey;
Michael Sydney	Lingfield;
Richard Wilson	The Byfleets;

EX OFFICIO MEMBERS (NON-VOTING) [4]

Sally Marks	Chairman of the County Council	Caterham Valley;
Nick Skellett CB E	Vice-Chairman of the County Council	Oxted;
David Hodge	Leader of the Council	Warlingham;
Mr P J Martin	Deputy Leader and Cabinet Member for Economic Prosperity	Godalming South, Milford & Witley;

APPOINTED SUBSTITUTES [19]

Stephen Cooksey	Dorking South and the Holmwoods;
Will Forster	Woking South;
Denis Fuller	Camberley West;
Ramon Gray	Weybridge;
Nick Harrison	Nork & Tattenhams;
Peter Hickman	The Dittons;
David Ivison	Heatherside and Parkside;
Daniel Jenkins	Staines South and Ashford West;
Stella Lallement	Epsom West;
John Orrick	Caterham Hill;
Adrian Page	Lightwater, West End and Bisley;
Chris Pitt	Frimley Green and Mytchett;
Fiona White	Guildford West;
Helena Windsor	Godstone;
Chris Townsend	Ashtead;

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AGENDA

1 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

To receive any apologies for absence and notices of substitutions under Standing Order 40.

2 MINUTES OF THE LAST MEETING

(Pages 1 - 8)

To confirm the minutes of the meeting held on 2 September 2015.

3 PETITIONS

To receive any petitions from members of the public in accordance with Standing Order 65 (please see note 7 below).

4 PUBLIC QUESTION TIME

To answer any questions received from local government electors within Surrey in accordance with Standing Order 66 (please see note 8 below).

5 MEMBERS' QUESTION TIME

To answer any questions received from Members of the Council in accordance with Standing Order 47.

6 DECLARATIONS OF INTERESTS

To receive any declarations of disclosable pecuniary interests from Members in respect of any item to be considered at the meeting.

Notes:

- In line with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, declarations may relate to the interest of the member, or the member's spouse or civil partner, or a person with whom the member is living as husband or wife, or a person with whom the member is living as if they were civil partners and the member is aware they have the interest.
- Members need only disclose interests not currently listed on the Register of Disclosable Pecuniary Interests.
- Members must notify the Monitoring Officer of any interests disclosed at the meeting so they may be added to the Register.
- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest.

7 MINERALS/WASTE MO/2014/1006/SCC: LAND AT BURY HILL WOOD, OFF COLDHARBOUR LANE, HOLMWOOD, SURREY.

(Pages 9 - 66)

This application is for an underground drilling corridor of an exploratory hydrocarbon borehole.

The recommendation is to PERMIT subject to conditions.

8 **MINERALS / WASTE - TA/2014/1884: NORTH PARK QUARRY, NORTH PARK LANE, GODSTONE, SURREY, RH9 8ND.** (Pages 67 - 102)

This application is for the extraction of sand and progressive restoration to agriculture and woodland; and the continued temporary diversion of bridleways 142 and 148 (parts) and temporary stopping up of footpath 121 and 143 (part), without compliance with Condition 3 of planning permission TA00/326 dated 22 November 2000, to allow an extension in time for the working of sand until 2020, with the restoration of the site by 31 December 2022.

The recommendation is to PERMIT subject to conditions.

9 **APPLICATION FOR VILLAGE GREEN STATUS: LAND AT LEACH GROVE WOOD, LEATHERHEAD** (Pages 103 - 222)

The committee is asked to consider whether or not to register the land the subject of this application as a Village Green.

The recommendation is to REJECT the application.

10 **DATE OF NEXT MEETING**

The next meeting of the Planning & Regulatory Committee will be on 14 October 2015.

David McNulty
Chief Executive
Thursday, 10 September 2015

MOBILE TECHNOLOGY AND FILMING – ACCEPTABLE USE

Those attending for the purpose of reporting on the meeting may use social media or mobile devices in silent mode to send electronic messages about the progress of the public parts of the meeting. To support this, County Hall has wifi available for visitors – please ask at reception for details.

Anyone is permitted to film, record or take photographs at council meetings. Please liaise with the council officer listed in the agenda prior to the start of the meeting so that those attending the meeting can be made aware of any filming taking place.

Use of mobile devices, including for the purpose of recording or filming a meeting, is subject to no interruptions, distractions or interference being caused to the PA or Induction Loop systems, or any general disturbance to proceedings. The Chairman may ask for mobile devices to be switched off in these circumstances.

It is requested that if you are not using your mobile device for any of the activities outlined above, it be switched off or placed in silent mode during the meeting to prevent interruptions and interference with PA and Induction Loop systems.

Thank you for your co-operation

Note: *This meeting may be filmed for live or subsequent broadcast via the Council's internet site - at the start of the meeting the Chairman will confirm if all or part of the meeting is being filmed. The images and sound recording may be used for training purposes within the Council.*

Generally the public seating areas are not filmed. However by entering the meeting room and using the public seating area, you are consenting to being filmed and to the possible use of those images and sound recordings for webcasting and/or training purposes.

If you have any queries regarding this, please contact the representative of Legal and Democratic Services at the meeting

NOTES:

1. The Chairman will adjourn the meeting for lunch from 12.45pm unless satisfied that the Committee's business can be completed by 1.15pm.

2. Members are requested to let the Regulatory Committee Manager have the wording of any motions and amendments not later than one hour before the start of the meeting.

3. Substitutions must be notified to the Regulatory Committee Manager by the absent Member or group representative at least half an hour in advance of the meeting.

4. Planning officers will introduce their report and be able to provide information or advice to Members during the meeting. They can also be contacted before the meeting if you require information or advice on any matter.

5. A record of any items handled under delegated powers since the last meeting of the Committee will be available for inspection at the meeting.

6. Members of the public can speak at the Committee meeting on any planning application that is being reported to the Committee for decision, provided they have made written representations on the application at least 14 days in advance of the meeting, and provided they have registered their wish to do so with the Regulatory Committee Manager in advance of the meeting. The number of public speakers is restricted to five objectors and five supporters in respect of each application.

7. Petitions from members of the public may be presented to the Committee provided that they contain 100 or more signatures and relate to a matter within the Committee’s terms of reference. The presentation of petitions on the following matters is not allowed: (a) matters which are “confidential” or “exempt” under the Local Government Access to Information Act 1985; and (b) planning applications. Notice must be given in writing at least 14 days before the meeting. Please contact the Regulatory Committee Manager for further advice.

8. Notice of public questions must be given in writing at least 7 days before the meeting. Members of the public may ask one question relating to a matter within the Committee’s terms of reference. Questions on “confidential” or “exempt” matters and planning applications are not allowed. Questions should relate to general policy and not detail. Please contact the Regulatory Committee Manager for further advice.

9. On 10 December 2013, the Council agreed amendments to the Scheme of Delegation so that:

   - All details pursuant (applications relating to a previously granted permission) and non-material amendments (minor issues that do not change the principles of an existing permission) will be delegated to officers (irrespective of the number of objections).
   - Any full application with fewer than 5 objections, which is in accordance with the development plan and national polices will be delegated to officers.
   - Any full application with fewer than 5 objections that is not in accordance with the development plan (i.e. waste development in Green Belt) and national policies will be delegated to officers in liaison with either the Chairman or Vice Chairman of the Planning & Regulatory Committee.
   - Any application can come before committee if requested by the local member or a member of the Planning & Regulatory Committee.

   The revised Scheme of Delegation came into effect as of the date of the Council decision.

HUMAN RIGHTS ACT 1998 – GUIDANCE FOR INTERPRETATION

This Guidance should be read in conjunction with the Human Rights section in the following Committee reports.

The Human Rights Act 1998 does not incorporate the European Convention on Human Rights in English law. It does, however, impose an obligation on public authorities not to act incompatibly with those Convention rights specified in Schedule 1 of that Act. As such, those persons directly affected by the adverse effects of decisions of public authorities may be able to claim a breach of their human rights. Decision makers are required to weigh the adverse impact of the development against the benefits to the public at large.

The most commonly relied upon articles of the European Convention are Articles 6, 8 and Article 1 of Protocol 1. These are specified in Schedule 1 of the Act.

Article 6 provides the right to a fair and public hearing. Officers must be satisfied that the application has been subject to proper public consultation and that the public have had an opportunity to make representations in the normal way and that any representations received have been properly covered in the report. Members of the public wishing to make oral representations may do so at Committee, having given the requisite advance notice, and this satisfies the requirements of Article 6.

Article 8 covers the right to respect for a private and family life. This has been interpreted as the right to live one's personal life without unjustified interference. Officers must judge whether the development proposed would constitute such an interference and thus engage Article 8.

Article 1 of Protocol 1 provides that a person is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of his possessions except in the public interest. Possessions will include material possessions, such as property, and also planning permissions and possibly other rights. Officers will wish to consider whether the impact of the proposed development will affect the peaceful enjoyment of such possessions.

These are qualified rights, which means that interference with them may be justified if deemed necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Any interference with a Convention right must be proportionate to the intended objective. This means that such an interference should be carefully designed to meet the objective in question and not be arbitrary, unfair or overly severe.

European case law suggests that interference with the human rights described above will only be considered to engage those Articles and thereby cause a breach of human rights where that interference is significant. Officers will therefore consider the impacts of all applications for planning permission and will express a view as to whether an Article of the Convention may be engaged.

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MINUTES of the meeting of the **PLANNING AND REGULATORY COMMITTEE** held at 10.30 am on 2 September 2015 at Ashcombe Suite, County Hall, Kingston upon Thames, Surrey KT1 2DN.

These minutes are subject to confirmation by the Committee at its meeting.

Members Present:

Mr Tim Hall (Chairman)
Mr Keith Taylor (Vice-Chairman)
Mr Ian Beardsmore
Mr Steve Cosser
Mrs Carol Coleman
Mrs Margaret Hicks
Mr David Munro
Mr George Johnson
Mr Ernest Mallett MBE
Mr Michael Sydney
Mr Richard Wilson

Apologies:

Mr Jonathan Essex

12/15 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS [Item 1]

Apologies were received from Jonathan Essex.

13/15 MINUTES OF THE LAST MEETING [Item 2]

The minutes from the meetings on 15 July 2015 and 30 July 2015 were agreed as an accurate record of the meeting.

14/15 PETITIONS [Item 3]

No petitions were received.

15/15 PUBLIC QUESTION TIME [Item 4]

No public questions were received.

16/15 MEMBERS' QUESTION TIME [Item 5]

No Member questions were received.

17/15 DECLARATIONS OF INTERESTS [Item 6]

There were no Declarations of Interest.

18/15 MINERALS AND WASTE APPLICATION: SP/2012/01132 - LAND AT MANOR FARM, ASHFORD ROAD AND WORPLE ROAD, LALEHAM AND

LAND AT QUEEN MARY QUARRY, WEST OF QUEEN MARY RESERVOIR, ASHFORD ROAD, LALEHAM, STAINES, SURREY. [Item 7]

It was decided to take items 7 and 8 together, an update sheet was tabled and is attached as annex 1.

Officers:
Alan Stones, Planning, Development and Control Team Manager
Susan Waters, Senior Planning Officer
Nancy El-Shatoury, Principal Lawyer
Kerry James, Principal Transport Development Planning Officer

Speakers:

Gordon Freeman, a local resident, made representations in objection to the application. The following points were made:

- Informed the Committee that he is currently the Secretary of Spelthorne Natural History Society, who he was representing today.
- Expressed that the national planning policy framework states new building is inappropriate on green belt land. Did not agree with the officers argument that very special circumstances had been made. The proposed new buildings will occupy a considerable area and be vertically very imposing and harm the green belt compromise its openness.
- Expressed that the concrete batching and aggregate bagging plant, stockpiles and parked trucks would be visible from reservoir embankment and seen by yacht club members and visitors.
- The mineral from Manor Farm should be exported. The plant would rely on imports after Manor Farm is worked. Noted that the applicant already has these facilities at their Hithermoor Quarry site and queried the need for the plant at this site.
- Expressed concern about the quantity of cement to be stored at the site and the alkaline wash water from the mixer trucks had the potential to damage or contaminate surrounding water supplies.
- The amenities of Manor Farm will not be enhanced by waterbodies. Noted that 25% of the area of Spelthorne currently has some form of water body. It would be better to backfill and restore the site to agriculture.

David Lavender, a local resident, made representations in objection to the application. The following points were made:

- Stated that he endorsed the points made by the previous speaker.
- At the previous meeting officers had stated that the bagging and batching plant were contentious and inappropriate development on Green Belt land but there were mitigating circumstances. He and questioned what these mitigating circumstances were. .
- Questioned how planning conditions, eg hours of working, and traffic would be enforced and controlled.
- Expressed concern that there was a lack of control dealing with dust and questioned if the dust control action plan would extend to the batching plant.

Mike Courts, the applicant, spoke in support of the application. The following points were made:

- Noted that the application had already gone through intense scrutiny.
- Expressed that the reports and attached annexes to the report today provided sufficient information for the Committee to make an informed decision.
- Informed the Committee that as well as planning permission a licence for the batching plant was required from the local authority, from Environmental Health. This ensures effective dual control for dust.
- On the issue of backfilling the site expressed that this would involve HGVs bringing waste to the site and put more HGVs on the public highway. A perfectly good alternative scheme is proposed which seeks to keep the HGV movements to the minimum. Richard Walsh, one of the two Local Members had registered to speak and made the following points in reference to the application:
- At the last meeting expressed to the Committee that the applicant should not go ahead with gravel extraction. This time wanted to raise the concern of residents over the restoration to water.
- Questioned the restoration maintenance after care timeline of 25 years, expressed that this should be longer in perpetuity.
- Residents and CLAG2 have objected to wet restoration and made representations indicating that it is possible to use a conveyor to backfill the site. Expressed that a conveyor would be of more benefit to residents in order to minimise HGV movements to and from the site. Residents had accepted wet restoration, but importing waste by conveyor or by road through Queen Mary Quarry and across the road from there. Noted from the report that 300 HGV movements would be made, questioned what the 300 movements were and over what period of time.
- Expressed that a landfill site would be a better option for residents.

Key points raised during the discussion:

1. The Planning Development Team Manager introduced the report and informed the Committee that the item was considered in January 2015. The Kides protocol states that when there is a delay with issuing decisions, the Council must consider any new material updates. The Committee was told that the mineral in the site, preferred area J in the minerals plan, was needed and the landbank in the county for concreting aggregates was well below the minimum provision required of seven years. He added that the restoration had been dealt with in the previous report and restoration options and the indicative restoration scheme is wet restoration in the restoration supplementary planning document and has been through the plan process. The restoration proposed drawn up on that basis. The environment and amenity impacts had been extensively considered in the report. Concerns had been raised about crystalline silica and health impacts. This is present in the natural environment but only of concern in the work place where you have enclosed areas. A Dust Action Plan is required by condition, and conditions were proposed to control hours of working, noise and other things. On Green Belt under the Kides process case law had been identified which meant the whole development including mineral extraction had to be considered inappropriate development, not just the concrete batching and aggregate bagging plant. Officer's view was that need, sustainability of having the plant where the mineral is produced and no long term

impact on openness of the green belt combine to form very special circumstances.

2. The Committee questioned the reasons for allowing the bagging and batching plant and officers noted that batching plants at mineral sites were traditionally considered as a more sustainable option, than when located on another site remote from the source of mineral.
3. A Member expressed that a land fill site or conveyor would not be of benefit to nearby residents. It was added that water restoration would increase the chances of flooding in surrounding residential areas.
4. A Member expressed that there would not be enough resources left in Surrey to maintain a seven year land bank and would need to be extracted at a slower rate.
5. Restoration options and transporting waste to the site and HGV movements were questioned by some Members and it was stated that the site is located off of the A308, which means HGV movements would not affect residents. New information and evidence was now available to show waste could be transported by conveyor which some Members, who did not support the wet restoration proposals, felt meant the minerals plan and wet restoration proposals for the site were unsafe and the site should be backfilled and restored to agriculture.
6. Officers informed the Committee that the bagging and batching plant would be in place until 2033 with planning permission ending in 2038. Extraction and processing was a five to six year timetable.
7. Officers informed Members that the strength of the argument in support of the application proposals was strong. There was still a reasonable amount of minerals in Surrey so the 7 year land bank was still applicable. Officers informed the committee that they considered the minerals plan was robust and remained sound. It had undergone due process in its preparation and took into account a number of issues and wet restoration would be acceptable.

RESOLVED:

It was agreed that, subject to the prior completion of a S106 legal agreement between the county council, the applicant and Thames Water Utilities Ltd to secure the long term aftercare management, (including bird management) of the land at Manor Farm and to limit the number of HGV movements in combination with planning permission refs SP07/1273 and SP07/1275 to no more than 300 HGV movements (150 two way HGV movements) on any working day attached as Appendix D to **PERMIT** subject to conditions and informatives for the reason set out in the report.

Action/further information to be provided:

None.

19/15 MINERALS/WASTESP13/01003 - LAND AT QUEEN MARY QUARRY, ASHFORD ROAD, LALEHAM, SURREY TW18 1QF [Item 8]

Officers:
Alan Stones, Planning, Development and Control Team Manager
Susan Waters, Senior Planning Officer
Nancy El-Shatoury, Principal Lawyer

Kerry James, Principal Transport Development Planning Officer

The discussion in relation to this item is recorded under item 7.

RESOLVED:

It was agreed subject to planning permission being granted to planning application ref. SP2012/01132 for the extraction of mineral from Manor Farm to **PERMIT** subject to the conditions and informatives set out in the recommendation in the report (Item 8) to the Planning and Regulatory Committee on 7 January 2015.

Action/further information to be provided:

None.

20/15 SURREY COUNTY COUNCIL PROPOSAL EL/2012/3285 (SUPPLEMENTARY REPORT TO OFFICERS' REPORT CONSIDERED AT THE MEETING HELD ON 15 OCTOBER 2014) [Item 9]

An update sheet was tabled and is attached as annex 2.

Officers:
Alan Stones, Planning, Development and Control Team Manager
Nathan Morley, Senior Planning Officer
Nancy El-Shatoury, Principal Lawyer
Kerry James, Principal Transport Development Planning Officer

Speakers:

Barry Evans, The Firs Sheltered Housing Manager, made representations in objection to the application on behalf of himself and another four residents; Brenda Goldsmith, Ethel Edwards, Bruce Rostron and Sandra Maycock. The following points were made:

- Informed the Committee that windows of the Firs was directly facing the school which is a few metres away.
- Expressed that the grass area closest to the Firs is normally fairly quiet area, using this space for a multi use games area (MUGA) would cause noise and be detrimental to the residents.
- Expressed that the new application was misleading and included inaccurate information.
- Expressed that there was no consideration to how to school would mitigate the noise impact.
- Expressed that the visual impact of the MUGA would not be in keeping with the surrounding area.
- Disagreed with the Planning Officers determination that there was not another suitable location for the MUGA.
- Noted the current condition was that the school would use the MUGA between 8.00am and 5.45pm, the school often use facilities later then this and on weekends.
- Noted that the Firs residents are elderly and very frail, during the summer they sit on the patio directly facing the MUGA, noise will affect the peace and quiet.

- Expressed that some grass banking could be taken away at the other end of the site and the MUGA placed there.
- Noted that the Firs Residents are sympathetic to the schools needs but express noise and living conditions need to be bearable, the prolonged application has caused stress and anxiety to the residents.

Darryl Taylor, the Claygate Primary School Head Teacher, made representations in support to the application. The following points were raised:

- Informed the Committee that the number of pupils at the school had increased to 460, space had been reduced to accommodate more classrooms meaning as much playing field space as possible was needed.
- Expressed that the chosen location for the MUGA was the only viable option. Option B would cut the playground off from the MUGA and option C would cut the playground in half. That could be unsafe for the pupils, the children can be much easily monitored when all in one place.
- Informed the Committee that the MUGA would be used the same amount as the grass area is currently, children already occupy the grass area outside the Firs at break time.
- Noted that after school clubs finish at 5 and evening/weekend use would be unauthorised.
- Additional drainage would be installed in the northern part of the site which would stop runoff water going onto the Firs land.
- Expressed that the school has a good and considerate relationship with the Firs residents and expressed some residents enjoy seeing the children play.
- Noted that the Firs previously had an extension built bringing the site closer to the school.
- Expressed that the school was happy to accept restrictions on the use of the MUGA.

The Local Member did not register to speak.

Key points raised during the discussion:

1. The Senior Planning Officer introduced the report and reminded the Committee that the application had previously been referred back to the school to look at further options. The school has supplemented more information to support the reasons why a MUGA is needed in the specified location.
2. The Chairman stated that a well attended site visit by the Planning and Regulatory Committee had recently taken place.
3. The Committee was informed that there would be no significant noise or visual impacts and no increase in the number of children using the site. This was supported by the fact the plans are acceptable under the National Noise Policy and the MUGA would only be used by the school.
4. A Member questioned why the update sheet stated the Firs residents should close their windows to maintain an appropriate noise levels and it was clarified that this meant to deal with reasonable infrequent noise. It was added that the only issue with the application was residential immunity.

5. The Committee expressed the need for the school to have a MUGA and emphasised that the chosen location was the only viable option. A Member expressed that the condition should remain at 8.00am for permission to use the MUGA from.
6. Officers informed the Committee that the school gates were locked securely meaning no unauthorised access to the MUGA would be possible.

RESOLVED:

It was agreed that pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, Application No. EL2012/3285 be **PERMITTED** subject to conditions for the reasons set out in the report, including an amended condition 5 as recommended in the update sheet.

Action/further information to be provided:

None.

21/15 ENFORCEMENT PROTOCOL [Item 10]

Officers:
Alan Stones, Planning, Development and Control Team Manager
Ian Gray, Planning Enforcement Team Leader
Nancy El-Shatoury, Principal Lawyer

Key points raised during the discussion:

1. A Member expressed that residents would like the enforcement protocol to be tougher and not just used by the authority as a last resort.
2. The Committee noted that Surrey are meeting the Environment Agency (EA) more regularly and had built an effective relationship. The Planning Enforcement Team Leader informed the Committee that the service is working with the EA, Kent County Council, West Sussex County Council and Borough & District Councils to relay information and offer training.
3. The Committee expressed that monitoring does partly depend on residents to assist enforcement, though residents don't always know who to address with information.

RESOLVED:

The Committee noted and agreed the Enforcement Protocol.

Action/further information to be provided:

None.

22/15 DATE OF NEXT MEETING [Item 11]

The next Planning and Regulatory Committee meeting will be held at 10.30am on 23 September 2015.

Meeting closed at 1.05 pm

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Chairman

TO: PLANNING & REGULATORY COMMITTEE **DATE:** 23 September 2015

BY: PLANNING DEVELOPMENT TEAM MANAGER

DISTRICT(S) MOLE VALLEY DISTRICT COUNCIL

ELECTORAL DIVISION(S):
Dorking Hills
Mrs Watson

PURPOSE: FOR DECISION **GRID REF:** 515065 144026

TITLE: **MINERALS/WASTE MO/2014/1006/SCC**

SUMMARY REPORT

Land at Bury Hill Wood, off Coldharbour Lane, Holmwood, Surrey.

Underground drilling corridor of an exploratory hydrocarbon borehole.

The underground drilling corridor would extend to some 8.5 hectares, allowing for deviation during drilling, spreading in a south-westerly direction from the associated drill-site at land at Bury Hill Wood to underneath Coldharbour Village. The application site is located within the Metropolitan Green Belt, the Surrey Hills Area of Outstanding Natural Beauty (AONB) and Area of Great Landscape Value (AGLV). Coldharbour Village is a conservation area, with the Anstiebury Camp Scheduled Ancient Monument to the east and Leith Hill Site of Special Scientific Interest to the west. The Coldharbour Village Conservation Area extends from the junction of Coldharbour Lane, Abinger Road and Anstie Lane in a band that includes the majority of the village properties and ends just short of The Landslip.

There are two important aquifers present in the Dorking area, the Chalk and the Lower Greensand. The primary aquifer, the Chalk, is not present in the proposed borehole location. The secondary aquifer, the Lower Greensand, is exposed at surface and would be penetrated by the upper part of the proposed exploratory borehole. The associated drill-site at land at Bury Hill Wood (allowed appeal ref: APP/B3600/A/11/2166561) is found some 3.5 km to the south west of Dorking, west of South Holmwood and 800 metres to the north of Coldharbour village. Access to the associated drill-site would be gained via Coldharbour Lane and utilise an existing Forestry Commission entrance and 250 metres of access track. Coldharbour Lane links to the A24 via Knoll Road to the south of Dorking and the A2003.

This application is Environmental Impact Assessment (EIA) development and as such, is accompanied by an Environmental Statement (ES). The application is concerned with the first stage of on-shore hydrocarbon development – exploration. It would involve the construction of a separately proposed above ground drill-site where following the drilling of an exploratory borehole, short term testing for hydrocarbons would take place to assess the prospect. That separate drill-site planning application (ref: MO09/0110) was refused by Surrey County Council (SCC) on 30 June 2011 and proposed the following: “*Construction of an exploratory drillsite to include plant, buildings and equipment; the use of the drillsite for the drilling of one exploratory borehole and the subsequent short term testing for hydrocarbons; the erection of security fencing and the carrying out of associated works to an existing access and track all on 0.79 ha, for a temporary period of up to 3 years, with restoration to forestry*.”

The applicant then made an appeal to the Secretary of State against the refusal. The appeal was subsequently dismissed by the Secretary of State’s Inspector on 26 September 2012.

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However, the applicant Europa Oil and Gas Ltd then successfully challenged the Inspector's decision in the High Court, and on 25 July 2013 the judge quashed the earlier appeal decision. Leith Hill Action Group, which was a defendant to the proceedings in the High Court, then appealed against the judge's decision. This appeal was dismissed by the High Court on 19 June 2014 and the Secretary of State re-determined the appeal by Europa Oil and Gas Ltd against SCC's earlier refusal of planning permission (ref: MO09/0110).

The re-determined Public Inquiry commenced on 22 April 2015 and closed on 11 June 2015 (ref: APP/B3600/A/11/2166561). The Inspector issued his decision on 7 August 2015 and allowed the appeal (i.e. the Inspector approved the associated exploratory drill-site).

Following a request made by the County Planning Authority (CPA), the applicant has provided further information in respect of any cumulative environmental impacts caused by this current planning application for an underground drilling corridor and the associated exploratory drill-site. However, this Report focuses only on those matters judged by the CPA to be relevant to this current planning application for an underground drilling corridor, rather than the wider range of issues relating to the associated exploratory hydrocarbon drill-site. Officers have, however, documented all the responses received to consultation / notification on this current application (including its supporting Environmental Statement) from technical consultees, non statutory consultees and residents.

As this planning application facilitates that associated drill-site, Officers recommend that Members accept that the issue of need for hydrocarbon development has been separately decided by the appeal Inspector. Nevertheless, there are relevant environmental and amenity issues associated with this proposed underground drilling corridor. Officers judge that the relevant considerations in this case are hydrology and hydrogeology; noise and vibration; and archaeological impacts. As this particular proposal is entirely below ground, Officers have not considered above ground impacts on the AONB/AGLV or Metropolitan Green Belt.

Sutton and East Surrey Water object to this current application as they are concerned that the proposed mitigation measures would not guarantee the Lower Greensand aquifer's protection. Similar concerns were also raised by resident groups and their representatives at the recent Public Inquiry. However, the Inspector concluded on 7 August 2015 that:

"The safeguarding of groundwater quality is always important, especially where it is used as a potable resource. However, the regime recently introduced by the EA would provide for more robust testing and checking for any leakage from the site operations into the underlying groundwater. This should reduce significantly the dangers of a loss at source travelling along pathways to sensitive receptors. With this monitoring in place, it should be much easier and quicker to introduce remediation. In the absence of any worries raised by the Regulator, objections could only have attracted more weight if they had relied on technical evidence and evaluation. As it is, they seem to be almost entirely precautionary and the management proposals for the site and EA's monitoring should answer any doubts."

Officers recommend that Members attach considerable weight to the conclusions of the Inspector and note that no objections have been raised to this application by either the Environment Agency or the County Geotechnical Consultant. As such, and on the basis of all the technical responses in respect of those relevant environmental and amenity issues referred to above, Officers consider that planning permission for an underground drilling corridor should be granted.

The recommendation is to **PERMIT** subject to the imposition of planning conditions.

APPLICATION DETAILS

Applicant

Europa Oil and Gas Ltd

Date application valid

14 May 2014

Period for Determination

3 September 2014 (extension agreed until 30 September 2015)

Amending Documents

- Figure 1.10a and 1.10b Well Construction Concept Cross-sections (these figures replace Figure 1.10 in Chapter 1 of the November 2014 ES);
- Revised Chapter 12 of the Environmental Statement: Hydrology & Hydrogeology (this chapter replaces Chapter 12 of the November 2014 ES);
- Appendix to Chapter 12: Hydrogeological Risk Assessment;
- Landscape & Visual ES Chapter Addendum (to Chapter 9 of the November 2014 ES);
- Appendices to Landscape & Visual ES Chapter Addendum.
- Letter from WSP regarding proposed site lighting.

SUMMARY OF PLANNING ISSUES

This section identifies and summarises the main planning issues in the report. The full text should be considered before the meeting.

	Is this aspect of the proposal in accordance with the development plan?	**Paragraphs in the report where this has been discussed**
Need for Hydrocarbons	Appeal Inspector decided: Yes	68-74
Hydrology & Hydrogeology	Yes	75-107
Noise & Vibration	Yes	108-122
Archaeology	Yes	123-126
AONB/AGLV & Visual Impact	Yes	127
Metropolitan Green Belt	Yes	128-130
Highways & Transportation	Yes	131-133
Other issues	Yes	134-136

ILLUSTRATIVE MATERIAL

Aerial 1 – Associated Drill-Site at Bury Hill Wood

Site Plan

Plan 1 - Site of Application (Drawing Ref EUR HO 10 Revision D)
Plan 2 - Well Construction Concept (Figure 5a)
Plan 3 - Well Construction Concept (Figure 5b)

Appendices

Appendix 1 – Schedule of 23 Conditions from the associated exploratory hydrocarbon (appeal ref: APP/B3600/A/11/2166561, decision dated 7 August 2015)

BACKGROUND

Site Description

1. The underground drilling corridor would extend to some 8.5 hectares, allowing for deviation during drilling, spreading in a south-westerly direction from the associated drill-site at land at Bury Hill Wood to underneath Coldharbour Village. The application site is located within the Metropolitan Green Belt, the Surrey Hills Area of Outstanding Natural Beauty and Area of Great Landscape Value. Coldharbour Village is a conservation area, with the Anstiebury Camp Scheduled Ancient Monument to the east and Leith Hill Site of Special Scientific Interest to the west. The Coldharbour Village Conservation Area extends from the junction of Coldharbour Lane, Abinger Road and Anstie Lane in a band that includes the majority of the village properties and ends just short of The Landslip.

2. There are two important aquifers present in the Dorking area, the Chalk and the Lower Greensand. The primary aquifer, the Chalk, is not present in the proposed borehole location. The secondary aquifer, the Lower Greensand, is exposed at surface and would be penetrated by the upper part of the proposed exploratory borehole.

3. The associated drill-site at land at Bury Hill Wood is found some 3.5 km to the south west of Dorking, west of South Holmwood and 800 metres to the north of the Village of Coldharbour. Access to the associated drill-site would be gained via Coldharbour Lane and utilise an existing Forestry Commission entrance and 250 metres of access track. Coldharbour Lane links to the A24 via Knoll Road to the south of Dorking and the A2003.

Planning History

4. Planning application ref: MO09/0110 was refused by Surrey County Council (SCC) on 30 June 2011 for the following development: “Construction of an exploratory drillsite to include plant, buildings and equipment; the use of the drillsite for the drilling of one exploratory borehole and the subsequent short term testing for hydrocarbons; the erection of security fencing and the carrying out of associated works to an existing access and track all on 0.79 ha, for a temporary period of up to 3 years, with restoration to forestry.” At the Planning & Regulatory Committee on 25 May 2011, Members had earlier resolved to refuse the application for the following reasons:

   ‘(1) *The proposed exploratory drilling development will have a significant adverse impact on the Area of Outstanding Natural Beauty (AONB) in the setting of Leith Hill which cannot be mitigated and where exceptional circumstances including the public interest have not been demonstrated to justify the grant of planning permission. The proposal is therefore contrary to Government Planning Policy as set out in Minerals Policy Statement 1 (Planning and Minerals) November 2006 and Planning Policy Statement 7 (Sustainable Development in Rural Areas) August 2004, The South East Plan May 2009 Policy C3 (Areas of Outstanding Natural Beauty); the Surrey Minerals Plan 1993 Policy 1 (Environmental and Amenity Protection) and the Mole Valley Local Development Framework Core Strategy 2009 Policy CS13 (Area of Outstanding Natural Beauty and Area of Great Landscape Value).*

   (2) *There is insufficient evidence to demonstrate why the proposed exploratory drilling development cannot be located beyond the boundary of the Area of Outstanding Natural Beauty (AONB) designation. The proposal is therefore contrary to Government Planning Policy as set out in Minerals Policy Statement 1 (Planning and Minerals) November 2006 and Planning Policy Statement 7 (Sustainable Development in Rural Areas) August 2004 and Surrey Minerals Local Plan 1993 Policy 15 (Environmental & Ecological Impact of Hydrocarbon Development).*

(3) It has not been demonstrated to the satisfaction of the County Planning Authority that the proposed traffic management measures are adequate to protect the character of Coldharbour Lane; where the nature of the traffic activity would have the potential to irreversibly damage the historic banks and trees and lead to the industrialisation of the character of a quiet rural road; or adequate to protect the amenity of highway users and residents in Knoll Road, Coldharbour Lane and the broader vicinity; contrary to the Mole Valley Local Plan 2000 Policy MOV2 (The Movement Implications of Development) and Surrey Minerals Local Plan 1993 Policy 1 (Environmental and Amenity Protection).'

5. The applicant then made an appeal to the Secretary of State against the refusal. The above reasons for refusal were subsequently amended by Surrey County Council in the run up to the first appeal Public Inquiry, with the second reason for refusal withdrawn and the third amended to read as follows: *'It has not been demonstrated to the satisfaction of the County Planning Authority that the proposed traffic management measures are adequate to protect the character of Coldharbour Lane; where the nature of the traffic activity would lead to the industrialisation of the character of a quiet rural road; or adequate to protect the amenity of highway users and residents in Knoll Road, Coldharbour Lane and the broader vicinity; contrary to the Mole Valley Local Plan 2000 Policy MOV2 (The Movement Implications of Development) and Surrey Minerals local Plan 1993 Policy 1 (Environmental and Amenity Protection).'*

6. The appeal was subsequently dismissed by the Secretary of State's Inspector on 26 September 2012. However, Europa Oil and Gas Ltd then successfully challenged the Inspector's decision in the High Court, and on 25 July 2013 the judge quashed the earlier appeal decision. Leith Hill Action Group, which was a defendant to the proceedings in the High Court, then appealed against the judge's decision. This appeal was dismissed by the High Court on 19 June 2014 and the Secretary of State has now re-determined the appeal by Europa Oil and Gas Ltd against SCC's earlier refusal of planning permission (see below). The question determined by the High Court and Court of Appeal was whether or not the exploration for minerals (including hydrocarbons) fell within the term "mineral extraction" as used in paragraph 90 of the NPPF (and policy MC3 of the Surrey Minerals Local Plan (1993)). If it does, then exploration for minerals is not inappropriate development in the Green Belt per se. Whether or not a proposal for exploration for minerals is inappropriate development in the Green Belt will depend on whether the particular development proposed preserves the openness and does not conflict with the purposes of Green Belt. If it does not fall within the phrase "mineral extraction" then exploration for minerals in the Green Belt would be inappropriate development per se. The Inspector found that it did not fall within the meaning of the phrase "mineral extraction." The High Court and the unanimous Court of Appeal held that he was wrong to do so. That position is now reflected in policy. Paragraph 092 of the NPPG states that there are three phases of hydrocarbon extraction: exploration, appraisal and production.

7. Planning application ref MO09/0110 (allowed at appeal on 7 August 2015, ref: APP/B3600/A/11/2166561) proposed to construct a temporary drill-site within an enclosed compound together with mobilising drilling and ancillary equipment/welfare accommodation to drill an exploratory borehole. Should hydrocarbons be encountered preliminary short term (no longer than 4 days) "drill stem" testing would be undertaken to assess economic viability. Should no hydrocarbons be encountered or upon completion of the drill stem testing, all structures, buildings and enclosures would be removed and the site restored. A temporary drill-site is used solely for exploratory purposes only to establish the presence or not of hydrocarbons. If economic reserves are encountered a suitably located permanent facility may be sought through a separate planning application and considered on its merits at that time. The duration of the temporary development is programmed to last approximately 18 weeks and can be summarised in 4 Phases: Phase 1 Site clearance and preparation - 6 weeks; Phase 2 Equipment

assembly and drilling operations - 5 weeks; Phase 3 Testing and evaluation (if applicable) - 2 days (oil) or 4 day (gas); and Phase 4 Reinstatement of site - 6 weeks

8. The Public Inquiry into the second appeal (ref: APP/B3600/A/11/2166561) closed on 11 June 2015. The Inspector issued his decision on 7 August 2015 and allowed the appeal with the following formal decision reason: *'Having regard to the evidence presented to the inquiry, the written representations and visits to the appeal site and surroundings, I am convinced that the short-term harm to the identified interests of acknowledged importance would be clearly and demonstrably outweighed by the fully reversible nature and the benefits of the scheme in national and local terms...Accordingly, and having taken into account all other matters raised, this appeal succeeds.'*

THE PROPOSAL

9. The applicant proposes an underground drilling corridor of an exploratory hydrocarbon borehole to be drilled from land at Bury Hill Wood, off Coldharbour Lane, Holmwood to land under Coldharbour Village. The borehole would be drilled to an anticipated total depth of 1,450m true vertical measured depth in order to target the Downdip Portland Target, with a 'deviation tolerance zone' of 8.5 hectares. The underground route of the drilling operation was not included within the earlier planning application refused by SCC (see above, ref: MO09/0110 – allowed at appeal), which sought planning permission for the over ground exploratory drill-site operations.

10. The application site comprises the underground drilling corridor in which the path of the directional drilling would take place. The applicant states that the well direction would be monitored continuously while drilling and would be directionally controlled in order to hit the targets selected. On completion of the well, a true and final surface location of the well path would be recorded on final borehole surveying.

Drilling Operations

11. The applicant sets out that following construction of the associated drill-site, drilling and associated operations would operate on a 24 hours per day basis over a period of approximately 4 – 5 weeks. The applicant states that the drilling and casing programmes would be designed in accordance with standard petroleum industry practice, taking into account the anticipated geology, pressures and objectives of the borehole. The applicant states that 24 hour drilling is necessary to ensure the stability of open hole sections of the well, and general safety of operations.

12. The applicant plans to drill as fast as possible to the target sections, log and test the borehole, set production casing and, if required, run a short-term drill stem production test. The applicant sets out that well casing is an important part of the drilling and completion process, consists of a series of metal tubes installed in the freshly drilled hole. Casing strengthens the sides of the well hole, ensures that no oil or natural gas seeps out of the well hole as it is brought to the surface, and keeps other fluids or gases from seeping into the formation through the well.

13. The applicant sets out that water would be required for the drilling fluids whilst drilling the borehole for dealing with the possible loss of fluids to formation in the early drilling stage and for emergency fire-fighting contingencies. The applicant states that the well has been designed to avoid any contamination of the Atherfield Clay and Hythe Beds, and that to isolate and protect the Lower Greensand, the drilling programme would include the following:

- Installation of a 508mm Outer Diameter (OD) Surface Conductor Pipe down to 20m prior to the drilling rig coming on site.

- Installation of 339.73mm OD casing pipe down to 450m following the drilling of a 444.5mm hole using water based drilling mud.
- The 339.73mmm OD casing cemented in place, inside of the 20” conductor pipe.
- A 311.15mm hole drilled with a fresh water mud system, taken down to a depth of about 750m.
- This hole would then be lined with 244.48mm OD casing and cemented to surface. This 244.48mm OD casing set from surface down to 750m would further isolate the Lower Greensand.

14. The applicant sets out that there would be no impact on the approximate drilling operation length and rig size as proposed in the associated drill-site. Lastly, the applicant sets out that the programme would be subject to Health and Safety Executive (HSE) notification and central Government (Department for Business, Innovation and Skills) approval prior to the commencement of operation.

CONSULTATIONS AND PUBLICITY

District Council

15. Mole Valley District Council: “*Mole Valley Council has no comment on the technical issues relating to Planning Application MO/14/1006 but wishes to state that it considers that it has no effect upon the issues relating to the objection previously raised regarding MO/2009/0110 which is under appeal. For avoidance of doubt Mole Valley maintains the following:*

    That Mole Valley District Council OBJECTS to the proposed exploratory oil drilling in this sensitive landscape that is recognised as having national importance. The proposal represents a short term, highly intensive and intrusive, development which would impact upon environmental interests of acknowledge importance, both nationally and locally. In the absence of any overriding national need the development must fail against the clear national and local planning policies in place to protect this national asset. Even with evidence of need the District Council is not convinced that the harm is overcome if appropriate weight is given to the conservation of the natural beauty of this part of the Surrey Hills Area of Outstanding Natural Beauty.”

16. Mole Valley District Council (Environmental Health): No response.

Consultees (Statutory and Non-Statutory)

17. Environment Agency (EA): No objection confirmed on 10 April 2015, following the EA’s review of further information submitted under Regulation 22 of the EIA Regs 2011.

18. County Geotechnical Consultant (CGC): No objection.

19. Sutton and East Surrey Water Plc: (letter dated 17 December 2014) *“The proposed exploratory well will penetrate the lower greensand aquifer in relatively close proximity to our Dorking abstraction source. We are concerned that, in the event of a leak or a spill, the proposed mitigation measures will not guarantee the aquifer’s protection. We therefore wish to formally register our objection to the proposed application.”*

    <u>Applicant’s response to Sutton and East Surrey Water objection</u>

    The applicant submits that: *“Sutton and East surrey Water are mistaken in their belief that the Lower Greensands underlying the suite are hydraulically linked to the water abstraction boreholes in Dorking. The water company has previously made the same objection to the original planning application for the drilling site (currently the subject of a new public inquiry) that was over ruled by the Environment Agency. The EA wrote at the*

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(Letter of 18 August 2009) to Surrey county council to confirm that there were '...no feasible pathways (for liquids from the site) to the Dorking abstraction boreholes...'

Examination of the Groundwater and surface water risk maps published by the EA show that the proposed site is outside any areas at risk. Where the borehole approaches the down-hole target, it is 100m below the Lower Greensands and therefore does not pose a risk to the groundwater aquifers located in that strata...the safeguards we have proposed are robust and safe, as proven by their use over the last 20 years...In this particular instance, the site is located well outside the Source Protection Zone for the Dorking Aquifers and is hydraulically isolated by the topography. There is therefore no risk to the water abstraction boreholes in Dorking arising from this proposed development."

CGC's response to Sutton and East Surrey Water objection

The CGC advises that the geology and groundwater catchment for the Sutton and East Surrey wells is such that there is no direct groundwater pathway in the same aquifer between the wells and the drill-site. The most direct pathway from the Hythe Formation alongside the well location to the supply wells is via the springs to the north and west of the site and into watercourses such as the Pipp Brook that eventually join the River Mole at Dorking. Where these watercourses leave the outcrops of the Weald and Atherfield Clays they then flow on the Hythe Formation and Folkestone Beds, with which there would be hydraulic continuity. The Hythe Formation and the Folkestone Beds is the aquifer exploited by the public water supply wells in Dorking. With no direct groundwater flow path between the drill-site and the public water supply wells, and the relatively long alternative ground and surface water pathway, the CGC considers that there is very little risk to the Sutton and East Surrey wells, though they note that it is essential that the surface water receptors are protected.

20. County Environmental Assessment: The ES is compliant with the minimum information requirements set out in Part II of Schedule 4 of the EIA Regulations 2011. As submitted, the ES also provides much of the information listed under Part I of Schedule 4 of the EIA Regulations 2011, as could be reasonably required for the proposed development.

21. County Noise Consultant: The noise and vibration levels likely to arise from this development should not exceed appropriate limits. On this basis, the development should be acceptable in terms of noise and vibration.

22. County Archaeological Officer: No objection.

23. County Highway Authority: As this application is only to consider the underground drilling corridor, it has no transportation impact on its own, and therefore no comment to make.

24. Health and Safety Executive: Does not advise, on safety grounds, against the granting of planning permission in this case.

25. Surrey Fire & Rescue: The Fire Authority has no observations to the proposal. However, should any drilling operation be undertaken the following points are to be observed:

- The Fire Authority should be notified of the location of any operations to ensure correct addressing of incidents on site;
- Adequate Fire Service access it to be provided
- Any ancillary buildings that used for such purposes as offices etc should comply with requirements of the Regulatory Reform (Fire Safety) Order 2005

26. Department of Energy and Climate Change (DECC): No response.

27. County Air Quality Consultant:

'There is no odour issue associated with the proposed exploratory drilling. With respect to dust, it is understood that there will be no significant operational effects associated with proposed activities on the site. In our view, the dust control during construction and restoration phase proposed is sufficient. With regards to air quality, the application proposes that Clean Enclosed Burners (CEBs) are to be installed as part of an exploratory borehole and production testing. As the CEBs are not expected to operate for more than 36 hours in total, NOx emissions are not likely to have significant effects on local vegetation at annual timescales. This is below the limit that would require an air quality assessment as stipulated in Environmental Protection UK guidance. We therefore would not expect significant operational effects associated with the application with respect to air quality.

The application also proposes to generate an average of about 20 HGV movements per day during its busiest phase, the site construction phase. This is not expected to be significant. We therefore would not expect significant construction effects associated with the application with respect to air quality. Based on the information provided, we envisage no further implications of the proposal with respect to air quality and dust.'

28. Southern Water: No comment to make.

29. Forestry Commission: No response.

30. Woodland Trust: Objects on the basis that the potential impacts (from noise, lighting and potential for accidental contamination from spillage) may cause irreversible deterioration to the ancient woodland that surrounds the site. Also concerned that deciding two connected applications independently will mean a strategic approach to managing environmental risk cannot be taken – therefore, this application should be deferred until a decision has been made on the appeal. Concerned that allowing exploratory well in an AONB and adjacent to ancient woodland will set a precedent leading to direct loss of irreplaceable habitat.

31. National Trust: *'Although the current application is only for the underground drilling corridor, the application acknowledges that the proposal is essentially linked to the earlier application. Effectively, they form part of the same development proposal. Furthermore, it is noted that the proposed drilling corridor would pass under the Trust's land at Coldharbour Common. The Trust therefore objects to the current planning application for the same reasons as set out above, and urges the County Council to refuse permission for this inappropriate development.'*

32. Gatwick Safeguarding: As this application is for an underground drilling corridor only and does not include above ground works including the rig, no aerodrome safeguarding objections to the proposed amendments/additional information. Should these proposals go ahead and a drilling rig is required, an obstacle light will be required of a specification to be agreed with the Gatwick Airport Safeguarding Officer.

33. County Ecologist: No objection.

34. County Lighting Consultant:

"Additional information was submitted to me with regards to more realistic effects the conifers would have on screening light sources to sensitive receptors. Indeed applying a more accurate factor for screening results in a significant drop in the source intensity figures from the circa 840 candela (cd) to 202 cd, with the limit for pre-curfew for Environmental Zone E1 being 2500cd, the calculation figures indicate the designer is endeavouring to reduce impacts as far as possible.

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Unfortunately due to Health & Safety reasons requiring illumination throughout the hours of darkness, the high level lighting (above the tree line) would inevitably result in receptors experiencing sight of the lit development and therefore not complying with the requirement of zero cd post-curfew. However the temporary nature of the works may provide the planning authority with mitigation for this and the effects of light presence.

The paragraph written by the applicant's Consultants (WSP) stating: '*Such lighting shall be implemented with due consideration for the use of best practicable means to prevent, or to counteract the effects of the artificial light on the surrounding area. The lighting shall be designed by competent designers and be assessed against the guidance documentation mentioned within the planning submissions using the latest technology*' does afford the Planning Authority some additional comfort that the applicant would use the best practicable means to prevent, or to counteract the effects of the artificial light on the surrounding area.

It is clear that this development would be unable to adhere to guidance for the reduction of obtrusive light, however it is clear the applicant has/would endeavour to limit the effects of this temporary lighting."

35. County Landscape Officer: There is an adverse landscape and visual effect on the landscape which increases in significance due to the location within the designated landscape of the AONB. Mitigation for this installation is limited only to its temporary nature.

Comment on Regulation 22 information:

'The assessment acknowledges that the upper parts of the drilling rig will be visible from a wider area but maintains that the contrast will not be so great as the plantation woodland has a strong vertical characteristic. This would seem to ignore the organic and undeveloped nature of the woodland and skyline which would be in direct contrast to an industrial installation. This would also have to be lit in accordance with operational health and safety requirements exceeding the sky glow requirements in a dark sky area.

I cannot agree with the conclusions drawn from this assessment on the level of harm on the Surrey Hills AONB...I would consider that the industrial nature of this development will be an uncharacteristic and alien feature in direct contrast to the predominantly organic character of the woodland landscape with an undeveloped skyline. As such the impact on landscape character would be of major significance only being reduced by its temporary nature.'

36. Natural England: No objection.

37. Surrey Wildlife Trust: No response.

38. Surrey Hill AONB Board:

'This application is directly related to the main exploratory drilling proposal (MO/2009/0110) subject of a second public inquiry in April and the harmful impact on the AONB is the same. Therefore the Surrey Hills AONB Board's concerns submitted to SCC in determining that application, the case it presented to the July 2012 public inquiry, and the Inspector's conclusion that material harm would be caused to the AONB all still apply to this current application. The Board is presenting further evidence at the forthcoming second public inquiry this April. SCC is asked therefore to take into account the AONB concerns previously set out in connection with the above application and appeal and the Inspector's AONB conclusion that material harm would be caused to the AONB.

Since the Inspector's decision the then Surrey Hills AONB Management Plan has been superseded by the Surrey Hills AONB Management Plan 2014 – 2019. The land use planning policies are similar and the proposal is contrary to Management Plan policies LU1 and LU2 and indeed the supporting text at section 2.9. The proposal is also considered to be a "major development" for the purposes of NPPF paragraph 116. Consequently, the proposal is contrary to NPPF policy set out at both paragraphs 115 and 116. Furthermore the application is contrary to the AONB aspects of Mole Valley Core Strategy policy CS13 and Surrey Minerals Plan Core Strategy Policy MC2.'

39. Ramblers Association: No response.

40. CPRE:

Objects owing to unacceptable impacts on the landscape and harm to the Green Belt, including other environmental harm, also: '*The proposals to explore for oil and gas, with only a one in three chance of success, cannot be justified on any rational basis of overriding need or strategic significance. If there is oil it is unlikely to fulfil more than the tiniest fraction (0.01%) our national energy requirements over the next quarter of a century. Therefore it cannot be sensible or practical to give planning consent just because our economy is currently dependent on hydro-carbons for the majority of its energy needs. This project would not alter that position one way or the other, and on a simple cost-benefit analysis, simply does not stack up.*

Given the basic suppositions underlying these applications are fundamentally flawed, there is no case to be made for saying that drilling in this site is essential (and in the national interest) rather than merely commercially convenient. Why this site over and above other ones in less sensitive areas? The consideration of alternative sites is one of the main objectives of an environmental impact assessment. Yet, as with the previous application, no satisfactory evaluation of alternative sites, outside the AONB and with better access for HGVs, have been made available for consideration.

Then there is the considerable volume and strength of local objection. If 'localism' is truly about local people deciding local issues then, in the absence of overriding national interest or exceptional circumstances to justify the harm, their voices should prevail. Moreover, Mole Valley District Council has continued to oppose exploratory oil drilling in this very sensitive landscape of national importance. The council has stated that in the absence of any overriding national need the development must fail against the clear national and local planning policies that have been put in place to protect this national asset.

Not only is a national asset diminished by this development, but a vital natural resource is threatened. The 'pan handle' application poses the risk of contamination of the aquifers and pollution of the water supply for the area. This resource is of far greater importance to the public, in both the short and longer term, than the limited energy supplies that may be found and extracted by Europa Oil & Gas Limited. The risks posed to our water supplies must be evaluated and eliminated before any drilling can even be considered. Independent expert advice must be sought.'

CPRE state that previous objections to the development remain material and relevant to this wholly connected application:

- Traffic implications, access via the historic sunken Coldharbour Lane, is totally unsuitable for HGVs; and the increase in traffic represents an unacceptable level of intrusion, adverse impact on the safety and rural character of the road.

- The proposals would have an obtrusive visual and noise impact, to the detriment of the peace and tranquillity of an important area, which provides recreation and peaceful enjoyment for many thousands of visitors and local residents.

CPRE sceptical that the company has the ability to restore the landscape and guarantee that there would be no risk to our future water supply.

Parish/Town Council and Amenity Groups

41. Capel Parish Council (CPC): Objects on the following grounds:

Financial Considerations

Based upon the Europa accounts ending on the 31st July, 2014 the following information was provided: 1) The applicants only have a 40% interest in the Holmwood PEDL143 Exploration Licence; 2) The revenue of £4.5 million is a 14% reduction on the previous year's revenue; 3) Compared to the previous year the apparent liquidity was dependent upon a Share Issue; & 4) It would appear that they have a retained deficit based upon an accumulated loss on the previous year end of £13.2 million.

Given the significant costs of implementing any form of exploration CPC is concerned as to their ability to meet all of its environmental obligations in the event of planning permission being granted. The applicants have a Lease from the Forestry Commission for the exploration now proposed. National Planning Guidance requires the owners (Forestry Commission) to undertake all remedial obligations contained within any Conditions or Planning Agreements to restore the land in the event of default. Given the financial risks which CPC consider may prevail the Commission would need to be party to any agreement. As the applicants only have a 40% (minority) interest, CPC would seek the assurance that all interested parties would be signatories to any planning agreement. CPC considers this prospect to be 'high risk' having regard to (a) the prospect of an application to vary the conditions of any permission which may be granted within 5 years and (b) the prospect of enforceability.

Green Belt (GB)

The previous Bury Hill Wood Appeal Inspector stated that there were no other considerations which "would clearly outweigh the harm to the Green Belt." The position adopted in relation to the Judicial Review and the Court of Appeal has subsequently changed. Firstly, the Secretary of State has had further regard to Green Belt considerations. Secondly, following the separate Redhill Aerodrome appeal, the Court of Appeal supported the decision of that separate Inspector who refused planning permission on ground of 'other harm' to the GB. The protection of the GB is one of the core planning principles in the NPPF and its emphasise is consistent with the balance addressed by the previous Bury Hill Wood Appeal Inspector, which now accords with the Court of Appeal Redhill decision. Planning permission should be refused by reason of inappropriateness and the harm it would cause to the GB. There have been no changes to what are considered to be the essential characteristics of the GB's and the five purposes they serve all remain unchanged. What remains a significant consideration in the view of CPC is that very special circumstances should justify an exception to GB policy which were not demonstrated in 2012 and cannot be demonstrated now.

AONB.

The area of high landscape and biological value is very popular with visitors. The protection of the natural beauty of the landscape is a priority in the AONB and while it is acknowledged that an AONB designation does not preclude development in tandem with its Green Belt designation and its unique setting where the corner stone is tranquillity any intrusion must be seen as one to have an adverse and potential irreversible impact upon the locality, this being reinforced in the NPPF. The CPC notes a consistent pattern in respect of recent central Government decisions in relation to the importance of, and protection of A.O.N.B's. The decisions may not relate to oil exploration but do show a consistent regard in respect of the great weight and importance to be afforded to such areas of national importance and designation.

Highways

The applicant confirmed that a holding location at a transport depot away from Dorking/Coldharbour would be implemented and that they would put in place measures to improve what is, at present, poor reception for mobile phones in the Coldharbour area. CPC wish to see the securing of these safeguards incorporated into a Planning Agreement. It has also been agreed in principle that in the event of planning permission being granted a condition survey would be undertaken along the entire length of Coldharbour Lane up to the site to enable protective/ remedial measures to be taken in the event of damage being caused by vehicles serving the proposed development. CPC would also wish to see these measures being secured by way of a Planning Agreement with movements suspended while remedial works are undertaken.

Light and Noise

Given the previously environmental condition some impact in relation to noise and light would prevail. Notwithstanding the applicant's intentions to minimise that impact, they are conditions which would be better absent from the vicinity

42. Holmwood Parish Council: Concerned about the impact of substantial traffic and link between Coldharbour Lane and Horsham Road, in addition to knock-on effects in Dorking area. There would be damage to the sunken narrow lane, as it is unsuitable for large vehicles, and local people/business/tourism would be inconvenienced by the proposal. Concern that exploration would take place in AONB and Green Belt; unacceptable views of the rig, visibility of flares, risk of fire in wooded area and light pollution. How long would this area take to recover if exploration allowed.

43. Wotton Parish Council: Concerned about the effect of the traffic and heavy vehicles that would be employed in the construction of the site on the surrounding roads and countryside.

44. Leith Hill Action Group:

'The application referenced above is not a stand-alone application (as the applicant clearly states); it simply adds more detail to MO/2008/0169 which was refused by the County Council as Minerals Planning Authority in 2011 and is the subject of a second Public Inquiry (APP/B3600/A/11/2166561) scheduled for April 2015. It does not change the proposed development. The County Council has required the applicant to submit a consolidated revised Environmental Statement covering the whole proposed development, which suggests to us that the Council takes the same view. This being the case, permission has already been refused. The only conceivable decision remaining for the Planning & Regulatory Committee to take is whether it wishes to add to its reasons for refusal.

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Sutton and East Surrey Water has formally objected to the additional proposal because of the potential for the contamination of groundwater. Unless the County Council has expert opinion to the contrary (from a source independent of the applicant) then it is our view that this should be an additional reason for refusal and should be added to the County Council's Statement of Case at the forthcoming Public Inquiry.

Any suggestion that this aspect of the proposed development (implications for groundwater) is separable from the rest and so might be approved separately falls when the letter of December 8th 2014 from the Environment Agency to the Planning Inspectorate is taken into consideration. That letter makes clear that changes to the proposed development would be required, e.g. an additional drilling phase and changes to the number and diameter of well casings, with implications for project duration and for quantity of waste production (and therefore traffic movements) from the site. However, none of these changes is currently defined.'

45. Dorking & District Preservation Society: No response.

46. Coldharbour Village Society: No response.

47. The Surrey Hills Society: No response.

48. Rudgwick Preservation Society: No response.

49. Westcott Village Association:

Objects on basis that adverse traffic effects would be felt widely, certainly in Westcott. Traffic management problems would not be containable and we are very concerned about threats to road safety. Congestion, particularly in the Coldharbour Lane area, would be severe. Concerned about the impact on motorists, cyclists and pedestrians. The number of cyclists using this area has risen dramatically in the past three years. Use by schoolchildren is considerable. Do not need or want an increase in HGV use of the magnitude envisaged. Do not consider this to be an appropriate development in the Green Belt.

The damage to the quality of the AONB is likely to be severe. This very major development should be refused on the ground that there are no exceptional circumstances to warrant it. Concern in Westcott about threats to the AONB are widespread and there is a strong feeling that this scheme is not in the public interest. Alarmed at the prospect of damage to the water supply, a supply which extends very widely. There would be significant risk of puncture and other damage to major aquifers in this area. Consider the public benefit arguments to be specious. Any so-called public benefit is likely to be slight and could undoubtedly be achieved elsewhere without such damage to the environment, to the quality of life of local residents and visitors and to the integrity of the AONB.

50. Frack Free and Fossil Free Surrey:

Objects on the basis that the AONB should be protected and this development could set a precedent, with 35 metre high rig and flare units. There are also lots of visitors to Leith Hill. The drilling corridor would have adverse effects on Coldharbour from noise and vibration. Not sure what the company plans to do with the borehole once they have finished drilling, though they stated in the original planning application that it would 'regenerate' under Forestry Commission care. HGVs using Coldharbour Lane would cause damage to historic sunken lanes and use of traffic lights would cause huge traffic jams and gridlock in Dorking, which would affect the quality of life for local villagers and the surrounding areas. Underground aquifers would be contaminated in the event of oil spillage; too much risk for short term gain. The proposed rig's lighting would adversely affect owls and bats at night, with flora and fauna affected by dust and fumes from

drilling and lorries. Against further drilling for hydrocarbons because of CO_2 effects on climate change and note the UK Government are committed to cutting carbon emissions to 20% below 1990 levels by 2020.

Summary of publicity undertaken and key issues raised by public

51. The application was publicised by the posting of a site notice and an advert was placed in the local newspaper. A total of 1492 owner/occupiers of neighbouring properties were directly notified by letter. As at 10 September 2015, the CPA has received some 220 representations. Officers note that a considerable volume of the representations refer to concerns about the associated drill-site allowed at appeal, rather than this application purely for an underground drilling corridor.

52. Where points are raised in representations that are not strictly relevant to this particular application for an underground drilling corridor (e.g. on the visual impact of the above-ground drill-site), Officers have not considered/responded to those points later in this report. The case made by SCC to the appeal Inspector was, however, unchanged that planning permission should have been refused for that associated development. For completeness, Officers have included the main issues raised in the representations below, although noting that not all are strictly relevant to this current planning application. Officers also note that residents and their representatives attended the recent appeal public inquiry and raised similar concerns directly to the Government's Inspector. The main points of public objection are grouped together below:

Traffic and Highway Safety

- The proposal would lead to an increase in traffic in the locality and would affect all of the Dorking area. The one-way system in Dorking already causes congestion.

- The country lanes are totally unsuited to use by HGVs and are in poor condition already. The roads are narrow, steep and it is difficult to pass. There are blind bends. The impact of over a thousand HGV movements on Coldharbour Lane and Knoll Road and the surrounding roads does not bear thinking about. It would cause great damage to the environment and inconvenience. It is also likely to endanger residents who may need emergency services.

- There are no pavements or street lighting on Coldharbour Lane. The proposal could lead to accidents.

- Coldharbour Lane is well used by cyclists and walkers and the proposal would bring HGVs into conflict with cyclists. The applicants are lying about the amount of HGV traffic on Coldharbour Lane.

- Knoll Road is unsuitable for the proposed use. It is a residential road and the route used to The Prior School and Powell Corderoy School. It is a designated route for school transport. The junction with Coldharbour Lane and Ridgeway Road is dangerous. The proposal would result in severe disruption to residents of Knoll Road. It would be awful having HGVs outside houses, with all the associated fumes and noise.

- The traffic management and road closures are unacceptable and not feasible. The unmanned traffic lights round the blind and very narrow bend would lead to traffic backing up to the north and south.

- The proposal would lead to increase in usage of other single track lanes such as Anstie Lane, Broomhill Lane and Logmore Lane. This would inevitably cause damage to these lanes too and has safety issues.

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- Would cause major disruption to the Village of Coldharbour. Coldharbour is a village of 300 people. Coldharbour Lane is the main access road to the village and disruption to it would cause unacceptable loss of amenity and could cause life-threatening delay if emergency vehicles cannot use the lane. Residents do not want to see, hear or be aware of this disruption, noise and pollution 24/7. There would be severe loss of amenity for residents.

- The development would cause major disruption to residents living along the access route. Access to properties must be maintained at all times particularly in terms of emergency vehicles, deliveries and services. Some residents rely on care workers. Milk deliveries, postal deliveries and rubbish collection would undoubtedly be interrupted. Missing a train from Dorking to London or elsewhere could be damaging to people's income.

- Final HGV deliveries would be 3.15pm, but school buses start arriving at 2.50pm – this would cause traffic chaos

- The traffic survey fails to properly consider cyclist, which are frequent road users

AONB / Area of Great Landscape Value (AGLV)

- The AONB is of national importance and should be protected. The development is contrary to AONB policy. Every weekend there are hundreds of families, ramblers, cross country bikes enjoying this location of Outstanding Natural Beauty. How could an oil rig be contemplated it is outrageous. There is a finite number of AONBs in the UK. Extracting hydrocarbon in an AONB is simply too great an impact and wholly unnecessary. Leith Hill is one of the last untouched AONBs in the South East and should be protected at all costs.

- The development should take place elsewhere. An alternative site should be used. There is no need to use this site in the AONB. The applicant's assessment of the others sites is simply not correct. They have compared the various sites inconsistently. The sites to the east are dismissed but they have much easier access to the A24 and A29, which are much better routes to the site with less disruption – Old Moorhurst Lane would be ideal.

- The alternative site assessment was poor, which contrasts with that done for the Albury Appraisal Well which was extremely thorough. SCC should request an up-to-date assessment.

- Such a unique area should be protected not exploited for commercial gain, industrial development wholly inappropriate in this setting.

- The AGLV should be protected. The development is contrary to AGLV policy.

- The development would be visually intrusive over a wide area. The visual impact of the drilling rig would blight the landscape not only during drilling and construction works but would leave a large scar on the landscape for many years. The view from the junction of Anstie Lane and Coldharbour Lane looking north is one of the finest landscapes in the south east of England, it would be ruined.

National Policy and the Development Plan

- The site is within the Metropolitan GB, which should be protected. The development is contrary to GB policy and no very special circumstances have been demonstrated. It is unacceptable to spoil the Green Belt when there are so few of these areas left for people to enjoy.

- The development is contrary to the Mole Valley Local Plan.

- The development is contrary to National Policy.

- The Government recently banned fracking in the AONB so this application should be refused.

- The proposal is against the commitment to tackle climate change/global warming and renewable energy policy. Would encourage the use of fossil fuels. Should not be looking to further exploit non-renewable resources. The proposal is a classic case of short-termism – a short term financial gain at the expense of permanent damage to an environment that has taken over 1,000 years to evolve and it would make an unwelcome contribution to the global problem of rapid temperature rise. To allow development in an AONB it has to be in the national interest, but national policy is for renewables.

- The development would set a precedent and would not be temporary. If hydrocarbons were found it would become a long term development. To permit exploration would set a precedent and result in industrialisation of the area. Production on Leith Hill would blight the area for years to come. The applicants have already lost at Public Inquiry, this is just about money.

- The development is small and is not of national importance. This can only be a minor pool of hydrocarbon, the importance to the nation of any discovery can only be miniscule at best.

Cultural and Heritage impacts

- Ancient woodland is irreplaceable and should be protected. Habitat translocation is unsuitable for ancient woodland. The proposed trackways should be planned in detail to ensure that tree roots are protected. Also need to ensure full emergency planning and decontamination plan in place.

- Coldharbour Lane is a historic sunken lane that has inadequate capacity to accommodate the traffic generated by this development. There would be damage to the road surface and the steep banks and vegetation. The HGVs would cause the banks to become unstable and the historic trees would be damaged. Coldharbour Lane is forever being affected by landslips and falling branches from trees. The banks are fragile and would erode significantly as a result of the volume of traffic proposed. This type of attractive rural lane with its overhanging tree canopy is typical of lanes in the AONB. Many trees would have to be cut down and this would be a dreadful destruction of a unique eco-system. Widening the lane may be easy but replacing the trees that sit on the banks of the road would be impossible and therefore the beauty of this lane would be damaged forever.

- The Conservation Area at Coldharbour Village would be compromised, including by vibration, with older properties having no foundations.

- The area is important historically. The development would impact on the Anstie Scheduled Ancient Monument.

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- Leith Hill is a popular destination for tourists and recreational users, which would be affected by visual impact and traffic congestion. The development would certainly affect the flora and fauna on Leith Hill. Leith Hill is a special place that deserves and needs preserving and protecting.

- The development would impact on tourism and leisure activities and cause loss of amenity/seriously detract from the enjoyment of visitors to the Coldharbour area.

- Walkers/Cyclists frequent and enjoy the area, especially since the 2012 Olympics. Would impact on the rights of way and ability to roam and the noise levels at the footpaths/bridleways would adversely affect users.

Ecological impacts

- Would have a profound effect on the nature and character of the area, including Leith Hill SSSI. It is part of a fragile and unique ecology.

- Would adversely impact on the wildlife and wildlife rich habitats in the locality, including the woodland and heathland. We believe this area includes 0.8% of the UK's remaining firecrest wrens and 12% of the local population. The area is home to lots of animals and birds. Badgers and bats use the area and there are several RSPB 'Red List' (endangered) creatures currently residing in the vicinity of Bury Hill Woods. This includes red kites, cuckoos, long-tail mice. There are also several endangered flora species.

- Would permanently damage a protected area, disturbance of landscape, wildlife and natural serenity. This development could affect much further afield than Coldharbour; it could be extremely detrimental to other parts of Surrey.

- Noise and light would adversely affect bats and owls

- The peace and tranquillity of the area would be destroyed and these are important attributes of the AONB.

Other environmental impacts

- The overlying rock is porous and there is some faulting of the underlying strata. There is a risk that drilling would cause oil to leak into the surrounding rock and pollute Kit Brook, Tillingbourne (which provides water for agriculture and fishing lakes) and Pipp Brook and that it could cause landslides. The stream close to the equestrian centre could become polluted. Sheep graze in these fields. Leith Hill's aquifers provide a major source of water for 3 rivers the Mole, Arun and Tillingbourne.

- Sutton and East Surrey Water have objected, any drilling could mean hose-pipe bans and reduced water pressure

- No permission should be given unless the EA give an absolute assurance that there would be no interrupted ground water flow or pollution

- By drilling into complex geological faults, a pathway could be created for contaminants (from the proposal) into aquifers with serious implications for abstractors downstream. Fracking uses a cocktail of chemicals with dramatic human health impacts.

- There have been many examples when puncturing aquifers in the search for oil and gas has resulted in contamination of underground water and dried up aquifers. The drilling could have an effect on the landslip area. There is an ongoing problem of landslips and during the last major landslip the area the road was closed for months.

- An application to extend the A29 through Coldharbour was refused because of unstable geology.

- Would give rise to noise and unacceptable noise levels. It is unacceptable to have noise night and day. Vibration of traffic would shake properties and cause damage. There was a recent tremor in Hampshire related to drilling. The magnitude of the noise impact has been underestimated in the ES.

- Would give rise to dust and dirt. The large number of lorries required to construct and de-construct the site would throw up dust all along the approach route. The magnitude of the dust impact has been underestimated in the ES.

- Could cause atmospheric pollution and the emissions could impact on air quality in the area. Drilling can involve releasing dangerous gases. The magnitude of the air quality impact has been underestimated in the ES.

- The proposal to have the site floodlit would cause light pollution and would be seen for miles around. The proposed site is intrinsically dark and the lighting would be out of keeping.

- The applicant states that water from well testing will be held in tanks in bunded areas though there is insufficient information on this.

Other issues

- There is concern that if the applicant company ceased trading, obligations to restore the site would not be met. The consortia putting forward this application are not exactly financially stable; although not a material planning consideration environmental responsibilities should be taken seriously.

- Who would pay/be responsible for damage to the water source if issues only arise much further in the future?

- The EA does not have the resource to properly monitor the exploratory drilling operation proposed.

- The EA state that a permit would be required for longer than the 18 weeks stated; this increase in traffic and time needs to be taken into account by SCC

- There is no profit to be made with current crude oil prices

- Residents should be told what benefits would arise to them as a result of the proposal – SCC are failing to do this

- Protest camps would be set up, which would be hard to police, and would have an unfair and detrimental effect on local residents

- Would have no positive effect on the residents and regular users of the area. It would have a detrimental impact on the village. The application would have a severe impact on the number of visitors to the area and therefore a negative impact on the local economic climate. Access to local businesses would be adversely affected, particularly the Plough Inn which depends on its weekend ' walker and mountain biker' trade. They would go somewhere else.

- There would be an influx of workers to the area
- The applicants have not undertaken any consultation with residents, unacceptable for residents to have to visit District Council during working hours.
- Misleading address - the site area is not called Bury Hill Wood locally.
- The proposal would affect house prices.
- SCC previously refused the original application so should refuse this application; no decision should be made until after the linked appeal public inquiry
- Object in principle but no specific grounds cited, 2000+ people objected last time.
- Would withhold permission for drilling under property, the law states that landowners own the land under their properties to the centre of the earth and therefore no permission equal trespass.
- Letter of objection from the EA not available/removed, which is unacceptable, as is the cost of £50 for a copy of the Regulation 22 response from the applicant.

Support

- Given the history of appeals on this site, permission with all conditions available to impose would now be preferable to a permission gained on appeal with no real safeguards for the environment.

PLANNING CONSIDERATIONS

53. Oil and gas developments fall within the definition of 'mineral development' and as such, the County Council as Minerals Planning Authority (MPA) has a duty under Section 38 (6) of the Planning and Compulsory Purchase Act 2004 to determine this application in accordance with the Development Plan unless material considerations indicate otherwise. The activity associated with the exploitation of gas reserves can be considered in three phases: exploration, appraisal and development. This application is concerned with the exploration stage. Government planning policy for land-based exploration, appraisal, development and extraction of oil and gas and the underground storage of natural gas are covered in the National Planning Policy Framework 2012 and National Planning Practice Guidance 2014. Government energy policy makes it clear that energy supplies should come from a variety of sources and that minerals can only be worked (i.e. extracted) where they naturally occur.

54. Since planning application MO09/0110 was considered by the Planning & Regulatory Committee in 2011, the National Planning Policy Framework (NPPF) (2012) and the National Planning Practice Guidance (NPPG) have been published. The NPPF sets out the government's objectives for the planning system and has superseded the Planning Policy Statements (PPS's). The NPPG consolidates national planning guidance in an online resource. The NPPF and NPPG are therefore now material considerations in the determination of this appeal. The Surrey Minerals Plan, Core Strategy Development Plan Document, was adopted by Surrey County Council on 19 July 2011, and therefore now forms part of the development plan for the area. It replaces the Surrey Minerals Local Plan (1993). Accordingly, the Development Plan now comprises: Surrey Minerals Plan, Core Strategy, Development Plan Document (2011); Mole Valley Core Strategy Development Plan Document (2009); and the Saved polices from the Mole Valley Local Plan (2000).

55. The Surrey Minerals Plan 2011 Core Strategy Development Plan Document gives information on hydrocarbon development in Surrey and sets out the Authority's policy in terms of such development. In this case, Policy MC12 is relevant, where the County Council must be '*satisfied that, in the context of the geological structure being investigated, the proposed site has been selected to minimise adverse impacts on the environment.'* Consideration would need to be given to the potential impacts arising from the development proposed in this application, in terms of the local environment and amenities. It would be necessary for the CPA to be satisfied that this application proposal would not give rise to unacceptable environmental impacts. The views of specialist consultees have been sought as set out above.

Legal / Procedural matters

56. When this application was first received, Legal Counsel was sought by the County Council on the relationship of the development proposed under this current planning application and that proposed under application MO/09/0110 (i.e. that determined on 7 August 2015 by the government's Inspector following the Public Inquiry).

57. Counsel advised that there were two options open to the County Council. Firstly, the Council could treat the current planning application straightforwardly as an application for part of one project and so assess the whole project against relevant national and development plan policies, which would allow a full assessment of the cumulative effects of the joint project. However, the disadvantage of this approach is that in relation to section 38(6) of the 2004 Act there would be a degree of artificiality. Secondly, the Council could assess the impacts first of the current planning application alone and assess this application for compliance with national and development plan policy. The cumulative effect of both the below ground proposal and above ground appeal proposal would then fall to be considered as other material considerations in striking the overall planning balance and applying section 38(6) of the 2004 Act (and s70 of the 1990 Act). This would allow the Council to make clear its view on the particular impacts of the current planning application itself, whilst equally setting out its view on the overall acceptability of the wider project; this second approach was viewed as preferable.

58. Should planning permission be granted for this application, the development could not proceed without the linked appeal proposal also being permitted by the government's Planning Inspector. As set out below, following a request made by the CPA, the applicant has provided further information in respect of any cumulative environmental impacts caused by this current planning application for an underground drilling corridor and the associated exploratory hydrocarbon drill-site. However, this Report focuses only on those matters judged by the CPA to be relevant to this current planning application for an underground drilling corridor, rather than the wider range of issues relating to the associated exploratory drill-site.

59. Officers have, however, documented all the responses received to consultation / notification on this current application (including its supporting Environmental Statement) from technical consultees, non statutory consultees and residents. Officers also confirm that a complete pack of technical responses was sent to the Planning Inspector, the appellant and LHAG, in advance of the Public Inquiry commencing on 22 April 2014.

60. Throughout this report, Officers have therefore not discussed matters associated with the separate appeal proposals if they are not directly relevant to this underground drilling corridor application. This is because the County Council's view of the acceptability of the associated appeal proposal was made publically clear through the case presented to the recent Public Inquiry and it would therefore be contradictory for the County Council to make a different resolution on the above ground drill-site, notwithstanding the fact that the Inspector has now allowed that appeal. This is not to diminish the stance taken by the County Council on the impact of the associated above ground drill-site. In light of the 'second approach' view as preferable by Counsel, the Council's view on the overall

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acceptability of the wider project and the above ground drill-site is clear from the case defended at the recent Public Inquiry, namely the two refusal reasons referred to above:

1. *'The proposed exploratory drilling development will have a significant adverse impact on the Area of Outstanding Natural Beauty (AONB) in the setting of Leith Hill which cannot be mitigated and where exceptional circumstances including the public interest have not been demonstrated to justify the grant of planning permission. The proposal is therefore contrary to Government Planning Policy as set out in Minerals Policy Statement 1(Planning and Minerals) November 2006 and Planning Policy Statement 7 (Sustainable Development in Rural Areas) August 2004, The South East Plan May 2009 Policy C3 (Areas of Outstanding Natural Beauty); the Surrey Minerals Plan 1993 Policy 1 (Environmental and Amenity Protection) and the Mole Valley Local Development Framework Core Strategy 2009 Policy CS13 (Area of Outstanding Natural Beauty and Area of Great Landscape Value).*
2. *'It has not been demonstrated to the satisfaction of the County Planning Authority that the proposed traffic management measures are adequate to protect the character of Coldharbour Lane; where the nature of the traffic activity would lead to the industrialisation of the character of a quiet rural road; or adequate to protect the amenity of highway users and residents in Knoll Road, Coldharbour Lane and the broader vicinity; contrary to the Mole Valley Local Plan 2000 Policy MOV2 (The Movement Implications of Development) and Surrey Minerals local Plan 1993 Policy 1 (Environmental and Amenity Protection).'*

61. The purpose of this report is to consider only those issues associated with the current planning application and therefore not to revisit all the matters addressed when application ref MO09/0110 was considered by the P&RC on 25 May 2011. This is because the Inspector allowed appeal ref APP/B3600/A/11/2166561), which is a material planning consideration of significant weight and Officers do not consider that there have been any changes since the Inspector's decision.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

62. The Town & Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 2011 (referred to here as the EIA Regulations) implement the European Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment which was adopted in 1985 and amended in 1997. Schedule 2 of the EIA Regulations identifies the types of development for which EIA may be required. Consideration of whether a project triggers the need for EIA includes thresholds and criteria and other circumstances such as location within or very close to a 'sensitive area' as defined in the Regulations. In each case the key question is whether or not the project would be likely to give rise to significant effects on the environment of the location concerned.

63. This planning application was accompanied by an Environmental Statement (ES), which the County Environmental Assessment Officer considered when the application was first submitted in May 2014. The ES advised that the only topic for which new assessment work would be required was that of hydrogeology. Consequently, the ES submitted with this application addressed only the likely impacts of the drilling pathway on the hydrogeology of the affected area. The question of cumulative impact, of the directional drilling in combination with the development of the surface well-site, was briefly addressed in the ES as follows:

"The cumulative impacts of the over ground exploratory site together with the underground drilling operation were assessed in the ES that accompanied the earlier planning application (reference: 2008/0169/PS), therefore the current ES only considers the hydrogeological effects of the subterranean route of the drilling operation..."

64. However, through the above-mentioned legal Counsel sought by the CPA, advice was received that the nature of the relationship of the development proposed under the current planning application, and that proposed under application MO/09/0110, was such that they should be considered to be a single project for the purposes of the EIA Regulations. Consequently, it was advised that any ES relating to the two applications should address the impacts of the project as a whole (i.e. any 'cumulative effects').

65. In order to provide the complete overarching ES that Counsel recommended was required for the project, the CPA requested on 24 June 2014 (via Regulation 22 of the EIA Regs 2011) that the applicant review the adequacy of the information set out in the ES for application MO/09/0110 (i.e. the 2008 ES and the 2009 Regulation 19 Addendum), in light of the period of time that has elapsed since the surveys and studies that informed that assessment were carried out. Where it was identified that information needed to be updated or otherwise amended, the CPA requested such work was carried out. Once the ES for application MO/09/0110 had been updated, the CPA requested that it should be combined with that provided in 2014 in respect of this application for the drilling pathway to provide an ES that covered the project in its entirety.

66. Additionally in January 2015, the County Planning Authority requested that further information be submitted in order to complete the ES provided in support of planning application MO/2014/0082/SCC and appeal case APP/B3600/A/11/2166561. In March 2015, the Barton Willmore Partnership submitted the requested further information, which comprised of the following reports and documents:

- Figure 1.10a and 1.10b Well Construction Concept Cross-sections (these figures replace Figure 1.10 in Chapter 1 of the November 2014 ES);
- Revised Chapter 12 of the Environmental Statement: Hydrology & Hydrogeology (this chapter replaces Chapter 12 of the November 2014 ES);
- Appendix to Chapter 12: Hydrogeological Risk Assessment;
- Landscape & Visual Environmental Statement Chapter Addendum (Addendum to Chapter 9 of the November 2014 ES);
- Appendices to Landscape & Visual ES Chapter Addendum.
- Letter from WSP regarding proposed site lighting.

67. The Environmental Assessment team provided their final comment on this application in April 2015 and they consider that the ES is considered to be compliant with the minimum information requirements set out in Part II of Schedule 4 of the EIA Regulations 2011. As submitted, the ES also provides much of the information listed under Part I of Schedule 4 of the EIA Regulations 2011, as could be reasonably required for the proposed development.

NEED FOR HYDROCARBON DEVELOPMENT

Surrey Minerals Plan Core Strategy Development Plan Document 2011 (SMP 2011)
Policy MC12 Oil and Gas Development
Policy MC14 – Reducing the Adverse Impacts of Mineral Development

68. The applicant has obtained (via an allowed appeal to the Secretary of State) a temporary consent for exploration of the Holmwood Prospect, which has been identified through seismic survey. Exploration would establish the presence, extent and viability of any hydrocarbon reserves. This current application proposes an underground drilling corridor of a hydrocarbon borehole to facilitate that exploration.

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69. The SMP 2011 recognises the difficulties in balancing meeting the need for mineral development and ensuring the impact from mineral working does not result in unacceptable impacts on local communities and the environment. SMP 2011 Policy MC12 on 'Oil and Gas Development' states the following: *"Planning applications for drilling to appraise potential oil or gas fields will only be permitted where the need to confirm the nature and extent of the resource, and potential means of its recovery, has been established."* Additionally, SMP 2011 Policy MC14 states that proposals for mineral working will only be permitted where a need has been demonstrated and sufficient information has been submitted to enable the authority to be satisfied that there would be no significant adverse impacts arising from the development.

Officer's assessment

70. One of the County Council's refusal reasons for the associated drill-site (allowed at appeal) states that: "*The proposed exploratory drilling development will have a significant adverse impact on the Area of Outstanding Natural Beauty (AONB) in the setting of Leith Hill which cannot be mitigated and where exceptional circumstances including the public interest have not been demonstrated to justify the grant of planning permission."* In the circumstances, it could be contradictory for the County Council to not accept that *exceptional circumstances including the public interest* exist for the above ground drill-site yet find that a need exists for this associated drilling corridor to facilitate the exploration for hydrocarbons.

71. However, the second refusal reason for planning application MO09/0110 (though later withdrawn as part of the County Council's case to the Secretary of State) stated that: "*There is insufficient evidence to demonstrate why the proposed exploratory drilling development cannot be located beyond the boundary of the Area of Outstanding Natural Beauty (AONB) designation."* The corollary of this second refusal reason is that location of that proposed exploratory drilling development beyond the boundary of the AONB *would* be acceptable to the County Council, meaning that directional drilling *per se* would be acceptable. This complicates matters for the Planning & Regulatory Committee since this current planning application proposes only an underground drilling corridor rather than the separately proposed above ground drill-site with its associated impact on the AONB.

72. The need for this current planning application is dependent on the associated drill-site, as it facilitates the exploration for hydrocarbons. The drill-site has been accepted by the government's Planning Inspector and he has allowed the appeal with permission granted subject to 23 conditions (see Appendix 1 for Schedule of Conditions).

73. Were Members minded to refuse this current application on the basis of a lack of exceptional circumstances including the public interest for hydrocarbon exploration, and given the associated drill-site appeal has been allowed, the applicant would likely appeal such a SCC refusal. Officer's judge that the applicant's chances of success at appeal would be very high in such a scenario and highlight that the County Council could then face a costs claim from the appellant on the basis of SCC's unreasonable grounds for refusal.

74. Officers recommend that Members accept that the issue of need has been separately decided by the government's Planning Inspector and advise against refusal of this application on grounds of a lack of exceptional circumstances including the public interest for hydrocarbon exploration. Notwithstanding the issue of need for hydrocarbon development, there are nevertheless other relevant environmental and amenity issues associated with this proposed underground drilling corridor, which may reasonably be grounds for a refusal. These other issues are discussed in the section below.

ENVIRONMENT & AMENITY

The Surrey Minerals Plan, Core Strategy Development Plan Document 2011 (SMP 2011)
Policy MC12 – Oil and Gas Development
Policy MC14 – Reducing the Adverse Impacts of Mineral Development
The Mole Valley Core Strategy Development Plan Document (DPD) (2009)
Policy CS14 Townscape, Urban Design and the Historic Environment
Policy CS15 – Biodiversity and Geological Conservation
Policy CS20 – Flood Risk Management
Mole Valley Local Plan 2000 (Saved Policies) (MVLP 2000)
Policy ENV22 General Development Control Criteria
Policy ENV50 Unidentified Archaeological Sites
Policy ENV51 - Archaeological Discoveries During Development
Policy ENV67 – Groundwater Quality

HYDROLOGY and HYDROGEOLOGY

75. The NPPF and NPPG expect mineral planning authorities to ensure that mineral proposals do not have an unacceptable adverse effect on the natural or historic environment or human health. The NPPF states authorities should also take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality. Guidance in relation to implementation of policy in the NPPF on development in areas at risk of flooding and in relation to mineral extraction is provided in the NPPG.

76. SMP 2011 Policy MC12 states that planning applications for drilling boreholes for the exploration, appraisal or production of oil or gas will be permitted only where the mineral planning authority is satisfied that, in the context of the geological structure being investigated, the proposed site has been selected to minimise adverse impacts on the environment, and that drill-site should be located such that there are no significant adverse impacts.

77. SMP 2011 Core Strategy DPD Policy MC14 states that proposals for mineral working will only be permitted where a need has been demonstrated and sufficient information has been submitted to enable the authority to be satisfied that there would be no significant adverse impacts arising from the development and sets out matters to be addressed in planning applications, including flood risk and effect on the flow and quality of groundwater, surface water, land drainage (of the site and adjoining land).

78. The second criterion in Policy ENV22 (General Development Control Criteria) in the MVLP 2000 seeks to ensure that the adverse effects of noise do not significantly harm the amenities of the occupiers of neighbouring properties. Policy ENV67 of the MVLP 2000 (Groundwater Quality) states that development would not be permitted where, following consultation with the Environment Agency, it is concluded that the development may have an adverse impact on the quality of groundwater. The Mole Valley Core Strategy 2009 Policy CS20 (Flood Risk Management) sets out requirements in terms of drainage and surface water flooding.

Applicant's submission

Flood Risk Assessment

79. The applicant explains that the closest surface water feature to the drill-site is Pipp Brook, located approximately 250m west of the site, with the drill-site situated within the Pipp Brook hydrological catchment at an elevation of approximately 220m above ordnance datum (AOD). Pipp Brook issues approximately 0.6km south-west of the drill-site and flows north past the drill-site at an elevation of approximately 175m AOD, passing through Westcott and on towards Dorking where it drains into the River Mole.

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Other major watercourses, Tilingbourne and Leigh Brook, exist approximately 1.5km west and 1km east, respectively from the drill-site. Both watercourses are situated within separate hydrological catchments and flow away from the wellsite. Several springs are indicated on the Ordnance Survey map to be present in the valleys to the east and west of the drill-site. The majority of baseflow to Pipp Brook originates from groundwater issuing from springs along the valley west of the drill-site.

80. The applicant submits that the application site is not in an indicative floodplain of any water body and lies within Flood Zone 1 'low probability', where the annual probability of flooding is considered to be <0.1%. Under technical guidelines laid out in the Planning Practice Guidance 2014, the drill-site is therefore considered appropriate for Flood Zone 1. The applicant sets out that the site would be constructed within an enclosed compound, with a Bentomat (low permeability) geomembrane, earth bunds and perimeter ditches, meaning any incident rainfall would be held on site and either used in the drilling process or removed from site in a sealed tanker. The applicant argues that no runoff would be generated from the self-contained site and there would be no flood risk associated with the drill-site development.

Geology of the Drill-site and Drilling Corridor

81. The geology through which the directional borehole would pass is described by the applicant in the order that the strata would be encountered during the drilling process. The bedrock geology comprises Cretaceous age strata overlying Jurassic age strata. The top of the sequence is marked by the Lower Greensand Group, which includes the Folkstone Formation, Sandgate Formation, Hythe Formation and the Atherfield Clay Formation. The Folkstone and Sandgate Formations comprise predominantly loose sands and sandstone with subordinate amounts of siltstones, mudstones and limestones, whilst the intervening Sandgate Formation consists of glauconitic sands and silt. The Hythe Formation comprises mainly fine to medium-grained sands, sandstones and silts, locally pebbly, with calcareous or siliceous cement in beds or lenses. The Atherfield Clay Formation marks the base of the Lower Greensand and comprises mudstone. The applicant notes that the uppermost formations of the Lower Greensand Group are not present at the site and the top of the geological sequence starts with the Hythe Formation. The Hythe Formation is expected to be between 30 - 35m thick beneath the drill-site. Plan 2, attached to this Report, provides a section view through hydrostratagraphic layers along the well trajectory.

82. The Atherfield Clay Formation marks the base of the Lower Greensand Group and comprises brown to dark grey silty mudstone. The Atherfield Clay Formation is predicted to be approximately 12m thick and up to 45m true vertical depth (TVD) to the base of the Atherfield Clay Formation. Underlying the Lower Greensand is the Cretaceous age Wealden Group, which comprises the Weald Clay Formation (a thick sequence of mudstones) and the Hastings Beds Formation (interbedded mudstones and sandstones). The Weald Clay Formation is predicted to be approximately 400m thick and the Hastings Beds Formation approximately 300m thick. Below this, interbedded mudstones, limestones and evaporites of the Purbeck Group (around 110m thick) are present. The Purbeck Group passes conformably up into the Hastings Bed Formation and comprises the Durlston Formation (Cretaceous in age) overlying the Lulworth Formation (Jurassic in age). The remaining Jurassic sequence comprises limestones of the Portland Group approximately 140m in thickness underlain by a thick succession of mudstones of the Kimmeridge Clay (around 360m thick), interbedded limestones, marls and sandstones of the Corallian Group (approximately 140m thick) and mudstones of the Oxford Clay Group and Kellaways Formation.

83. The applicant explains that the borehole is expected to intersect the top of the Corallian beds and that the geological maps for the region record the presence of two minor faults along the proposed drilling corridor. A minor fault present on the eastern boundary of the site displaces strata down towards the west. 200m from the site south west along the drilling corridor a minor fault downthrows strata towards the north. The applicant notes that data indicates the presence of deeper, subsurface faults within the Jurassic age strata, although there is no information on the exact orientation of the geological strata beneath the site. The general dip of the Cretaceous and Jurassic strata is expected by the applicant to be at a shallow angle towards the northwest.

Hydrogeology

84. The applicant submits that in respect of the Cretaceous - Lower Greensand Group, this is classified by the EA as a principal aquifer on a regional scale, is present at the drill-site and the upper section of the underground drilling corridor. The Lower Greensand does not behave as a single aquifer unit and can be split into two distinct aquifers: the Folkstone Formation and the Hythe Formation. The Sandgate Formation, which separates the two aquifers, can be considered an inconsistent aquitard. Neither the Folkstone Formation nor the Sandgate Formation are present at the drill-site but can be found approximately 3.5 to 4km to the northwest near Westcott, west of Dorking. The Hythe Formation at the drill-site is unconfined and is underlain by mudstones of the Atherfield Clay Formation, which based on the description provided by the British Geological Society (BGS) is considered as Unproductive strata on a regional scale.

85. The Hythe Formation is highlighted by the applicant as the most important aquifer unit locally to the drill-site and drilling corridor, and contains groundwater with a resource value. Groundwater in the Hythe Formation is targeted by public supply boreholes at Dorking. The Hythe Formation is also abstracted for industrial and domestic (private supply) uses. The Hythe Formation in very close proximity to the site is not targeted for public or private water supply, however, groundwater within the formation would support spring flow. The springs are most likely issuing at the intersection between the Hythe Formation and the underlying Atherfield Clay Formation. Whilst there are no mapped springs in close proximity to the wellsite, the applicant states that it is reasonable to assume that a spring line may be present along this intersection and springs may be present in closer proximity to the site in addition to those indicated on the Ordnance Survey map.

86. With reference to one of the concerns raised by residents to both this application and at the recent Public Inquiry, the applicant sets out that the above-mentioned springs provide baseflow to Pipp Brook, which has eroded the Hythe Formation and exposed the Atherfield Clay Formation at surface. The applicant submits that the Hythe Formation at the site is therefore effectively disconnected from the Hythe Formation northwest of Pipp Brook, although it is hydraulically possible that some of the groundwater issuing from springs and flowing into Pipp Brook could infiltrate into the Hythe Formation northwest of Pipp Brook, where it is targeted for public water supply downstream of the drill-site. However, the applicant highlights that there is limited published information available on groundwater levels within the Hythe Formation, though based on a review of the location of relevant springs and streamlines within the area, their topography and underlying geology, groundwater levels are expected to be approximately 25 metres below ground level. The regional groundwater flow direction is expected to be northwards and locally, flow direction is expected to be variable on account of topography and surface water features. Groundwater flow directions in the Hythe Formation in the vicinity of site are likely to be westwards towards Pipp Brook.

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87. In respect of the Createaceous - Wealdon Group, the applicant notes that this is present beneath the Lower Greensand comprises the Wealdon Clay Formation and underlying Hastings Bed Formation. The Wealdon Clay Formation is predominantly argillaceous (rocks or sediment consisting of or containing clay) and can be considered Unproductive strata, separating groundwater present in the Lower Greensand from deeper, water bearing formations. The Hastings Beds Formation comprises the Tunbridge Wells Formation and the Ashdown Formations, both of which are classed as Secondary aquifers at a regional scale and are separated by the poorly permeable Wadhurst Clay Formation. Since the formations are located at a depth of approximately 445 to 745m at the site, the applicant reasons that the permeability of the formation and ability to yield water is likely to limited.

88. The applicant submits that the Weald Clay acts as a confining layer above the Hasting Beds and therefore the primary recharge mechanism is direct infiltration at the outcrop areas, approximately 12km to the south. Given the distance of the outcrop from the site, the depth of the formation and reduced permeability, the applicant reasons that any water present within the Hastings Beds at the site is likely to be old and therefore of a poor quality, with minimal resource value (as defined by the UK Technical Advisory Group (UKTAG) on the Water Framework Directive). The applicant highlights that this is consistent with data presented in their submission, which shows there are no abstractions within 5km of the site that are targeting the Hastings Beds. Information from the BGS suggests that the Hastings Beds may contain relatively high concentrations of natural gas (developed by thermogenesis) even where the formation is present at shallow depth.

89. In respect of the Cretaceous / Jurassic Conformity - Purbeck Group, the applicant notes that this passes conformably up into the Hastings Bed Formation and comprises the Durlston Formation (Cretaceous in age) overlying the Lulworth Formation (Jurassic in age). Limestones of the Lulworth Formation are classed as Secondary aquifers on a regional scale containing water of limited importance for supply due to their very limited outcrop. Whilst fractured limestones within the Lulworth Formation have been recorded as high yielding close to outcrop, the formation at the site is confined beneath over 800m of overlying formations. In the same way as the overlying Hastings Beds Formation, the applicant submits that any water present within the Lulworth Formation at the site is likely to be very old and therefore of a poor quality, with minimal or no resource value.

90. Lastly, in respect of the Jurassic Strata, the applicant sets out that this sequence comprises permeable limestones and sandstones separated by thick successions of mudstones. On a regional scale, the permeable horizons are classed as Principal and Secondary aquifers, however, on account of their depth at this location they do not constitute viable sources of groundwater with a resource value. The Portland Sandstone and the Corallian Sandstone are proposed to be targeted for exploration on account of the presence of hydrocarbons. Therefore any water present in the formation can be considered formation water and would be of extremely poor quality and no resource value; with elevated salinity and hydrocarbons present.

Source Protection Zones (SPZ)

91. The applicant submits that the drill-site is not located within any mapped SPZ, with data obtained from the EA indicating that the drill-site lies approximately 0.7km east of an SPZ 3 zone (Total Catchment) and less than 2km from an SPZ 2 (outer zone). An SPZ 1 (Inner Zone) is situated approximately 4.8km north of the drill-site associated with the public water abstraction undertaken by Sutton & East Surrey Water PLC at Dorking. Further, the applicant sets out that there are no groundwater dependent Sites of Special Scientific Interest (SSSI) within a 5km radius of the drill-site centre, with no Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar designated sites within a 5km radius of the drill-site. Details of private water supplies, licensed and deregulated abstractions within 5km of the drill-site centre were included in the

applicant's submission, though they note that there are no abstractions within the immediate vicinity of the drill-site.

Conceptual Model

92. The applicant has developed a hydrogeological conceptual model for the drill-site and underground drilling corridor, which was based on the four hydrostratigraphic units beneath the well, namely: the Hythe Formation (Layer 1); the Atherfield Clay & Weald Clay Formations (Layer 2); the Hastings Beds Formation & Purbeck Group (Layer 3); and the Jurassic strata (Layer 4). The hydraulic properties are described below:

- Layer 1 has hydraulic conductivity and storage, and contains groundwater with a very high resource value that is used for drinking water and other supplies.
- Layer 2 has very low hydraulic conductivity and is considered Unproductive strata. Layer 2 effectively hydraulically separates Layers 1 and 3.
- Layer 3 has limited hydraulic conductivity and limited storage. Any water in these formations has minimal resource value. The Purbeck Group would become increasingly impermeable with depth and would act primarily as Unproductive strata.
- Layer 4 has limited hydraulic conductivity and limited storage. Some formations contain hydrocarbons and formation water with no resource value. Poorly permeable clay and mudstone horizons effectively hydraulically separating the hydrocarbon bearing strata from overlying water bearing formations.
- There is no material vertical movement of water between Layers 1 and 3. Natural recharge to the formations in Layer 1 and 3 is limited to the outcrop. There is no active recharge to the formation waters in Layer 4.

Potential Effects

93. In respect of construction effects, there is potential for spillage of fuel and lubricants, used by equipment such as excavators and bulldozers constructing the temporary drill-site, to occur at surface and to runoff or infiltrate downwards potentially altering the quality of the Pipp Brook or underlying Hythe Formation. There is also potential for affected groundwater issuing from springs flowing towards the Pipp Brook, to infiltrate into the Hythe Formation aquifer northwest of Pipp Brook and to alter the quality of the Dorking Public Water Supply (SPZ 2 aquifer). Excavation and laying of the site sub base could also increase localised flushing of silt or fine particles during rainfall events potentially causing increased erosion and sediment deposition in the Pipp Brook, in the underlying aquifer and in the downgradient SPZ 2 aquifer. Spillage of drilling muds, additives and grout used in the installation of conductor casing could lead to deterioration in quality of the Pipp Brook or in quality of the Hythe Formation aquifer (encompassing the immediate underlying aquifer and the downgradient SPZ 2 aquifer) by runoff and leakage into groundwater or by direct infiltration from the well bore.

94. In respect of exploratory drilling effects, drilling muds, additives and grout would be used during exploratory drilling and there is therefore the potential that these materials could lead to deterioration in quality of the underlying aquifer, the SPZ 2 aquifer and Pipp Brook via leakage of spilt materials at surface into groundwater and via surface runoff. Although the applicant states that there is no direct pathway between the exploratory drilling activities inside the well bore and the shallow groundwater system following the installation of conductor casing into the Weald Clay, drilling fluids could still migrate vertically through geological faults to the aquifer beneath the site, affecting its quality and that of the Pipp Brook and the potentially hydraulically connected SPZ 2 aquifer. There is also potential that formation water and hydrocarbons present in deep geological formations could infiltrate directly from the well borehole and indirectly through geological faults into groundwater that may be present in the Jurassic Hastings Beds Formations and Purbeck Group, altering its quality.

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95. In respect of temporary well testing effects, the applicant highlights that this would generate natural gases, hydrocarbons and produced waters from deep geological formations which would be stored in tanks at the drill-site. A flare pit would be constructed outside of the drill-site and would store hydrocarbons during the flaring process. However, spillages of such stored materials at surface could occur, which may runoff into the Pipp Brook or leak through the base of site / flare pit infiltrating groundwater causing a deterioration in quality of the brook, the underlying aquifer or SPZ 2 aquifer further downstream. There is also potential that water quality in Pipp Brook and the shallow groundwater system is also affected by leakage of hydrocarbons and produced waters via well casing and / or grout failure into surrounding groundwater. Groundwater if present in the deep Jurassic Hastings Beds Formations and Purbeck Group could also be affected in this way. Lastly, in respect of decommissioning effects, this would include removal of the Bentomat liner laid during the construction phase potentially mobilising contaminated soils which could runoff to Pipp Brook or leak into the shallow groundwater system, impacting on their quality.

Proposed Mitigation Measures

96. Owing to the above potential effects, the applicant proposes mitigation measures during the construction, drilling, well testing and decommissioning phases. The proposed construction mitigation measures would include the fact that the exploratory well would be constructed in accordance with The Offshore Installations and Wells Regulations 1996, best practice and regulatory requirements. Earth bunds and a perimeter ditch would also be constructed around the well pad to prevent surface water runoff entering or leaving the drill-site. The surface of the drill-site would be constructed using a Bentomat geotextile membrane, laid over the earth bunds and perimeter ditch to prevent surface water at the drill-site infiltrating to groundwater. This would be incorporated into the drilling cellar and mousehole features to ensure integrity of the membrane. A conductor casing would be set in the Weald Clay using a standard water well rig and grouted through the full thickness of the Hythe Formation. This would prevent direct migration of fluids and gases from the wellbore during exploratory drilling and testing phases to the shallow groundwater system.

97. In respect of proposed drilling mitigation measures, the applicant submits that the well has been designed to avoid any contamination of the Hythe Formation. To isolate and protect the Hythe Formation, the drilling programme would also include the following:

a) Drilling would commence through the full thickness of the Hythe Formation, Atherfield Clay and the top of the Weald Clay to a depth of ~50m TVD. A 20” diameter conductor casing would be set (grouted) into the top of the Weald Clay.
b) Drilling would commence through the full thickness of the Weald Clay Formation to ~460m TVD at which point a 133/8” diameter surface casing would be set. Drilling would then continue through the underlying Hastings Beds Formation to a depth of ~750m TVD into the top of the Purbeck Group, where a 95/8” diameter surface casing would be set.
c) Beneath the 95/8” casing, drilling would continue using either a water-based or an oil- based mud to a target depth of ~1450m TVD. The well would remain open hole to allow testing.

98. The well direction would be monitored continuously while drilling and would be controlled in order to hit the target horizons. The applicant identifies that groundwater may be encountered when drilling through the Hastings Beds Formation, and they set out that the weight of the muds would be carefully monitored and controlled to prevent loss of fluids or entry of groundwater to the well bore. The applicant explains that additives would be used to prevent losses, with each string of casing and cement would be pressure tested to confirm its integrity and to ensure fluids cannot transfer between the well bore and the surrounding strata. The applicant explains that the grout would comprise neat cement, mixed at a 50:50 water/cement ratio.

99. In respect of temporary well testing, the applicant proposes that water produced during well testing would be held in tanks in specially-bunded areas prior to disposal at a specialist facility for further processing. Exact details of produced water storage would be provided and agreed with the regulatory authorities as part of the environmental permitting process, prior to the development commencing. The flare pit storing hydrocarbons for flaring would be constructed using a similar technique to the drill-site. The applicant highlights that the well has been designed to avoid any contamination of groundwater that could be present in the deep Jurassic Hastings Beds Formations and Purbeck Group. Lastly, the applicant sets out that decommissioning would follow best practice and that, following drill stem tests, the well would be plugged and abandoned in accordance with Oil & Gas UK guidelines for the suspension and abandonment of wells.

Officer's assessment

100. In respect of hydrogeology, the County Geotechnical Consultant (CGC) notes that the site and proposed underground drilling corridor are not located within a groundwater source protection zone, although part of the wider Hythe Formation located to the west of the site and moving northwards, is indicated to be within a groundwater source protection zone (transitioning from total catchment through outer zone to inner zone) for the public water supply boreholes in Dorking. However, the outcrop of the Hythe Formation that underlies both the Bury Hill Wood site and part of the drilling corridor is predominantly truncated/isolated from the larger outcrop of Hythe Formation that is present to the west of the site and to the west of Coldharbour. This has occurred as a result of localised erosion and removal of the Hythe Formation by the stream (Pipp Brook) that lies within the valley bottom to the west of the site, between Coldharbour Lane and Wolvens Lane. The stream bed and valley has cut down to the underlying Atherfield Clay, a non-aquifer. The two outcrops of Hythe Formation are connected by a small area at Coldharbour that is up hydraulic gradient of the majority of the isolated outcrop on which the site is located.

101. The CGC notes that there are numerous springs indicated to be present in the valley sides to the east and west of the site location, and these are indicated to issue at the junction between the Hythe Formation and the underlying relatively impermeable Atherfield Clay. Based on the geological and hydrogeological setting, the CGC considers it unlikely that any groundwater present within the outcrop of Hythe Formation at the site is directly significantly connected to the wider Principal aquifer, or therefore poses a significant risk to the Dorking public water supply boreholes. However, there is potential for groundwater that issues from the springs, to connect to local surface water features (e.g. Pipp Brook), and then flow through areas (North West of the site) where the surface water can infiltrate via the river bed directly into the wider Principal aquifer.

102. The CGC considered that the HRA provided in the Regulation 22 submission was not sufficiently site specific and was still missing much of the information that both PBA and the EA have requested. For example, the CGC noted that the HRA as submitted still does not indicate that the risks to groundwater, surface water and other receptors has been fully understood, assessed and mitigation measures considered. Predominantly the HRA states that mitigation measures would be provided by 'best practice in wellsite construction'. This is not adequate information for us to determine whether the proposals are sufficient. As in any EIA, actual mitigation measures need to be identified so that any significant effects can be assessed. However, as groundwater protection is within the EA's remit, and if they accept the Regulation 22 information as being sufficient to demonstrate adequate groundwater protection, then the CGC advises that the CPA could defer to the EA for determining this application.

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103. The EA provided a final response to the CPA on 10 April 2015 (after earlier raising an objection) and also attended the Public Inquiry in April 2015, in order to answer questions from both the government Inspector and residents who attended the proceedings. The EA identified in their April 2015 response that the information provided in the revised submission demonstrated that the applicant now has an improved understanding of the hydrogeological environment in the vicinity of the site. The EA note that the applicant has identified the potential risks posed to groundwater environment from the proposed activity and have identified the likely receptors in the area. As a result, the EA notes that the applicant has revised their original design, specification and ways of working to incorporate mitigation measures to protect groundwater environment, particularly groundwater quality.

104. However, the EA highlight that while the supplementary information had answered the majority of their concerns, one issued that needs further consideration is the perimeter drainage ditch capacity. They noted that this can be addressed at the permit application stage. The perimeter drainage ditch does not have adequate capacity to deal with a 1 in 100 year rainfall event and it is likely that such an event would impact on the site itself. The perimeter bund arrangement would prevent any losses to the ground around the site but the site might have to propose some extra contingency plans for dealing with the extra water in that event. The EA also advise that although the applicant has provided a baseline study of the site in relationship to the wider area, plans for a site-specific assessment (including soil chemistry and water quality etc) and details of the final restoration plan do not appear to be included. The EA note that such an assessment along with the associated groundwater monitoring on and off-site would need further consideration, although these aspects could be covered by planning conditions(s) or through the environmental permits.

105. The EA's position following the receipt of regulation 22 information (including a Hydrological Risk Assessment) is therefore that the applicant has demonstrated an improved understanding of the risks to the groundwater environment, in both near surface aquifers and deeper groundwater bearing strata, in comparison to the initial submission. As a result, the EA state that the applicants have now submitted improved details of proposed mitigation measures; they therefore removed their earlier objection. The EA noted in their April 2015 response that the applicant would be required to provide further technical details and clarifications on several aspects if they proceed to the environmental permit application stage. These aspects include borehole integrity testing, details of substances in drilling fluids, waste types and movements, noise, odour, air quality, site containment and associated Construction Quality Assurance of the membrane. The applicant would also need to apply to the EA for further permits and consents.

106. Although Sutton and East Surrey Water continue to object to this application, as was discussed at the recent Public Inquiry during April 2015, the EA are satisfied that the separate Permitting Regime would adequately deal with any risks to water supply. The CGC has also responded to the objection raised, as noted earlier. The Inspector also concluded on 7 August 2015 that:

"The safeguarding of groundwater quality is always important, especially where it is used as a potable resource. However, the regime recently introduced by the EA would provide for more robust testing and checking for any leakage from the site operations into the underlying groundwater. This should reduce significantly the dangers of a loss at source travelling along pathways to sensitive receptors. With this monitoring in place, it should be much easier and quicker to introduce remediation. In the absence of any worries raised by the Regulator, objections could only have attracted more weight if they had relied on technical evidence and evaluation. As it is, they seem to be almost entirely precautionary and the management proposals for the site and EA's monitoring should answer any doubts."

107. Officers recommend that Members attach considerable weight to the conclusions of the Inspector and, taking into account the views of the EA and CGC, and that the HSE does not advise against the granting of planning permission in this case, Officers do not consider that the development proposed in this application would pose any significant risk of pollution to the surrounding environment. Officers therefore consider that the proposal satisfies the requirements of the NPPF and NPPG, Surrey Minerals Plan 2011 Policy MC12 and Policy MC14, and relevant polices of the Mole Valley Core Strategy 2009.

NOISE & VIBRATION

108. As this planning application involves an underground drilling corridor, Officers consider it reasonable to assess whether any vibration and noise impacts would occur above ground (i.e. experienced by residents and visitors to the area above ground). The application is for temporary works which would not exceed 18 weeks in duration with: six weeks of site clearance and preparation (daytimes and Saturday mornings); five weeks of equipment assembly and drilling (the latter on a 24/7 basis); one week of testing and evaluation, if applicable, i.e. if hydrocarbons are detected; and six weeks of site reinstatement (daytimes and Saturday morning). The area of the drill-site is very rural in nature with mostly isolated receptors remote from the site with the closest being over 500 m distance. However, due to the remote nature of the site without any nearby major transportation or other noise sources, the area is relatively quiet.

109. NPPF paragraph 123 states that planning policies and decisions should avoid noise giving rise to significant adverse impacts on quality of life and mitigate the adverse impacts through the use of conditions, but recognise that development will often create some noise. NPPF paragraph 143 says that when developing noise limits local planning authorities should recognise that some noisy short-term activities, which may otherwise be regarded as unacceptable, are unavoidable to facilitate minerals extraction. NPPF paragraph 144 then states that when determining applications local planning authorities should ensure that any unavoidable noise, dust and particle emissions and any blasting vibrations are controlled, mitigated or removed at source.

110. Surrey County Council produced its own Noise Guidelines in 1994, and this provides guidance on acceptable levels of noise from oil and gas related development. However, the 1994 SCC limits have largely been superseded by those contained in the Planning Practice Guidance for Minerals (PPGM) released in March 2014. PPGM contains limits for normal and short-term operations, which are the same as promoted for many years through MPG 11, MPS 2 and the Technical Guidance to the National Planning Policy Framework. PPGM states that for normal operations, for core daytime working hours (07:00 to 19:00), the noise level should not exceed the LA90, 1h by more than 10 dB(A) but this is to a maximum of 55 dB(A) LAeq, 1hr, which is very similar to the SCC guidelines. For evening periods, defined as 19:00 to 22:00 hours, the limits are the same as the daytime but for night-time, defined as 22:00 to 07:00 hours, the limit is 42 dB(A) LAeq, 1hr. These are all free-field values, i.e. at least 3.5 m away from any façade. For particularly noisy short-term works, which include soil-stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance, the limit is 70 dB LAeq, 1 h (free field) for up to eight weeks in a year at specified noise sensitive properties.

111. SMP 2011 Core Strategy DPD Policy MC14 states that proposals for mineral working will only be permitted where a need has been demonstrated and sufficient information has been submitted to enable the authority to be satisfied that there would be no significant adverse impacts arising from the development, including noise and vibration. The second criterion in Policy ENV22 (General Development Control Criteria) in the MVLP 2000 seeks to ensure that the adverse effects of noise do not significantly harm the amenities of the occupiers of neighbouring properties.

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Submitted assessment

112. Surveys of ambient noise levels were undertaken during the daytime and at night in the area surrounding the application site, which was noted by the applicant to be a considerable distance from any residential property. Additional 'spot' measurements were made at various locations in order to verify that the main location was truly representative of background sound, and these were at publicly accessible locations by the roadside near dwellings.

Vibration

113. In terms of vibration, the applicant submits that this depends not only on the input excitation, but also on the ground conditions close to the surface (in the unconsolidated layer) and the nature of the property in which vibration might be detected. None of these can be predicted other than in terms of the order of magnitude. Vibration arising at the drill bit, hundreds of metres below ground level, can occasionally be detectable on the drill floor because of direct transmission up the drill string. None of this vibration passes through the ground to areas beyond the rig itself, and no ground vibration during rig operations would be detectable inside neighbouring properties. The applicant sets out that the levels of vibration inside these properties would be several orders of magnitude lower than the architectural damage criteria given in British Standard 7385-2:1993, and at least two orders of magnitude below the levels perceptible to a human observer.

114. The applicant sets out that shale shakers located next to the drilling rig itself, and forming part of the solids control equipment, are significant sources of vibrational energy since their operation, as the name implies, depends on passing the returned drilling fluids through a set of reciprocating (vibrating) screens. Shale shakers are components of drilling equipment used in many industries, such as coal cleaning, mining, oil and gas drilling. They are the first phase of a solids control system on a drilling rig, and are used to remove large solids (cuttings) from the drilling fluid. This vibration is detectable on the solids control structure itself, and can sometimes just be detected by an observer standing on the ground next to the machinery. This ground vibration is dissipated within a matter of a few metres and is undetectable beyond the confines of the site. The applicant acknowledges that some older types of solids control equipment can emit tonal noise at low frequencies but on the latest types of equipment this tendency has been largely eliminated.

Noise

115. The applicant submits that given that the separation distances between the application site and the nearest residential properties, noise effects would not be perceptible. The drilling operations proposed are temporary in nature, and the daytime and night time noise limits proposed by the applicant are significantly in excess of the ambient sound levels measured. It is the applicant's intention to use a rotary drilling rig of which the British Drilling and Freezing (BDF) Rig 28 and Edeco Rig 10 are typical examples. The BDF 28 is the noisiest under most conditions and was used for the purposes of their assessment thus representing the worst case. Drilling rigs have directional characteristics, so the actual value measured at a particular point would vary according to the actual rig used, and its orientation.

116. Since drilling would continue 24 hours a day, seven days a week, noise is generally more likely to be noticed at night than during the daytime, not least because daytime background noise may be considerably greater. Given the relatively short-term nature of drilling operations (maximum five weeks) these levels of noise are of moderate adverse significance. Noise emissions arising during the erection of the drilling rig (up to one week) and drill stem testing (Phase 3, four days) would not exceed those from the drilling phase and were therefore not considered further in the applicant's assessment. The applicant submits that although the landform in the area of the proposed development is gently undulating, there are few natural barriers to sound propagation towards noise-sensitive locations, and no hollows or large areas of open water which might reduce the expected degree of ground-borne attenuation. However, as there are several hundreds of metres of intervening woodland between the noise sources and any of the closest receptors, the applicant argues that this would reduce considerably the levels reaching these receptors.

Mitigation Measures

117. Given the above, the applicant has proposed mitigation measures for noise for the associated drill-site. Noise from construction would be controlled primarily by the restriction of working hours and it would be usual practice to allow potentially noisy activities only during the normal working week and on Saturday mornings, subject to local practice. Quiet working methods would be adopted including the use of the most suitable plant and reasonable hours of working for noisy operations. Noise would be controlled at source and on-site noise levels monitored regularly. Mitigation measures that would be implemented to reduce noise levels at source include the avoidance of unnecessary revving of engines, switching off equipment when it is not required, minimising the drop height of materials, and starting up plant and vehicles sequentially rather than all together. Audible reversing alarms would be of types that have a minimum noise effect on persons outside the site.

118. In respect of mobilisation and drilling, there would be additional screening effects on drilling rig noise as a result of the intervening topsoil bund to the north side of the site. The applicant sets out that the volume of topsoil and subsoil available for the construction of bunds may vary owing to site conditions, which might affect the overall length and height of a bund. Moreover, different drilling rigs have slightly different configurations when mobilised on site, so that a particular noise source that would be screened by a bund for one rig might just be visible for a different rig. The identity of the rig to be contracted for the drilling phase is not yet known to the applicant, as it depends on the suitability and availability of the drilling rigs on the market at a future time.

119. As the predicted background noise levels at nearby residential properties are acceptably low, the applicant submits that further noise mitigation measures are not expected to be required, but that any decrease in noise level is regarded as beneficial and further noise control measures may be practicable. It would be necessary in any event to confirm that the noise control measures on the individual rig, including diesel exhaust silencers, attenuators allowing cooling air into and out of acoustically-enclosed machinery, and the enclosures themselves, are all kept in good repair in order to ensure that the overall sound power levels used for the acoustical modelling are valid. When the rig is fully mobilised on site, access doors to all noisy equipment would be kept closed at all times. Good site management practice would maintain acceptably low drilling rig noise throughout the life of the proposed development. In respect of testing, the applicant sets out that no further noise mitigation measures are necessary during testing and that finally, similar to the construction phase, noise from site restoration can also be controlled by the restriction of working hours. The applicant therefore submits that subject to the above mitigation measures, residual noise effects as a result of construction activities would be negligible, with residual noise effects of rig mobilisation and drilling negligible or minor. The applicant further submits that residual noise effects of well testing, site restoration and site retention would also be negligible.

Officer's assessment

120. Seismic hazard maps for the UK have been produced by the British Geological Society as part of the work involved with the introduction of the 'Eurocode 8' building regulations. These give guidance on the levels of peak ground acceleration to be expected in different parts of the country. Seismic hazard is the potential for, or probability of, dangerous earthquake-related phenomena. Most often, this is ground shaking but it could also be liquefaction or fault rupture at the ground surface. The 2008 map shows that the application site and the surrounding area are located in the part of the UK with the lowest seismic hazard.

121. The County Noise Consultant (CNC) has reviewed the information provided in connection with this planning application, as relating to noise and vibration. The CNC agrees that the noise and vibration levels likely to arise from this development should not exceed appropriate limits. On this basis, the development should be acceptable in terms of noise and vibration. However, due to the very low baseline environment in the area where receptors are located, it is quite likely that noise from the 24/7 drilling would be audible and some public concern/possible complaints could arise. The CNC notes that conditions have been suggested separately to the government's appeal Inspector (i.e. relating to the above ground drill-site), which the CNC advises should ensure protection of residential amenity with reference to SCC guidelines and relevant national policy.

122. The predicted noise and vibration levels arising from this development have been shown to be below the limits set out in the Surrey Noise Guidelines and thus would fall within acceptable limits that would not give rise to noise levels which would adversely affect local amenity and/or the environment. Noise limits would be set by condition and the noisier temporary construction and restoration phases would be time limited. The County Noise Consultant considers that the noise and vibration levels likely to arise from this development should not exceed appropriate limits. On this basis, the development should be acceptable in terms of vibration and noise and it is considered that the proposal would not be in conflict with the NPPF, NPPG, or SMP 2011 Policy MC14.

ARCHAEOLOGY

123. As this planning application involves an underground drilling corridor, Officers consider it reasonable to assess whether any archaeological impacts would occur. NPPF paragraph 128 states that planning decisions should be based on the significance of a heritage asset and that level of detail supplied by an applicant should be proportionate to the importance of the asset and should be no more than sufficient to review the potential impact of the proposal upon the significance of that asset. SMP 2011 Core Strategy DPD Policy MC14 requires that the impacts in relation to the historic landscape, sites or structure of architectural and historic interest and their settings, and sites of existing or potential archaeological interest or their settings are considered.

124. The MVLP 2000 has Policy ENV50 (Unidentified Archaeological Sites) which covers the requirements where sites of larger than 0.4 ha are located outside Areas of High Archaeological Potential and Policy ENV51 (Archaeological Discoveries During Development) which deals with finds made during the development process. The Mole Valley Local Development Framework Core Strategy 2009 recognises that the District's historic environment is an asset to both the District and the Region. Policy CS14 (Townscape, Urban Design and the Historic Environment) states that areas and sites of historic or architectural importance will be protected and where appropriate enhanced.

Submitted assessment

125. The focus of the applicant's investigation was Anstiebury Camp to the south of the site and one other excavation focussed at the Roman Road. Due to the lack of investigation within the area generally, the applicant submits that it was difficult to determine the potential for archaeological remains to exist within the site as comparative sites are rare. The wooded nature of the area has meant that there has been very little opportunity for archaeological investigation and as a result the potential for remains within the area is largely unknown. The applicant acknowledges that the development has the potential to damage or remove any archaeological deposits that may be present within the site during the construction phase, through the implementation of the borehole rig, compound, topsoil stripping and other associated works. The applicant proposes that this could be mitigated by a programme of archaeological works to preserve the remains by record. The applicant does not expect there to be any additional mitigation required for the 19th century clay extraction pits, as these have been recorded previously.

Officer's assessment

126. The County Archaeological Officer raises no objection to this application or to the associated drill-site. Taking account of the scale, location and temporary nature of the development, Officers do not consider that the character or setting of nearby listed buildings, the Coldharbour Conservation Area nor the Scheduled Monument, would be significantly adversely affected by this development. Given the existing ground disturbance at the drill-site, it is not considered that the proposal would give rise to any archaeological impact. Accordingly, Officers are of the view that in terms of heritage the underground proposal would not conflict with the relevant national guidance in the NPPF and NPPG and development plan policies in the SMP 2011, Mole Valley Local Plan 2000 (saved policies) and Mole Valley Local Development Framework Core Strategy 2009.

AONB/AGLV & VISUAL IMPACT

127. As this planning application involves an underground drilling corridor it would have no visual impact. This application is to be determined separately from the proposal for an exploratory drill-site, which was allowed at appeal. As noted above, the County Council refused that separate proposal owing to the conclusion that the proposed exploratory drilling development would have a significant adverse impact on the Area of Outstanding Natural Beauty (AONB) in the setting of Leith Hill which could not be mitigated and where exceptional circumstances including the public interest had not been demonstrated to justify the grant of planning permission. Officers have considered this application on its individual merits, whilst acknowledging the County Council's case made at the recent Public Inquiry. Officers do not recommend that this application is refused because of its visual and landscape impact in the AONB/AGLV. Officers consider that it would be unreasonable to refuse an entirely underground proposal on the basis of its above ground visual impact, and would advise Members that any such refusal in this case would risk a successful appeal by the applicant and an award of costs against the County Council.

METROPOLITAN GREEN BELT

128. The application site is located in the Metropolitan Green Belt. NPPF paragraph 87 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. NPPF paragraph sets out the basis for considering planning applications relating to Green Belt land and advises that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, and that 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

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129. NPPF paragraph 90 notes that mineral extraction is a form of development which is not inappropriate in Green Belt provided that it preserves the openness of the Green Belt and does not conflict with the purposes of including land in the Green Belt. In the High Court and Appeal Court cases relating to the associated drill-site, it was held that the proposed exploration for hydrocarbons does fall within the meaning of the phrase 'mineral extraction' for the purposes of paragraph 90 of the NPPF. Therefore exploration for minerals is not inappropriate development in the Green Belt per se provided that it preserves the openness of the Green Belt and does not conflict with its purposes.

130. This application would have no impact on Green Belt openness, relating purely to an underground directional drilling corridor. In terms of 'any other harm' to the Green Belt, on the basis of the technical responses provided above on hydrology/hydrogeology, noise/vibration and archaeological impacts, Officers do not consider that such harm arises. The case presented by the County Council to the planning Inspector in respect of the separate appeal proposals made no reference to conflict with Green Belt policy, and Officers do not consider that this current planning application could reasonably be refused on those grounds either.

HIGHWAYS AND TRANSPORTATION

131. As this planning application involves solely an underground drilling corridor it would have no highway and transportation impact. During the recent appeal Public Inquiry, the applicant explained to the Inspector that, notwithstanding further detail provided on exploratory well design and borehole casing, which was included in the Regulation 22 information, there would be no increase in associated traffic numbers or an extension of time to complete exploration (i.e. still 18 weeks including restoration).

132. This application is to be determined separately from the proposal for an exploratory drill-site, which was allowed at an appeal. As noted above, the County Council refused that separate proposal owing to the conclusion that it had not been demonstrated to the satisfaction of the County Planning Authority that the proposed traffic management measures were adequate to protect the character of Coldharbour Lane; where the nature of the traffic activity would lead to the industrialisation of the character of a quiet rural road; or adequate to protect the amenity of highway users and residents in Knoll Road, Coldharbour Lane and the broader vicinity.

133. Officers have considered this application on its individual merits, whilst acknowledging the County Council's case made at the recent Public Inquiry (including the defended highway refusal reason). Officers do not recommend that this application is similarly refused on the grounds of its highway or transportation impact. Officers consider that it would be unreasonable to refuse an entirely underground proposal on the basis of its above ground highway and transportation impact, as that is properly to be assessed by the appeal Inspector. Officers would advise Members that any such highway refusal in this case could risk a successful appeal by the applicant and an award of costs against the County Council.

OTHER ISSUES

134. Local residents and other objectors have expressed a large numbers of concerns, including on lighting, air quality, ecology, damage to the local economy, disturbance to local residents in their day-to-day activities, finances of the applicant and the overall chances of success of finding hydrocarbons at this site. Many of these concerns were raised at the public inquiry and considered by the Inspector before he issued his decision last month.

135. The applicant undertook an environmental assessment and has provided further information where necessary. Some of the concerns raised by objectors relate to issues controlled under other regulatory regimes. Paragraph 122 of the NPPF states that planning authorities should focus on whether the development itself is an acceptable use of the land, and the impact of the use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes; and that planning authorities should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities.

136. Several representations have raised doubt concerning whether the applicants are sufficiently competent or financially secure to undertake the proposed operations, arguing that the CPA must satisfy itself that an appropriate level of indemnity can be obtained/raised. However, Officers note that issues of competence are correctly dealt with through the Environmental Permitting regime and the EA's role is to adequately monitor and regulate the site's operation to ensure that the managers and operators are adequately competent regarding aspects that impact upon the public and the environment. With reference to concerns that the proposed development would devalue property, this is not considered to be a material planning consideration. Having taken into account all the information provided by the applicant and the responses of technical consultees, Officers do not consider there are any grounds for refusal in this case.

HUMAN RIGHTS IMPLICATIONS

137. The Human Rights Act Guidance for Interpretation, contained in the Preamble to the Agenda is expressly incorporated into this report and must be read in conjunction with the following paragraph.

138. In this case of this application it is recognised that there would be impacts in respect of hydrology and hydrogeology, plus noise and vibration, and these are acknowledged and have been assessed in the body of the report and mitigation provided; however the scale of such impacts is not considered sufficient to engage Article 8 or Article 1 of Protocol 1 and, if planning permission were to be granted, any impact is capable of being mitigated by the measures incorporated into the application proposal, possible planning conditions and the mitigation measures and controls available through the Environmental Permitting regime. As such, this proposal is not considered to interfere with any Convention right.

CONCLUSION

139. Officers recommend that Members accept that the need for hydrocarbon development at this site, in addition matters concerning safeguarding of groundwater quality, have been dealt with by the Inspector's decision letter dated 7 August 2015. The views of technical consultees have been reported under individual relevant issues earlier in this report. As set out above, following a request made by the CPA, the applicant has provided further information in respect of any cumulative environmental impacts caused by this current planning application for an underground drilling corridor and the associated exploratory hydrocarbon drill-site. However, this report focused only on those matters judged by the CPA to be relevant to this current planning application for an underground drilling corridor and Officers consider that planning permission should be granted.

RECOMMENDATION

The recommendation is to GRANT subject to the following conditions:

CONDITIONS

Approved Documents

1. The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the terms of this permission: the following approved plans are contained in the application:

   - Drawing No. EUR HO 10 Revision D - Site of Application, dated March 2014
   - Figure 1.6 – Holmwood Prospect Location, contained in Chapter 1 of the Environmental Statement dated November 2014
   - Figure 1.10 – Proposed Well Trajectory for Holmwood-1, contained in Chapter 1 of the Environmental Statement dated November 2014
   - Figure 5a – Well Construction Concept, dated 27 February 2015, contained in the March 2015 Hydrogeological Risk Assessment prepared by Envireau Water
   - Figure 5b - Well Construction Concept, dated 27 February 2015, contained in the March 2015 Hydrogeological Risk Assessment prepared by Envireau Water

2. A copy of this decision notice together with the approved plans and any schemes and/or details subsequently approved pursuant to this permission shall be kept at the site office at all times and the terms and contents therefore shall be made known to supervising staff on the site.

3. This planning permission shall be limited to a period of 3 years from the date of the decision notice. The applicant shall notify the County Planning Authority in writing within seven working days of the commencement of the implementation of the planning permission.

4. Apart from exceptions allowed via the exploratory hydrocarbon drill-site (appeal ref: APP/B3600/A/11/2166561, decision dated 7 August 2015), no operations or activities authorised or required by this permission shall take place other than during the hours of:

   0700 to 1800 hours on Monday to Friday
   0700 to 1300 hours on Saturday

   There shall be no working at any time on Sundays, Bank Holidays or National Holidays.

INFORMATIVES

1. The planning permission granted on 7 August 2015 for the associated exploratory hydrocarbon drill-site (appeal ref: APP/B3600/A/11/2166561) has 23 conditions. On the basis that they are not relevant to the development hereby permitted, those conditions have not been attached to this permission (i.e. duplicated). Nevertheless, the list of the 23 conditions was shared with Members of the Planning & Regulatory Committee before their resolution to grant. The County Planning Authority confirms that the 4 conditions attached to this planning permission comply with paragraph 206 of the National Planning Policy Framework 2012. Non-compliance with any of the 23 conditions attached to the planning permission for the associated exploratory hydrocarbon drill-site (appeal ref: APP/B3600/A/11/2166561) could lead to proportionate enforcement action by the County Planning Authority.

2. The applicant / developer will be required to obtain Environmental Permits from the Environment Agency, in order to carry out drilling and testing of any exploration borehole. The applicant /developer must notify the Environment Agency of their intention to drill any borehole(s) in accordance with section 199 (1) Notice etc. of mining operations (Water Resources Act 1991), which may affect water conservation. In the event that the applicant /developer decides to abstract groundwater from any designated well or borehole on the site, and the required volume of water is in excess of $20m^3$/day, the developer will also need an Abstraction Licence from the Environment Agency.

3. The applicant / developer is reminded that under Section 14 of the Wildlife & Countryside Act (as amended), it is illegal to plant or otherwise cause the spread of Japanese knotweed into the wild.

4. The installation of the Bentomat lining for the associated exploratory hydrocarbon drill-site should be carried out in accordance with the manufacturer's guidelines and particular attention given to the sealing of seams, penetrations and punctures, and any pre-hydration that may be required. The applicant / developer should also aim to meet vehicle emission standards such as Euro III or Euro IV to reduce potential local air quality impacts.

5. The County Planning Authority confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of paragraph 186-187 of the National Planning Policy Framework 2012.

CONTACT
Mark O'Hare
TEL. NO.
020 8541 7534

BACKGROUND PAPERS
The deposited application documents and plans, including those amending or clarifying the proposal, responses to consultations and representations received as referred to in the report and included in the application file and the following:

Government Guidance
National Planning Policy Framework 2012
National Planning Practice Guidance (NPPG) 2014 and NPPG for Minerals 2014

The Development Plan
Surrey Minerals Plan 2011 Core Strategy
Mole Valley Core Strategy 2009 Development Plan Document
Mole Valley Local Plan 2000 (saved policies)

Other documents
Planning application ref: MO09/0110, refused on 30 June 2011
Appeal ref: APP/B3600/A/11/2166561, Inspector's decision 7 August 2015
The Town & Country Planning (Environmental Impact Assessment) Regulations 2011
European Directive 85/337/EEC 1985 (amended 1997)
Regulatory Reform (Fire Safety) Order 2005
Environmental Protection UK guidance 2010 Update
Surrey Hills AONB Management Plan 2014 – 2019.
Redhill Aerodrome High Court Decision 24/10/2014 (Ref: C1/2014/2773, 2756 and 2874)
Letter dated 8 December 2014 from the Environment Agency
Planning and Compulsory Purchase Act 2004
Town and Country Planning Act 1990
UK Technical Advisory Group Report on the Water Framework Directive 2008.
The Offshore Installations and Wells Regulations 1996

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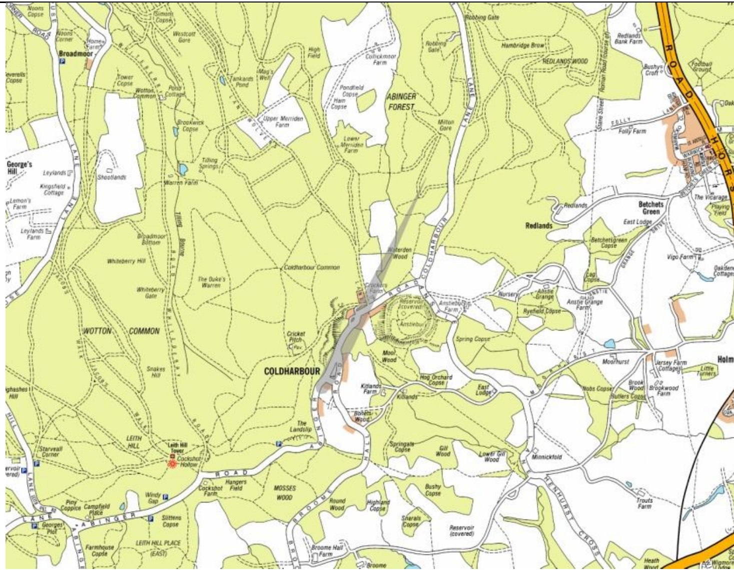
Oil & Gas UK guidelines for the suspension and abandonment of wells 2012.
Surrey County Council Noise Guidelines 1994
British Standard 7385-2:1993
Eurocode 8' Building Regulations, European Union 2012.

Site Location



Land at Bury Hill Wood, off Coldharbour Lane, Holmwood, Surrey.

Underground drilling corridor of an exploratory hydrocarbon borehole.

Application No.: MO/2014/1006/SCC
Electoral
Division: Dorking Hills
Grid Ref: 515065 144026

THIS PLAN IS FOR INDICATIVE PURPOSES ONLY – ALL BOUNDARIES ARE APPROXIMATE

Application Site Area

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Application Number : MO/2014/1006/SCC

2012-13 Aerial Photos

SURREY

Aerial 1 : Associated Drill-Site at Bury Hill Wood

Associated Drill-Site Area

Site of Underground Drilling Corridor

All boundaries are approximate

Plan 1 : Site of Application

Deviation tolerance zone (8.50 hectares)

Drilling Site

Site of Application

Scale 1:10,000

0 100m 200m

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SO41 6EB

Client: Europa Oil & Gas
Bury Hill Woods
Coldharbour Lane
Dorking

Job Title: PEDL 143
Holmwood Prospect

Drawn By: AJNE

Date: March 2014

Sheet Size: A3

Drawing Title: Site of Application (1:10,000)

Drawing Number: EUR HO 10

Revision: D

SURREY

Plan 2: Hydrostratagraphic Layers

INSET - SEE FIGURE 5b FOR DETAIL

Wellsite

Atherfield Clay

Horizontal Scale (m)

0 200m

True Vertical Depth (m bgl)

Hythe Beds

Weald Clay

20" Conductor Casing 0-50mTVD

13 3/8" Surface Casing 0-460mTVD

9 5/8" Casing 0-750mTVD

8 1/2" Open Hole 750-1450mTVD

Hastings Beds Formation

Purbeck Group

Portland Group

Kimmeridge Clay

Corallian Group

Oxford Clay and Kellaways Formations

fault

0, 200, 400, 600, 800, 1000, 1200, 1400, 1600

Hydrostratagraphic Layers

Layer 1
has useful hydraulic conductivity and storage, and contains groundwater with a very high resource value.

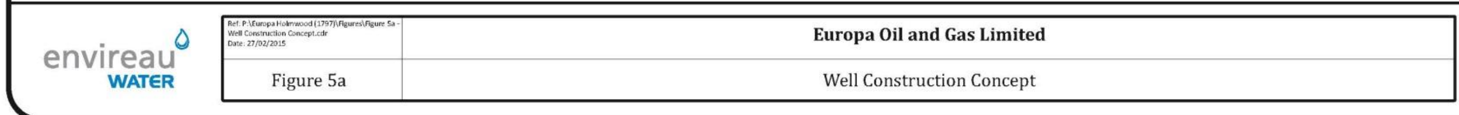
Layer 2
is very poorly permeable (very low hydraulic conductivity)and is considered Unproductive strata.

Layer 3
has limited hydraulic conductivity and limited storage. Any water in these formations has minimal resource value. The Purbeck Group will become increasingly impermeable with depth and will act as Unproductive strata.

Layer 4
has limited hydraulic conductivity and limited storage. Some formations contain hydrocarbons and formation water with no resource value. Poorly permeable clay and mudstone horizons effectively hydraulically separate the hydrocarbon bearing strata from overlying water bearing formations.

SECTION VIEW ALONG WELL TRAJECTORY

NOTES: Geology based on seismic data from Europa Oil and Gas Limited



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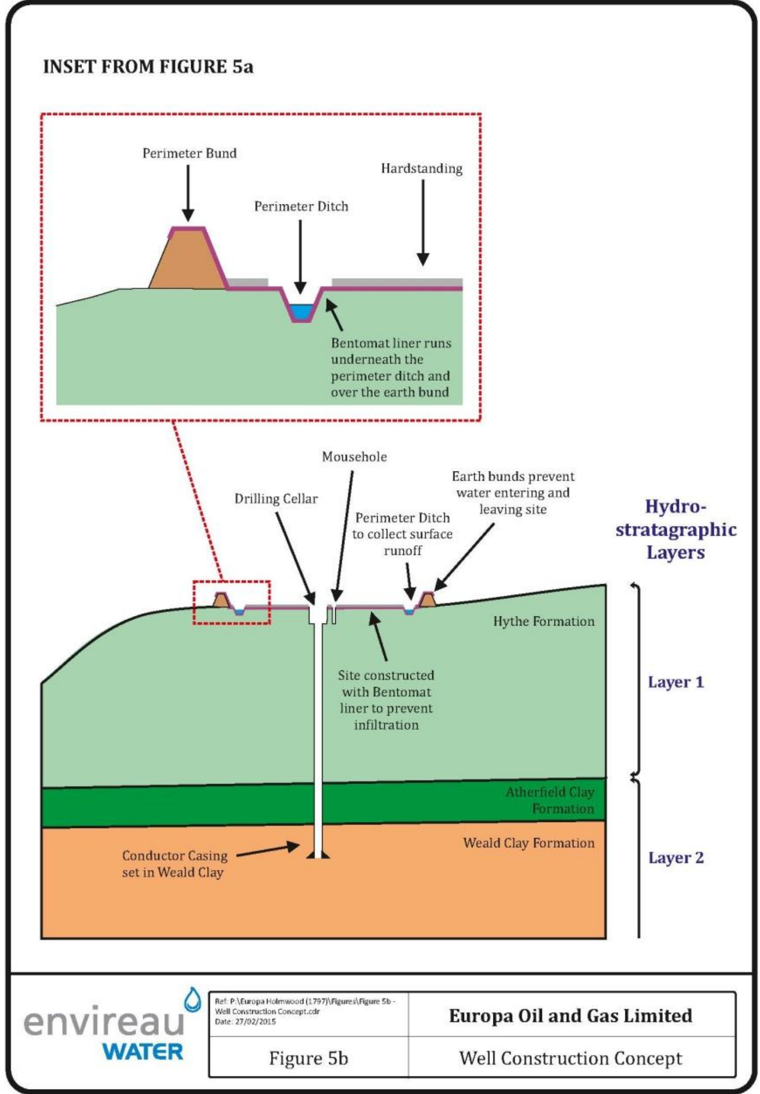
SURREY

Plan 3 : Inset figure from Plan 2



SCHEDULE OF CONDITIONS

Approved documents

1. The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the terms of this permission. The following approved plans are contained in the application:
    - Site Application Area – Drawing No. 2.9 (January 2007)
    - Rig Access Route to Site - Drawing No. 5.9 Rev A (July 2009)
    - Proposed Site Entrance & Vehicle Swept Paths - Drawing No. 4.1 (July 2007)
    - Site Layout Drilling Mode - Drawing No. 1.7 (April 2008)
    - Cross Section of Site & Flare Compound - Drawing No. 4.3 (August 2006)
    - Typical Section Through Cellar - Drawing No. 5.4 REV A (April 2015)
    - Flare Bund Containment Details – Drawing No. 4.5 (March 2015)
    - Site Layout Drill Stem Testing - Drawing No. 4.6 REV B (July 2007)
    - Plans & Elevations proposed Site Cabins - Drawing No. 4.7 (May 2007)
    - Rig 28 Lights – Drawing No. 02061_TCP_01 REV A (14 May 2014)
2. A copy of this decision notice, together with the approved plans and any schemes and/or details subsequently approved pursuant to this permission, shall be kept at the site office at all times and the terms and contents shall be made known to supervising staff on the site.

Temporary permission and commencement

3. This planning permission shall be limited to a period of three years from the date of this decision. The developer shall notify the County Planning Authority in writing within seven working days of the commencement of the implementation of the planning permission.
4. Within 18 weeks from the commencement of the development (save insofar that, for the purposes of this condition, anything done pursuant to Condition 15 (Ground and surface water monitoring) shall be deemed not to constitute commencement of development), all buildings, plant, machinery (both fixed and otherwise) and any engineering works connected therewith, on or related to the application site (including any hard surface constructed for any purpose), shall be removed from the application site and the drill-site shall be reinstated to a condition suitable for forestry save that this condition shall not operate to require the removal or cessation of anything done or to be done pursuant to Condition 15 (Ground and surface water monitoring). The site shall be fully restored in accordance with the detailed restoration scheme required under Condition 14.

Hours of operation

5. With the exception of emergencies, drilling, gas flaring and ingress and egress by relevant HGVs as specified in Condition 17, no lights shall be illuminated nor shall any operations or activities authorised or required by this permission, take place other than during the hours of:

   0700 to 1800 hours on Monday to Friday

   0700 to 1300 hours on Saturday

   Apart from the exceptions referred to above, there shall be no working at any time on Sundays, Bank or National Holidays.

Limitations

6. Notwithstanding any provision to the contrary under Part 17 of the Town and Country Planning (General Permitted Development Order) 2015 or any subsequent Order (but subject to the proviso set out below):

   i. no plant, building or machinery, whether fixed or moveable, shall be erected pursuant to the said permitted development rights, on the application site.

   ii. no lights or fences other than those permitted by this application shall be installed or erected at the application site.

   Proviso: This condition, however, does not prohibit the exercise of and reliance on any permitted development right under which the ground and surface water monitoring scheme under Condition 15 could be carried out.

Dust

7. None of the development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring)) shall commence until a scheme for appropriate on-site dust suppression has been submitted to the County Planning Authority and approved in writing. Such a scheme shall include measures necessary to minimise any impact upon local road users, residential properties located near the site, or any other sensitive interests of importance from the emission of dust from the application site. The approved scheme shall be implemented and retained in place for the duration of the development in a condition that ensures the aims of the approved scheme are met.

Noise

8. The level of noise arising from any operation, plant or machinery on site, at a height of 1.2m above ground level and at least 3.5m from the façade of any residential property or other noise-sensitive building most exposed to noise from the site shall not exceed the limits in the table below. Such noise levels may be measured directly at the relevant location(s) or may be calculated according to a method previously agreed in writing with the County Planning Authority.

Activities	Times of day	Noise limit $L_{Aeq,30min}$ dB	Explanatory notes
Temporary operations such as site preparation and reinstatement	07:00h – 18:00h weekdays 07:00h – 13:00h Saturdays	55	These hours are limited by Condition 5
All activities save gas flaring (covered separately below)	07:00h – 18:00h daily	45	
Any activity save gas flaring (covered separately below)	18:00h – 07:00h daily	42	
Gas flaring	07:00h – 19:30h (except in emergencies)	53	Gas flaring shall only be undertaken in between the hours here specified.

Ecology and Bio-diversity

9. No development hereby permitted (including removal of vegetation, lopping of trees and other site clearance) but excluding anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until an Ecological Monitoring and Management Plan has been submitted to and approved in writing by the County Planning Authority.

   The plan will include details of the following:

   i. Methods, survey area(s) and programme for pre-commencement surveys for vegetation, badger, roosting and foraging bats, nesting birds (including nightjar and firecrest), reptiles, other protected species and invasive plant species;

   ii. Ecological protection and mitigation objectives and measures for site clearance, construction, operation and decommissioning phases of the consented development. These will include:

a. Measures to address potential disturbance or harm to badger, roosting and foraging bats, nesting birds (including nightjar and firecrest), reptiles and other protected species,

b. Details of mitigation for potential lighting, noise and dust impacts on flora and fauna, and

c. Other protection measures for retained and adjacent vegetation and habitats;

iii. Specifications for any habitat management and/or translocation necessary to address potential impacts on reptiles and other protected species, including exclusion fencing;

iv. Methods and programme for on-going ecological monitoring and aftercare of the development, including provision of an Ecological Clerk of Works to implement the Ecological Monitoring and Mitigation Plan and oversee mitigation works at the site; and

v. Measures for the control of Japanese knotweed and any other invasive plant species recorded by the ecological monitoring surveys.

The results of the pre-commencement ecological surveys shall be reported to the County Planning Authority in writing. Should the results of the pre-commencement ecological surveys require new or amended mitigation measures, the Ecological Monitoring and Management Plan will be amended and resubmitted to the County Planning Authority for further approval within one month of the surveys taking place.

The results of the monitoring surveys during site clearance, operational and decommissioning phases shall be reported to the County Planning Authority in writing.

The final approved Ecological Monitoring and Mitigation Plan shall be implemented in full and those protection measures that are required to be retained shall be maintained in a functional condition for the duration of the development and any agreed aftercare period.

Lighting

10. Obstacle lighting consisting of the 200 candela LL330 series shall be placed on the top of the drill-rig for the duration that the drill-rig is on site. The periods of illumination of obstacle lights, obstacle light locations and obstacle light photometric performance must all be in accordance with the requirements of 'CAP 168 Licensing of Aerodromes'.

11. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Light Management Plan has been submitted to the County Planning Authority and approved in writing. The Light Management Plan shall be in accordance with drawing no. 0277-1300-001 Rev A and shall include details of:

i. the siting of temporary security lighting for all phases of the development, taking into account the location of sensitive receptors;

ii. the hours lights would be illuminated and good practice measures to minimise the use of lights;

iii. measures to control and minimise light spill;

iv. measures for reviewing any unforeseen impacts;

v. Practical measures to minimise upward waste of light from site luminaries and to minimise light spill into the surrounding woodland.

The approved Light Management Plan shall be implemented for the duration of the development.

Soil Contamination

12. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Method Statement for the geochemical baseline soil testing and how the developer will identify any soil contamination at the decommissioning stage and how this will be remediated has been submitted to and approved in writing by the County Planning Authority.

The Method Statement will include:-

i. details of the proposed design;

ii. details of minimum sample spacing and depths below existing ground level;

iii. the method of testing samples using a mobile testing laboratory;

iv. a programme for the geochemical baseline soil testing for the site and submission of results to the County Planning Authority;

ii. the methods proposed to prevent soil contamination;

iii. remediation methods for soil contamination should it occur during the contract period. The remediation methods shall deal with a sliding scale of contamination with protocols to cover each level of potential contamination identified; and

v. a programme for identifying any soil contamination at the decommissioning stage and how it will be dealt with, should it be encountered, again on a sliding scale of contamination with protocols to cover each level of potential contamination identified. This programme should allow time within the 18-week contract period for the County Planning Authority to approve the test results in writing and for any necessary remediation to take place.

NB It should also be remembered that the test results at both pre construction and decommissioning stage will be of interest to the Environment Agency and its contamination thresholds may differ from those of the County Planning Authority.

Soils

13. All topsoil and subsoil shall be retained on the site for subsequent use in restoration. No soils or soil making material for use in the restoration shall be brought onto the site. Stored soil bunds shall not exceed 4m in height.

The restoration soils shall be spread over the site at an even depth and shall not exceed the final levels shown on The Restoration Profile Drawing No 4.10 dated July 2007.

Landscape and restoration

14. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Landscape and Restoration Plan to be implemented on the cessation of phase 3 of the development (testing and evaluation) shall be submitted to and approved in writing by the County Planning Authority.

    The Landscape and Restoration Plan shall include details of:

    i. the excavation, storage and reinstatement of soils to ensure the survival of the of the existing seed bank;

    ii. programme for the implementation of the restoration, monitoring and aftercare;

    iii. provision for the enhancement of biodiversity focusing on native species and the results of the pre-commencement ecological surveys, whilst taking into account the use of the land for commercial forestry;

    iv. planting specification including details of species, planting sizes and proposed numbers/quantities/seed mix & application as appropriate;

    v. the reinstatement of the access track; and

    vi. details of any elements of the ground and surface water monitoring scheme approved under Condition 15 to be retained or continued on the site.

    The plan as approved shall be carried out in full.

    All planting implemented pursuant to this permission shall be maintained in good, healthy condition and be protected from damage for five years from the completion of site restoration. During that period any trees or shrubs which die, or are severely damaged or diseased shall be replaced in the next available planting season with others of a similar size and species.

Groundwater monitoring

15. No development shall commence until a scheme for the evaluation of groundwater and surface-water baseline quality and monitoring has been submitted to and approved in writing by the County Planning Authority. The scheme of works shall include full details of any proposed borehole design, installation details and monitoring (and include an action plan in the case of any identification of pollutants found beneath the appeal site prior to commencement of development). The development shall thereafter be carried out in accordance with the approved details.

Highways

Routing

16. No relevant vehicle (i.e. any HGV connected with the development hereby permitted and including any vehicle carrying parts of the drill-rig, but excluding

any vehicle used for the purposes of the ground and surface water monitoring) shall enter or leave the application site unless accompanied by an escort vehicle to ensure correct routeing in accordance with the approved Traffic Management Scheme (agreed in accordance with Condition 19 below).

Delivery hours

17. With the exception of the 2No. three day road closures, no relevant vehicle shall enter or leave the application site other than between the hours of 0930 to 1500 hours Monday to Friday and 0930 to 1300 hours on Saturdays; no relevant vehicles (as defined in Condition 16) shall enter or leave the site at any time on Sundays, Bank or National Holidays.

    The developer shall notify the County Planning Authority in writing of the dates of any road closures at least seven working days prior to the road closure.

Traffic survey and safety audit

18. Prior to the submission of the Traffic Management Scheme a traffic survey shall be undertaken of all vehicles and pedestrians using Knoll Road and Coldharbour Lane on Saturdays between the hours of 0800 and 1400. This survey should cover all recreational activities, including cycling, which currently take place in Knoll Road and Coldharbour Lane. The results of this survey, combined with those of the traffic survey conducted in late 2014, supplemented by any pedestrian counts to fill in gaps, shall be used to produce a safety audit forthe junction of Knoll Road and Coldharbour Lane and for the length of Coldharbour Lane between Knoll Road and the site access. The results of this audit shall be used to inform the Traffic Management Scheme required by Condition 19 below.

Traffic Management Scheme

19. No development (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall take place until a Traffic Management Scheme has been submitted to and approved in writing by the County Planning Authority.

    The Traffic Management Scheme shall include:

    i. the provision, implementation and monitoring of traffic management measures (including details of the HGV holding area) to regulate the passage of relevant vehicles (as defined in Condition 16) travelling to and from the site and these measures shall take account of the road safety audit. Any mitigation measures should be subject to the road safety audit process;

    ii. details of the temporary road closures, the management of traffic, including emergency vehicles, during the road closures;

    iii. details of temporary warning signs for rights of way users at the point at which the rights of way meet Coldharbour Lane;

    iv. details of temporary signs and any appropriate road marking prohibiting all relevant vehicles from parking or waiting in Knoll Road other than in three temporary marked parking places;

v. details of the publicity and prior notification signs to be provided to Capel, Holmwood and Wotton Parish Councils and to residents in Coldharbour Lane, Knoll Road, Abinger Road, Leith Hill Road, Lake Road, Broome Hall Road and Hen Hurst Cross Road in advance of and during the works;

vi. banksmen and escort details, including management of the progress of HGVs along Coldharbour Lane to protect trees and banks.

The Traffic Management Scheme shall be implemented as approved and continue for the duration of the contract.

Pre and Post development Condition Survey and subsequent repairs

20. No works shall commence unless and until:

i. A pre-development condition survey of Knoll Road and the section of Coldharbour Lane from the application site to Knoll Road (the route for HGVs agreed in the Traffic Management Scheme) has been carried out and submitted to the County Planning Authority and approved in writing.

ii. A method statement has been submitted to the County Planning Authority and approved in writing identifying how any damage to the carriageway or highway verge, which may be inadvertently caused as a result of the development, will be made safe and remediated by the developer.

In the event of damage to the banks (as opposed to verges) of Coldharbour Lane (which it is agreed cannot be repaired), the method statement shall include steps to be taken to minimise the impact of the damage.

A post development condition survey of Knoll Road and the section of Coldharbour Lane from the application site to Knoll Road (the route for HGVs agreed in the Traffic Management Scheme) shall be undertaken by the developer and submitted to the County Planning Authority within three months of the completion of the development hereby approved. As part of this survey, a scheme, including the method of payment at the developer's expense, for the remediation of any damage to the public highway and its verges resulting from the passage of relevant vehicles (as defined in Condition 16) shall be submitted to and approved in writing by the County Planning Authority.

Method of construction/reinstatement

21. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Method of Construction/Reinstatement Statement has been submitted to the County Planning Authority and approved in in writing. Such a Method Statement shall include details of:

i. parking (both on and off site) and manoeuvring of vehicles for site personnel, operatives and visitors;

ii. loading and unloading of plant and materials;

iii. storage of plant and materials;

iv. the protection of trees to remain on the appeal site and immediately adjacent to it; and

v. programme of works.

Only the approved details shall be implemented during the site construction and reinstatement periods.

Wheel cleaning

22. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a scheme for the prevention of contamination of the public highway has been submitted to and approved by the County Planning Authority in writing. Such a scheme shall specify all measures necessary to keep the public highway clean and prevent the creation of a dangerous surface on the highway. The scheme shall be implemented in full and the measures as approved shall be thereafter retained and used for the duration of the development.

In-cab cameras/CCTV

23. All relevant vehicles (as defined in Condition 16) shall be fitted with a camera or CCTV within the cab. This feature shall be fitted to give a forward view from the cab and capable of covering the width of the carriageway and immediate highway verges/banks. The cameras shall be running at all times the relevant vehicles are traversing the route of Knoll Road and Coldharbour Lane in either direction. The film/tapes shall be retained without deletion of content and made available to the County Planning Authority for a period to be agreed in writing with County Planning Authority, before commencement of the development hereby permitted.

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TO: PLANNING & REGULATORY COMMITTEE **DATE:** 23 September 2015

BY: PLANNING DEVELOPMENT TEAM MANAGER

DISTRICT(S) TANDRIDGE DISTRICT COUNCIL

ELECTORAL DIVISION(S):
Godstone
Mrs Windsor

PURPOSE: FOR DECISION **GRID REF:** 533487 151988

TITLE: **MINERALS / WASTE - TA/2014/1884**

SUMMARY REPORT

North Park Quarry, North Park Lane, Godstone, Surrey, RH9 8ND.

The extraction of sand and progressive restoration to agriculture and woodland; and the continued temporary diversion of bridleways 142 and 148 (parts) and temporary stopping up of footpath 121 and 143 (part), without compliance with Condition 3 of planning permission TA00/326 dated 22 November 2000, to allow an extension in time for the working of sand until 2020, with the restoration of the site by 31 December 2022.

The proposed development comprises an application under section 73 of the Town and Country Planning Act 1990 (as amended) for the continued extraction of sand from land to the south and west of North Park Quarry until 2020, with restoration by 31 December 2022. This is in line with the existing permission for the removal of the processing plant and complete restoration of North Park Quarry. The reason for the extension is as a result of the sand being worked slower than anticipated, due to economic conditions with lower sales in sand over recent years.

North Park Quarry lies within an Area of Great Landscape Value (AGLV) and the Green Belt, and is partially covered by the Surrey Hills Area of Outstanding Natural Beauty (AONB).

Tandridge District Council has raised concerns about the extension in time, and the continued impacts on air quality, the visual impact on the AONB and AGLV and the delay to the reinstatement of local rights of way. Objections have been raised in terms of air quality, however based on the data submitted as part of the approved Dust Management Scheme and Dust Action Plan, there is no evidence to suggest that that the development will cause harm to health. There have been no objections from technical consultees. In relation to the impact on local amenity in terms of dust, noise, visual impact, traffic or hydrology, Officers consider that the existing conditions and mitigation measures will continue to provide adequate safeguards.

Minerals can only be worked where they are found and despite the site being in the Green Belt, AGLV and partially within the AONB, the national need for this industrial mineral is an important consideration. The impact of the proposal on the AONB and AGLV is judged to be acceptable, in that the temporary nature of the development, national benefits and public interest, the lack of alternatives, quality of the restoration proposed, would constitute exceptional circumstances. Officers therefore consider that the need for the mineral clearly outweighs any temporary impacts of this extension to the timetable for working and restoration and that the scheme meets the policy requirement for mineral extraction in the Green Belt, in that high environmental standards can be maintained and the site can be well restored within an acceptable timescale.

The recommendation is to PERMIT subject to conditions

APPLICATION DETAILS

Applicant

Sibelco UK

Date application valid

7 November 2014

Period for Determination

27 February 2015

Amending Documents
Amending landscaping plans and associated documentation (email dated 23/04/15), enclosing the following drawings:
R01/P27/004B - Quarry Phasing 2016
R01/P27/005B - Quarry Phasing 2018
R01/P27/006B - Quarry Phasing 2020
R01/P27/007A - Final Restoration
R01/P27/011B - Planting Plan
R01/P27/012 - Woodland and Hedgerow Planting Schedule
Scheme of Restoration and Landscaping (May 2015)

SUMMARY OF PLANNING ISSUES

This section identifies and summarises the main planning issues in the report. The full text should be considered before the meeting.

	Is this aspect of the proposal in accordance with the development plan?	Paragraphs in the report where this has been discussed
Mineral Issues and Need	Yes	34 – 38
Highways, Traffic & Access	Yes	39 – 41
Noise	Yes	50 – 51
Air Quality – Dust	Yes	52 – 59
Hydrology, Hydrogeology and Surface Water	Yes	60 – 62
Landscape AONB/AGLV	Yes	63 – 69
Ecology & Biodiversity	Yes	70 – 74
Rights of Way	Yes	75 – 78
Restoration and Aftercare	Yes	79 – 84
Green Belt	Yes	86 - 89

ILLUSTRATIVE MATERIAL

Site Plan

Plan

Aerial Photographs

Aerial 1 – North Park Quarry (Location)
Aerial 2 – North Park Quarry (Site Area)

Site Photographs

Figure 1 – Southern extension area of NPQ - View SE
Figure 2 – Southern extension area of NPQ - View S
Figure 3 – View west toward western extension area of NPQ along conveyor route (link to Pendell Quarry)
Figure 4 – Western extension area (view south toward Place Farm Road)

BACKGROUND

Site Description

1 North Park Quarry has historically covered some 99 hectares (ha), including the processing plant site of some 6ha; and with some 22ha which have undergone restoration and 9ha in interim restoration. The quarry lies in a valley between the North Downs and the Greensand Ridge with the land rising from south to north across the site. The quarry is located in a rural area between the villages of Bletchingley and Godstone with the M25 motorway to the north and the A25 to the south. The land is designated as Metropolitan Green Belt and falls within an Area of Great Landscape Value (AGLV). The northern section of the quarry falls within the southern extent of the Surrey Hills Area of Outstanding Natural Beauty (AONB). Access to the application site is gained from a purpose built haul route linking the quarry to Junction 6 of the M25, north east of the site.

2 The surrounding land use is predominantly agricultural however there is a golf course to the south of the site. Kitchen Copse an area of ancient woodland that has been designated a Site of Nature Conservation Interest (SNCI), lies to the north west of the site. The nearest residential properties are to the east of the quarry on North Park Lane; and to the west at Place Farm.

Planning History

3 Sand working at North Park Quarry commenced following the grant of planning permission (ref.TA76/155/298) in January 1977, which allowed the winning of silica sand from a 12ha site directly west of North Park Lane. Working has been completed in this area and the land restored to a lower level. A second planning permission (ref.TA81/796/1336) was granted in May 1982, which enabled a westward extension of the previous workings from an area of approx. 20.5ha but also the re-grading of the extracted site and surrounding land amounting to a total of 27.6ha. Both the 1977 and 1982 consents were granted subject to conditions including one requiring that the silica sand extracted would be transported via the A25 to the company's then Holmethorpe Works, Redhill for processing and despatch.

4 A further 3.6ha extension to the extraction area previously permitted in 1982 was granted in July 1990 (ref.TA90/0284), which was varied to enable the programme of extraction and restoration of working to be revised to extend the period of extraction until 2010 with restoration to be completed by 2015. In November 2000 planning permission (ref.TA00/0326) was granted for the extraction of sand from land to the south and west of North Park Quarry until 2014 and restoration by 2016. The application also included the progressive restoration of the whole of the site to agriculture and woodland, the retention and use of the existing mineral despatch plant and associated accesses, the temporary diversion of parts of bridleways 142 and 148; and the temporary stopping up of part of footpath 143.

5 On 19 July 2004 planning permission (ref.TA02/0183 & RE02/0268) was granted for the construction of a replacement sand processing plant for the one then at Holmethorpe, dedicated haul route, new access onto the B2235 Godstone Hill Road with associated woodland planting, landscaping and other matters. This planning permission involved

8

the processing of raw silica sand extracted at North Park Quarry and the export of processed silica sand utilising the new access onto the B2235. The planning application also allowed for a sand / soil rootzone blending area whereby peat (or a similar material) and soil is imported to the quarry site and is blended with sand to produce sports sands. In September 2008 planning permission was granted (ref.TA08/0185 & RE02/0255) for the 'as built' processing plant development at North Park Quarry, as the processing plant and associated elements were not carried out in accordance with the 2004 planning permission.

6 On 23 March 2012 planning permission (ref.TA09/1536) was granted for the extraction of some 2.5 million tonnes of sand over a period of eight years from Pendell Quarry situated to the west of the existing North Park Quarry with progressive restoration to agriculture, woodland and nature conservation. The extracted sand would be transported via a covered conveyor to North Park Quarry for processing within the existing processing plant and then dispatched via the existing haul route. The processing plant had planning permission until 2014, however planning permission (ref.TA09/1533 & RE09/1876) was granted allowing a further period of time for the processing and transport of minerals at North Park Quarry until 31 December 2020 in order to receive and process mineral from Pendell, with restoration to agriculture and nature conservation by 31 December 2022. All pre-commencement conditions have been approved, with works on the conveyor belt being completed in September 2014. Soil stripping for the first cell of Pendell Quarry has been completed and excavation has commenced.

7 Applications (SCC refs. 2014/0135 and 2014/0136) have been submitted as variations to the Pendell Quarry (ref.TA09/1536) and North Park Quarry processing plant (ref.TA09/1533 & RE09/1876) permissions to provide for an amended dust action plan and dust monitoring scheme removing the use of horizontal sticky pads. These applications are undetermined at the time of writing this report.

THE PROPOSAL

8 The application is for a variation to Condition 3 of planning permission TA00/326 dated 22 November 2000, to allow an extension in time for the working of sand from 2014 until 2020, with restoration by 31 December 2022. The reason for the extension is as a result of the sand being worked slower than anticipated, due to economic conditions with lower sales in sand over the last 5 to 6 years. The application will require an amendment to the quarry phasing and will not amend the working and restoration of the western section of North Park Quarry, which is to be restored by the end of 2016.

9 The application is accompanied by an Environmental Statement dated 2014, which is an update to the original ES submitted with the original planning application in 2000.

CONSULTATIONS AND PUBLICITY

District Council

10 Tandridge District Council – Planning

'Concern is raised about the proposed extension of time for the working of sand until 2020 and the subsequent extension of time for restoration of the site as it is considered that this:

a) will result in poor air quality continuing for a further period of time to the detriment of the occupiers of local dwellings. Such poor air quality needs to be satisfactorily addressed to the satisfaction of local residents before these extensions in time are allowed;

b) will lead to the adverse visual impact of North Park Quarry on the local landscape, including the Surrey Hills Area of Outstanding Natural Beauty and the area of Great Landscape Value, continuing for a further period of time; and

c) will result in the adverse impact on the local rights of way network continuing for users of this network.'

Consultees (Statutory and Non-Statutory)

11 **Environment Agency**
No objection

12 **Natural England**
No objection

13 **Sutton and East Surrey Water**
No comments received

14 **County Highways - Transportation Development Planning**
No objection

15 **County Ecologist**
No objection

16 **County Landscape Officer**
No objection. Recommended that further information be submitted (listed above under amending documents).

17 **Countryside Access Officer - Rights of Way**
No objection

18 **County Air Quality Consultant**
No objection

19 **County Environmental Enhancement Officer**
No objection

20 **Environmental Assessment**
The Environment Statement contains sufficient information to be deemed compliant with the EIA Regulations 2011. There was further information requested under Regulation 22 in respect of landscaping plans, which was duly submitted by the applicant.

Parish/Town Council and Amenity Groups

21 **Bletchingley Parish Council**
Objection on the following grounds:
a) prolonged development of a Green Belt site (details included - visual impact from Surrey Hills AONB and rights of way would be severe, delay in reinstatement of rights of way, need for reserves not convincingly demonstrated, restoration should be implemented as soon as each face is worked and assurances by the applicant cannot provide sufficient protection)

b) deterioration of air quality due to extensive cumulative quarry workings (PM10 particulate dust of greatest concern and increased working area would increase dust generation)

22 **Godstone Parish Council**
No objection

23 **Quarry Observation Group**
Concerns over dust generation from the extensive area of quarry that will remain open for an extended period of time and the effectiveness of the current monitoring. Concerns of use of abstraction water to suppress dust and exceeding the exemption limits in terms of water usage.

24 **British Horse Society**
Request that a condition is placed on any permission requiring the dedication of a perimeter bridleway.

25 **Godstone Village Association**
Objection on the following grounds: need not demonstrated, Green Belt and continued visual impact, loss of public amenity from continued diversion of rights of way, air quality and cumulative effect from 3 quarries in area and possible effects on health.

26 **The Ramblers Association (Godstone area)**
Objection, requiring the local community have their rights of way restored to their original routes.

27 **White Hill Residents' Association**
Objection on the following grounds: AONB and demonstration that the extraction is in the public interest; contrary to the objective of minimising the impact on local amenity and ensuring prompt and effective restoration; need which cannot be met elsewhere; assessment needed of sand quality; contrary to policy in ensuring restoration completed as soon as practical; increase in HGV traffic when added to Mercers South permission, resulting in exceedance of the allowable NO_2 levels.

Summary of publicity undertaken and key issues raised by public

28 The application was publicised by the posting of 2 site notices and an advert was placed in the local newspaper. A total of 21 of owner/occupiers of neighbouring properties were directly notified by letter. In response to the above consultation, 8 letters of representation were received by the County Planning Authority (CPA) objecting to the proposed development, for the following reasons: Green Belt and further impact; negative visual impacts on AONB, AGLV and Place Farm Conservation Area; dust and air quality; noise; adverse cumulative effects from 3 quarries; delay in reinstating the rights of way network; need for sand unwarranted; need for 6 years to extract unwarranted; need for two years for restoration unwarranted; lack of certainty on restoration back to agricultural/conservation use; restoration of ROW148 to its original route is unsuitable; contrary to NPPF, Surrey's Mineral Site Restoration Guidance and Surrey Minerals Plan Policies.

PLANNING CONSIDERATIONS

29 The County Council as Minerals Planning Authority (MPA) has a duty under Section 38 (6) of the Planning and Compulsory Purchase Act 2004 to determine this application in accordance with the Development Plan unless material considerations indicate otherwise. In this case, the statutory Development Plan consists of: the Surrey Minerals Plan 2011 - Core Strategy Development Plan Document (SMP2011); the Tandridge District Core Strategy 2008 (TDCS2008) and Tandridge Local Plan Part 2, July 2014 (TLP2014): Detailed Policies 2014 – 2029.

30 This application is submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), which allows planning permission to be given for development of the same description as development already permitted but subject to different conditions. The development, which the application seeks to amend, will by definition have been judged to be acceptable in principle at an earlier date at the time the planning permission was granted. If permitted, the MPA is in effect granting a fresh permission and as such need to look at wider considerations affecting the original grant of permission.

31 Section 73 provides a different procedure for such applications from that applying to full applications for planning permission, and requires the local planning authority to consider only the question of the conditions subject to which planning permission should be granted, though in doing so the authority should have regard to all material considerations and determine the application in accordance with the development plan unless material considerations indicate otherwise. The main issues in the determination of this application are the impacts of the development on the Green Belt; AONB and AGLV; residential and environmental amenities; highways, traffic and access; and mineral extraction issues (need).

32 The National Planning Policy Framework (NPPF) (adopted March 2012) provides guidance to local planning authorities in producing local plans and in making decisions on planning applications. The development plan remains the cornerstone of the planning system, and planning applications, which comply with an up to date development plan should be approved. Refusal should only be on the basis of conflict with the development plan and other material considerations. The NPPF does not change the statutory principle referred to above. The NPPF states that policies in Local Plans should not be considered out of date simply because they were adopted prior to publication of the framework. However, the policies in the NPPF are material considerations which planning authorities should take into account. Due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.

33 The NPPF sets out the Governments approach on the management and planning's role with regard to minerals. Para 142 states that: "*Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals area finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long term conservation*". Para 144 sets out a number of bullet points that should be considered when determining planning applications. Those that are relevant to this proposal include:

- giving great weight to the benefits of the mineral extraction including to the economy;
- ensure in granting planning permission for mineral development that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety and take into account the cumulative effect of multiple impacts from individual sites and/ or from a number of sites in a locality;
- ensure that any unavoidable noise, dust and particle emissions are controlled, mitigated or removed at source and establish appropriate noise limits for extraction in proximity to noise sensitive properties; and
- provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards through the application of appropriate conditions, where necessary.

MINERAL ISSUES AND NEED

National Guidance
National Planning Policy Framework (NPPF) 2012
National Planning Practice Guidance (NPPG) 2014
Surrey Minerals Plan 2011 - Core Strategy Development Plan Document (SMP2011)
Policy MC1 – Location of Mineral Development in Surrey
Policy MC8 – Silica Sand Supply

34 The National Planning Policy Framework (NPPF) 2012 states under para.146, that mineral planning authorities should plan for a steady and adequate supply of industrial minerals by providing a stock (at least 10 years for individual silica sand sites) of permitted reserves to support the level of actual and proposed investment required for new or existing plant and the maintenance and improvement of existing plant and equipment. The National Planning Practice Guidance (NPPG) 2014 recognises that industrial minerals are essential raw materials for a wide range of downstream manufacturing industries and their economic importance therefore extends well beyond the sites from which they are extracted. The NPPG (2014) states under para.90, that the required stock of permitted reserves for each silica sand site should be based on the average of the previous 10 years sales, and that the calculations should have regard to the quality of sand and the use to which the material is put.

35 The proposal is for the continued extraction of the industrial mineral - silica sand, which unlike construction sand contains a high proportion of silica in the form of quartz and more importantly a low level of impurities. The significance of the end use rather than the nature of the sand in the ground is recognised by the British Geological Society (BGS), which has defined silica sand as sand used for applications other than construction aggregates and “are valued for physical and chemical properties”. Markets often have very specific requirements for one or more of these properties, and as such sands are generally marketed as ‘specialist sands’ that include industrial processes (for glass, foundry moulds, chemicals, aircrete, bricks and tiles), ‘non-construction aggregates’ (including equestrian sand, sports and leisure sand, horticultural sand) and specialist construction uses.

36 Minerals planning raises a number of issues, often related to the fact that minerals can only be worked where they occur, and maintaining an adequate supply of minerals without having a significant impact upon communities and the environment is a challenge. The Surrey Minerals Plan 2011 - Core Strategy Development Plan Document (SMP2011) states that “*exploitation of mineral resources and other mineral development in Surrey should be efficient, environmentally responsible, adequate, as far as possible, to meet the needs of the economy and should not impose significant adverse impacts on the community*”. The SMP2011 highlights that the silica sand resources within Surrey are some of the purest within the country, with low levels of iron and alumina. Silica sand resources, although being part of the Lower Greensand Formation, are much more restricted in extent than the soft sand resource, which limits the choice of alternative locations for future production (Policy MC1 – Location of Mineral Development). Given the scarcity of suppliers of silica sand, it is important to maintain workable reserves where appropriate in order to ensure a continuous and competitive source of supply of the raw materials, ensuring that important mineral resources and sites for mineral development are not sterilised in any way (Policy MC8 – Silica Sand Supply).

37 The applicant seeks to extract the remaining 600,000 tonnes of silica sand reserve at the site (permitted in 2000 under ref. TA00/326) over an additional 6 year period (maximum) until 2020. The applicant has carried out exploratory drilling and analyses of the remaining reserves, which has resulted in the above calculation. The reserves fall into three types and are identified by their location within the site;

- Place Farm - low iron/low alumina fine to medium sands suitable for glass and sodium silicate manufacture,
- Southern quarry – sand for use in coloured glass and sports/leisure,
- East of Kitchen Copse – coarse low iron sands for industrial customers.

The sand in the place Farm area (approx. 100,000 tonnes) is anticipated to be worked out by the end of 2015 and will be blended with sand from Pendell Quarry. The various sand types will require appropriate blending and processing to meet customer's requirements, as such the sands can only be worked at a rate appropriate to sales profiles. Residents have questioned the need for the sand however the applicant has confirmed the quality of the remaining sands, and Policy MC8 (SMP2011) ensures that such important mineral reserves are worked and not sterilised in any way.

38 The SMP2011 recognises the need for silica sand and the limited areas within the UK where this specialist sand is found, with North Park Quarry and Pendell being the only active workings in Surrey. The proposal seeks an extension of time to complete mineral extraction and the subsequent restoration of the North Park Quarry site and does not seek a physical extension to the working area. There is a continued need for the reserves of this high quality industrial sand, and to sterilise this remaining reserve through not working it, would contradict national and development plan policy. Officers are therefore satisfied there is a need to extend the time by which extraction can cease to assist in maintaining the landbank for the county and to avoid sterilisation of the mineral.

HIGHWAYS, TRAFFIC and ACCESS

Surrey Minerals Plan 2011 Core Strategy and Primary Aggregates Development Plan Documents (SMP2011)
Policy MC14 – Reducing the adverse impacts of mineral development
Policy MC15 - Transport for minerals
Tandridge District Core Strategy 2008 (TDCS2008)
Policy CSP12 - Managing Travel Demand

39 Government policy on transport is set out in part 4 'Promoting sustainable transport' of the NPPF (paragraphs 29 to 41). The NPPF recognises the important role transport policies have in facilitating sustainable development and in contributing to wider sustainability and health objectives with the Government recognising that different communities will require different policies and measures, and the opportunities for maximising sustainable transport solutions will vary from urban to rural areas. Developments that generate a significant number of movements are required to be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether: opportunities for sustainable transport modes to avoid the need for major transport infrastructure (which will depend on the nature and location of the development) have been taken up; suitable and safe access for all people can be achieved; and cost effective improvements can be undertaken within the transport network to limit the significant impacts of the development, with development only being refused on transport grounds where residual cumulative transport impacts are severe. In relation to mineral development, plans should set environmental criteria for assessing the traffic impacts of proposals.

40 The traffic generated by transporting minerals is one of the most significant impacts of mineral working and a concern to those living and travelling in the vicinity of a site. Policy MC15 of the SMP2011 states that applications for mineral development should include a transport assessment of potential impacts on highway safety, congestion and demand management and explore how movement of minerals within and outside the site will address issues of emissions control, energy efficiency and amenity. The policy requires applicants to consider alternatives to road transport, though the supporting text at paragraph 7.9 acknowledges that as the majority of

mineral produced in Surrey is transported over relatively short distances, transport by lorry is often the only practicable, cost effective option.

41 The impact of the North Park Quarry operations on traffic levels and the transport network of the area has been previously assessed in the planning applications for the retention of the processing plant and haul road (ref.TA09/1533 & RE09/1876), and for the extraction of sand from Pendell (ref.TA09/1536), as a western extension to North Park Quarry, both of which were permitted in March 2012. The Scoping Opinion for the proposed development concluded that no further work was required in respect of transport matters. Due to reduced sales of silica sand traffic levels have reduced, however there is no intention to increase traffic levels as part of this proposal. The County Highways Authority have commented that access to the site is by way of a dedicated haul road linking the processing plant with junction 6 of the M25, as such the proposal will not increase the HGV traffic generation of the site. As the majority of HGVs enter and exit the site via the purpose built haul road, the extension of time for the working of the sand will have no significant impact on the local highway network. Officers conclude that the proposal will not adversely impact on the highway network and there would be no reasons for refusal on highway safety or capacity grounds. Officers therefore consider that the proposal is in accordance with the transport policies of the development plan.

ENVIRONMENT AND AMENITY

Surrey Minerals Plan 2011 Core Strategy Development Plan Document (SMP2011)
Policy MC2 – Spatial Strategy – protection of key environmental interests in Surrey
Policy MC14 – Reducing the adverse impacts of mineral development
Policy MC17 – Restoring mineral workings
Policy MC18 – Restoration and enhancement
Tandridge Local Plan Part 2, July 2014 (TLP2014): Detailed Policies 2014 – 2029
Policy DP5 – Highway Safety & Design
Policy DP7 – General Policy for New Development
Policy DP21 – Sustainable Water Management
Policy DP22 – Minimising Contamination, Hazards & Pollution (Air Pollution)
Tandridge District Core Strategy 2008 (TDCS2008)
Policy CSP13 – Community, Sport and Recreation Facilities and Services
Policy CSP17 – Biodiversity
Policy CSP20 – Areas of Outstanding Natural Beauty
Policy CSP21 – Landscape and Countryside

Introduction

42 This part of the report deals with environmental and amenity matters, including: landscape and visual amenity; rights of way; noise; air quality and dust; hydrology/ hydrogeology and flood risk; ecology and biodiversity; restoration and aftercare; cumulative impact. The NPPF and NPPG expect mineral planning authorities to ensure that mineral proposals do not have an unacceptable adverse effect on the natural or historic environment or human health. The NPPF states authorities should also take into account the cumulative effect of multiple impacts from individual sites and/or from a number of sites in a locality. Guidance in relation to implementation of policy in the NPPF on development in areas at risk of flooding and in relation to mineral extraction (including in relation to proximity of mineral workings to communities, dust emissions, noise and restoration and aftercare of mineral sites) is provided in the NPPG. Some of the development plan policies listed above relate to one or more of the issues.

43 The Surrey Minerals Plan 2011 (SMP2011) recognises the difficulties in balancing meeting the need for mineral development and ensuring the impact from mineral working does not result in unacceptable impacts on local communities and the environment. Policy MC14 states that proposals for mineral working will only be permitted where a need has been demonstrated and sufficient information has been submitted to enable the authority to be satisfied that there would be no significant adverse impacts arising from the development and sets out matters to be addressed in planning applications. Matters relevant to this application include:

- noise and dust – air quality;
- flood risk and hydrology;
- the appearance, quality and character of the landscape;
- the natural environment and biodiversity;
- public open space, the rights of way network;
- cumulative impacts arising from the interactions between mineral developments.

44 Policy MC2 gives protection to key environmental interests in Surrey and sets out the information and assessments for the protection of areas of national designation such as AONB's. It will have to be demonstrated that the development is in the public interest, and the applicant can establish that development and restoration can be carried out to the highest standard and in a manner consistent with safeguarding the specific relevant interests. Paragraph 116 of the NPPF outlines the 'exception test', which states that planning permission should be refused for major developments in these designated areas (AONB's) except in exceptional circumstances and where it can be demonstrated they are in the public interest. The NPPF sets out that consideration of such applications should include an assessment of: the need for the development; the cost of, and scope for, developing elsewhere outside the designated area; and any detrimental effect on the environment and landscape and the extent to which that could be moderated.

45 Policy MC17 requires mineral working proposals to provide for restoration and post restoration management to a high standard. Sites should be progressively restored or restored at the earliest opportunity with the restoration sympathetic to the character and setting of the wider area and capable of sustaining an appropriate afteruse. For mineral working in the Green Belt afteruses should be appropriate to that designation, these include agriculture, forestry, recreation and nature conservation. For nature conservation afteruses longer term management beyond the standard five year aftercare advised in national policy would be necessary, which the authority would look to secure through legal agreements. A key objective is for enhancement as well as restoration and through Policy MC18 the county council will work with operators and landowners to deliver benefits including enhancement of biodiversity interests at the site and where appropriate as part of a wider area enhancement approach.

46 Policy DP7 (6) of the Tandridge Local Plan Part 2 (TLP2014) seeks to safeguard existing and secure good standards of new amenity for all current and future occupants of land and buildings. Part 6 of this policy seeks to ensure that proposed development does not significantly harm the amenity of neighbouring properties by reason of pollution (noise, air or light), traffic, or other general disturbance. Policy DP21 (Sustainable Water Management) seeks to ensure that development is carried out in a sustainable way to protect all natural resources for use by future generations, and to adapt against and mitigate the impacts of predicted climate change.

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47 Policy CSP17 of the Tandridge District Core Strategy 2008 (TDCS2008) states that development proposals should protect biodiversity and provide for the maintenance, enhancement, restoration and, if possible, expansion of biodiversity, by aiming to restore or create suitable semi-natural habitats and ecological networks to sustain wildlife in accordance with the aims of the Surrey Biodiversity Action Plan. Policy DP19 (TLP2014) (Biodiversity, Geological Conservation & Green Infrastructure) seeks to provide more detail than CSP17, securing protection of protected wildlife sites and landscape areas.

48 Policy CSP20 (TDCS2008) advocates that the conservation and enhancement of the natural beauty of the landscape is of primary importance within the AONB, reflecting their national status and provides principles to be followed for their protection. This policy goes on to confirm that the same principles will be applied in the associated AGLV which will be retained for its own sake as a buffer to the AONB and to protect views from and into the AONB. Further, Policy CSP21 of the same seeks protection of the character and distinctiveness of the District's landscapes and countryside for their own sake with new development being required to conserve and enhance landscape character.

49 Policy CSP 13 (TDCS2008) seeks to protect the Rights of Way network from developments that would adversely affect the enjoyment of users of the network, and encourages improvements to the network. Policy DP5 (TLP2014) adds further detail to the above core strategy policy, by seeking to retain or enhance existing footpaths and cycleway links.

Noise

50 The applicant carried out noise assessments at North Park Quarry in 2000, 2001 and 2009 as part of the planning applications for the extensions to the quarry working and retention of the processing plant, which will be operational until 2020. The permissions included set noise levels and appropriate noise monitoring surveys, which are undertaken at six monthly intervals. The applicant has provided these survey details which show no exceedances of the appropriate noise limits. In terms of potential for cumulative noise impact, which is an issue raised in the letters of representation, the Environmental Statement (ES) concluded that given the separation distances (2km) between future operational areas of North Park and Pendell quarries, there are expected to be no in-combination effects in terms of noise. No occupied properties are closer than 450m and 800m from future planned concurrent workings.

51 The Scoping Opinion for the proposed development concluded that in view of the previous noise assessments and the ongoing noise control, further substantive work was not required in respect of noise. The County Noise Consultant commented that the M25 (which bounds the site to the north) noise dominates the area and for most of the time the quarry operations are not really audible. Officers recognise that some residents have raised noise an area of concern. However, due to adequate controls in terms of hours of working and noise conditions (including monitoring surveys), Officers do not consider that the extension in time and in-combination effects would generate an unacceptable level of noise and therefore the site can operate within the existing appropriate noise limits.

Air Quality – Dust

52 There are two issues concerning airborne sand from quarries – the impact upon residential amenity by causing a nuisance; and the impact upon health. Small particles (PM_{10}) are associated with effects on human health and only make up a small proportion of the dust emitted from most mineral workings. These are deposited slowly and may travel 1000m or more from the source but their concentration will decrease rapidly on moving away from the source due to dispersion and dilution. Larger particles (greater than 30μm (μ = microgram)) make up the greatest proportion of dust emitted from mineral working and will largely

deposit within 100m of sources with intermediate particles (10 - 30μm) being likely to travel up to 200-500m. Large and intermediate particles are often referred to as nuisance dust.

53 The Scoping Opinion for the proposed development stated that the impact of the North Park Quarry operations on air quality has been previously assessed in the ES submitted with the planning permission (ref.TA00/326) granted in 2000 for the western and southern extensions. That assessment concluded that subject to appropriate management and mitigation, the working and restoration of the quarry would be unlikely to cause nuisance to neighbouring properties in terms of dust deposition. Further assessments were carried out in support of the planning applications (ref.TA09/1533 & RE09/1876) for the retention of the silica sand processing plant and haul road, and for the Pendell Quarry (ref.TA09/1536), both of which were granted in 2012. The assessment concluded that subject to effective mitigation and management, the residual risk of dust impacts on nearby receptors would be 'low' to 'near zero', and emissions of PM_{10}, $PM_{2.5}$, respirable crystalline silica, and HGV emissions would comply with the relevant National Air Quality Strategy (NAQS) standards or Environmental Assessment Levels (EALs). The Scoping Opinion concluded that further substantive work was not required in respect of dust effects from the proposed development. However, an amendment to the ES was required to consider the cumulative effects.

54 The applicant provided an addendum to the 2009 ES, which sets out an assessment of the cumulative effects from dust associated with the concurrent working of North Park and Pendell quarries. The assessment demonstrated that there would be no net change in dust impacts at the surrounding receptors. The applicant has stated that there are appropriate controls already in place through the provisions of the Dust Management Scheme (DMS) and Dust Action Plan (DAP), which has required the submission of quarterly dust monitoring reports. Dust monitoring has been carried out at six locations around the existing North Park Quarry and the proposed Pendell extension area since December 2002, with gauges to measure dust flux (flow of dust through the air) and dust deposition (dust fallout from the air).

55 Concern has been raised in respect of the deterioration of air quality from Tandridge District Council, Bletchingley Parish Council and local residents, commenting that the increased area of working for a longer period of time will create increased dust nuisance. QOG have more specifically requested that in view of the dust data collected to date (as part of the monitoring reports) there should be a suitable site specific limit for North Park Quarry, and if not then there should be some improvement in the method of monitoring dust nuisance. In addition, QOG raise the concern that the MPA need to ensure that the approved dust suppression system can be implemented, as the amount of water utilised by the applicant for sprays drawn from Mercers Lake under an abstraction licence, exceeds their exemption limit (This is a matter for the EA and the applicant).

56 The County Air Quality Consultant (CAQC) in reviewing the planning application has referred to the guidance within the Minerals section of the NPPG, which sets out the principles when considering the environmental effects of surface mineral workings. The applicant's addendum to the ES provided more up to date monitoring information (2011-2014) to describe the baseline, and provided and assessment of the deposited and suspended dust impacts. The CAQC was satisfied with the applicant's conclusions in respect of the dust impacts and confirmed that there will be no significant residual impact in respect of dust, providing that there is continued adherence to the DAP for North Park Quarry, which provides the appropriate controls and mitigation. Setting site specific limits would be a matter for the environmental regulator, which would be the Environment Agency. The CAQC supports the use by the applicant of dust flux monitoring using vertical sticky pads gauges as a management tool and also confirms that the abatement/control/mitigation measures proposed by the applicant prominently features controls at source. The CAQC has previously confirmed that the DMS and DAP for

North Park and Pendell quarries would provide adequate monitoring and control in terms of dust and air quality.

57 Residents have also raised the issue of increased NO_2 and combined the effects of HGVs associated with the Mercers South traffic raising the NO_2 levels above the allowable levels. After processing, the sand extracted from North Park Quarry is distributed utilising the existing approved dedicated private haul route up to Junction 6 of the M25. The extension in time would not increase the existing level of traffic generation to and from the site. The applicant has stated that the reason for the extension in time is due to a downturn in sales, as such vehicle movements have reduced. The combined effect of vehicle emissions from Mercers South and North Park Quarry was assessed when Mercers South was granted planning permission. However, as stated above there is no increase in daily traffic levels as a result of this extension in time. In addition the North Park Quarry traffic has a dedicated private road direct to the M25, away from the A25.

58 Concerns about health impacts have been raised by residents, however the impacts of working of North Park and Pendell quarries were assessed previously in 2012, and it was considered that measures would be taken to ensure that dust generated by the operations would not be significant and that operations would be in line with best available techniques, and there were no significant concerns from technical consultees regarding the risk to health of the local population. The CAQC has confirmed that they are satisfied with the applicant's conclusion in respect of the cumulative effects of the development, in that there would negligible impacts on dust concentrations and would be very unlikely to cause a breach of the National Air Quality Objectives.

59 Whilst the concerns of local residents and others are acknowledged, on the basis of the assessments to date, the responses received from technical consultees, Officers consider that with the imposition of appropriate conditions and the DMS / DAP, the proposed extension in time to work the remaining reserves at North Park Quarry would not give rise to significant or unacceptable impacts in terms of air quality. As such Officers consider the proposal is consistent with the aims and objective of national policy and guidance and relevant development plan policy relating to air quality.

Hydrology, Hydrogeology and Surface Water

60 The North Park Quarry area lies on the boundary of two surface water catchments (Thames and Southern Regions of the Environment Agency). The North Park Quarry site is in the headwaters of the Medway catchment (Southern region) with surface water sourced from the scarp slope of the North Downs. The applicant has undertaken long term and ongoing hydrogeological monitoring at North Park Quarry, which has been based on the monitoring of groundwater levels within and adjacent to the quarry. The Scoping Opinion in respect of the proposed development stated that, having taken account of the advice given by the County Geotechnical and Hydrological Consultant and the Environment Agency, further substantive work was not likely to be required but recommended that the ES be updated to reflect the fact that the impacts of the working of North Park Quarry will persist for a longer period of time than originally intended, and provide a review of current groundwater monitoring data and an evaluation of the previous hydrogeological and groundwater studies. In addition, a full review of the previous flood risk, drainage and surface water management assessments should be undertaken in light of current policy and guidance, to demonstrate that the work undertaken for the approved schemes is still applicable and relevant.

61 The applicant provided an assessment of the potential impacts of the time extension at North Park Quarry and extraction at Pendell on the water environment. The assessment concluded that there are no predicted surface water, flood risk or groundwater impacts, with a recommendation that there would be continued monitoring of the groundwater levels and quality throughout the period of working both quarries. No significant residual

impacts on the water environment are expected, provided that the mitigation measures approved under the 2000 and 2012 permissions continue to be implemented. These measures include working the extension areas dry and to a maximum depth of 2m above the highest groundwater levels, in accordance with the current Environmental Management Plan.

62 The Environment Agency raised no objection to the continuation of activities at the site for an extended period of time, based on the assumption that working practices within the site remain in accordance with the current permissions, particularly with regard to drainage, storage of fuel and chemicals, and the currently agreed depths. Surface water drainage is to be carried out in accordance with the currently approved schemes. Officers therefore consider that with the imposition of appropriate conditions, the proposed extension in time to work the remaining reserves at North Park Quarry would not give rise to significant or unacceptable impacts in terms of the water environment.

Landscape and Visual Amenity (AONB/AGLV)

63 The land at North Park Quarry is designated as Metropolitan Green Belt and falls within an Area of Great Landscape Value (AGLV). The northern section of the quarry falls within the southern extent of the Surrey Hills Area of Outstanding Natural Beauty (AONB) and therefore an assessment of the developments impact upon the AONB is necessary. In order for planning permission to be granted in this case it is necessary to be satisfied that the development serves a public interest and the proposal is also capable of conserving and enhancing the sensitive and distinctive area of landscape in which it is located. The need to extract sand from this sensitive landscape has already been accepted when planning permission was granted in 2000, however it was for a limited time and the impacts of extending that time need to be assessed.

64 The Scoping Opinion for the proposed development stated that the impact of the North Park Quarry operations on the landscape character and visual amenity of the area has been previously assessed in the Environmental Statement submitted with planning application (ref.TA00/0326) for the westward and southward extensions to the North Park Quarry (the subject of this application). That assessment concluded that mineral working would result in further damage to a sensitive landscape (AONB and AGLV) that had already been adversely affected by a number of developments, including mineral extraction and the construction of the M25 motorway, but also recognised the opportunity for the impacts of mineral working to be addressed over the longer term through restoration of the site. A further assessment was carried out for the extension of time for the western part of the North Park Farm Quarry and the retention of the processing plant and access road (ref.TA09/1536). This concluded that the longer time period would give rise to moderate adverse cumulative effects during operation for landscape and visual amenity, with restoration expected to deliver moderate beneficial effects for landscape and minor beneficial effects for visual amenity.

65 The Scoping Opinion concluded, following advice from the County Landscape Architect, that further substantive work was not likely to be required in respect of the landscape and visual impacts of the development, but recommended that the ES be updated to reflect the fact that the landscape impacts of the development will persist for a longer period of time than originally intended. The update was to include a clear account of how the previous assessments work together to cover the whole of the North Park Farm Quarry working area for the proposed duration of working and restoration. In addition, a combined summary of the main adverse impacts identified by all the previous assessments and a summary of the mitigation measures that are being implemented to address those impacts, including the final restoration across the whole of the quarry site (i.e. North Park Quarry and Pendell Farm).

66 The applicant submitted a Landscape and Visual Impact Assessment (LVIA) update, which reviewed the previous LVIA's undertaken in 2000 and 2009, in order to highlight the implications of any effects on the Landscape Character or the Visual Environment as a result of the proposed time extension. The applicant concluded that the landscape and visual impacts as a result of the proposed development will be no more adverse than those stated in the two previous assessments. The County Landscape Officer (CLO) agreed with the summary findings of the assessment on landscape character, in that the extension of time period should not introduce further impacts and the landscape effects will be no more adverse. However, the CLO did raise some concern over the visual assessment, in that the extension of time extends the effect of the range of adverse visual impacts over a significant period, in particular the views from the north (public viewpoints) of a site within the protected landscape of the Surrey Hills AONB. As such, the CLO recommended that the landscape mitigation be reviewed and where necessary enhanced, to include details of a landscape management plan.

67 The applicant reviewed the landscape mitigation, which has resulted in slightly amended landscape plans and landscape management. The CLO is satisfied that the amending documents address the concerns raised, in that they now describe clearly the development of the landscape elements through phased operations, followed by restoration. The amending programme of planting, including the timing and extent of woodland and hedgerow planting will provide a better screening effect earlier and for longer, thereby enhancing the landscape mitigation.

68 Tandridge District Council have raised no objection to the development, however they have raised concerns that the extension in time will lead to the adverse visual impact on the local landscape, including the Surrey Hills Area of Outstanding Natural Beauty and the area of Great Landscape Value. The local parish council, local groups and residents all raise objection to the development and its continued adverse visual impact and impact on the AONB and AGLV, questioning whether it is in the public interest.

69 As mentioned above (para.44) the NPPF sets out the 'exception test' for considering development within the AONB, which requires the demonstration of exceptional circumstances and that the development is in the public interest. The need for the extraction of this silica sand resource was demonstrated back in 2000 when planning permission was granted to extract these extension areas to North Park Quarry. The section above on Minerals Issues and Need has demonstrated the quality of the sand and the continued need, as such it remains in the public interest to work the remaining reserves of this specialist sand and not to sterilise them, and minerals can only be worked where they naturally occur. Officers acknowledge that there would be an extended period during which there would be adverse visual harm to the landscape, however this would be outweighed by the nature and the benefits of the scheme in national and local terms. Officers also consider that the proposal is capable of conserving and enhancing this sensitive and distinctive area of landscape in which it is located. Officers therefore conclude that there are exceptional circumstances for the continued working of the sand, and that the proposal complies with national and development plan planning policy relating to landscape and visual impact matters.

Ecology & Biodiversity

70 The application area is not covered by any ecological designations, however Kitchen Copse Site of Nature Conservation Importance (SNCI) lies adjacent to the application area and Place Pond SNCI lies approximately 270m to the south. The applicant has stated that the impacts of the development were comprehensively assessed in the earlier Environmental Statements supporting the applications permitted in 2000 and 2012 however the county Ecologist recommended that a Phase 1 walkover survey was to be undertaken for the whole of the site and bat detector surveys at agreed locations.

71 A Biodiversity Action Plan for North Park Quarry was approved in October 2010 and this sets out an inventory and description of the habitats present on the site; what species are present on the site; and an evaluation of both habitat and species including action plans looking at the current and conservation status, factors that could affect the habitat or species and proposed actions and outcomes.

72 The applicant submitted an updated ES (2014), updating the work done in 2000, which involved a Phase 1 survey of the quarry, a bat assessment and results of the great crested newts surveys on ponds to the north of the site. The impacts that were considered relate to the lengthening of the working and restoration period beyond 2015 on the ecology of the site area, with the exception of the plant site, conveyor route to Pendell and access road, which have permission until 2022. The ES concluded that there would be a temporary low-moderate positive effect on both the habitats and species at North Park Quarry.

73 Natural England raises no objection to the proposal, as the extension in time for the site is unlikely to have significantly different impacts on the natural environment than currently approved. Surrey Wildlife Trust raises no objection as the application is for development already in existence. The County Ecologist does not consider that there are likely to be any significant ecological impacts on habitats or species resulting from an extension of the working period and the final restoration, and is satisfied that there are adequate controls and mitigation measures within the currently approved schemes.

74 The County Ecologist has noted that shells of Roman snails have been found in the areas proposed for restoration to the south and in soil mounds on the south, and necessary surveys are proposed prior to any further working of the area and if necessary, a licence would need to be obtained from Natural England. The applicant has confirmed that appropriate measures are included to address this issue. There is also reference to the potential occurrence of three bird species and the County Ecologist has recommended that an informative be placed on any decision in respect of a watching brief. Officers therefore conclude that the proposed development complies with national and development plan planning policy relating to ecology and biodiversity.

Rights of Way

75 There are many rights of way (bridleways and footpaths) that traverse and surround North Park Quarry, some of which have been temporarily diverted as a consequence of quarrying activities. These rights of way link up to the broader rights of way network within the county. The public access arrangements around the site currently involve the diversion of bridleway 142 to the south of the working area running in an east west direction; the diversion of bridleway 148 to the west of the working area; and the stopping up of footpaths 121 and 143 on their original routes to the north and the south of the current working / restoration areas at the quarry.

76 This application seeks the continued diversion / stopping up of the above rights of way in the vicinity of North Park Quarry. The applicant has submitted as part of the planning application the proposed restoration and aftercare for the application site including the haul route, which includes the proposed reinstatement of definitive rights of way across the quarry site and the introduction of new definitive and permissive rights of way. This includes the existing current temporarily diverted route of bridleway 142, which will remain in place as a permanent dedicated route in addition to the reinstated route. The applicant also proposes to open an additional footpath along the northern boundary of North Park Quarry, linking the original route of Bridleway 148 to North Park Lane, which can be completed on completion of restoration for this area, by early 2018.

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77 Tandridge District Council, the local parish and local residents have all raised concerns over the delay to the reinstatement of the local rights of way network however the Countryside Access Officer (Rights of Way) has raised no objection. In addition residents have raised concern over the steep gradient of the re-instated bridleway 148 upon restoration of the site (i.e. along the original route). The issue of the steep gradient was raised by the Ramblers Association in 2000, and was addressed by rights of way officers at the time. Officers commented that the gradient needs to be considered in relation to its location, which is an area of undulating landscape between the North Downs and Greensand Ridge. Steep rights of way are a feature of the North Downs and the majority of the paths in the area would be at a far steeper gradients. The British Horse Society has requested a new definitive perimeter bridleway once the site is restored however this matter had also been investigated previously, and was found to be impractical due to adverse gradients near North Park Lane and the presence of badgers setts in the woodland on the west side of north Park Lane. The applicant has added that circular bridleway routes are available by access to the north of the M25 and a new bridleway would be provided across the northern sections of the Pendell Quarry site to the west.

78 Officers acknowledge the concerns about the further delay to the reinstatement of the rights of way network, however the proposed restoration provides for an enhanced and improved network of reinstated and new routes across the site linking to the wider network, which accords with development plan policies.

Restoration and Aftercare

79 The SMP2011 requires mineral working proposals to provide for restoration and post restoration management to a high standard, and sites should be progressively restored or restored at the earliest opportunity with the restoration sympathetic to the character and setting of the wider area and capable of sustaining an appropriate afteruse. In 2000 planning permission was granted for this site to be progressively restored to an agricultural use, including an approved aftercare scheme, using existing soils on the lower regraded floor and margins of the quarry.

80 The applicant has stated that the restoration concept for North Park Quarry remains unchanged to a predominantly agricultural use at a lower level, which will create a predominantly dry valley feature that reflects the mix of valley and foothill features present in the surrounding landscape. The applicant has submitted restoration phasing plans, planting schedules and final restoration, showing how the site will be progressively restored by 2022. The restoration includes the planting of new and replacement species rich hedgerows and new woodland planting, which will act as wildlife corridors, linking areas of existing ecological interest, designed to complement and enhance the overall nature conservation value of the area.

81 In 2012, planning permission (ref.TA09/1533 & RE09/1876) was granted for the above agricultural/nature conservation restoration, with the extraction of remaining permitted sand in the western section of North Park Quarry prior to the removal of the processing plant and associated infrastructure and final restoration by 2022. The applicant has stated that the restoration of the Place Farm area (western end of NPQ) covered by the above consent will be completed by the end of 2016, and the northern area by 2017, with the exception of the conveyor and associated access to Pendell Quarry. The remaining southern extension area will be worked and restored over the remaining period until 2020, leaving the processing plant area to last, with complete restoration by 2022 which ties in with the 2012 permissions for the processing plant and Pendell Quarry.

82 The proposed restoration scheme also makes the provision for the reinstatement of rights of way across the quarry site and the retention of permissive rights of way around the quarry site to enhance the rights of way network within the immediate locality. This includes the provision of rights of way along the restored haul road route. The areas already restored to agricultural land will continue to be subject to an aftercare period and schemes as approved in 2000 and 2008. The applicant submitted an amended 'Scheme of Restoration and Landscaping' (May 2015), which includes details of both the agricultural and planting 5 year aftercare schemes.

83 Under the 2012 planning permission, the County Landscape Officer (CLO) considered that the 'holistic' scheme for the restoration of North Park Quarry and Pendell Quarry was appropriate, and complemented the existing landscape. Officers considered that the restoration concept strengthened the landscape character, provided good integration with the Surrey Hills AONB, and offered protection and enhancement of the wider setting including the AONB. The proposed development retains this approved restoration concept for the site, which is principally agricultural with integrated nature conservation elements. Further detail on the landscape management, restoration and aftercare was provided by the applicant following recommendations from the County Landscape Officer, which shows more clearly the development of the landscape elements through phased operations and on to restoration.

84 Officers therefore consider that the restoration and aftercare for the site is acceptable in underpinning the existing structural landscape, and accords with the policies of the development plan.

Cumulative Impacts

85 Residents have raised the issue of the cumulative impact of three quarries (North Park Quarry, Pendell and Mercers South) operating in the local area, in particular the impact on air quality in respect of dust and HGV emissions. The applicant has addressed the cumulative impacts of working both Pendell and North Park Quarry (NPQ) on air quality, where it has been shown that the impacts would be the same as at present, for North Park Quarry alone. This has been addressed in the air quality section above. With regard to the cumulative impact of working NPQ/Pendell at the same time as Mercers South, this has been previously been addressed when planning permission was granted for Mercers South, where it was concluded that there would be no significant impact from cumulative or interactive uses.

METROPOLITAN GREEN BELT

National Guidance
National Planning Policy Framework (NPPF) 2012
National Planning Practice Guidance (NPPG) 2014
Surrey Minerals Plan 2011 - Core Strategy Development Plan Document (SMP2011)
Policy MC3 – Mineral Development in the Green Belt
Policy MC17 – Restoring mineral workings

86 The site lies within the Metropolitan Green Belt where policies of restraint apply. Government policy on Green Belts is set out in Part 9 'Protecting Green Belt land' (paragraphs 79 to 92) of the NPPF. Government policy and guidance in relation to minerals planning is set out in Part 13 'Facilitating the sustainable use of minerals' (paragraphs 142 to 149) and the 'Minerals' section of the NPPG. Mineral extraction is included in the forms of development listed in paragraph 90 that are not inappropriate in Green Belt '*provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt*'. When determining planning applications paragraph 144 of the NPPF states local planning authorities should '*provide for restoration and aftercare of mineral workings at the earliest opportunity to be carried*

out to high environmental standards, though the application of appropriate conditions, where necessary'.

87 SMP2011 Policy MC3 states that '*Mineral extraction in the Green Belt will only be permitted where the highest environmental standards of operation are maintained and the land restored to beneficial after-uses consistent with Green Belt objectives within agreed time limits*'. The supporting text at paragraphs 3.45 and 3.47 refer to almost all mineral working in Surrey being in the Green Belt, and the need for restoration and afteruse of mineral workings to be appropriate to the designation and objectives for the use of land in the Green Belt, which include securing nature conservation interest and retaining land in agricultural, forestry and related uses. Policy MC17 requires mineral working proposals to provide for restoration and post restoration management to a high standard. Sites should be progressively restored or restored at the earliest opportunity with the restoration sympathetic to the character and setting of the wider area and capable of sustaining an appropriate afteruse. For mineral working in the Green Belt afteruses should be appropriate to that designation, these include agriculture, forestry, recreation and nature conservation.

88 Given the site's Green Belt location it is necessary to consider whether the proposed development would maintain high environmental standards during operation and whether the restoration of the site can be achieved to a good standard and will provide an acceptable afteruse consistent with Green Belt objectives. Much of the consideration of whether high environmental standards could be maintained and whether an appropriate and acceptable restoration can be achieved has already been demonstrated in the sections above. Mineral working is a temporary use of land and minerals can only be worked where they are found.

89 The need for the silica sand at North Park Quarry has not changed and this is discussed under mineral need above and in granting planning permission in 2000 and 2012 for the site area it has previously been accepted that the site will be well restored to agriculture and nature conservation. Technical consultees have considered the proposal and their views and issues relating to visual amenity, environmental impacts and the quality of the restoration are considered to be acceptable. Officers acknowledge that the additional period of time in which to work the remaining sand will impact on the openness of the Green Belt. However consideration has to be taken of the siting and use of the processing plant, which has planning permission and can continue to operate until 2020 during which time the impact on the Green Belt and openness would continue. In addition, the longer term view must be taken of the effects on the characteristics and purposes of the Green Belt. Officers conclude that the temporary impacts of the mineral working on the Green Belt would be significantly mitigated by the progressive restoration of the site and as such, will not cause permanent harm to the Green Belt, and therefore the proposal accords with the policies of the development plan.

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90 The Human Rights Act Guidance for Interpretation, contained in the Preamble to the Agenda is expressly incorporated into this report and must be read in conjunction with the following paragraph.

91 It is the Officers view that the scale and duration of any potential impacts are not considered sufficient to engage Article 8 or Article 1 and that potential impact can be mitigated by the imposition of planning conditions. As such, this proposal is not considered to interfere with any Convention right.

CONCLUSION

92 The application site is located in the Metropolitan Green Belt where mineral related development need not be inappropriate development provided that high environmental standards are maintained and the site is well restored. Minerals can only be worked where they are found. The District Council, local parishes, residents and other objectors have expressed concerns about various issues including: need for the sand; highways and traffic; landscape impacts; rights of way; air quality and dust; restoration; and Green Belt. The applicant undertook an environmental assessment and has provided further information where necessary.

93 Technical consultees have carefully considered the application and information provided and have not objected to the development. The views of technical consultees have been reported under individual issues earlier in the report. There is no reason to believe that high environmental standards cannot be maintained during the continued extraction and progressive restoration of the site.

94 Officers consider there is no reason to believe that the site could not be well restored to the proposed after-uses, which are uses consistent with Green Belt objectives. Any adverse impact on the visual amenities of the Green Belt, AONB and AGLV would be limited and adequately controlled. The need for the sand has been demonstrated and is the public interest and high environmental standards would be achieved and that the site well restored. Officers therefore consider that the proposed development accords with Surrey's Mineral Site Restoration Guidance and Surrey Minerals Plan Policies.

RECOMMENDATION

The recommendation is to PERMIT subject to conditions

CONDITIONS

Approved Documents

1 The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the terms of this permission, and the following plans:

Title	Drawing No.	Date
Location Plan – Figure 1	R01/P27/001	25.04.2014
Application Boundary – Figure 2	R01/P27/002	24.06.2014
Rights of Way and Services Plan – Figure 3	R01/P27/003	25.04.2014
Quarry Phasing 2016 – Figure 3.4	R01/P27/004B	02.04.2015
Quarry Phasing 2018 – Figure 3.5	R01/P27/005B	02.04.2015
Quarry Phasing 2020 – Figure 3.6	R01/P27/006B	02.04.2015
Final Restoration – Figure 3.7	R01/P27/007A	02.04.2015
Planting Plan	R01/P27/011B	02.04.2015
Woodland and Hedgerow Planting Schedule	R01/P27/012	23.04.2015
Location of Stand Off Cross Sections	R01/P03/061	22.06.00
Stand Off Sections - Place Farm (West Face S1)	001A	08.06.00
Stand Off Sections - Place Farm (South Face S2)	002A	08.06.00
Stand Off Sections - Place Farm (North Face S3)	003A	08.06.00
Stand Off Sections - Place Farm (North Face S4)	004A	08.06.00
Stand Off Sections – Southern Extension	005A	08.06.00
Proposed Quarry Floor Contours	R01/P03/005	May 2000

Time Limits

2 The extraction of minerals shall cease by 31 December 2020 and restoration of the site shall be completed by 31 December 2022 strictly in accordance with the final restoration scheme and Drawing Nos R01/P27/007A dated 02.04.15.

3 All buildings, plant, conveyor belts, machinery both fixed and otherwise, vehicular access, internal access roads subject to this permission together with the existing engineering works which provide the access thereto and the surfaced area connected therewith (other than that east of North Park Lane necessary to give access to Sutton and East Surrey Water's Godstone Reservoir) and such works ancillary to the parking of vehicles thereon shall, together with their foundations and bases, be removed from the site in accordance with the timescale outlined in Condition 2 above, or within 24 months of the completion of extraction, whichever is the earlier. All the land where such works stood shall be scarified and covered with sub soil and topsoil and restored in accordance with the approved restoration scheme. (Note. This excludes the processing plant area as permitted under ref.TA09/1533 & RE09/1876)

Limitations

4 Notwithstanding any provision to the contrary under Parts 17 of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any subsequent Order:

(a) no plant, building or machinery whether fixed or moveable other than those permitted by this application, shall be erected on the application site;

(b) no lights other than those permitted by this application shall be installed or erected at the application site.

Hours of Working

5 Except in emergencies to maintain safe site operations which shall be notified to the County Planning Authority as soon as practicable, no lights shall be illuminated nor shall any operations or activities authorised or required by this permission be carried out except between the following times:

0700 - 1800 hours Monday to Friday
0700 - 1300 hours Saturdays

Notwithstanding this the formation of the screen bunds around the site and their subsequent removal when required for restoration, shall only be carried out between:

0800 – 1700 hours Monday to Friday
other than in the area of Place Farm where works shall be carried out between:
0830 – 1700 hours Monday to Friday
0900 – 1300 hours Saturdays

there shall be no working on Sundays, Public, Bank Holidays or National Holidays.

Phasing of working

6 The working of the site shall be carried out and completed in accordance with the quarry phasing plans: Drawing Nos R01/P27/004B, R01/P27/005B, R01/P27/006B

Vehicle Movements and Access

7 The means of access for heavy goods vehicles approaching and exiting the site from the north, east or south shall be via the haul route from the B2235 Godstone Hill only. There shall be no means of access to and from North Park Lane and A25 Bletchingley Road for vehicles leaving and approaching to and from these directions. Goods vehicles associated with the site should at no time travel through the centre of Godstone Village.

8 There shall be no means of access either vehicular or pedestrian from the application site to Church Lane or Place Farm Road.

Surface Water and Groundwater Protection

9 No dewatering or pumping of water from the sub-strata shall take place without the prior permission of the County Planning Authority.

10 No extraction shall take place lower than 2 metres above the level of the highest seasonal watertable which is estimated to be between 85 to 87 metres AOD in the western part of the site and 100 metres AOD in the southern part of the site. Having regard to the approved groundwater monitoring scheme, if, at any time during the course of mineral excavation, extraction takes place lower than 2 metres above the highest recorded seasonal watertable, the resultant void will be backfilled with such indigenous material as may be available on the site to bring the level of the quarry floor back to at least 2 metres above the level of the highest recorded seasonal water table. The method of working in accordance with the above shall be such as to maintain an even sloping pit floor.

11 Appropriate groundwater level and chemical monitoring shall continue to take place including the following:

a) topographic surveys of the quarry to be undertaken up to a maximum of four per year
b) monitoring of groundwater levels in boreholes to be undertaken four times per year
c) samples of groundwater will be taken once a year from each of four boreholes, two up gradient and two down gradient of operations. The determinands shall be: pH, suspended solids, iron, aluminium, copper, lead, zinc, ammonium, nitrate, and sulphate
d) data collected will be submitted to the County Planning Authority and Environment Agency on an annual basis. The location of the boreholes to be identified on a plan to be submitted alongside the data collected.

12 No watercourse shall be incorporated into or be allowed to discharge into the working. Any watercourses which are within the site shall be diverted around the working area. All possible steps shall be taken to prevent any suspended matter or sand passing into any watercourse from the extraction and subsequent restoration operations. There shall be no discharge of water, sand, oil, grease or any other offensive or injurious matter into any watercourse.

13 Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging onto the ground. Associated pipework shall be located above ground where possible and protected from accidental damage.

8

14 Adequate drip trays shall be provided for static plant and machinery and any materials accidentally contaminated by oil spillage shall be removed immediately. All moveable plant and machinery shall be parked within the approved parking area outside the normal working day.

Rights of Way

15 The temporarily diverted route of Bridleway No 148 should be 2.5 metre wide and constructed from 150 mm of consolidated reject brick hardcore or crushed concrete overlaid with 150 mm of consolidated limestone scalpings or road planings.

16 On completion of the restoration in accordance with Drawing No R01/P27/007A` Footpaths Nos 121 and 143 and Bridleways Nos 142 and 148 shall be reinstated to an appropriate standard and specification to be submitted and approved in writing by the County Planning Authority.

Noise

17 When measured at, or recalculated as at, a height of 1.2 m at least 3.5 m from a noise sensitive building, the level of noise emitted as a result of any activity or operation at the site and associated with the development hereby permitted shall not exceed 55 LAeq for any 0.5 hour period.

18 Appropriate noise monitoring surveys shall be undertaken at intervals of six months and the results of noise monitoring surveys shall be reported to the County Planning Authority within six weeks of the date of each survey. The data reported from each survey will include:

- Survey date
- Survey personnel
- Survey instrumentation
- Measured sound pressure levels
- Locations of noise sources
- Source-receiver distances
- Calculated sound power levels
- Distance and screening/ soft ground attenuation calculations
- Received noise levels
- Survey weather conditions
- Prediction of maximum noise levels from operations in following 12-month period
- Comment on measured sound power levels in comparison to manufacturers rated sound power levels (where stated).

Dust

19 Operations and activities shall be carried out in strict accordance with the approved Dust Action Plan (DAP), including the measures, controls and actions contained therein.

20 Dust and particulate matter monitoring shall be carried in strict accordance with the approved Dust Monitoring Scheme (DMS). Should any measured dust levels exceed the action levels contained therein, action will immediately be taken using all appropriate measures and controls (including suspension of activities) to reduce dust levels below the acceptance limits.

Soil Movement and Placement

21 All topsoil or subsoil or gault clay shall be retained on the site.

22 The screen bunds shall be seeded to grass and the sward shall be managed until such time as the soils are required for use in the restoration of the site.

23 Topsoils and subsoils shall not at any time be stripped, stockpiled or used for purposes of restoration unless they are in such a dry and friable condition as to prevent compaction.

24 All available topsoil and subsoil should be stripped, separated and shall, wherever possible, be immediately re-spread over an area at the appropriate stage of restoration or, if immediate re-spreading is not practicable, the topsoil and subsoil should be stored separately for subsequent restoration.

25 The top 1 metre of the replaced overburden shall be free from large solid objects larger than 10 cm in any dimension which may damage cultivation machinery or obstruct underdrainage and is to be thoroughly ripped or deeply cultivated so that any compact layers are effectively broken up.

26 The subsoil is to be spread over the restoration area at an even depth above the respread overburden so as to follow the final contours. This soil is to be deeply cultivated so that any compact layers are effectively broken up.

27 The topsoil is to be spread over the restoration area at an even depth above the respread subsoil so as to achieve the final levels shown on final restoration plan.

28 The County Planning Authority shall be notified at least five working days in advance of the commencement of the final subsoil placement on each phase.

Landscape and Restoration

29 All landscape planting shall be carried out strictly in accordance with the scheme included in this application and as detailed on Final Restoration – Figure 3.7 - Dwg. No. R01/P27/007A, Planting Plan - Dwg. No.R01/P27/011B and Woodland and Hedgerow Planting Schedule - Dwg. No.R01/P27/012.

30 All existing hedges, trees, saplings and shrubs along the boundaries shall be retained and protected from damage during the process of extraction and subsequent restoration. Any roots which protrude beyond the margin shall be cleanly cut and treated with an approved preservative.

31 All shrub planting and other landscape works pursuant to this permission shall be maintained in good healthy condition and be protected from damage in accordance with the scheme included in this application for the duration of the extraction and restoration works, and for ten years from the completion of restoration in any part of the site. During that period any trees or shrubs which die, or are severely damaged or diseased shall be replaced in the next available planting season with others of a similar size and species.

Aftercare

32 The land shall be brought to the required standard for agricultural use in accordance with the provision of the aftercare scheme forming part of the application and such detailed annual schemes as may be approved. Such detailed annual schemes shall be submitted one month prior to the annual aftercare site meeting which shall be attended by representatives of the applicant, the owner or their successors in title, and the County Planning Authority to monitor the success of the scheme. Schemes shall be submitted annually throughout the five year period of aftercare and shall provide details of; vegetation establishment, vegetation management, secondary treatments, field drainage and irrigation/watering schedule.

REASONS

1 For the avoidance of doubt and in the interests of proper planning.

2&3 To enable the County Planning Authority to exercise planning control over the operation so as to minimise the impact on local amenity and to ensure the prompt and effective restoration to comply with Schedule 5 paragraph 1 of the Town and Country Planning Act 1990 and Surrey Minerals Plan 2011 Policy MC17.

4 To safeguard the environment and protect the amenities of the locality in accordance with the terms of the Surrey Minerals Plan 2011 Policies MC3, MC8 and MC14

5 To enable the County Planning Authority to exercise planning control over the development so as to minimise disturbance and avoid nuisance to the locality, to safeguard the environment and protect the amenities of local residents in accordance with the terms of the Surrey Minerals Plan 2011 Policy MC14; Tandridge District Core Strategy 2008 Policy CSP15.

6 To enable the County Planning Authority to exercise planning control over the operation so as to minimise the impact on local amenity and to ensure the prompt and effective restoration to comply with Schedule 5 paragraph 1 of the Town and Country Planning Act 1990 and Surrey Minerals Plan 2011 Policy MC17.

7&8 In order that the development should not prejudice highway safety nor cause inconvenience to other road users in accordance with Surrey Minerals Plan 2011 Policies MC14 and MC15; Tandridge District Core Strategy 2008 Policy CSP12.

9-14 To prevent the increased risk of flooding and to protect water quality in accordance with Surrey Minerals Plan 2011 Policy MC14; and Policy DP21 of the Tandridge Local Plan July 2014: Detailed Policies 2014 – 2029.

15&16 To protect the route of the public footpaths and bridleways and the amenities of the users and comply with Surrey Minerals Plan 2011 Policy MC14, Tandridge District Core Strategy 2008 Policy CSP13 and Policy DP5 of the Tandridge Local Plan July 2014: Detailed Policies 2014 – 2029.

17&18 To enable the County Planning Authority to exercise planning control over the development so as to minimise disturbance and avoid nuisance to the locality, to safeguard the environment and protect the amenities of local residents in accordance with the terms of the Surrey Minerals Plan 2011 Policy MC14; Tandridge District Core Strategy 2008 Policy CSP15 and Policy DP22 of the Tandridge Local Plan July 2014: Detailed Policies 2014 – 2029.

19&20 To enable the County Planning Authority to exercise planning control over the development so as to minimise disturbance and avoid nuisance to the locality, to safeguard the environment and protect the amenities of local residents in accordance with the terms of the Surrey Minerals Plan 2011 Policy MC14; Tandridge District Core Strategy 2008 Policy CSP15 and Policy DP22 of the Tandridge Local Plan July 2014: Detailed Policies 2014 – 2029.

21-28 To prevent loss or damage of soil and to ensure that the land is restored to a condition capable of beneficial afteruse to comply with the Surrey Minerals Plan 2011 Policies MC14 and MC17.

29-31 To secure restoration to the required standard and enhance biodiversity in accordance with the Surrey Minerals Plan 2011 Policies MC17 and MC18; Tandridge District Core Strategy 2008 Policies CSP17 and CSP21.

32 To secure restoration and assist in absorbing the site back into the local landscape as soon as practical to accord with Surrey Minerals Plan 2011 Policies MC3, MC14 and MC17; and Tandridge District Core Strategy 2008 Policies CSP20 and CSP21.

Informatives

1 A watching brief should be kept during the working of the quarry for the presence of sandmartin, little ringed plover and peregrine. No works should be undertaken in any face where sand martin is active. A working distance of 20 metres should be left around a nest of little ringed plover. Should a peregrine start to nest then no works shall move closer to the nest site than have currently been taking place.

2 The County Planning Authority confirms that in assessing this planning application it has worked with the applicant in a positive and proactive way, in line with the requirements of paragraph 186-187 of the National Planning Policy Framework 2012.

3 Attention is drawn to the requirements of Sections 7 and 8A of the Chronically Sick and Disabled Persons Act 1970 and to the Code of Practice for Access of the Disabled to Buildings (British Standards Institution Code of Practice BS 8300:2009) or any prescribed document replacing that code.

CONTACT
Stephen Jenkins
TEL. NO.
020 8541 9424

BACKGROUND PAPERS
The deposited application documents and plans, including those amending or clarifying the proposal, responses to consultations and representations received as referred to in the report and included in the application file and the following:

Government Guidance
National Planning Policy Framework 2012 (NPPF)
National Planning Practice Guidance 2014 (NPPG)

The Development Plan
Surrey Minerals Plan 2011 - Core Strategy, Primary Aggregates and Minerals Site Restoration Supplementary Planning Document Plan Documents (SMP2011)
Tandridge District Core Strategy 2008
Tandridge Local Plan Part 2, July 2014: Detailed Policies 2014 – 2029

Other Documents
Planning application and decision ref.TA00/326
Planning application and decision ref.TA09/1533 & RE09/1876

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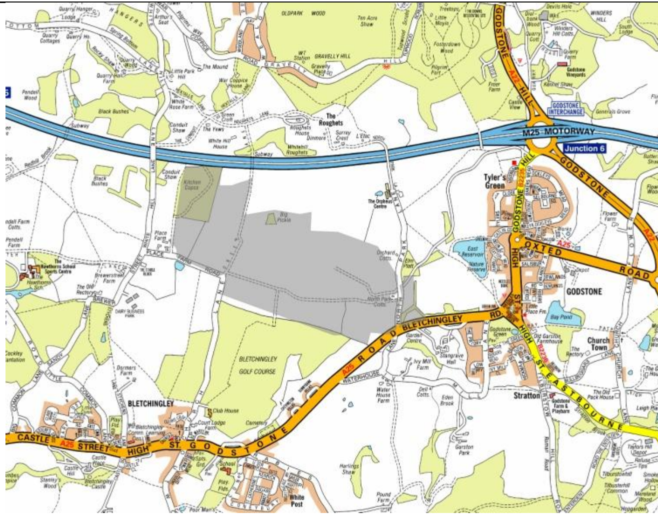
Site Location



North Park Quarry, North Park Lane, Godstone, Surrey, RH9 8ND.

The extraction of sand and progressive restoration to agriculture and woodland; and the continued temporary diversion of bridleways 142 and 148 (parts) and temporary stopping up of footpath 121 and 143 (part), without compliance with Condition 3 of planning permission TA00/326 dated 22 November 2000, to allow an extension in time for the working of sand until 2020, with the restoration of the site by 31 December 2022.

Application No.: TA/2014/1884
Electoral
Division: Godstone
Grid Ref: 533487 151988

THIS PLAN IS FOR INDICATIVE PURPOSES ONLY – ALL BOUNDARIES ARE APPROXIMATE

Application Site Area

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2006 Aerial Photos

Aerial 1 : North Park Quarry

All boundaries are approximate

Application Number : TA/2014/1884

2012-13 Aerial Photos

Aerial 2 : North Park Quarry

All boundaries are approximate

SURREY

Figure 1 : Southern extension area of North Park Quarry – View Southeast

SURREY

Figure 2 : Southern extension area of North Park Quarry – View South

Figure 3 : View west toward western extension area of North Park Quarry along conveyor route (link to Pendell Quarry

04/03/2015 12:56

SURREY

Figure 4 : Western extension area (view south toward Place Farm Road)

TO: PLANNING & REGULATORY COMMITTEE **DATE:** 23 September 2015

BY: HEAD OF LEGAL & DEMOCRATIC SERVICES

DISTRICT (S): MOLE VALLEY

ELECTORAL DIVISION:
LEATHERHEAD AND
FETCHAM EAST
Tim Hall

PURPOSE: FOR DECISION

TITLE: APPLICATION FOR VILLAGE GREEN STATUS.
LAND AT LEACH GROVE WOOD, LEATHERHEAD

SUMMARY REPORT

The committee is asked to consider whether or not to register the land the subject of this application as a Village Green.

Application for Village Green status by Philippa Cargill (the Applicant) dated 22 March 2013 relating to land at Leach Grove Wood, Leatherhead.

The County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Under Section 15 of the 2006 Act the County Council is able to register new land as a Town or Village Green on application.

The recommendation is to REJECT the application.

APPLICATION DETAILS

Applicant
Philippa Cargill

Site
Land at Leach Grove Wood, Leatherhead

Date of Application
№ 1869: 22 March 2013.

ILLUSTRATIVE MATERIAL

Annexe A: Plan of application site
Annexe B: Inspector’s report dated 9 June 2015
Annexe C: Neighbourhood/Locality Plan

BACKGROUND

1. On 25 March 2013 Surrey County Council received an application for a new village green for the land of Leach Grove Wood, Leatherhead. The application was made on the basis that *a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.* The application was accompanied by 116 evidence questionnaires.

2. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 sets out the process to be followed by any applicant seeking to register a new town or village green and the process to be followed by the Commons Registration Authority.

3. A public notice was placed in the local press on 12 July 2013 with an objection period running from 12 July 2013 until 30 August 2013. The application was placed on public deposit at Mole Valley District Council (MVDC) offices and Leatherhead Library.

4. An objection to the application was received from NHS Property Services Ltd in its capacity as freehold owner of the application land (the Objector). It was not clear from the evidence provided with the application whether the land met the criteria for registration. Legal opinion was sought and a view was taken that an independent investigation be conducted in the form of a non-statutory public inquiry. This was to enable the County Council, as Commons Registration Authority, to discharge its statutory duty.

5. A non-statutory public inquiry was held on 13th to 16th April 2015 with closing submissions on 27th May 2015. The Inspector submitted his report to the Commons Registration Officer on 9th June 2015.

6. The Commons Registration Officer is therefore now placing this matter before members for consideration.

CONSULTATIONS AND PUBLICITY

Borough/District Council

Mole Valley District Council	No views received

Consultees (Statutory and Non Statutory)

The Open Spaces Society:	No views received
Local Residents – adjoining properties:	No views received
Rights of Way	No objection
Estates Planning & Management	No views received
County Highways Authority – Highways Information Team	No views received

Summary of publicity undertaken

7. Documents placed on public deposit at local council offices and local library.

FINANCIAL IMPLICATIONS

8. The cost of advertising has already been incurred.

ENVIRONMENTAL IMPLICATIONS

9. If the land is registered as a village green it will be subject to the same statutory protection as other village greens and local people will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Registration is irrevocable and so the land must be kept free from development or other encroachments.

HUMAN RIGHTS IMPLICATIONS

10. Public Authorities are required to act, as far as possible, compatibly with the European Convention on Human Rights, now enforceable in English Courts by way of the Human Rights Act 1998. The officer's view is that this proposal will have no adverse impact on public amenity and has no human rights implications.

ANALYSIS AND COMMENTARY

11. Surrey County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Before the Commons Registration Authority is an application made by Mrs Cargill, under the Commons Act 2006 (№ 1869), to have land at Leach Grove Wood, Leatherhead (the land), registered as a town or village green (TVG). The land is identified on the plan appended to the application.

12. NHS Property Services Ltd, as the freehold owner, opposes the application.

13. To succeed, the Applicant has to prove on the balance of probabilities (*i.e.*, more than a 50% probability) that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes (LSP) on the land for a period of at least 20 years.

14. The facts were thoroughly tested with evidence at a public inquiry. At the inquiry the Applicant applied to amend her application on the issue of locality/neighbourhood. The Applicant claims a locality comprising the polling district known as XB falling within the Leatherhead South ward of MVDC (shown by the blue dashed line on plan at Annexe C) or a neighbourhood comprised within the red line shown on plan at Annexe C. The Objector raised no objection to the way in which the Applicant chose to reformulate her case on this point and the Inspector recommends that the Applicant be permitted to amend the application.

15. The Inspector concluded that the Applicant proved that a significant number of inhabitants indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years. However, he did not accept that the locality or neighbourhood within a locality relied upon by the Applicant met the criteria required by the Commons Act 2006 to allow registration of the land as a TVG.

16. The term 'locality' is taken to mean a single administrative district or an area within legally significant boundaries. A 'neighbourhood' need not be a recognised administrative unit. However, it must have a degree of cohesiveness and must be capable of meaningful description. The Inspector's view is that a claimed neighbourhood must be an area which is cohesive, identifiable and recognisable as a community in its own right.

17. On the question of locality the Inspector states in his report:

    "..... a polling district is not a qualifying locality within the meaning of this term where it is first used in section 15(3). I accept that a polling district is an area with legally significant boundaries but it has nothing to do with any community of interest on the part of its inhabitants. It is concerned entirely with the practicalities of administering the electoral process within a given area.....

    Whilst I accept that polling districts may well be chosen for the convenience of its inhabitants, it seems to me that this is not a description of a community falling within the meaning of the term locality where used in section15(3). If it did then the term 'locality' would, in my view, be devoid of any coherent meaning at all and could feasibly embrace legally significant boundaries of more or less any description without having any credible relationship at all with the claimed TVG, and, in my view, this cannot have been the statutory intention."

18. On the question of neighbourhood the Inspector states:

    "In my view, it must, I think, be substantially a matter of impression whether the claimed area is a neighbourhood or not. My impression, and my considered view having heard the evidence and visited the area, is that the claimed neighbourhood is <u>not</u> a neighbourhood within the meaning of the 2006 Act. Whilst it is correct that it is enclosed within busy, or relatively busy, roads, it did not seem to me that the character of the residential areas differed substantially or significantly from that within the adjoining areas.

    The residential properties comprised a mix of styles and ages and there is nothing in the way of facilities (that is, with the exception of the land itself) serving predominately the claimed neighbourhood and none other. There are undoubtedly a number of community facilities located within the claimed neighbourhood but without exception these facilities serve ...... a much wider catchment. In these cases, one is always on the lookout for local shops or true community facilities such as a small parade of shops with a post office, licensed premises, local schools, churches and the like, in other words, the sort of facilities that create a self-contained small community. It is the absence of these features which would indicate that one would need to see some other factor indicating cohesiveness but, with the exception of the land itself and perhaps the allotments as well, there is very really nothing beyond the fact that many of the applicant's witnesses ..... considered that their neighbourhood was simply the area in their own vicinity or where their friends mainly lived."

CONCLUSIONS AND RECOMMENDATION

19. The Inspector's report contained the following conclusions: -

- I find that a significant number of the local inhabitants of the claimed locality shown within the blue dashed lines on App/1(*Annexe C attached to this report*) (being the polling district XB within the Leatherhead South ward of MVDC) indulged as of right in LSP on the whole of the land for the period of at least 20 years ending on or about 9/01/2013.

- I find that a significant number of the local inhabitants of the claimed neighbourhood shown within the red lines on App/1 and falling within the locality of Leatherhead South ward also indulged as of right in LSP on the whole of the land for the period of at least 20 years ending on or about 9/01/2013.

- I find that the objection advanced by the Objector that the land was not registrable on the ground of statutory incompatibility was not made out.

- I find that the claimed locality is not a locality within the meaning of section 15 of the 2006 Act.

- I find that the claimed neighbourhood is not a neighbourhood within the meaning of section 15 of the 2006 Act.

- Because the Applicant has failed to satisfy all the elements necessary to justify the registration of the land as a TVG, my recommendation to the registration authority is that the application to register (under application number 1869) should be REJECTED.

20. Village Green status is acquired over land where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years. The evidence provided with this application, and the subsequent investigations, show that this criteria has not been met.

21. Therefore, Officers recommend that the application be REJECTED.

CONTACT
HELEN GILBERT, COMMONS REGISTRATION OFFICER.
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020 8541 8935

BACKGROUND PAPERS
All documents quoted in the report.

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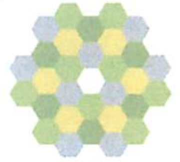
APPENDIX 2, MAP 2

9

Land Registry
Index map plan

Ordnance Survey map reference **TQ1756SW**
Scale **1:1250**
Plan prepared on **24/06/2009** at **00:00:01**



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This is the exhibit referred to in Section 7: Justification for application to register the land as a town or village green.

before me EMoore EMMA MOORE SOLICITOR

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IN THE MATTER OF AN APPLICATION TO REGISTER LAND AS A NEW TOWN OR VILLAGE GREEN DESCRIBED IN THE APPLICATION AS 'LEACH GROVE WOOD' AT LEATHERHEAD, SURREY

– APPLICATION NUMBER 1869 –

INSPECTOR'S REPORT AND RECOMMENDATION TO THE COMMONS REGISTRATION AUTHORITY – SURREY COUNTY COUNCIL

Introduction

1. I am instructed by Surrey County Council ('SCC') in its capacity as the commons registration authority ('the registration authority') to advise on an application to register as a new town or village green ('TVG') a small parcel of woodland (referred to in this report either as 'the land' or 'the wood') which is approximately 2.90 acres in size and is located at the southern end of Leach Grove in Leatherhead. The land is coloured green and marked LGW on the plan at Appendix/1 ('App/1'). The application is made pursuant to the provisions of section 15(3) of the Commons Act 2006 ('the 2006 Act') on the basis that qualifying user ceased with the erection of permissory signage on 9/01/2013.

2. The application in Form 44 is dated 22/03/2013 (A1/tabA) and was made by Philippa Cargill who lives at 54 Windfield ('the applicant'). The registration authority acknowledged receipt of the application and accompanying documents on 25/03/2013. These included the original neighbourhood plan in which the neighbourhood was described as *'South Leatherhead'* and comprised polling districts 1 and 2 within the locality of the South Leatherhead ward of Mole Valley District Council ('MVDC') (RA/B12). Put shortly, the grounds on which the application was made were that local inhabitants had used the land for informal recreation for a period of at least 20 years ending in January 2013. The application was supported by the evidence of those who completed Evidence Questionnaires ('EQs'). It was also accompanied by 116 EQs

(RA/G44).The overall tally of EQs has now risen to some 362 which demonstrates very clearly that this is a well supported application to register.

3. The application was duly publicised by the registration authority in accordance with the regulations (The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007). The publicity notice invited objections and a single objection was received from NHS Property Services Ltd ('the objector') to whom the application land had been transferred under arrangements contained in the Health and Social Care Act 2012. All land assets held by the former Strategic Health Authorities and Primary Care Trusts ('PCTs') which did not pass to Clinical Commissioning Groups vested in the objector which now manages, maintains and develops such assets on behalf of the Department of Health. In fact, I think that Surrey PCT may still be the registered proprietor of the land which is held under title number SY637083. I shall deal with the history of ownership of the application land in more detail below.

4. After being instructed by the registration authority I gave directions on 26/02/2015 dealing with the procedure at a public inquiry which took place over 5 days at a venue in Leatherhead on 13-16th April with closing submissions at County Hall on 27th May 2015. Representation at the public inquiry was as follows: Dr Ashley Bowes acted for the applicant and Jonathan Clay acted for the objector. I heard submissions (written and oral) from both counsel. Oral evidence was taken from 22 witnesses (including the applicant) who supported the application whereas the objector called only 2 witnesses. I will deal with this later. I am, however, indebted to both counsel for their assistance and helpful submissions. I am also grateful for the administrative support provided by Helen Gilbert of the registration authority.

5. I should mention at this stage that the applicant applied to amend her application on the issue of locality/neighbourhood. The claim under this head is now put in two ways. The applicant claims a locality comprising the polling district known as XB falling within the Leatherhead South ward of MVDC (this is the blue dashed line on App/1). Further or alternatively, she claims a neighbourhood comprised within the red line shown on App/1, again within the same locality. Very sensibly, Mr Clay raised no objection to the

way in which the applicant chose to reformulate her case under this head and I recommend to the registration that she should be permitted to do this.

The earlier application

6. A2 contains an earlier application to register the same land as a new TVG. The applicant's Form 44 was dated 25/01/2012 and the application was made under section 15(2) of the CA 2006. This is because it was being asserted by the applicant that qualifying user was continuing at the date of the application (there was no permissory signage in place at this stage).

7. The earlier application was withdrawn. When she gave oral evidence about this application the applicant said that she had wanted to pursue it but had been told by a resident of Highlands Avenue that the land could not be developed in view of its protected designation which she was told was *'Strategy Open Plan'*. She was unsure what this meant so she spoke to an officer at MVBC who again told her that the land's planning designation was *'Strategic Open Plan'*. When questioned by me about this, the applicant said that the officer might have told her that it was *'Strategic Open Land'* rather than *'Strategic Open Plan'*, although she could not be sure which it was.

8. The upshot to this was that the applicant rang the Open Spaces Society (OSS) for advice (she is a member) and she spoke to a Ms Nicola Hodgson who is evidently a solicitor. The gist of what she was told was that the planning designation was a *'knock-out blow'* to her application in that it meant that the land was being used with permission. The applicant said that she then rang the registration officer (Helen Gilbert) and, having relayed what she had been told, was advised to write to the registration authority formally withdrawing her application which is exactly what she did. It is plain, in my view, that she took this step as a direct result of the advice which she had been given by Ms Hodgson at the OSS, advice which was, of course, erroneous as the land's planning designation could have had no effect on its registrability as a new TVG.

9. There is documentation within the registration authority's bundle dealing with these matters. On 20/08/2012 Ms Gilbert wrote to the applicant to inform her that she had received an objection to the application to register from solicitors (Capsticks) acting for

the Surrey PCT (RA/G39). On 11/12/2012 Ms Gilbert wrote to the applicant and to Abigail Condry at Capsticks stating that as she had:

'been advised that, as the land has been designated as Strategic Open Land in the Mole Valley Local Development Framework Proposals Map (2009), any use of the land for lawful sports and pastimes within the period of such designation has been "by right" and not "as of right". As such, any such use would not meet the requirements of section 15 Commons Act 2006.

The Senior Property Solicitor asks if Mrs Cargill wishes to continue with her application. By this email I am therefore asking you, Mrs Cargill, if you wish to take the positive step of withdrawing your application. Surrey Primary Care Trust may however object to that and I would need to know their view. The decision to accept a withdrawal lies with this council.

I should appreciate views from both of you by Monday 7 January 2013.

Your responses will then be put to this council's Senior Property Solicitor for her to make a recommendation to this council.

Regards

Helen Gilbert'

10. On 19/12/2012 another solicitor at Capsticks (Rachel Strong) wrote to Ms Gilbert (but not to the applicant) stating that the objector did not object to the withdrawal by the applicant of her application to register (RA/G40). On 4/01/2013 the applicant wrote to Ms Gilbert stating*:*

'Yes, I hereby withdraw my application, but understand SPCT may object, and SCC will make the final decision' (RA/G42).

It is clear from this email that the applicant was still very concerned about the future of the land. On 15/01/2013 Ms Gilbert wrote to the applicant notifying her (in effect) that the objector was not objecting to her withdrawal of the application (RA/G42). It was put to the applicant that a report would now be made *'to the Head of legal Services for her to consider the withdrawal of the application'*. It is known to me that the Head of Legal

& Democratic Services at SCC has a delegated power to deal with unopposed applications to register land as a new TVG.

11. Ms Gilbert's report to Ann Charlton (as SCC's Head of Legal & Democratic Services) is dated 13/02/2013 (RA/G44). It contained a recommendation that the withdrawal of the application be accepted. The material parts of the report, for present purposes, read as follows:

'4. An objection was received from Capsticks Solicitors, on behalf of the owners of the land Surrey Primary care Trust.

5. Upon further investigation by the applicant it was discovered that the application land has been designated as Strategic Open Land in the Mole Valley Local Development Framework Proposals Map (2009). Any use of the land for lawful sports and pastimes within such designation has been "by right" and not "as of right" and would not meet the requirements of Section 15 of the Commons Act 2006.

6. In Oxford County Council v Oxford City Council [2006], the Court of Appeal held that an applicant has no absolute right to withdraw his application unless the registration authority considers it reasonable to allow the withdrawal. DEFRA's Guidance Notes for the completion of an application to register land as a village green states "the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the evidence available".

7. In the Oxfordshire case the Inspector considered that it would be a waste of resources for a registration authority to process an application that the applicant did not wish to pursue unless there was some good reason to do so. There is no good reason as the Objector has consented to the withdrawal of the application.

8. The Commons Registration Officer is therefore placing this matter before the Head of Legal and Democratic Services for decision to accept the withdrawal of the application.

9. The Head of Legal and Democratic Services has the authority to take this decision under the Council's Scheme of Delegation as there is no dispute between the parties on the issue for decision.

CONCLUSIONS AND RECOMMENDATION

The evidence provided with this application, and the subsequent investigations, suggest that the criteria for registration has not been met. All parties are in agreement to withdraw the application. Therefore, Officers recommend that the withdrawal be accepted.'

SCC's Head of Legal and Democratic Services duly acted on this recommendation and, on 19/03/2013, Ms Gilbert duly notified the applicant that her withdrawal of the application had been accepted by the registration authority and accordingly she returned the application and supporting documentation (RA/G46).

12. Continuing with her oral evidence, the applicant spoke of a meeting of the Leatherhead Residents Association where, on informing members that she had withdrawn her application to register, she was told by another member (Tim Hall, who was also a county councillor) that the advice which she had been given *'wasn't right'*. Mr Hall gave her the name of Dr Ashley Bowes whom she later retained to act for her in these proceedings. Dr Bowes is an expert in this area of the law. The upshot was that she tried to reinstate her earlier application but it was too late as, by January 2013, permissive signage had already been erected which meant, of course, that any fresh application needed to be made under section 15(3). The applicant thought that the interval between the withdrawal of her earlier application and the time when she attempted to reinstate it was short.

13. When questioned by me about the withdrawal of the earlier application, the applicant said that in agreeing to withdraw she had relied on the advice which she had received from the OSS. She said that no one else gave her advice which was instrumental in her decision to withdraw

14. It seems that the trigger for the withdrawal was the erroneous advice received by the applicant from the OSS. The objector was no doubt pleased with this turn of events and Ms Gilbert clearly referred the matter for decision by the Head of Legal &

Democratic Services on the basis that there was no dispute between the parties that the application should be withdrawn. If there had been any dispute (such as if the objector was insisting on the application being determined on its merits as a duly made application to register) it would have been referred for decision by the relevant regulatory body which, in this instance, was (and still is) SCC's Planning and Regulatory Committee, which would have been provided with a comprehensive report on the merits of the application by the registration officer. It is even quite possible that counsel's advice may have been obtained seeing as this was a well-supported application by a committed applicant and it is possible that the regulatory committee might have sought reassurance that the OSS were correct in the advice which they gave to the applicant which had, of course, only been given orally. The view of the objector's solicitors on the correctness of such advice would no doubt also have been canvassed by the registration authority. In short, the application to register would, in all probability, have been processed and determined by the registration authority as if it had in fact been a substantive, opposed application on the basis of the contents of the application form and the accompanying documents and written submissions on both sides.

15. It is undoubtedly true that an applicant has no absolute right to withdraw an application. It is clearly important that the registration authority has the power to insist on determining a duly made application so that the status of the land is clarified in the public interest. This was the view of Vivian Chapman QC in his capacity as the inspector in the *Oxford* case (also known as the *Trap Grounds* case), a view with which Carnwath L.J concurred at [2006] Ch 74 at [104]. Mr Chapman also considered that a registration authority did not have to proceed with an application which the applicant did not wish to pursue where it was reasonable that it should not be pursued. For instance, the landowner may reasonably wish to have the status of the application land determined. Without such determination there is always a risk that the status of the land would remain in limbo and at risk of a repeat application.

16. In this case the objector might well have alleged that the status of the application land had already been determined by the withdrawal of the earlier application and that this precluded the applicant from proceeding with the present application (presumably by reliance on a *res judicata* estoppel). This was not in fact alleged prior to or at the

outset of the public inquiry and, indeed, in his closing submissions Mr Clay made it clear that he was not alleging this.

17. In order to complete the narrative under this head (should it be necessary), on 16/03/2015 Capsticks wrote to Ms Gilbert asking for disclosure of the registration authority's Decision Notice and a copy of the legal advice obtained by the registration authority. In her email dated 18/03/2015, Ms Gilbert said, firstly, that she did not understand what was meant with regard to a 'Decision Notice and, secondly, that any legal advice obtained by the registration authority was subject to legal professional privilege and, if held, is (as she put it) *'exempt from disclosure'*.

18. On 27/03/2015 (which was less than 3 weeks before the start of the public inquiry) Capsticks wrote in these terms to the registration officer:

'The "Decision Notice" referred to in our letter dated 16 March 2015 is the notification to the parties confirming the Registration Authority's decision to consider the application at a Public Inquiry, and the reasons for that decision. We should be grateful if you would provide us with a copy of this document so that we may establish why the County Council has decided that this matter is to be referred to a Public Inquiry, having previously concluded on the basis of legal advice that the previous application did not meet the requirements of section 15 of the Commons Act 2006 because the land has been designated as Strategic Open land.

Your comments regarding the legal advice obtained by the Registration Authority are noted. However, we do not agree that the legal advice obtained by the Registration Authority is subject to legal professional privilege, and we therefore consider that it falls to be disclosed. If we are not provided with copies of any legal advice obtain (sic) in advance of the Public Inquiry, Counsel instructed by NHS PS will consider making an application to the Inspector at the start of the Inquiry for disclosure of the same.

We look forward to hearing from you.'

19. This then was the first time in which the objector's solicitors appeared to be placing in question the soundness of the current application and the decision of the registration authority to hold a non-statutory inquiry.

20. The inquiry bundles were duly lodged on or about 30/03/2015 and in light of the documents contained in the registration authority's bundle at RA/G39-46, the objector would have been able to see how matters had unfolded between 20/08/2012, when the applicant was notified of the objection by Surrey PCT to her earlier application, and 19/03/2013, when the applicant was notified by the registration authority that her withdrawal had been accepted.

21. At the start of the public inquiry the objector's counsel renewed these requests for disclosure. After discussion on the matter, I indicated that I would be making the following recommendations to the registration authority:

(a) that they need not disclose to the objector any legal advice which had been given to officers in relation to the earlier application to register since it was subject to legal professional privilege; and

(b) that the current application to register could be determined as a free-standing application since the earlier application had been withdrawn and not determined on its merits and was accordingly not subject to a *res judicata* estoppel.

22. I also pointed out to Mr Clay that if he was going to claim that the withdrawal of the earlier application precluded the registration authority from proceeding to deal with the current application then he should indicate as much but, as previously indicated, no such contention was made.

23. There was one further matter raised by Mr Clay and that concerned his request that I hear evidence on oath. I informed Mr Clay that as a non-statutory public inquiry the registration authority had no power to insist that oral evidence be taken on oath.

The relevant statutory requirements

24. Section 15(3) of the 2006 Act enables any person to apply to register land as a TVG in a case where subsections 2, 3 or 4 applies.

25. Section 15(3) applies where -

'(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the time of the application but after the commencement of the section; and

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).'

26. It is not in dispute that user *'as of right'* ceased before the application was made and that the application to register was made within two years (now only one year in light of recent reform) from the cessation of such use.

27. One then looks at the various elements of the statute.

'a significant number'

28. *'Significant'* does not mean considerable or substantial. What matters is that the number of people using the application land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers (see *R (McAlpine) Staffordshire CC [2002] EWHC 76 at [71] (Admin).*

'of the inhabitants of any locality'

29. Where first used in section 15(3)(a) of the 2006 Act the term *'locality'* is taken to mean a single administrative district or an area within legally significant boundaries. This emerges very clearly from what Vos J (as he then was) said at [97(i)/(ii)] in *Paddico (267) Ltd v Kirklees Metropolitan Council [2011] EWHC 1606 (Ch)* whose findings on locality were affirmed on appeal at [2012] EWCA Civ 262. In short, village green rights require to be asserted by reference to a particular locality.

30. Because of the later debate on locality, it is worth mentioning that in *Paddico* at first instance (see [106] at [2011] EWHC 1606 (Ch)) Vos J thought that a Conservation Area could be regarded as a locality since it had legally significant boundaries.

However, he rejected this outcome on the facts of the case as (a) the area had not been designated as such for the whole of the relevant 20 year period, and (b) users had not been predominantly from such area. Sullivan L.J rejected this finding on appeal at [2012] EWCA Civ 262 at [29]. He said this:

"I would respectfully disagree with the judge's view that the Edgerton Conservation Area could be regarded as a locality for the purpose of section 22(1) of the 1965 Act. It is true that its boundaries are legally significant, but they are legally significant for a particular statutory purpose, and those boundaries would have been defined by reference to its characteristics as an area of 'special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance' (see section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990) – rather than by reference to any community of interest on the part of its inhabitants.'

At [62] Carnwath L.J (as he then was) also rejected the notion that a Conservation Area could be an original locality. He said that this:

'seems wholly impractical, since it is not a description of a community'.

31. I have mentioned this as the claimed locality in this instance comprises the polling district known as XB which is shown by the blue dashed line on App/1. Although the polling district is clearly an administrative district in one sense the question begs as to whether it is, in truth, a locality within the meaning of section 15(3) of the 2006 Act. I should perhaps also add that Carnwath LJ noted at [62] that where local government boundaries change, provided one has an historic district to which rights have become long attached, it may not matter if, subsequently, the boundaries are affected by local government reorganisation, so long as it remains an identifiable community. The position would, however, be different if the relevant locality did not even exist at the start of the 20 year period.

32. I might also add under this head that although at [69] in *R (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council [2010] EWHC 530 Admin* (known as the *'Warneford Meadow'* case) HH Judge Waksman QC appeared to accept that a ward

might well be a locality (since like a town or parish, it was a form of administrative unit) this was, however, founded upon a concession.

33. I shall return to the locality issue later when I come to the parties' closing submissions as there was keen debate over whether a polling district is even capable of being a locality in law for the purposes of the 2006 Act.

'or of any neighbourhood within a locality'

34. A neighbourhood is a more fluid concept. The expression *'neighbourhood within a locality'* need not be a recognised administrative unit. A housing estate can be a neighbourhood (*McAlpine*). However, a neighbourhood cannot be any area drawn on a map: it must have a degree of (pre-existing) cohesiveness (*R (Cheltenham Builders Ltd) v South Glos DC [2003] EWHC 2803 para 85*). In the *Warneford Meadow* case at [79] HH Judge Waksman QC said that the area *'must be capable of meaningful description in some way'*.

35. The statutory test is fulfilled if a significant number of the users come from any area which can reasonably be called a neighbourhood even if significant numbers also come from other neighbourhoods. The view I take is that the claimed neighbourhood must be an area which is cohesive, identifiable and recognisable as a community in its own right. There must, I think, be something about the claimed neighbourhood (or at least its core area) which distinguishes it from the surrounding areas. Only the inhabitants of the relevant neighbourhood have recreational rights over the land.

36. It is also clear that the expression neighbourhood can mean either a neighbourhood or neighbourhoods and the neighbourhoods concerned do not have to be located within a single locality (*Leeds Group PLC v Leeds City Council [2010] EWCA Civ 1438* at [26] and [56-7] and *Oxfordshire County Council v Oxford City Council [2006] 2 AC 674* at [27]).

'have indulged as of right'

37. The traditional formulation of the requirement that user must be *'as of right'* is that the user must be without force, secrecy or permission. The rationale behind *'as of right'* is acquiescence. The landowner must be in a position to know that a right is being

asserted and he must acquiesce in the assertion of the right. In other words, he must not resist or permit the use.

38. The nature of the inquiry is the use itself and how it would, assessed objectively, have appeared to the landowner. One first has to examine the use relied upon and then, once the use had passed the threshold of being of sufficient quantity and suitable quality, to assess whether any of the vitiating elements of the tripartite test applied, judging the questions objectively from how the use would have appeared to the landowner. In short, the use must be to a sufficient extent since use which is *'so trivial and sporadic as not to carry the outward appearance of user as of right'* should be ignored (*R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335, 375D-E*).

39. The issue of *'force'* does not just mean physical force. Use is by force if it involves climbing or breaking down fences or gates or if it is contentious or under protest. Nothing of the kind arises in this instance.

40. Use that is secret or by stealth will not be use *'as of right'* because it would not come to the attention of the landowner.

41. *'Permission'* can be express e.g. by erecting notices which in terms grant temporary permission to local people to use the land. Permission can also be implied but not by inaction (*R (Beresford) v Sunderland City Council [2004] 1 AC 889 at* [5]).

42. It is not alleged in this instance that use of the land was by virtue of an implied licence because of the way in which the land was managed over the years.

43. It is worthy of note in this case that between 30/01/1969 until 21/07/1993 (i.e. for around 7 months at the start of the qualifying period which began on 9/01/1993) the application land was vested in SCC following which title passed to the Secretary of State for Health. It is not, however, suggested in this case that the land had, at any time, been held by a public body for purposes which entitled the public to use it for informal recreation such as would preclude user as of right following *R (oao Barkas) v North Yorkshire CC [2014] UKSC 31*.

44. Although not an issue on as of right, Mr Clay raises the issue of statutory incompatibility (arising from *R (Newhaven Port and Properties Ltd) v East Sussex County Council [2015] UKSC 7*) to which I will return later.

'in lawful sports and pastimes'

45. The expression 'lawful sports and pastimes' ('LSP') form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play provided always that those activities are not so trivial or intermittent so as not to carry the outward appearance of user 'as of right' (see *Sunningwell at p.356F-357E*).

46. It is becomes necessary in some cases (and this is one of them) to distinguish between the use of paths or tracks as putative public rights of way rather than as qualifying LSP.

47. The law under this head was addressed by Lightman J in *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 at [102/3] and in *R (oao Laing Homes Ltd) v Buckingham County Council* [2004] 1 P&CR 36 at [102-110] and in the *Oxfordshire* case at [2006] 2 AC 674 at [68]. There is also a very helpful analysis in the TVG report of Vivian Chapman QC in *Radley Lakes* (13/10/2007) at [304-305] who said that the main issue in such cases is whether the use would appear to a reasonable landowner as referable to the exercise of a right of way along a defined route or referable to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, then it shall be ascribed to the lesser right, i.e. a right of way.

48. Mr Clay specifically invited me to consider those passages within *Laing Homes* [102-105] which require me to discount user which would suggest to a reasonable landowner that users believed they were exercising a public right of way which would include situations (a) where a dog off the lead roams freely outside the footpath whilst its owner remains on the footpath; (b) where owners are forced to retrieve their dogs which have run away from the footpath; or (c) where walkers casually or accidentally stray from the paths without any intention of going onto other parts of the application land.

49. The factual issues under this head which operate to preclude qualifying use are, as I see it, these: (a) whether any proven use of the land was in the nature of transit over defined routes, and/or (b) whether any use outside these defined routes would have been only occasional and/or ancillary to the exercise of putative rights of way over the land. I should also mention *Dyfed CC v Secretary of State for Wales* [1989] 59 P&CR 275 at 279 where it was said that there is no rule that use of a highway for mere recreational purposes is incapable of creating a public right of way.

'on the land'

50. The expression *'on the land'* does not mean that the registration authority has to look for evidence that every square foot of the land has been used. Rather the registration authority needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the land had been used for LSP for the relevant period. The registration authority also retains a discretion to register part only of the application land if it is established that part but not all of the land has become a new TVG.

'for at least 20 years'

51. The relevant period in this case is 9th January 1993 – 9th January 2013. No one is suggestion interruption in this case.

Procedural issues

52. The regulations which deal with the making and disposal of applications by registration authorities outside the pilot areas make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen whereby an expert in the field is instructed by the registration authority to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.

53. In *Regina (Whitmey) v Commons Commissioners [2004] EWCA Civ 951* Waller L.J suggested at [62] that where there is a serious dispute, the procedure of *'conducting a non-statutory public inquiry through an independent expert'* should be followed *'almost invariably'.* However, the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by judicial process. There

is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs. However the registration authority must act impartially and fairly and with an open mind.

54. The only question for the registration authority is whether the statutory conditions for registration are satisfied. In its determination there is no scope for the application of any administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the application land as a TVG on account of the fact that it has been long enjoyed by locals as a public open space of which there may be an acute shortage in the area.

55. The onus lies on the applicant for registration and there is no reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.

56. The procedure is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The 2007 Regulations follow closely the scheme of The Commons Registration (New Land) Regulations 1969 which governed applications to register new greens under section 13 of the 1965 Act. In a small number of pioneer authorities The Commons Registration (England) Regulations 2008 apply.

57. The prescribed procedure is very simple: (a) anyone can apply; (b) unless the registration authority rejects the application on the basis that it is not *'duly made'*, it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection to the application; and (d) the registration authority then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

58. It is clearly no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be *'properly and strictly proved'* (*R v Suffolk CC ex p Steed (1996) 75 P&CR 102 at p.111* per Pill LJ, and approved by Lord Bingham in *R (Beresford) v Sunderland City Council [2004] 1 AC 889, at para 2*).

Consequences of registration

59. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land.

60. Upon registration the land becomes subject to (a) section 12 of the Inclosure Act 1857, and (b) section 29 of the Commons Act 1876.

61. Under section 12 of the Inclosure Act 1857 it is an offence for any person to cause damage to a green or to impede *'the use or enjoyment thereof as a place for exercise and recreation'*.

62. Under section 29 of the Commons Act 1876 it is deemed to be a public nuisance (and an offence under the 1857 Act) to encroach or build upon or to enclose a green. This extends to causing any *'disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green'*.

63. Under both Acts development is therefore prevented and the land is effectively blighted.

Description of the application land

64. I visited the application land unaccompanied on 31/03/2015. I made a longer accompanied visit on 16/04/2015.

65. We are concerned with a 2.90 acre parcel of woodland containing a range of species of both deciduous and evergreen trees. The land is largely unkempt and run down and it is obvious that there has been very limited management over the years. Despite this, the main tracks are free of obstruction and are easy to walk on which is indicative of prolonged heavy use.

66. A number of fallen trees remain in situ on the ground and in some cases have done so for many years. It seems probable (and there was evidence about this) that there were more trees at one time than exist today. There are, for instance, a large number of much younger, self-seeded, trees scattered around the wood in places where other,

much larger, trees have fallen. Some trees have even been felled recently by the objector as they presented a risk to health and safety.

67. There are, as I say, a mix of trees, some quite mature, others less so. Most of the mature standing trees are extensively covered by ivy which are certain to contain wildlife habitats, as will the fallen trees. Further away from the tracks the undergrowth is fairly dense and, in one or two places, is largely impenetrable. It is, however, possible to leave the tracks in order to wander generally over most of the land although there is little evidence that people have done this in those areas where the undergrowth is dense which is the case on the eastern margins of the wood where it adjoins the hospital and school sites.

68. The application land is criss-crossed by tracks. At the time of my visits the land was dry and, being well-used, the compacted earth made use of the main tracks (of which there are two, if not three) a relatively simple affair. There is a single track leading into the wood at the southern end of Leach Grove which continues on the eastern side until it joins the public footpath (FP 138 – see O1/tab/2/39) running east-west between Highlands Road at its western end to Fortyfoot Road at its eastern end. Other subsidiary tracks leave the main track at various points and it is obvious that, over time, the routes of the various paths chop and change as and when trees fall down blocking paths. There are three openings onto the public footpath beyond which there are the allotments. It is also evident that there are openings or gates into the rear gardens of some, or indeed even all, of those houses in Highlands Avenue which back on to the wood.

69. In my view, it is probable that around 60-70% of the application land is reasonably accessible for informal recreation of varying kinds. Upon reflection, I think my estimate (given during closing submissions) of around 75% was too high. In his closing submissions Mr Clay said that he was *'genuinely astonished'* that I should arrive at such a high percentage. He thought that only *'less than 10%'* of the wood was accessible for walks, with or without dogs. I disagree. If one is looking only at the extent of the paths themselves then Mr Clay may be right, but it seems to me that one thing is indisputably clear and that is that there is ample space to walk around within the wood outside the tracks. Whereas in the case of the major and other tracks and/or

in the open or less overgrown areas away from the tracks, this would be relatively straight-forward, in my view, even the more densely vegetated areas elsewhere would, to a lesser or greater degree, be available for use to the hardy walker/explorer. However, it was certainly not my impression from what I was able to observe that the wood is being used mainly as a place of transit as there is clear evidence of use outside the tracks. The question whether the evidence proves that recreational use within the wood has been sufficiently general or widespread to amount to recreational use of the land as a whole is something which I will address later.

70. A total of 72 colour photos taken by the applicant accompanies her written evidence at A1/tab/D6. These photos were taken between 2010-14 and the applicant provided a very helpful index which follows her EQ at A1/D6.1a. The main tracks are clearly well-used but it is, as I say, still possible to venture off the tracks into a number of areas (some more open than others) where it would be relatively simple to wander around, with or without dogs, or for the purposes of children's play or watching wildlife. Indeed, someone has constructed earth humps on the south-west side close to the footpath although, having said that, I did not get the impression that they had been much used by children on bikes lately. These humps are said to have been constructed by local children whose use of the wood for these purposes seems to have been of short duration as it was objected to by local inhabitants.

71. The tracks running through the wood provide a convenient pedestrian link between Leach Grove and a number of locations to the south and south-east of the application land, including the allotments, the former St Mary's Church of England First School ('St Mary's Primary School'), Woodlands School, the Beeches care home, the Scout Hut, the Mencap building and the residential streets of Beech Holt and Tanners Dean. It is, I think, obvious that the wood is being used both as a place of transit and for informal recreation. It is certainly an attractive location for walks, with or without dogs, and for children's play and, as I say, the majority of the wood would accommodate this. It seems to me that the unused areas are integral to the enjoyment of the wood as a whole and form part of the function and attractiveness of the area.

72. There is no lighting or bins for dog faeces within the wood. Remarkably, fly tipping and the dumping of household and other wastes has always been minimal although there

was some evidence involving the dumping of garden waste and rubbish, particularly at the rear of the properties in Highlands Avenue some or all whom, as I say, have access directly into the wood. I suspect that this is more because local people have been enthusiastic about keeping the area clean and tidy rather than because of any plan of action on the part of the landowners from time to time to manage the land and thereby facilitate its use by local inhabitants for informal recreation.

73. On or about 9/01/2013 the objector (in the name of 'NHS Surrey') erected the below-mentioned permissive signage at each point of access/egress into the application land:

Leach Wood

This land is privately owned.

The public have permission to

enter this land on foot for recreation but this

permission may be withdrawn at any time.

Estates Management 01932 723180

74. I should add finally that I have been assisted by a number of photos some of which were taken after the end of the qualifying period. Those taken by John Hindson were taken in 2012, evidently as a result of the first TVG application.

History of ownership of the application land (including planning history)

75. Abigail Condry of Capsticks put in a very helpful statement setting out the relevant conveyancing, legislative and planning history of the land which I am content to adopt. This will be found at O1/43. Further information about the history (including the planning history) of the area emerged during the public inquiry and the accompanied view included a visit to the area of land to the east of the wood and since this area falls within the perimeter of the claimed neighbourhood I think it would be sensible if I dealt with this first.

76. The Leatherhead Hospital site (which included the application land) was transferred by the Trustees of Leatherhead Hospital to the Minister of Health in 1948 under the

National Health Service Act 1946. By virtue of the Secretary of State for Social Services Order 1968 SI No.1699 of 1968, title to the land along with other land vested in the Secretary of State for Social Services.

77. Under a conveyance dated 30/01/1969 the Secretary of State for Social Services sold a parcel of land (which included the application land) on the Leatherhead Hospital site to SCC. This is the land coloured pink and hatched red (which was approximately 7 acres) shown on Appendix/2 ('App/2'). Recital (d) to this conveyance shows that the land was surplus to the requirements of the Secretary of State. Mr Clay pointed out to me that this conveyance contained a term whereby the Secretary of State agreed to indemnify SCC in the event that owners/occupiers of those premises in Highlands Avenue had acquired rights of way over the land.

78. The north-west corner of the land conveyed (i.e. the land hatched red on App/2, which comprises a portion of the wood nearest Leach Grove) was subject to a restrictive covenant for the benefit of the adjoining hospital land which limited the height of any development on the pink parcel to no more than a single storey.

79 An extract from SCC's Property Register (which will be found at O1/AZC/11) discloses that the land was acquired under general powers but that on 2/02/1971 it was appropriated *'from Finance to Education, Health & Social Services'*. The same document also discloses that the land was required for the purposes of a *'Proposed Hostel for Confused Elderly & Proposed Junior Training Centre'*. In accordance with the provisions of section 24 of the Town and Country Planning Act 1959, the Property Register also shows that adjustments were made in the internal accounts of the authority in order to reflect the attribution of departmental responsibility for the incoming land asset for which SCC had paid £100,000 (vis: Education - £11,500; Health - £37,500 and Social Services - £51,000). It is though plain that the written records do not show that the pink land, or any part of it, was being acquired for or had otherwise been later appropriated by SCC as recreational open space.

80. Further researches at the Surrey History Centre in Woking have resulted in a note from Matthew Piggott (an officer at the Centre) of the minutes of the Finance Committee dated 9/02/1971 which stated that land at Fortyfoot Road in Leatherhead had been acquired for £100,000 *'on behalf of Education, Health and Welfare and*

Police Committees' (although the Police Committee had withdrawn its interest). It was said that the land required for the School was 0.80 acres and that the Home for the Confused Elderly and Special Training School extended to 3.55 acres which, since the entire holding amounted to some 7.10 acres, meant that the remainder extended to 2.75 acres on which the Health Committee were proposing to build a Health Centre. The minutes say that the *'appropriations approved by the Estates Committee include the whole 2.75 acres (£37,500) as a site for a Health Centre'.* This material will be found at O1/AZC/11/1.2.

81. The land acquired by SCC in 1971 was, of course, only partially developed. No Health Centre was ever built (this proposal was evidently abandoned in or prior to 1983) and the 2.90 acre parcel, which now comprises the land, remained as open space.

82. Under the National Health Service Reorganisation Act 1973 the services provided by hospitals and local authorities were brought together under the umbrella of Regional Health Authorities with services at a local level being run by Area Health Authorities.

83. Under section 16(1)(a) of the 1973 Act, all property held by local authorities wholly or mainly for the purposes of their *'health functions'* was vested in the Secretary of State. This would have included the land.

84. In 1993 the application land was duly transferred by SCC to the Secretary of State for Health. The conveyancing documentation comprised a Memorandum of Vesting dated 21/07/1993 and a plan dated 20/05/1992 on which the application land is coloured green. This plan will be found at Appendix/3 ('App/3').

85. App/3 is useful in that it shows that as at the date of the plan in May 1992 there was a circular path or paths running around the wood (with access into Leach Grove and the public footpath) and a complex of public and other buildings on the western side of Fortyfoot Road. This development currently comprises:

(a) on the northern side (separated by amenity green space):

(i) Woodlands School (which I understand to be a school for children with special needs);

(ii) a publicly-run care home known as The Beeches;

(b) on the southern side:

(iii) St Mary's Primary School (which has recently closed down and its premises taken over by Woodlands School);

(iv) a building housing the 1st Leatherhead Scout Group;

(v) Fortyfoot Hall which are used by a playgroup and the local Mencap group;

(vi) residential development in the gap between the Scout building and Woodlands School comprising the streets Tanners Dean and Beech Holt.

86. On the east side of Fortyfoot Road we have Fortyfoot Recreation Ground on which there are children's play facilities and a laid out football pitch with woodland on its south-east side. I should also mention that we were told by John Hindson that the reference on App/3 to *'Plan (um)'* signifies that the path or paths are *'unmaintained'*. Mr Hindson is also right when he says that the path marked on App/3 which traverses the wood from east to west is no longer evident on the ground

87. The 1993 Memorandum expressly stated that the land had been transferred to the Secretary of State for Health under the 1993 Act and the Transfer of Functions (Health and Social Security) Order 1988 with effect from 1/04/1974.

88. Under the National Health Service Act 1977 the Secretary of State would have held the land under section 87 which then provided that the Secretary of State could acquire any land, either by agreement or compulsorily, and any other land required by him for the purposes of the 1977 Act.

89. Section 1 of the 1977 Act imposed a duty on the Secretary of State:

'to continue the promotion in England and Wales of a comprehensive health service designed to secure improvement – (i) in the physical and mental health of the people of those countries, and (ii) in the prevention, diagnosis and treatment of illness, and for that purpose to provide or secure the effective provision of services in accordance with this Act.'

90. By section 8 of the National Health Service Community Care Act 1990, the Secretary of State was empowered to transfer property owned by him to an NHS Trust for the purpose of enabling it to carry out its functions.

91. By section 5(1) of the 1990 Act, NHS Trusts were established for the purpose of assuming responsibility for the ownership and management of hospitals and to provide and manage hospitals or other establishments or facilities which had previously been managed or provided by Regional, District or Special Health Authorities.

92. Ms Condry's statement tells us that on 20/09/1993 the Secretary of State transferred the Leatherhead Hospital Site (including the application land) to Epsom Health Care NHS Trust by way of a transfer order of the same date. The area of land transferred is shown edged red on the plan at Appendix/4 ('App/4').

93. The Epsom Health Care NHS Trust had been established on 21/12/1990 pursuant to the Epsom Health Care National Health Service Trust (Establishment) Order 1990/2414.

94. From 1/04/1991, the Epsom Health Care NHS Trust's functions were to: (a) own and manage hospital accommodation and services at Epsom District Hospital and associated hospitals; and (b) to manage community health services provided from Epsom District Hospital and to own the premises there from which those services were to be provided along with any associated premises.

95. Epsom Healthcare Trust NHS Trust was dissolved on 1/04/1999, and a new trust, the Epsom and St Helier National Health Service Trust, was established with effect from the same date and to whom the former Trust's land assets were transferred.

96. The Epsom and St Helier National Health Service Trust was established in 1999 by the Epsom and St Helier National Health Service Trust (Establishment) Order 1999/848.

97. Leatherhead Hospital (including the land) was, on 1/04/2002, transferred to the East Elmbridge and Mid Surrey PCT to whom the former Trust's land assets were again transferred.

98. PCTs had been established by the Secretary of State under section 16A of the National Health Service Act 1977 for the purposes of providing and commissioning primary healthcare services. Pursuant to Schedule 5A, para/12(1), PCTs were empowered to do anything which appeared to them to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions, including acquiring and disposing of land or other property. The National Health Service Act 2006 updated the provisions relating to the functions and exercise of those functions by PCTs.

99. Pursuant to the Primary Care Trusts (Establishment and Dissolution) (England) Order 2006 (SI No.2006/2072), the East Elmbridge and Mid Surrey PCT merged with a number of other local PCTs to form the new Surrey PCT to whom the former Trust's land assets were, as before, transferred.

100. With the abolition of PCTs, Leatherhead Hospital (including the application land) was, on 1/04/2013, transferred to the objector under arrangements contained in the Health and Social Care Act 2012 and in the Surrey PCT Property Transfer Scheme 2013.

101. In light of the foregoing, after 1974 the land was, with other land, held by bodies discharging NHS functions and for these and no other purposes.

102. It is then plain (as Mr Clay correctly says in his closing submissions) that:

(a) after July 1993 the land was comprised within a single freehold title which included the hospital site (see App/4);

(b) in the discharge of their statutory health functions after July 1993, none of the foregoing NHS bodies had power to permit land to be used by the public for the purposes of LSP;

(c) throughout the relevant qualifying period, both the land and the hospital site would have been held for (as Mr Clay puts it in his closing submissions at [62]) *'health related purposes'* which, for the sake of convenience, I will refer to as the 'NHS functions' of the various NHS bodies identified above.

103. At [64-68] of his closing submissions, Mr Clay provides a very helpful summary of the NHS functions of the Secretary of State for Health and of the NHS Trusts and PCTs. In the case of the Secretary of State, his powers, duties and functions are defined in a

series of NHS Acts commencing with the National Health Services Act 1946. His functions included the provision of hospitals and a whole range of specialist services. Under section 211 of the National Health Services Act 2006, the Secretary of State can acquire land and other property required by him for the purposes of the Act and, under section 211(3), use such land for the purposes of any of the functions conferred on him by virtue of the Act.

104. NHS Trusts were established initially under the National Health Service and Community Care Act 1990 to create an internal market within the NHS for the provision and commissioning of health services. Between September 1993 and October 2006, the land was, as has been indicated, held by a series of NHS Trusts which managed and operated the hospital site in accordance with its NHS functions.

105. After 2006, the land and hospital site was owned by PCTs which were, as I say, established by the Secretary of State as administrative bodies, with responsibility for commissioning primary, community and secondary health services from providers. They had the power to acquire and dispose of property and were authorised to do anything which they considered necessary or expedient for the purposes of their functions (Schedule 3, Part 3, paragraphs 15(1)&(2) to the NHS Act 2006). The powers and functions of PCTs under the 2006 Act included the provision of health and pharmaceutical services, the provision of premises for those purposes and for the use of persons providing those services and the preparation of plans to improve health and health care. PCTs were abolished in April 2013 by the Health and Social Care Act 2012.

106. I have dealt with the conveyancing history of the land and the fact that it has been held for NHS functions in some detail in light of the case advanced by Mr Clay on statutory incompatibility arising out of the recent decision of the Supreme Court in the *Newhaven* case to which I will return once I have dealt with the evidence.

107. I turn next to the relevant planning history which Ms Condry has also very helpfully identified in her statement.

108. At some point in the early 1980s a revision of the Local Plan for the area allocated the land as a site for housing. However, as a result of the efforts of a local action group

(*'The Leach Grove Wood Protection Group'*) this policy was amended by MVDC in that Policy EV3 of the Leatherhead Local Plan, adopted in 1983, provided that the land was, along with other land shown on the Proposals Map, allocated *'for community and recreation uses'* and that MVDC would *'resist proposals which would disturb or displace any of the existing activities in this area'* (O1/tab/3/72-73).

109. The removal of the land for potential housing supply was objected to by SCC but the Inspector dealing with objections to the Local Plan nonetheless supported the decision of MVDC (O1/tab/3/75-76). The Inspector noted in 3.18 of his report that:

'such a fine area of woodland must be almost unique in its survival amidst development, and what is even more surprising, considering that access is not restricted, and the footpaths are well used, is the apparent lack of vandalism, litter or dumping so commonly found in urban open spaces'.

Much the same can be said today, such is the importance of the wood to local people.

110. Under the Mole Valley Local Plan (2000) (parts of which still remain in force), the land is currently designated as *'Strategic Open Land within Built-up Areas'* (policy ENV20). This means that development *'will not normally be permitted other than for purposes ancillary to the use of the land for outdoor recreation appropriate to the character of the area'*.

111. Since adopting the 2000 plan, MVDC adopted the Mole Valley Core Strategy in 2009. Policy CS 16 of the Core Strategy seeks to safeguard open space, sports recreational facilities from development. Any proposal for development will need to be assessed against Planning Policy Guidance Note 17 which is restrictive of development. A New Local Plan is evidently in preparation.

112. Before leaving Ms Condry's evidence, I should mention that, when the applicant's locality claim relied on the polling districts of Leatherhead South 1 and 2 within the South Leatherhead ward of MVDC, she produced a very helpful plan (which she has since modified) showing not only the boundaries of these polling districts but also an outline of the claimed neighbourhood (O1/tab/3/86A).

113. On this plan Ms Condry has also plotted the addresses of those who support the case for registration. I was sent a key to this plan by way of an email dated 20/04/2015 which I have added to the objector's bundle at O1/tab/3/86B. The red line on the modified plan represents the claimed neighbourhood. The blue and orange (numbered) dots are those who provided evidence questionnaires. The green dots are the addresses of those who provided evidence questionnaires but who have since moved out of the area. The red circles around the dots are the addresses of those who provided an EQ, a witness statement and who also gave oral evidence to the public inquiry. Those dots, which have been initialled, identify those witnesses who gave both oral evidence and provided a witness statement but who did not provide an EQ. I consider this to be a very helpful document which must have involved a good deal of work. What it does show, at a glance, is that if the claimed neighbourhood is a qualifying neighbourhood in law then the users of the land are widely distributed throughout such area.

The claimed neighbourhood

114. I have been around the claimed neighbourhood and the surrounding areas, partly on foot as well as in the car. I have also revisited the area as a desk top exercise on *Google earth* street view which is now an indispensable tool in these cases. I am confident that I have, for present purposes, seen enough of the claimed neighbourhood and the surrounding areas.

115. If one refers to App/1 one can see that we are dealing with a roughly triangular shaped area bounded by (running anti-clockwise) (a) Epsom Road (B2122) where it leaves the roundabout on the Leatherhead bypass; (b) The Crescent; (c) Church Street; and (d) Church Road until the road forks onto Highlands Road (B2033); and (e) thence into Headley Road until it meets the bypass. Dr Bowes clarified that the red line boundary is intended to be a mid-point in the affected carriageways.

116. Within the neighbourhood there are a number of community buildings/facilities which I have already identified in paragraph/85, in addition to the recreation ground at Fortyfoot Road and the Church Hall on the north side of Church Road, all of which are used by individuals from a much wider area.

117. For reasons which I do not understand, whereas the Church Hall lies within the claimed neighbourhood, the Parish Church of St Nicholas & St Mary, which is just across the road, falls just outside it. Nor are there any shops or convenience stores or the like within the claimed neighbourhood other than, within The Crescent, where one finds two takeaways, an opticians, a dental practice and a health shop of some description, all of which are bound to be frequented by people living within the town as a whole. The same applies in the case of the estate agents located on the corner of Church Street and Church Road. There is, for instance, no parade of shops which could be said to mainly serve the needs of an identifiable local community within the town of Leatherhead.

118. The land lies roughly in the middle of the claimed neighbourhood and is, I think, a cohesive feature, but possibly the only one within the claimed neighbourhood. I suspect that most people using the land, either as a place of transit or as a destination in itself for informal recreation, live in the nearby streets and would include many living in the streets to the south of Highlands Road which appear to me to comprise a number of separate developments of mainly detached dwellings, some of high value. The town of Leatherhead seems to be expanding in the gap between Highlands Roads and the bypass where there has been much residential development in recent years. One witness said that this was the *'posh area'* of town.

119. The major features in the gap between the north of the land and the railway line are St John's School and its extensive grounds, the two sports grounds on either side of Garlands Road, the Catholic Church of Our Lady and St Peter and Trinity Primary School. On the north-west side of the land we have the town centre which is, I think, mainly pedestrianised and, on the west side, we have, downslope, the River Mole (dominated by a heavily wooded weir area mid-stream) and the Bridge Street crossing. I have to say that without a much closer examination of the central area of Leatherhead (perhaps with the assistance of expert evidence) I have found it very difficult indeed to identify separate neighbourhoods within the town (in other words, where the characteristics of one area distinguish it from surrounding areas) as the area as a whole contains a good deal of residential and other development of varying ages and styles which are not specific to the claimed neighbourhood although, in light

of the evidence I heard, I do not doubt that within it, or at least in parts of it, there is a local community spirit.

Objector's other evidence

120. Before I turn to the applicant's evidence, I should deal with the written and oral evidence of **John Hindson** who was the objector's only other witness. I should mention here that I am particularly grateful for Ms Condry's own typed-up note of Mr Hindson's oral evidence.

121. Mr Hindson said that the land only came under his *'jurisdiction'* in January 2012 (he could not speak for the condition of the land before his first visit in February 2012). In his statement at O1/tab/2/12, he describes himself as the *'FM Service Delivery Manager for NHS Property Services (South East Region)'*. My understanding is that this means that he oversees the management of the objector's land interests in this region following the abolition of the PCTs on 1/04/2013. Mr Hindson had previously been the Estates Manager for Surrey PCT.

122. It was Mr Hindson's evidence that he was responsible for managing the wood and he cited as examples of this dealing with encroachments and the removal of unsafe trees and cleaning up after fly-tipping had taken place. He said that if the main paths were overgrown the objector would cut them back although this is something which he or men working for him also did. He asserted, however, that, as a wood, it *'should be allowed to grow naturally'* and that the objector did not manage it as though it were *'like Kew Gardens'*. He said that the objector's management is reactive and that it would be more likely to receive complaints if it maintained the wood to a higher standard. He said that on other sites they might even fence off to prevent public access altogether but not so in the case of the wood which he had been told by the former PCT's solicitor, Sally Barham, the public had a right to walk through.

123. It seems that when he visited the wood if he saw anything which caused him concern he would mention it to his Environment Manager (Derek Bennett). If it was something small it would be dealt with in-house within their Landscape Department. If it was serious then they would engage outside contractors. He did mention seeing (as he put it) a tepee-like structure made of wood which he thought was an *'impressive structure'*

- *'It was more of a hide than a den - It was about 8 feet tall, 3 feet wide and 2 feet in depth. It could have been something to sit in. Not a children's den. It looked like an adult had built it'.* Mr Hindson said that it was a *'bit of fun'*. Whatever it was, they dismantled it. I am not sure whether this occurred within the qualifying period.

124. Mr Hindson was, therefore, clearly aware that people were using the wood which was unfenced. He did say though that he had never actually seen any children playing in the wood although he accepted that this had happened but not on a regular basis. He mentioned what he described as evidence *'that children had been there'*, citing bike tracks on the main path (or paths) and bike ramps which he dismantled (a *'bike jump using planks of wood'* - *there was no evidence that the jumps were used - Others had been filled in'*). He accepted that there were now more open areas within the wood (i.e. where trees had come down) where children could play although this was not something which he had ever encouraged (*'After the holiday periods you get a number of things left on site'* which had to be removed - recently he had even removed a sofa and chairs). He says that he saw dog-walkers and others passing through the wood on the main track (with their dogs in the undergrowth) which, in his statement, he describes as merely walking on the paths as opposed to the use of the wood itself for LSP. Mr Hindson recorded that he made 13 visits to the wood before January 2013, although he thinks that he would have visited more frequently than this. Mr Hindson says that each of his visits would have involved a 5-10 minute walk around the wood (*'I usually do two full footpaths - I didn't do that big a walk - It tended to be early - about 6am to 10am'*). In his statement, he says that he observed the paths through the wood being used by local residents on their way *'to a number of local facilities adjoining the wood'*, namely the allotments, the recreation ground and St Mary's Primary School before it closed down. In his oral evidence, he said that he had seen *'dog-walkers and the occasional person going straight through'*. He said in his oral evidence that his visits were mainly to prevent squatters getting into the wood.

125. Although unsure of the date (but accepting that it might have been in late 2012/early 2013, i.e. following the first TVG application), Mr Hindson recalls being phoned by the applicant whom, he claimed, only spoke to him about the ivy on the trees. He says that this would have occurred before the felling of the three trees close to the rear boundary of a Mr Cuello who lived in Highlands Avenue and into whose garden a

branch had fallen. For her part, the applicant is sure that she spoke to Mr Hindson about trees being felled in the wood although she also remembers speaking to him about the ivy as well in the same call. Mr Hindson thinks that she would have spoken to Derrick Bennett about the trees being felled at the top end of the wood (they felled three trees and cut back another two - *'We try not to cut down a tree if it is not necessary'*). He could only recall speaking to the applicant about the ivy. In his statement, Mr Hindson has produced bills showing that contractors were involved in cutting up/felling/pruning back operations in the wood in 2013-14 after the end of the qualifying period.

126. When asked about the permissory signage which was erected in January 2013, Mr Hindson said that although he had been asked to erect signs saying that the public could access the wood, his concern was *'more about health and safety risks'* (as he also put it: *'I was concerned to ensure the people's safety was also considered'*) and that, as far as he was concerned, the signs did not restrict access and that the public were merely being allowed to use the wood at their own risk. He says that, as far as he was aware, the signs were nothing to do with the previous TVG application but with health and safety. This was a somewhat bizarre answer in light of the actual content of the January 2013 signage and the earlier withdrawn application. Exactly where health and safety came into it is anyone's guess. At any rate, Mr Hindson said that he was *'always made aware that it'* (i.e. the wood) *'was a public area - people could go through the woods. I never stopped anyone. If they did not have permission to do so, the wood would have been fenced off'*. When asked who had made him aware that people were allowed to go into the wood he said it was Sally Barham, the PCT's former solicitor, whom he said had told him that *'people could go through'*. All this is clearly strong evidence of acquiescence on the part of the landowner.

127. I do not attach a great deal of weight to Mr Hindson's evidence. Quite apart from his explanation for the signage, I am not convinced that he spent much time in the wood and I rather think that his periodic visits are unlikely to have been prolonged affairs. His diary at O1/tab/2/14 shows that he visited the wood on 13 occasions (no doubt during ordinary working hours – and his visits were usually once a month and sometimes twice a month) and his 5-10 minute walk around was, in my view, very probably insufficient time for him to draw firm conclusions about the general use of the

wood by local inhabitants. However, I doubt whether any of this matters very much as I agree with Dr Bowes that it does not matter very much if he saw no one engaging in LSP in the wood on his visits as the law does not require land to be in constant use for LSP in order to justify registration.

The applicant's evidence

Oral evidence

128. Although I will endeavour to summarise the evidence that I heard, what follows is not intended as a verbatim account, or even necessarily a complete account, of the evidence given by the applicant's witnesses at the public inquiry. It is simply a summary of some of the more salient issues dealt with in the evidence, particularly those that form the basis of my findings of fact. The summary is simply intended to be a sufficient account of the evidence for the registration authority to understand the reasoning behind my conclusions.

129. **Mrs Cargill (the applicant)**

(a) The applicant, lives at 54 Windfield. She claims to have used the land for informal recreation since 1991. Her EQ is at A/D.6.1a, along with the 72 photos which she has put in evidence to which reference has already been made. Mrs Cargill also produced a number of additional documents during the course of the public inquiry. I marked these documents A-H which are behind her evidence within A1. The documents A/B/C/D and F were utilised by her in the course of obtaining written evidence for use at the public inquiry as well as advising potential witnesses what to expect if they gave oral evidence. Document A is not quite the same as Document B since it advertises what is described as a pre-hearing get together on 9/04/2015.

(b) Documents A/B were accompanied by a locality/neighbourhood plan Documents A/B went out together after my directions had been issued on 26/02/2015. The plan would have been Document E which not only shows the boundaries of the currently claimed neighbourhood on App/1 but also discloses a different locality comprising polling districts 1 and 2 within the Leatherhead South ward of MVDC (which was in accordance with the claim made in the Form 44 at Box/6). Those responding were invited to agree to the boundaries of the claimed neighbourhood, failing which they

were invited to suggest an alternative. The applicant cannot be sure that those responding received a colour copy of the locality/neighbourhood plan at Document E but, even if they did not, the boundaries of the areas in question would have been apparent on the face of the uncoloured plan.

(c) Document C was a document entitled: *'Reminder of Importance of Neighbourhood & Locality'*. She specifically said at the top of the document that it was *'to help refresh your memory'*. The new plan (App/3) also accompanied this document to prospective witnesses by reminding them that the locality had been changed to polling station XB (within the same ward of Leatherhead South). By the time this statement had come into being it would seem that most of the statements had probably already been put in (*'Most of you have covered neighbourhood in your statements'*). The note (which was evidently circulated to her oral witnesses shortly before the start of the public inquiry) encouraged them to reflect on the correct neighbourhood: *'Establishing a Neighbourhood is possibly the barrister's biggest challenge'*. The note ended with a revised date for a get together at the house of a witness, Susannah Golding, on Sunday 12/04/2015 which was the day before the start of the public inquiry. The applicant accepted that by Document C she was trying to prepare her witnesses. As she put it, *'I wanted them to think through their statements again'*. She said that she was trying to prompt them to come to the inquiry *'and to be prepared'*. She denied, however, that she was prompting or coaching her witnesses when it came to the evidence they should give when it came to the issue of neighbourhood.

(d) Document D is headed: *'Conduct & Guidelines for Witnesses at the Hearing'* which contained guidance on how to address the Inspector, to keep *'calm, cool and polite'* and to take care when giving answers to questions. We should in fact have started with Document F (which was the first to go out) but it was produced late. The document is dated 11/07/2014 and is headed: *'Dear Leach Grove Wood Supporters'*. The context of this document was the decision of the registration authority to hold a non-statutory inquiry and the document invited 20 witnesses to come forward to provide written evidence for use at the public inquiry. The document also contained an exhortation to local inhabitants to provide financial support to help with the costs of instructing a barrister. Those responding were invited to fill in the form where

requested and to return it either to the address of the Leatherhead Residents' Association or to the applicant, who dealt with these forms in her oral evidence.

(e) The applicant said that she considered it her responsibility to prepare witnesses for the public inquiry *'to the best of my ability'*. She wanted to reassure her witnesses *'without putting words in their mouth'*.

(f) Documents G/H deal with the Highlands Road allotments. We have the names and addresses of a number of allotment holders in June 2001 and as at 18/10/2014. The applicant also gave oral evidence about this by identifying how many allotments were taken up in 2014 and the number of allotment holders living within the claimed neighbourhood.

(g) Pulling all this material together, it appears that in 2014 there were a total of 51 allotments of which only 49 were taken up. Of the 49 allotments, 15 were taken by those living within the claimed neighbourhood. The numbers change if one allows for the actual numbers of people involved as a number of allotments are held by couples. The applicant said that a total of 57 people are involved with allotments (i.e. as sole or joint allotment holders) whether living inside and outside the claimed neighbourhood, of which 27 (or 47%) lived within the claimed neighbourhood. This percentage obviously assists the case on cohesion. In the case of the June 2001 particulars within Document H, 37 individuals were identified by the applicant as allotment holders of whom 27 (or 73%) lived within the claimed neighbourhood.

(h) The applicant's statement will be found at A1/D6. She and her husband (who are not dog walkers) have used the wood for recreation ever since they moved into the area in 1991. I think they may even have two allotments (Plots 20B/21B). There is no pattern to their use which mainly involves walks for pleasure but it is frequent. She says that it may average out in her case at around once a fortnight. Use is not so frequent in the winter. She says that she sees children playing there along with mothers with prams. She recalls groups of boys riding cycles on the jumps (in two locations – one still very evident, the other very much less so in the central area which she pointed out to me at the accompanied site visit) and others simply watching what was going on. She said that she used to clear up the large amount of litter which they left behind, as did other locals. She seemed to recall that this occurred in 2009 when, as she put it, there were

three groups of boys making their jumps *'everywhere'*. She said that *'we were getting to the stage where we couldn't use the paths anymore as the boys were taking it over'*. This is hardly indicative of LSP and was probably neither prolonged nor otherwise had the requisite quality of qualifying use.

(i) The applicant objected to the assertion in cross-examination that *'there are commonly no people in the wood'*. She said that there was a 60/40 or 70/30 per cent chance that *'you would meet somebody in the wood'.* She accepted that she did not always see people in the wood.

(j) The applicant sought to justify her case on neighbourhood by saying that, bounded by the roads (see App/1), the area has *'a community and village feel to it'*. She says that a combination of the public buildings mentioned above and green space *'fosters a quiet but strong community spirit'*. She thinks of the claimed neighbourhood as her *'immediate neighbourhood, and that, at a guess, say 50-60% of my waking time is spent within it'*. When asked by Dr Bowes why she considered the claimed neighbourhood to be her *'immediate neighbourhood'* she said it was because of the number of people she knows who live within its boundaries *'and the quiet community spirit'*. When asked what distinguished the claimed neighbourhood from (as she put it) *'the broader community outside it'*, she said that people living within the neighbourhood were closer to her physically and that a lot of her time was spent in her neighbourhood – some 50-60% of her waking time: *'The infrastructure is there. Everything I need is there. I grow my own vegetables. I work at home. People come to me. I get involved in local campaigns'.* This was a reference (a) to the *'Fortyfoot Road Campaign'* between 2009-14 which involved the surfacing and adoption of this road, and (b) litter picking in the application land in October 2014 on the part of volunteer members of the Leatherhead Residents Association (the applicant sits on its Environmental Sub-Committee).

(k) Mr Clay cross-examined the applicant closely about the changes made by her in relation to her locality/neighbourhood claim which have already been addressed in paras 2/5 above. She accepted that those who put in EQs subscribed to a neighbourhood based on polling districts 1 and 2 within the MVDC ward of Leatherhead South (i.e. as per question/6 in the Form/44 – this is shown on the plan

attached to the application at Appendix/2, Map/3 – see RA/B12). In other words, the current formulation of the applicant's case on locality/neighbourhood was never even addressed by these witnesses in this evidence.

(l) It gets worse than this in that the EQs ask those responding to confirm (a) that the area outlined in green on the attached map was the relevant land (see RA/B10 – this is Map/1 in Appendix/2 to the Form/44), and (b) that he or she considered themselves *'to be a local inhabitants of the area in which Leach Grove Woods is situated'*, to which they all, not surprisingly, said *'Yes'*. In the result, they all answered affirmatively in circumstances where the relevant map attached to their EQs (i.e. the map at RA/B10) did not even delineate the boundaries of the area in respect of which those responding were claiming to be a *'local inhabitant'*. RA/B10 bears no relation to the neighbourhood plan at App/1 and shows only a handful of roads in close proximity to the application land. As a neighbourhood plan, it is wholly inadequate for current purposes.

(m) The same applies in the case of the map described as Map/2 which was also included within Appendix/2 to the Form/44. Map/2 is specifically linked to the applicant's comments in Section/7 of the Form/44 which deals with the justification for registration and the use of the land by local inhabitants *'of the South Leatherhead neighbourhood'* which is, I take it, a reference to polling districts 1 and 2 within the South Leatherhead ward. Map/2 does not actually delineate (whereas Map/3 at RA/B12 did) the neighbourhood which was originally being contended for (i.e. the two polling districts) and, of course, it bears no relation either to the applicant's current formulation at App/1 when it comes to her case on locality/neighbourhood. The applicant said that her Form/44 was filled in with the assistance of Dr Bowes but I rather doubt whether he was even on the scene to help at this point.

(n) The applicant said that her husband helped draw up the plan at App/1. She said that Dr Bowes was involved in the reformulation of her locality/neighbourhood claim. It seemed that there were not enough witnesses who could speak for the larger area on RA/B12 showing the two polling districts. She said it was this plan which she put to her witnesses at the public inquiry and she said that she selected only those witnesses to give oral evidence whom she *'thought were brave enough to do it'*. She readily

accepts that she gave her witness the guidelines comprised within the above-mentioned Documents at A/B/C/D.

(o) Before Dr Bowes very sensibly acknowledged on behalf of the applicant that, for the avoidance of doubt, the perimeter of the claimed neighbourhood was a mid-point running along the relevant highways, the applicant had asserted that her neighbourhood included the housing on both sides of Highlands Road and Epsom Road, going as far to say even that it included the whole of St John's School. She said that the neighbourhood boundary *'includes the buildings on or abutting the pavements on the outer edges of the red line'* (on App/1). At one point in cross-examination, the applicant accepted that the neighbourhood was in fact more extensive than shown on her neighbourhood plan (quite possibly because she said that she had friends living outside the boundaries shown on such plan) although, as she put it, *'my neighbourhood'* is as shown on the application plan. As I was concerned about her evidence under this head, I gave the applicant time to confer with her counsel following which Dr Bowes confirmed that the claimed neighbourhood perimeter was in fact a mid-point in the relevant carriageways rather than at the edge of the red line shown on App/1.

(p) The applicant was cross-examined at length on her locality/neighbourhood claim. It seemed obvious (as she herself accepted) that she did not have a correct understanding of the terms neighbourhood and locality. She accepted, by way of example, that more than half the allotments and those who used them came from outside the claimed neighbourhood. She conceded that there was also a considerable fluctuation in the number of people using the allotments and that there was not a long waiting list for allotments which is clearly significant on the issue of neighbourhood. Another inconsistency is the fact that on Document F (see para/126 above) the applicant has included in her call for witnesses anyone living in Reigate Road which falls outside the claimed neighbourhood. In the same document the applicant mentions that land might become a village green by *'walking in it rather than en route to somewhere else*'. Although this might arguably raise the spectre of coaching, Mr Clay was at pains to point out that there was no suggestion on his part of bad faith.

(q) In general I considered the applicant to be an honest and genuine witness not least when it came to her own use of the wood and that which she observed on the part of others. Further, although it was certainly my clear impression that she had not deliberately set out to direct the way in which evidence should be given by her witnesses when it came to neighbourhood, her reminder at Document C is bound to have been influential in steering her witnesses towards an acceptance (at least in the case of those who did) of the map at App/1 as showing the true neighbourhood. At the end of the day, the existence of neighbourhood for present purposes has to be an objective judgment in light of all the relevant circumstances as opposed to a judgment in which decisive weight is accorded to the subjective beliefs of those who choose to give oral evidence about this. As I think the applicant rightly said in Document C: *'Establishing a Neighbourhood is possibly the barrister's biggest challenge'.* In my view, the applicant is bound to have realised that a great deal of weight was going to be attached by her oral witnesses to her eventual neighbourhood plan.

130. **Susannah Golding**

(a) Ms Golding had lived at the following addresses: (i) at 5A St John's Road between 1999-2001 (ii) at 2 Poplar Road between 2001 -2007 and (c) at 22 Poplar Road to the current date. All these addresses lie within the claimed neighbourhood. She therefore used the wood between 1999-2013 i.e. for 14 years.

(b) Ms Golding's statement dated 16/03/2015 is at A1/D9 and it is accompanied by her EQ dated 20/03/2013. Her statement begins by agreeing with the claimed neighbourhood shown within the red lines on App/1 which she said she had no hand in drawing up but which she says she was shown when she was drawing up her statement. She considers the people living within this area as being her neighbours. She says she walks or cycles on the roads within the neighbourhood on a daily basis and feels *'a definite sense of community with the people that live here'* with whom she says she greets in passing or stops to speak to. She says that it is a really *'family-friendly'* neighbourhood and that her children (who were aged 14, 12 and 9 in 2013) had grown up in the area and used the land for building camps and playing hide and seek. She also deals with places where people meet such as the Church (which in

cross-examination she accepted was outside the neighbourhood), the recreation ground and the land.

(c) Ms Golding is a dog-walker and she uses the wood twice daily and she says that she meets up with neighbours walking their dogs. Her children also played in the wood on a regular basis. She also picked wild garlic and collects kindling from autumn through to the spring, often on a daily basis. She says that the wood is an important part of her life and an essential part of her local community.

(d) Ms Golding was pressed in cross-examination on the neighbourhood issue. It was put to her that, in effect, there was no single community group or activity serving the interests of those who lived in claimed neighbourhood, although Ms Golding asserted that a large number of people using the allotments, for instance, were local to the area. She did say, however, that she had seen very few people living outside the claimed neighbourhood using the land.

(e) In explaining her involvement, Ms Golding said that *'we think'* Leatherhead Hospital might close down in which case the land *'would be vulnerable to development'*. She said she was asked by the applicant whether she was interested in becoming involved with her application to register. She was and was given the EQ and was also asked to provide a statement. It is plain from what she said that she was asked to deal with how often she used the land and for what purpose. The applicant also showed her a map and she was asked what she considered were the boundaries of her neighbourhood and the neighbourhood plan which the applicant eventually produced met with her approval.

(f) As to where she walked within the wood, Ms Golding said that although she used the main paths she did not necessarily stick to them. She has been walking dogs since 2008 and this is one of the reasons (I think it was her main reason) for using the land. She says that the paths are *'well trodden'* and that nothing grows on them although when the brambles spread over onto the paths then she herself has cut them back. She says that most of the fallen trees have blown over recently. Some of the older trees which have fallen over have been on the ground for some time.

(g) Like the applicant, Ms Golding thinks that any maintenance carried out on the land by the NHS authority has been minimal and it is certainly untrue that they kept the paths open in the period 1993-2013. She characterised the objector's maintenance efforts as being *'fire-fighting rather than maintenance'*. She was only aware that the NHS owned the wood when the signs went up. She thought that it had belonged *'to the people of Leatherhead, having been given to the authority by a Mr Leach'*.

(h) I have no hesitation in accepting Ms Golding's evidence.

131. **Sandra Sullivan**

(a) Ms Sullivan moved to 1 Highlands Close with her partner in December 2011. She therefore used the wood for the last 2 years of the qualifying period. Her statement is dated 15/03/2015. Ms Sullivan (who works from home) and her partner use the land for dog-walking at least four times a week. She said that she goes *'round and round the woods'* and sometimes goes further afield to the recreation ground. She certainly walks off the tracks and goes wherever she can without getting caught up in the *'twigs and brambles'*. She said that she also saw other people walking their dogs through the wood some of whom she knew although only two lived in her street. She also mentioned *'seeing people coming and going with gates'*, which I take to be a reference to those with homes backing onto the land in Highlands Avenue.

(b) She too accepts the claimed neighbourhood which she says is a friendly place *'with the Church Hall, recreation ground, application ground and the allotments offering a central focus for everyone … Leatherhead is the town and wider community to which we belong … Our community is in the streets and open spaces around our own, the people we talk to on a daily basis whilst out walking the dog or doing a spot of gardening at the front of the house. This is the roads defined on the map produced by Flip Cargill plus a few more streets around the Church we regularly walk too'.*

(c) When cross-examined Ms Sullivan made it clear that she was not told that she should agree to the neighbourhood plan. In producing her statement she used Document A as a guide. She also agreed that she walked outside this area (Worple Road and St Mary's Road to the south and to the weir on the western side).

(d) Ms Sullivan was similarly an honest and genuine witness and I also accept her evidence.

132. **Elizabeth Turner**

(a) Mrs Turner and her husband lived at 4 Highlands Road between 2006-2012 and thereafter, until January 2015, at 55 Windfield. They now live at Walton-on-the Hill. They therefore used the wood for around 7 years during the qualifying period. They are both serving police officers. Mr Turner is a handler of police dogs one of whom he keeps at home permanently. They have two boys aged 2/4. Mrs Turner's statement is dated 16/03/2015 and will be found at A1/D22.

(b) The Turner family are very happy living in Leatherhead. She has developed strong friendships with her neighbours and enjoys using the local amenities of the recreation ground, the allotments, the church in Church Road and the town centre. Her children flourish in the local community.

(c) They have throughout regularly walked their dogs in the wood. At Highlands Road they would walk their dogs in the wood after dark. She said that they continue to use the wood at least three times a week. Since the birth of their first child in 2010 they have taken the children to play games in the wood. In her statement she said that they used the wood at least twice a week for recreational visits and that they quite regularly meet other dog-walkers, some of whom are known to them. Before the signs went up in 2013 she thought the wood was publicly-owned. She noted that away from the pavements, the wood and the recreation ground were the only dog-walking areas in the area. She thought that the wood was a 15 minute walk from the boundaries of the claimed neighbourhood which she supported. She said that when she was given Document A by the applicant (with plan) she was *'left to get on with it'*. She is clearly a supporter of the claimed neighbourhood.

(d) I have no hesitation in accepting Mrs Turner's evidence.

133. **Russell Turner**

(a) Mr Turner's evidence follows that of his wife. His statement is also dated 16/03/2015 and will be found at A1/D24. With suitable changes, the statements of Mr and Mrs

Turner are identical. Mr Turner is a police dog-handler. He and his wife work shifts which are not always the same. Sometimes he walks the dogs on his own.

(b) On walks he predominantly uses the wood although he sometimes used the recreation ground when he was with the children. He walks a circuit of the wood. He uses the paths and has seen others doing the same. Whilst living at Highlands Road (2006-2012) he walked three dogs (one pet and two police dogs – one of these dogs had to stay on the lead) in the wood whereas, at Windfield (until January 2015), he had two dogs (I think these were both police dogs whom he used to take home). He says that he has seen other *'fairly local'* families in the wood.

(c) He too agrees with the extent of the claimed neighbourhood. He says that the area is welcoming and friendly and that people he used to know also used the wood. He accepted that people to the south of Highlands Road used the wood although, with the exception of one family, he did not know anyone living within this area.

(d) Mr Turner was an honest and genuine witness whose evidence I also accept.

134. **Mrs Jennifer Hollingshead**

(a) Mrs Hollingshead lives at 65 Highlands Road which backs onto the wood. Her statement and EQ is at A1/D11/D11.1. Mrs Hollingshead has lived at this address since November 1985 and has therefore used the land for more than 20 years. It seems that she started doing so when she took on an allotment in around 1990. They walked their dogs in the wood after 1992 where they sometimes met up with other dog-walkers.

(b) Mrs Hollingshead gave up work to have a family in 1995 and as the children grew up and started at the Fortyfoot Playgroup and then, following on at St Mary's Primary School, she walked with the children through the wood which seems to have been a place of distraction and fun as she says that a five minute walk home usually lasted for thirty minutes with the children and their mother finding things of interest in the wood, such as collecting beech nuts, fir cones and looking out for the wildlife (birds and insects, trees and plants). Sometimes their school friends joined them on the way back home. It seems that the children also played in the wood whilst their parents worked on their allotment.

(c) Mrs Hollingshead was rather vague about App/1 although she recalls receiving written advice from the applicant which would have been Documents A/B which she says came with a map. It must have been the neighbourhood plan at App/1 as she can recall the green parcel marked LGW on the document in question and says that it had another area but she cannot recall whether it was coloured or not. In re-examination she thought that the map she saw was probably black and white. In re-examination she clearly accepted the claimed neighbourhood (*'most definitely'*) which she accepted was her neighbourhood which she said was an area where she knew people – *'I know people outside area but I wouldn't class them as neighbours'* (at least half of her children's class at St Mary's Primary School lived within the claimed neighbourhood (she said that the school had around 180 pupils in 6 forms in an age range of 4-7). As she put it: *'You see other mums with their children and a lot of them live in that area'* (meaning the claimed neighbourhood). She also said that the wood, playgroup, primary school and recreation ground were *'key factors'* by which I took her to mean were key cohesive features (although the school closed around a year ago). It was Mrs Hollingshead who thought that the area to the south of Highlands Road was a *'posh area'* although she accepted that some of the 5-7 years olds living in this area would have attended St Mary's Primary School. She also accepted that anyone who could afford it used the playgroup.

(d) When questioned about her use of the wood Mrs Hollingshead said that she mainly strolls with her dogs on the main paths. There were, she said, more trees in the early years but several had blown over in the storms which brought about changes in the route of the paths passing through the wood. Commenting on the activities of others whom she had seen in the wood (see para/7 of her EQ), she said that some of the people whom she had seen lived within the claimed locality.

(e) I have no hesitation in accepting the evidence of Mrs Hollingshead.

135. **Emma Hollingshead**

(a) Emma Hollingshead (whose evidence I accept) is Mrs Hollingshead's daughter. She is aged 20 and her statement will be found at A1/D10. She was born in 1995 and can even remember, as a three year old, walking through the wood with her mother in her push chair on the way to her playgroup. This was followed by trips through the wood

on the way to St Mary's Primary School and playing there with friends some of whom lived to the south of Highlands Road. She recalls cycling through the wood and stopping and sitting on fallen trees. In the summer she recalls making camps out of fallen branches. As she got older she took the family dogs for walks in the wood. She also enjoys sitting and watching the birds and flowers and taking photos. However, she says that the wood is not as popular as the recreation ground (this was obvious on my accompanied visit to the area).

(b) Ms Hollingshead has seen dog-walkers and cyclists using the wood along with children and their mothers. She remembers boys cycling on the so-called bumps before someone put a stop to it. I understand her evidence to be that this activity lasted for around 2 months. She has never seen anyone with equipment carrying out maintenance in the wood – *'that's why it's so natural'*. She says that more people are using the wood for dog-walking early in the morning before they go to work. There are also dog-walkers in the lunch hour. At weekends Ms Hollingshead says that can stay in the wood with her dogs for between 1-2 hours. In the evenings she has only ever seen 2/3 dog-walkers.

(c) When it came to neighbourhood, Ms Hollingshead agreed with the claimed neighbourhood plan. She also mentioned that the two middle schools and secondary school in Leatherhead are outside the claimed neighbourhood. She still meets up with some of her friends at St Mary's Primary School. She recalled that they used to play in the wood on their way to school.

136. **Julia Jarrett**

(a) Mrs Jarrett has lived at 6 Highlands Avenue (which backs on to the wood) since 1979 and is thus a 20 years plus user of the land. Her statement and EQ is at A1/D12 and D12.1.

(b) Mrs Jarrett uses the wood (which she always assumed was public open space) once a week although not when it is muddy. Her children used to play and make dens in the wood and could also ride their bikes there in safety. Her grandchildren also play in the wood. The trees in the wood form a pleasant backdrop to her garden. She says that it is a delightful open space.

(c) Mrs Jarrett agrees with the claimed neighbourhood and she saw the map relied on by the applicant when she drew up her statement. She says that her community includes the land within the red lines citing the fact that it included the application land in the centre, the allotments, the school and the hospital – *'That seems to me to be a community'*. She also said, however, that her neighbourhood included the church on Church Road which, until the 1990s, she regularly attended (her children also sang in the choir). The church is, however, outside the area of the claimed neighbourhood.

(d) I accept Mrs Jarrett's evidence. Her evidence was also noteworthy for the fact that I questioned Mr Clay on the relevance of that part of his cross-examination which concerned (in effect) this witness's subjective belief as to her entitlement to be using the wood *'as of right'*. Mr Clay said that he needed to ask questions as to whether this witness knew or ought to have known that she had a right to be using the wood and that this was relevant on whether her use was permissive. Mr Clay told me that he was familiar with the decision of the House of Lords in *R v Oxfordshire County Council ex parte Sunningwell parish Council [2000] 1 AC 335* when it was held that the law did not require subjective belief in the existence of the right. The same point is also addressed at [68-69] in *Newhaven* namely that whether use is to be treated as being *'as of right'* is a matter which should be assessed objectively.

137. **Ken Ellis**

(a) Mr Ellis has lived at 48 Windfield since November 1999. He therefore used the wood for around 13 years before January 2013. His statement and EQ will be found at A1/D8 and D8.1.

(b) Mr Ellis did not entirely accept the claimed neighbourhood plan at App/1 as he thought that his neighbourhood would also include (a) the High Street (i.e. as a continuation of Epsom Road) (b) The Withies where there is a catholic church which he attends (The Withies lies well outside the claimed neighbourhood) and the whole of Church Street.

(c) He accepted in cross-examination that the Leatherhead Residents Association covered a wider area, as did the hospital (which he said comprised a number of clinics rather than being a hospital for in-patients), the Bowls Club, the Library (which is just outside the claimed neighbourhood on the east side of Church Street) and the Doctors

Surgery at Linden Pit Path (again, just outside the claimed neighbourhood, but within polling district XB). He said that his neighbourhood would include all these facilities which *'we need as a community … Facilities everyone needs in the town'*.

(d) Mr Ellis and his wife have always had at least one dog which they regularly walk in the wood. He and his wife have also made many friends on their daily walks in the wood.

(e) Mr Ellis is a regular user of the wood for dog-walking. He was clearly an honest and genuine witness but his evidence on neighbourhood certainly did not assist the applicant.

138. **Les Prescott**

(a) Mr Prescott (whose evidence I accept) lived within the claimed neighbourhood at 26 Poplar Road for some 10 years between 2001-2010. He now lives in Yarm Court Road which is to the south of Highlands Road and outside the claimed neighbourhood. His statement and EQ will be found at A1/D20 and 20.1. He says that he and his wife used the wood for walks around once or twice a month in the summer but rather less than this in the winter. They saw others in the wood, including children playing and dog-walkers, whom he says *'were mostly neighbours we recognised including friends living in Highlands Avenue'*.

(b) He agreed with the claimed neighbourhood which he and his wife *'felt to be a part of'*. He also mentioned the following facilities: (a) the hospital (b) the Methodist Church (in Church Road) (c) the Church Hall (d) the Scout Group meeting place in Fortyfoot Road (e) the allotments and (f) the recreation ground which he said made it *'feel like our neighbourhood'.* Mr Prescott accepted that these facilities served *'a wider community'.* He said that *'they are part of the glue which binds my community together'*. He also agreed with Mr Ellis that High Street and Church Street should be included within the claimed neighbourhood. He also said that he knew a *'significant'* number of people living within the claimed neighbourhood. On the face of it, he seems to be defining his neighbourhood by reference to his relationships with other people rather than by reference to his surroundings.

139. **James Moore**

(a) James is aged 12. He lives at 22 Highlands Avenue. His statement and EQ is at A1/D16 and D16.1. James can get into the wood via a gate in his back garden.

(b) It seems that James spends *'a lot'* of time in the wood with his friends (he mentioned Alex who also lives in Highlands Avenue). They climb trees, play around on their bikes or make dens. James said that he goes to the wood more often in the spring/summer/autumn when he thinks he visits three or four times a week. He does not visit the recreation ground as often as he goes to the wood to play around. He sees lots of people walking dogs in the wood.

(c) The family considers the wood so special that they actually buried their cat there as it use to prowl around inside the wood.

(d) James gave his evidence with great confidence and I have no hesitation in accepting what he said to the inquiry.

140. **Christopher Moore**

(a) Christopher is the brother of James. He is aged 10. His statement and EQ is at A1/D17 and D17.1. Christopher likes to pay in the wood with his elder brother and his friend Piers. He likes climbing trees and building dens. His mother can get them in for their tea by walking out of their garden gate. It was Christopher, I think, who produced the three photos of boys (that included his friends Lorcan and Alex) playing in the wood.

(b) Christopher said that he plays in the wood three or four times a week. He said that he did not see a lot of people in the wood although *'you do see people walking through'.* He said that the wood was important to him.

(c) Despite his young age, Christopher gave helpful evidence with confidence and great care. I certainly accept what he told me.

141. **Piers Bunford**

(a) Piers is aged 11 and lives at 5 Highlands Avenue. His statement and EQ will be found at A1/D5 and D5.1. Piers obviously had a lot of help with his statement.

(b) The wood is next to his home and close to his friends with whom he plays in the wood on his bike. He used to attend St Mary's Primary School and played in the wood before and after school. He also used the wood once as part of his scouting activities (he was also in the cubs which used the same building and he can remember that they too used the wood once for some organised activity).

(c) He says that whilst in the wood he sees people who live close by playing with their dogs. His neighbour also uses the wood for running practice. He says that he has been using the wood as a play area for as long as he can remember. He said that *'it's a nice place'*. Piers plays with James and Christopher Moore in the wood. They also play with another boy called Alex who also lives in Highlands Avenue. Piers says that he uses the wood frequently – *'whenever we have some free time'*. He says that he sees a lot of people in the wood – *'People on bikes and with dogs – children generally playing and building dens'.*

(d) In the case of Piers, I reiterate what I said in the case of the other two boys, namely that he gave his evidence with considerable confidence and I was grateful for the assistance he and his two friends. I certainly accept all that Piers told me about his own use of the wood and of what he saw there.

142. **Sharon Pavey**

(a) Ms Pavey has lived with her partner at 52 Highlands Road since March 2003 and therefore used the wood for a little under 10 years within the relevant period. They mainly use the wood for walking their dog. Ms Pavey produced 4 photos taken in 2014-15. Her statement is at A1/18.

(b) Ms Pavey said that the wood is safe for walking her dog and they go there daily, sometimes more than once a day (mornings and evenings). She says they see *'lots of other people walking through (and around) and enjoying the wood with their dogs and young children'*. She said that they meet most of their neighbours by walking their dog in the wood, although there are other users whom they do not know.

(c) Ms Pavey gave limited evidence on neighbourhood. I understood her to be saying in her statement that the key (or cohesive) features which make up her neighbourhood are the wood, the Beeches, Woodlands School, the hospital and recreation ground.

Her reference to *'within the boundary'* in para/2 of her statement implies, I think, that she is a supporter of the claimed neighbourhood.

(d) Ms Pavey was also an honest and genuine witness.

143. **Steven Pavey**

(a) Mr Pavey's statement at A1/D19 is the same as his partner's. He says that it is difficult to exercise his dog in the recreation ground whereas they can walk their dog around the paths in the wood without getting their dog dirty. He does the evening walk. He says they mainly stick to the paths although his dog (whom they are happy to let off the lead) *'will deviate'*. He says they meet up with other dogs. They use various of the paths within the wood – *'We always see somebody, especially at this time of year when it's lighter … In summer you always see children cycling around'*.

(b) In common with his partner, Mrs Pavey was an honest and genuine witness and I have no hesitation in accepting their evidence.

144. **Heather Ward**

(a) Mrs Ward has lived at 35 St John's Road since 1978. Her statement and EQ is at A1/E24 and E24.1.

(b) She began by dealing with the neighbourhood issue. She thinks that Kingston Avenue (which backs onto Trinity Primary School – which she agreed accepted children from outside the claimed neighbourhood – she included this school as *'all my local grandchildren went there'*) and Park Rise should be added to the claimed neighbourhood (where, she says, many of the residents have known each other for years), as she also knew most of the residents within these roads. Judging from her statement, she would include Upper Fairfield Road as well as this is where her GPs Surgery is located which, she says, serves this area. She also has several friends in Upper Fairfield Road.

(c) She explained that her neighbourhood was anywhere within *'easy'* walking distance of her home. As she put it, this was on the principle that her group of friends lived within walking distance of her home. She agreed that it meant that her neighbourhood was larger than that claimed by the applicant (*'The red line is not a big area'*). She also

agreed that there was a mix of housing within the claimed neighbourhood, comprising housing of different ages and styles. The area appeals to her *'as we meet people we know as we go around the area'*. She says that the people she meets on her walks are those whom she sees regularly. She accepted, however, that she goes for walks outside the claimed neighbourhood and gave as examples of this trips to her GP or to the dentist or to the library.

(d) Mrs Ward has used the wood for many years. She says that the qualifying period 1993-2013 includes the childhood of three of her grandchildren (now aged 12, 10 and 9) who also lived in St John's Road. They regularly went for walks and played in the wood (which she says was within easy walking distance of her home), meeting up with other children or families whom they knew from Trinity School. In the 1970s her own children had also used the wood as a place to play.

(e) Mrs Ward said that it is in the summer holidays *'when you see the children'* in the wood. She has even been involved in Easter egg hunts in the wood. She thinks that she walks in the wood on average once a fortnight, weather permitting.

(f) Mrs Ward was plainly an honest and genuine witness. Her evidence on neighbourhood was, however, of little assistance to the applicant.

145. **Michael Brian**

(a) Mr Brian has lived at 30 Highlands Road since 1992. His statement and EQ is at A1/D4 and D4.1. Although his wife knows the applicant, he was not involved in the preparation of the neighbourhood plan.

(b) He supports the claimed neighbourhood although judging by his statement he would have preferred it if it had included the church at Church Road. Otherwise he says that the area contains all the ingredients for a neighbourhood citing the shops in The Crescent (which, when questioned, he said comprised a takeaway, a shop that sold kitchen appliances and a health food shop which he accepted were not used predominantly by residents living within the claimed neighbourhood), the (former) school, hospital, allotments, recreation ground and bowls club with the wood being central to the area. As he put it: *'Yes, it's a neighbourhood'*.

(c) Until the signage went up in January 2013, Mr Brian thought that the wood was common land to which the public had a right of entry seeing as the land was unfenced and was not cared for in any way. He had no idea that it was connected with the NHS. He says that some of the paths are clear but that others are overgrown at different times of the year. Sometimes the growth at the sides of the tracks are cut back. He says that he has observed management within the wood taking place *'from time to time'.*

(d) Mr Brian's use of the wood over (as he put it) the last 10 years has been specifically with his three grandchildren who have enjoyed trips to the wood. He said this: *'The wood has formed and continues to form the young lives of all three children who all call the area the wooded park'*. His youngest grandchild (aged 5 and now at school) always wants to go to the wood whenever he visits his grandfather and the other, older, grandchildren (aged 13 and 11) never seem to mind going with him. He thinks that he goes to the wood around 30-40 times a year, mainly during the last 10 years, although it seems that his visits are less frequent now that his youngest grandchild has started at school. He says that he has seen and spoken to other adults and dog-walkers in the wood. He said they sometimes walk outside the paths. Whenever the children walk away from the established paths he says that he would follow them. He says that the wood is busier during the school holidays. I understood from his evidence that those whom he mainly comes across in the wood are dog-walkers although he does see accompanied children.

(e) I think that Mr Brian's use of the wood is fairly limited although his evidence on neighbourhood was supportive of the applicant's case. I thought that, in common with others, Mr Brian was an honest and genuine witness.

146. **David Brett**

(a) Mr Brett has lived at 41 Highlands Road since 1977. Before that, he lived at 64 Winfield after 1972. His statement and EQ will be found at A1/D3 and D3.1.

(b) In his statement Mr Brett says that he and his family used the wood *'as part of their local environment over the years'* and he specifically mentions bird watching, animal watching and picking blackberries. He says that in recent years he goes for walks in

the wood. His use is said to be at least monthly but sometimes weekly or even more often than this. His EQ also shows that he has seen children playing in the wood and others using it to walk to school, the allotments or to the recreation ground.

(c) In his oral evidence he says that he would have started using the wood in 1972 when he said there were more trees than there are today. By 1993, however, his own children were in their 20s and had left home. He finds the wood convenient as it is flat *'and very nice to walk in'*. He says that the wood has its *'thoroughfares'* and that the paths change as the trees fall down.

(d) On the question of neighbourhood, his statement notes that he agrees with the neighbourhood plan. As he puts it, it is an *'accurate depiction of the immediate environs of which we are a part'.* In his oral evidence he said that his community *'consists of people and all sorts of things'*. However, as the question of neighbourhood was explored in his evidence it was clear that he thought that it might even extend beyond the boundaries of the claimed neighbourhood. For instance, Mr Brett did find the exclusion of the church in Church Road *'puzzling'*. Overall, however, he seemed to accept that the claimed neighbourhood could be designated as a community in its own right with the wood located right in the middle of it.

(e) Mr Brett was an honest and genuine witness but I am not sure that he was really sure of his ground when it came to neighbourhood as I suspect that he found the concept difficult to grasp.

147. **Ms Alison Draper**

(a) Ms Draper has lived at 95 Poplar Road since 2001. Her statement and EQ will be found at A1/D7 and D7.1. Before 2001 she lived in Kingston Avenue for around a year and a half. This is outside the claimed neighbourhood. She says that she bought her home because of its proximity to the wood which has an abundance of wildlife. In her oral evidence she said that the wood *'provides a green corridor for wildlife'* and is a *'haven'*.

(b) Ms Draper is supportive of the claimed neighbourhood. She mentions all those facilities included within its boundaries which she says she has either used or visited. In her oral evidence, she specifically cited the recreation ground (where there are

sometimes festivities involving the scouts and Mencap), the hospital (where she received physiotherapy at one time and also played the piano at church services), the Beeches care home (which evidently has open days and where she also played the piano – she also knows that local people have relatives at the home), the scout hut, the church hall (as a member of a hand bell group), the allotments (she is not an allotment holder although she knows people who are) and the parish church in Church Road where, at one time, she sang in the choir (she said she knew a lot of people in the area who attended this church. As a school governor (of a school in north Leatherhead) she said that she would have visited all the schools in the area. She also mentioned the retail outlets and opticians in The Crescent. She conceded in her oral evidence that all the community facilities within the claimed neighbourhood *'are enjoyed by people from within and outside the red line. No facility is enjoyed exclusively by people living within the red lines'* which is, of course, a reference to the boundaries of the claimed neighbourhood.

(c) In terms of her use of the wood, she said she went there for regular walks (*'I walk in and around the woodland. I walk around it a lot'*). Before 2006 she was not a dog-walker but between 2006-09 she looked after her daughter's dog when she used the wood daily in the early morning before going to work. She says that she now walks in the wood either early in the morning or later in the evenings. She says that she collects wild garlic in the spring, elderflowers in June and elderberries and blackberries in the autumn. Sometimes she collects small branches for kindling and she often meets local people whom she knows live within the claimed neighbourhood, when engaged in these activities in the wood. She also mentioned seeing local children (whom she believed lived in Poplar Road) building a camp (this would have been recently and had not lasted very long) and riding bikes *'on an assault course they had built'*. In her oral evidence she said that *'these children have moved on'*. In her statement Ms Draper says that since 2001 she has used the wood weekly but it would, as indicated, have been on a daily basis whilst she had a dog.

(d) Ms Draper was likewise an honest and genuine witness. As with other witnesses her evidence on neighbourhood did not greatly assist the applicant.

148. **Ms Imani Ayimba-Golding**

(a) Ms Ayimba-Golding's statement and EQ is at A1/A1/D1 and D1.1. She is aged 16 and lives at 22 Poplar Road. I think the family had earlier lived at St John's Road which also lies within the claimed neighbourhood.

(b) When (she thinks) she was only 2 she attended a nursery at the scout hut. She recalls after nursery playing in the wood with her parents. Later, until the age of 5, Ms Ayimba-Golding used to attend St Mary's Primary School. Since the age of 11, however, she has been attending a school on the other side of the motorway.

(c) Ms Ayimba-Golding says that she used to play in the wood a lot when she was growing up. When she was small her mother would take her there to play, sometimes with friends. These were friends who lived within the claimed neighbourhood. She still has friends who used to go with her to this school, one of whom lives in Highlands Avenue. When she was older she used to ride her bike around the wood with her sisters and also picked flowers in the summer and collected wild garlic for her father.

(d) Ms Ayimba-Golding recalls that she used to cycle through and play in the wood (she also played in the recreation ground). Her family also had 2 dogs (after 2008) for seven years although they now have only one dog which Ms Ayimba-Golding takes for a walk in the wood at weekends and in the school holidays.

(e) Ms Ayimba-Golding also attended a Sunday club at the church hall in Church Road. Evidently they would all troop across the road to the church at the end of the service. Her mother also used to have an allotment.

(f) Ms Ayimba-Golding said that she now goes into the wood once a week for a walk. She also runs in the wood as part of a wider circuit which takes in the recreation ground.

(g) As for neighbourhood, Ms Ayimba-Golding agrees with the claimed neighbourhood. She says that it is where most people she knows live. It is also a *'walkable distance'* from her home to see her friends whereas if she wanted to go into the town centre she would ride her bike.

(h) Ms Ayimba-Golding was a good witness for the applicant and I certainly accept her evidence. Although only young, she gave evidence with great assurance. It is plain that she has used the wood frequently over the years.

149. **Ms Leila Ayimba-Golding**

(a) Ms Ayimba-Golding, who is aged 14, is Imani's younger sister and they attend the same school. Her statement is at A1/D2 and D2.1. Her evidence mirrors that of her sister.

(b) She says that she has walked in the wood for as long as she can remember. She remembers being taken there by her mother after school and playing hide and seek in the woods. She loves the flowers and collects wild garlic and kindling for her father. She also used to ride her bike over the humps which boys had made in the wood.

(c) She was shown a map of the claimed neighbourhood by her mother. She has many friends living both inside and outside its boundaries. She has her bike and goes where she wants. She also takes their dog for a walk in the wood. Her mother also has another dog or dogs to look after and she walks them there as well. They walk a loop of the wood and do not stick to the paths. She rode her bike on the humps which she says was popular for a couple of years.

(d) Ms Ayimba-Golding was also a confident witness and I also accept her evidence. It is plain that she and her family have been frequent visitors to the wood.

150. **Timothy Jones**

(a) Mr Jones has always lived at 67 Windfield since 1965 (he was born in 1959). His statement and EQ are at A1/D13 and D13.1. He says that he has been going into the wood since 1959 which was much larger that it is today as the general area was less developed. For instance, he thinks that St Mary's Primary School was only built in 1972/73 and that Woodlands School would have been built in approximately 1993/94 with the road being made up at around the same time.

(b) In his statement he says that there is *'a definite community of people who know, enjoy and "use" Leach Grove'*. He speaks of those who live close to the wood and those further away who also use it as (in effect, and as he does) *'a destination'* in its own

right. He says that some people living locally use the wood on a daily basis whereas others (including himself) would use it less regularly.

(c) Mr Jones says that he has used the wood regularly since 1993. The frequency of his visits vary but in his statement he thinks that he would have gone there every few months to take photographs. In his oral evidence, the claimed frequency of his visits for photography extended to once a fortnight although in the spring it could even be every day and he said that he might spend an hour there. It would be less than this in the summer, perhaps once a week *'to see what's going on'*. He said he could be there for between five to thirty minutes depending on whether there was *'anything interesting going on'*, which was a reference to plant life which he considered a suitable subject for photography.

(d) Although a metallurgist by training, Mr Jones is also a very keen landscape photographer and he takes photos of plant life in the wood. He also walked his dogs there (*'at least every week in the last years up to 2013'* – I think his dog died at the end of 2013 and had been with Mr Jones since 2007). He also mentions seeing local children playing in the wood, particularly those living in Highlands Avenue who have openings in their back gardens. He can also recall the boys riding their bikes on the humps to give a more exciting ride. He says that he has seen different groups of boys playing in the wood over the years.

(e) Interestingly, Mr Jones says that the paths change every two or three years. In 1972, for instance, they were entirely different to what they are now. He has certainly never seen anyone carrying out maintenance within the wood although he has seen some recent cutting.

(f) Although I thought that Mr Jones was probably exaggerating the frequency of his trips to the wood to take photographs, the thrust of his evidence was plain (and which I accept), namely that he has been a regular visitor to the wood over many years and has observed others there from time to time also engaging in informal recreation consistently with the evidence of all the others who gave oral evidence in support of the case for registration.

151. In summary, including the applicant herself, there were 22 oral witnesses supporting the case for registration. Of these, 5 were minors (the Ayimba-Golding sisters, the Moore brothers and Piers Bunford) and one other (Emma Hollingshead) was aged only 20 and whose recollection of her early life would probably only have gone back to the late 1990s. If I had to, I would categorise her as a 15 year user. On the face of it, we have 22 oral witnesses of whom 7 were 20 year plus users, 7 were users for between 10 to 15 years and 8 for less than 10 years. Of the 22 witnesses, 3 now live outside the claimed neighbourhood (Turner x2 and Draper).

Applicant's written evidence

152. Of those whom it was hoped would give oral evidence (see A1/tab/D), 4 did not show up whereas Heather Ward, who was not intending to give oral evidence, did so. I have read all the evidence behind A1/tabsD&E. The weight to be attached to this material is limited as these witnesses did not appear to be questioned about their written evidence. When looked at in the round, however, the written evidence was largely consistent with the oral evidence. It is plain, I think, that the wood is well used for informal recreation by those living near enough to access it on foot without having to walk too far from their homes. The number of witnesses providing written evidence (statements and EQs) behind A1/tabsD&E adds up to 54 of whom only 22 gave oral evidence.

153. Beyond the statements and EQ behind A1/tabsD&E there are (a) the letters of support from 7 individuals behind A1/tabF2 (which I have also read); (b) an initial batch of 74 EQs and (c) a further batch of 288 EQs making a grand total of 362 EQs. I have looked at this material but not in great detail. This has undoubtedly been a well supported application. I have also looked again at the documents within A1/tabF1/F3 which do not really take the matter any further. It seems to me to be plain and obvious that the wood has for many years been a well used location for informal recreation.

154. Lastly, the applicant put in the written evidence of her husband Ian Cargill at A1/E31 who dealt with the locality issue. Mr Cargill deals with the polling district XB. He says that MVDC do not maintain maps of the various polling districts. Instead the records which they maintain are merely of lists of streets. Mr Cargill did, however, carry out a search online and he came across a report to MVDC titled *'Implementation of Electoral*

Review of Surrey County Council' dated 13/02/2013. The report sought approval (which was given) to the amendments which were being made to the various polling districts across the Borough (for instance, two new polling districts were added to the South Leatherhead ward). One sees from the report what the boundaries are in the case of polling district XB (which necessitated a small adjustment to the plan at App/1 which now includes Highlands Park) (E39/41).

155. An FOI request was made to the relevant officer at MVDC (Shaun Hughes) regarding electorate and other details in relation to polling district XB and his reply is at E43. In his email dated 19/05/2015, Mr Hughes says that there is no statutory obligation for the Electoral Registration Officer or Returning Officer to provide the information requested in the applicant's email dated 19/04/2015. He did, however, provide some information in relation to the polling district XB, namely that it contained 1,644 electors and 989 properties shown in what is described as a Property Register. I deal below with the legal position in relation to polling districts.

Submissions of the parties' advocates

156. In the first instance, I shall deal with the submissions of both parties to the exclusion of locality and statutory incompatibility which I will look at separately as they are discreet and complex issues.

Submissions of the applicant

157. **Sufficiency of use for LSP**

(a) The applicant argues that this has been made out on the evidence and that there has been due compliance with the reasoning of Sullivan J in the *McAlpine* case.

(b) The applicant invites me to conclude that the land has been in general use by the local community for informal recreation for the relevant period in light of the written and oral evidence.

(c) The oral witnesses confirmed that they had seen others using the land for LSP, and have indicated where they live within the claimed neighbourhood.

(d) Reliance is placed on the evidence of Christopher Moore, James Moore and Piers Bunford all of whom indicated that the land was a play area for the local children. They were frequently there with their friends from within the neighbourhood.

(e) It is contended that there are photographs of recreational use taking place on the land which also contains a network of tracks with no obvious inhibitions on usage throughout the qualifying period.

(f) It is said that the land is to be preferred over the Fortyfoot Road recreation ground because of its seclusion, tranquillity, attractiveness to train dogs off the lead, making dens, and as a place to walk when conditions are wet because of the well-trodden paths.

(g) In planning terms, the land has over a number of years served a recreational function.

(h) The applicant also claims that the objector has been well aware of the public's use of the land and could not have failed to appreciate that it was in general use by the local community for informal recreation.

(i) In light of the above, it is contended that the land cannot be said to be in mere sporadic recreational use by the occasional trespassers but rather in general use by the local community for informal recreation.

(j) The whole of the land is being used for informal recreation in legal terms even though, in practice, not all of it is actually being used. In the first place, paths criss-cross the land and, in the second, the rest of the land is claimed to be *'part-and-parcel of the enjoyment of the whole land'.*

158. **Do the users come from a qualifying neighbourhood within a locality?**

(a) As indicated, I deal merely with the issue on neighbourhood whose boundaries are identified on App/1.

(b) The applicant argues that the neighbourhood test is not a high threshold relying on Sullivan J in *R(Cheltenham Builders) v South Gloucestershire District Council* [2003] EWHC 2803 (Admin) who said at [85] that all that is required is that the area has a *'sufficient degree of cohesiveness'* and that a housing estate might well meet that test.

(c) Dr Bowes submits that the neighbourhood issue was most recently re-visited by HHJ Behrens QC in *Leeds Group Plc v Leeds City Council* [2010] EWHC 810 (Ch.). There the Inspector found *'The Haws'* and *'Banksfield'* constituted a neighbourhood on the basis of cohesion of their interconnecting streets which surrounded the application land at *'Yealdon Banks'* at [99]. The court ruled that the inspector had been wrong to find that the two areas comprised a single neighbourhood, but that it was in fact correct to say that they amounted two separate neighbourhoods on the basis of the cohesion of their interconnectivity and the rationality of the boundaries at [104], [105] and [107]. Dr Bowes submits that this conclusion was not challenged on appeal and no adverse comment about it was made by the Court of Appeal when, by a majority, it upheld the decision of the first instance judge.

(d) Dr Bowes submits that, when it came to cohesiveness, a common theme in the evidence was that witnesses met other local people whilst using the land. In other words, the close proximity of the land to their homes and the homes of others within the claimed neighborhood was itself a cohesive factor.

(e) Dr Bowes also points to the following matters which, as he puts it, *'serve as conductors for cohesiveness'*, namely:

- The parish church of St Mary and St Nicholas on Church Road.
- The church hall on Church Street which, it is said, *'also acts to bind the Church within the neighbourhood'* (even though it lies outside its boundaries).
- Then there are the allotments (of which 27 (out of 57) are held by inhabitants of the neighbourhood - in 2001 37 out of the 57 were held by inhabitants of the neighbourhood).
- There is also the scout hut in which the local scout troop regularly meet of which children living in the neighbourhood would be members (i.e. James Moore and Piers Bunford).
- There is the Fortyfoot Road playgroup which meets in the Mencap Hall on Fortyfoot Road which a number of local inhabitants use.
- Throughout the qualifying period St Mary's Primary School was attended by a number of children living within the claimed neighbourhood (Mrs Hollingshead

thought that about half of her daughter's year lived within the neighbourhood, with only three or four living south of Highlands Road).

- The neighbourhood also has distinctive urban boundaries, serving to bind the smaller interconnecting streets within them together (a matter of some importance to HHJ Behrens in *Leeds*).
- Dr Bowes submits that it was clearly stated by witnesses that the claimed neighbourhood represents their neighbourhood, and that beyond the very busy major roads to the north, west and east lies outside their immediate neighbourhood. Witnesses were also clear that south of Highlands Road was a different neighbourhood.

(f) Dr Bowes submits that the claimed neighbourhood in this case falls into the housing estate category mentioned by Sullivan J in *Cheltenham Builders* or that of HHJ Behrens' group of interconnecting streets in the larger urban setting such as that which applied in *Leeds.* He submits that the presence of community facilities which either (i) fall physically outside the claimed neighbourhood or (ii) are used by a wider range of people than those living within the neighbourhood, is no bar to them being *'assessed in the factual matrix of cohesiveness'*. As Dr Bowes puts it: *'This is because they act as rallying points around which the neighbourhood can bind'* or, as Mr Prescott explained, that they acted as the *'glue'* which binds the *'existing community'* within the four roads. Dr Bowes says that that *'must be correct as a matter of law because facilities on a housing estate cannot be said to be for the exclusive use of the residents of that estate'*.

159. **Was the use of the land for lawful sports and pastimes?**

(a) Quite apart from the evidence of walking, with or without dogs, Dr Bowes also relies on the evidence children playing, making dens and camps etc, blackberry picking, garlic picking, collecting fallen pine cones, using the land as a destination for nature and bird watching, biking, picnicking, photography, collecting sticks and as a place to stroll for quiet reflection, sitting and listening to music etc.

(b) In the case of the use of paths on or crossing the land, where the tracks are not public rights of way (as is the case in this instance), Lightman J held in *Oxfordshire* at [2004]

Ch 253 at [103] that where there are no public rights of way over the land the registration authority should approach the matter as follows:

'… The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to, e.g., an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track, e.g., fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.'

(c) Dr Bowes submits that much of the recreational walking, with or without dogs, in this instance could not rationally be described as *'transitory'*. In particular, he cites from the evidence of the following:

- Sandra Sullivan who walked *'in a double eight' 'round and round'* the wood.
- Elizabeth Turner does a *'circuit on the paths'*.
- Stephen Pavey who also walked *'circuits of the wood'*.
- Sharon Pavey who explained that most people she saw were walking *'around'* and not *'through'* the wood.
- Jennifer Hollingshead who used *'the paths to walk around the wood'*.
- Emma Hollingshead whose route to school would not take her through the wood - she explained that she would detour off her route to play in the wood.
- Stephen Pavey who explained that the usual route to the allotments would not involve going through the wood yet he had seen people walking through the wood on their way to the allotments.

160. Dr Bowes submits that the vast majority of users did <u>not</u> use the wood as a place of mere transit. He says that the use is on all fours with the criteria for qualifying user laid down by Lightman J in *Oxfordshire*. In this instance, he argues, *'there is plainly sufficient LSP to justify registration of the land'*.

161 Has the use been continuous? Dr Bowes submitted that it had in that there was before the public inquiry evidence spanning the entire qualifying period. Indeed, there was evidence of user dating from the late 1960s. In the circumstances, Dr Bowes submits that I should find that the use of the land for informal recreation had been continuous.

162. **Was the use permissive or otherwise by right?**

(a) It is common ground that the effect of the signage erected on 9/01/2013 rendered subsequent use permissive.

(b) It was not alleged by the objector that use prior to 9/01/2013 would have been permissive. Nor was it alleged that user was either *Barkas 'as of right'* or otherwise subject to an implied permission arising from the way in which the wood was managed and/or as a result of the exercise of statutory powers.

(c) Dr Bowes submits that the only inference that can properly be drawn on the evidence is that the objector and its predecessor tolerated the consistent recreational use and chose to acquiesce in it. That choice, Dr Bowes submits, viewed objectively, can only mean that the use of the land has matured into a legal right which justifies registration.

163. **Can the registration authority lawfully determine this application?**

(a) Dr Bowes also deals with the *res judicata* issue. However, in light of his concession in his closing submissions, Mr Clay is <u>not</u> claiming (in my view, quite rightly) that a *res judicata* estoppel precludes the registration authority from determining this application on its merits.

(b) I think Dr Bowes is right when he submits that the decision on the part of the registration authority to consent to the withdrawal of the 2012 application was <u>not</u> a final decision on the merits of the application. As such, no *res judicata* arises.

Submissions of the objector

164. **Quality of the applicant's evidence**

(a) Mr Clay submits that the EQs should be treated with great caution unless they are supported by witnesses who appear at the inquiry. He is clearly right about this. He does though accept that they are of some evidential importance insofar as they comprise a large number of consistent statements which do indicate that such use of the land which did take place consisted predominantly of walking (with or without dogs) and cycling on journeys between destinations outside of the site itself, rather than the recreational activity of walking within the land itself.

(b) For instance, Mr Clay submits that most of those responding appear to have ticked the boxes which are concerned with walking to other destinations - school, allotments, Leatherhead, and the recreation ground. He also says that they are consistent in being marked by an absence of the evidence of user that would be expected to be provided in support of any successful application. In fact, Mr Clay goes as far as to say that the application stands or falls almost entirely on the basis of the evidence heard and submissions made at the public inquiry which, he says, was unsupported by any independent corroboration from anyone who did not have a direct stake in the outcome.

165. Mr Clay concedes that at no time during the qualifying period was the application land held for purposes which permitted informal public recreation to take place on the land. Essentially the land was held for the purposes of the wide-ranging statutory health functions of SCC and, after 21/07/1993, of the various NHS bodies mentioned above.

166. **Sufficiency of use**

Mr Clay submits that the numbers supporting the application are insufficient to justify registration. He also says that in the case of those seen by oral witnesses, the evidence linking these individuals to the claimed neighbourhood was very tenuous and *'unconvincing'*.

167. **Neighbourhood**

(a) Mr Clay rejects the claimed neighbourhood which he said had gone through a number of changes. Indeed, in her own oral evidence the applicant said that she thought the area that formed her own neighbourhood was actually wider than that shown on App/1.

(b) Mr Clay submits that the area chosen as her neighbourhood by the applicant lacked cohesion and failed to meet the statutory test. He contended that many of the witnesses called by the applicant were influenced in their choice of area by leaflets and a meeting of supporters at the home of Susannah Golding. Indeed, the applicant confirmed in cross-examination that only those living within the *'neighbourhood'* were invited to give evidence in support of the application.

(c) Mr Clay submitted that the claimed neighbourhood was merely part of the urban area of Leatherhead which happened to surround the land. He said it was arbitrarily chosen and was not recognisable as a community in its own right and had no relationship with the administrative districts, wards or parishes of the area. He said its boundaries were vague and self serving and largely corresponded to the area within which most of the applicant's friends and neighbours and her chosen witnesses lived.

(d) It was said that the area has no particular character or social cohesiveness other than that created for the purposes of the application and a number of witnesses accepted in cross examination that their friends and community went wider than the area claimed which seems to have been based on the geographic spread of her witnesses.

(e) Mr Clay submitted that the boundaries of the claimed neighbourhood were not precise and appeared to cross or run along different sides or the centre of roads. The identified *'neighbourhood'* had arbitrary boundaries and, save from proximity to the site, had nothing to identify it as a neighbourhood or locality to enable it to meet the statutory test. Some parts have no relationship to manmade or topographical features. It was also said that the area is highly mixed, has no coherence in terms of its architecture, physical character, or its uses, or social or administrative community. It relies largely on community facilities, shops, library, theatre etc which are outside the defined area and which are used by a much wider catchment.

168. **Use of the land for LSP**

(a) Mr Clay invites me to find that the overwhelming majority of the applicant's references to use in the EQs refer to use which is of a transitory nature and he relies on the evidence of Mr Hindson who mentioned a number of matters:

- use of footpaths for walking between destinations outside the wood and for dog walking;
- that he had seen bike tracks on the paths which indicated that cyclists rode through the wood travelling between destinations;
- that he had never seen children playing in the wood;
- he described one occasion in 2012/13 when he found evidence that someone (he imagined children) had constructed a bike jump from planks of wood;
- that he had never seen anyone picking blackberries in the wood.

(b) Mr Clay submits that the evidence of walking, with or without dogs, or cycling was limited to a very small number of local residents and the use for children's play appears to have been only sporadic and mainly associated with use by children from adjoining properties in Highlands Avenue.

(c) It is also claimed that some of the tracks simply linked domestic garden gates with the principal paths, and I was reminded of the vendor's indemnity when the application land was transferred to SCC in 1969.

(d) It is said that the use of the land was low key and/or intermittent and the evidence suggests only very limited use by a small minority of the inhabitants of the claimed neighbourhood. Mr Clay also submits that casual bird watching while out walking in the wood is not LSP. I do not accept this.

(e) Mr Clay submits that most of the wood is not even capable of being used for LSP and should not even be considered for registration. He reminds me of what the applicant said in 2012 in support of her original application, namely that only around 45% of the land was accessible. This seems to me to be an under-estimate by reference to what

one sees at the moment - clearly more trees have fallen over the last 3 years. John Hindson also says that only around 45% of the land is accessible by way of footpaths.

(f) Mr Clay submits that the presence of paths is not in itself evidence of recreation and would also have varied over time. It is also said that walking to the school, to the allotments and into Leatherhead is an activity which is consistently recorded on the applicant's EQs and the majority of the completed forms refer principally or only to this activity. It is further submitted that it would be reasonable to infer that Mr Hindson's observations of what was happening on the land after 2012 would have applied before-hand. The weight of the applicant's case on qualifying use is also said by Mr Clay to be undermined by the absence of independent evidence i.e. from someone with no interest in the outcome of the application.

(g) Mr Clay submits that user is primarily referable to rights of way type use and is not explicable on the basis that the whole of the land on either side of footpaths is also used for informal recreation. Accordingly, while the objector may have gained the impression that people were using the paths for access and passage, the nature of the user has been such as not to give the outward appearance of use of the wood for LSP as of right. In other words, it is submitted that the predominant use of the land is that of the use of the paths which would be more consistent with right of way or highway use rather than the exercise of TVG rights and reference is made to the decisions in *Laing Homes* and *Oxfordshire* and to how the claimed user would have appeared to the landowner.

(h) Mr Clay also submits that the objector has not acquiesced in any significant wider use of the wood because (i) the nature of the user was such that it would not appear to represent a right to use the whole of the woods for LSP; (ii) other than walking on the paths, the level of use was so trivial and sporadic elsewhere that it would not have appeared to the reasonable landowner to be the assertion of the right claimed; and (iii) that the main user appears to be associated with use of footpaths or casual activities ancillary to such use, such as dog walking or bird watching, which would not be perceived by the landowner as the assertion of the much wider right to indulge in LSP throughout the whole of the wood.

169. **For a period of 20 years**

I think the point being made under this head turns on the claimed infrequency in relation to the evidence in the case of the children's bike jumps which seems to have been limited to children and their friends living in Highlands Avenue which was sporadic.

170. **As of right**

I take this head out of turn but Mr Clay is raising two issues on 'as of right' which I think properly fall under other heads. Firstly, he mentions that of statutory incompatibility which is one of construction and I deal with this separately. Secondly, he says that the use relied on would not have given the outward appearance of use as of right over the whole of the land. The main issue, of course, is whether the use would appear to a reasonable landowner as referable to the exercise of a right of way along a defined route or referable to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, then it shall be ascribed to the lesser right, i.e. a right of way. This is an issue relating to qualifying LSP rather than 'as of right'.

171. **Statutory incompatibility**

Submissions of the objector

(a) The objector contends that section 15 of the 2006 Act should not be interpreted as extending to the land since registration would conflict with the statutory purposes under which it was held by the public bodies in question during the qualifying period.

(b) *Newhaven* is cited, in particular the leading judgement of Lord Neuberger and Lord Hodge (with whom Lady Hale and Lord Sumption agreed). The landowner's argument was set out at [75]:

'NPP's argument is that section 15 of the 2006 Act should not be interpreted as extending to the Harbour because it was reasonably foreseeable that registration of the Beach as a town or village green would conflict with the port authority's future exercise of its statutory powers".

At [76] Lord Neuberger continued:

'There is no express exclusion [from section 15 rights] *of land held by statutory undertakers for statutory purposes. Therefore any restriction on the scope of section 15 would have to be implicit. NPP argues that statutory incompatibility provides that restriction.'*

(c) The objector rightly contends that no statutory enabling power exists which would confer power on an NHS body to grant the public recreational rights on land held for health purposes. That will not, of itself, however, prevent a green from being registered: see *Newhaven*, at [80] (per Lord Neuberger).

(d) Lord Neuberger said this at [91]:

'It is ... significant in our view that historically in both English law and Scots law, albeit for different reasons, the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired land for specified statutory purposes and continued to carry out those purposes, where the user founded on would be incompatible with those purposes.'

(e) In *Newhaven*, the Supreme Court considered the vires of the statutory body (in that case the port authority) and whether there was incompatibility between registration of the application land (i.e. Newhaven beach) as a TVG and the statutory purposes for which Parliament had authorised the landowner to acquire and hold such land. The court concluded at [92]: "*[In] our view the matter does not rest solely on the vires of the statutory body but rather on the incompatibility of the statutory purpose for which Parliament has authorised the acquisition and use of the land with the operation of section 15 of the 2006 Act.*"

(f) The objector continues that the court then defined the question at issue at paragraph [93]:

'The question is: "does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?" In our view it does not. Where

Parliament has conferred on a statutory undertaker powers to acquire land compulsorily and to hold and use that land for defined statutory purposes, the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes." *Where there is a conflict between two statutory regimes, some assistance may be obtained from the rule that a general provision does not derogate from a special one (generalia specialibus non derogant), which is set out in section 88 of the code in Bennion, "Statutory Interpretation" 6th ed (2013):*

"Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed."

While there is no question of repeal in the current context, the existence of a lex specialis is relevant to the interpretation of a generally worded statute such as the 2006 Act.'

(g) And at [94-95] Lord Neuberger continued:

'There is an incompatibility between the 2006 Act and the statutory regime which confers harbour powers on NPP to operate a working harbour, which is to be open to the public for the shipping of goods etc on payment of rates (section 33 of the 1847 Clauses Act). NPP is obliged to maintain and support the Harbour and its connected works (section 49 of the 1847 Newhaven Act), and it has powers to that end to carry out works on the Harbour including the dredging of the sea bed and the foreshore (section 57 of the 1878 Newhaven Act, and paras 10 and 11 of the 1991 Newhaven Order).

[95] The registration of the Beach as a town or village green would make it a criminal offence to damage the green or interrupt its use and enjoyment as a place for exercise and recreation - section 12 of the Inclosure Act 1857 - or to encroach on or interfere with the green - section 29 of the Commons Act 1876. See the Oxfordshire case [2006] 2 AC 674, per Lord Hoffmann at para 56.

(h) The objector says that the beach in *Newhaven* was being used for LSP and the Court did not need to rely on evidence of actual port use of the beach:

(i) Lord Neuberger continued:

'[96]. In this case, which concerns as working harbour, it is not necessary for the parties to lead evidence as to NPP's plans for the future of the Harbour in order to ascertain whether there is an incompatibility between the registration of the Beach as a town or village green and the use of the Harbour for the statutory purposes to which we have referred. Such registration would clearly impede the use of the adjoining quay to moor vessels. It would prevent the Harbour authority from dredging the Harbour in a way which affected the enjoyment of the Beach. It might also restrict NPP's ability to alter the existing breakwater. All this is apparent without the leading of further evidence.

[97] NPP has also suggested that vessels en route to and from other parts of the port might have to reduce speed in circumstances where such reduction would not be desirable to maintain the stability of the vessels. It also led evidence of proposals to unload materials for an offshore wind farm on the Beach. But we do not need to consider such matters in order to determine that there is a clear incompatibility between NPP's statutory functions in relation to the Harbour, which it continues to operate as a working harbour, and the registration of the Beach as a town or village green.'

(j) The objector submits that the decision in *Newhaven* turned on the fact that although the beach was not actually being used directly for harbour purposes, it was nevertheless operational land and part of the Harbour and held for those statutory purposes, and registration would impede the NPP in the exercise of its statutory functions.

(k) The cites from [101-102] in *Newhaven* where Lord Neuberger said this:

[101] … The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility. By contrast, in the present case the statutory

harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour.

[102] In this context it is easy to infer that the harbour authority's passive response to the use by the public of the Beach was evidence of an implicit permission so long as such user did not disrupt its harbour activities ...There has been no user as of right by the public of the Beach that has interfered with the harbour activities. If there had been such an assertion of right it would not avail the public, because the 2006 Act cannot operate in respect of the Beach by reasons of statutory incompatibility."

(l) The objector then poses this question: would registration of the land be incompatible with the statutory functions under which it is held?

He makes these points.

(i) The land was in 1993 transferred to the relevant NHS Trust by the Secretary of State for Health as part of a single contiguous landholding together with the adjoining Leatherhead Hospital and the rest of the land surrounding it, comprising car parks, lawns and wooded areas. Ms Condry's statement at paragraph 11 states:

*'On 20 September 1993, the Leatherhead Hospital site (including the Wood) was transferred from the Secretary of State for Health to Epsom Healthcare NHS Trust by way of a transfer order of the same date. I attach a copy of the completed Inland Revenue Particulars relating to this transfer as Exhibit "**AZC3**". The area of land transferred is shown edged red on the plan attached to this document.*"

(ii) The land edged red on the Plan attached to AZC3 forms a single contiguous area which includes the hospital and its grounds, as well as the land.

(iiii) SCC and the relevant NHS bodies held (and continue to hold) this land for the purposes of its health functions. As Mr Clay puts it: *'It is now held as part and parcel of the same title as the Hospital and its fate is inextricably linked to that of the hospital.'*

(iv) Although the land is very different in character to that of Newhaven beach, the two cases are analogous. The Beach is part of the *'operational land'* of the Harbour and the land is held, with other land, for health purposes.

(v) The term *'Operational land'* is a planning term and is defined in section 263 of the Town and Country Planning Act 1990 as *'land which is used [by a statutory undertaker] for the purposes of carrying on their undertaking'*. [The term *'statutory undertaker'* is any one of those bodies mentioned in section 262(1) and involves railways, tramways, road and water transport, canal and inland navigation, dock, harbour, pier or lighthouse undertakings or airport operators.]

(vi) Although the hospital is clearly not a statutory undertaker and the land is clearly not operational land within the meaning of the 1990 Act, the objector nonetheless submits that because the land is and was being held for health purposes by a public body it should be regarded as being analogous with the operational land of a port operator which is a statutory undertaker. The fact that every part of the land identified as being held for those purposes is not at any given time being used does not affect its status as land held for those purposes.

(vii) The objector claims that at no time after 1993 was any distinction drawn by the Secretary of State between the operational site of the hospital and the application land. The objector submits that *'the fate and function of the Site cannot be severed from that of the Hospital Site and its grounds. It is part of the same Title, held for the same purposes and to be available to the NHS for any of its statutory health functions, to be treated, in terms of its status, as part of the working Hospital land. The possible future need to use the land for the improvement or expansion of the hospital services that the PCT provides is no different, in principle, from, for example, the future works to alter the breakwater relied on by the SC in Newhaven, to establish statutory incompatibility.'*

(viii) The objector says that should the expansion or improvement of the Hospital services require the land, or any part of it, then there can be little doubt that its registration as a TVG would be capable of frustrating or impeding the exercise of its powers in respect of land which it holds for health purposes.

Submissions of the applicant on statutory incompatibility

(m) The applicant says that the fact that the land may be held within the same title as the operational hospital site does not mean that it is to be treated as part of the working

hospital. The submission of the objector (premised on the decision in *Newhaven*) that registration of the land would give rise to statutory incompatibility is denied.

(n) Five submissions are made by the applicant in answer to the plea of statutory incompatibility.

(i) The objector's very wide interpretation of the doctrine would have the net effect of removing from the 2006 Act every public body which held land for statutory functions which, if it chose to exercise, would be frustrated by registration of its land as a TVG. That is plainly not the intention of Parliament. It is particularly apposite to mention what was said by Lord Neuberger at [101] in Newhaven:

'In our view, therefore, these cases do not assist the respondents. The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour.'

(ii) The court in *Newhaven* did not in fact cast the doctrine in the very wide terms advanced by the objector. In the first place, the doctrine was held to apply only to land held *and operated* for a particular statutory purpose (see Lord Neuberger at [93]) compared to land merely in the ownership of an authority which might be used for a particular purpose inimical to TVG use in the future (see Lord Neuberger at [101]). In the second, the court did not choose to overrule, confine or even disapprove of the three cases cited at [98]-[100] for which the registration of the land as a TVG frustrated the proposed exercise of the public authorities' statutory powers.

(iii) The doctrine depends upon a statutory construction by reference to the rule that general legislative provisions do not allow derogation from a special one (see Lord Neuberger at [93]). The special provision at issue in *Newhaven* was a statutory duty to *'maintain and support the harbour'* (section 49 of the Newhaven Act 1847). The application land formed a part of the operational land of the harbour even though it was not actually used as such. It was part-and-parcel of the land to which a statutory duty to maintain and support applied. As such, the Supreme Court found an

incompatibility with the duty at s.49 Newhaven Act 1847 and registration of the land as a TVG (at [94]).

(iv) By contrast there is no similar special duty imposed upon the NHS which would permit derogation from the general application of the scheme of the 2006 Act. Reference was made to the general duty on the Secretary of State at section 1 of the National Health Service Act 2006 as being an analogous duty to section 49 of the 1847 Act. This is wrong.

First, because section 1(1) requires the Secretary of State to *'continue the promotion in England of a comprehensive health service designed to secure improvement …'*, it does not place a duty on the Secretary of State merely a target, as the Court of Appeal held in *R v North & East Devon HA ex parte Coughlan* [2000] 2 WLR 622 (considering the materially identical wording of the 1977 Act) (per Lord Woolf MR at [22]). The fact the Secretary of State does not, in fact, secure *'a comprehensive health service'* is immaterial provided he has regard to the target to attempt to secure one to meet its objectives (per Lord Woolf MR at [25]).

Secondly, and in any event unlike section 47 of the 1847 Act there is no duty upon the Secretary of State to secure a health service on the application land. It is, therefore, incorrect to say that there is a duty of any kind to do anything on the application land. The point is best illustrated by reference to its enforcement: a claim for judicial review could not be sustained against the NHS for disposing of the hospital site and the land for a non-health purpose *per se*, whereas a claim might well be sustained against the port authority for disposing of land comprising part of the operational harbour in Newhaven because Parliament has specifically required it to maintain and support Newhaven harbour.

(v) Dr Bowes says that even if that is wrong, the land still cannot rationally be said to form part of the working hospital land in contrast to the man-made beach in Newhaven which was part of the working harbour to which a specific and narrow statutory duty fell upon the port authority to maintain and support. The beach was in fact part of the operational land of the statutory port undertaker (at [8]). The definition of operational land (which concerns land of statutory undertakers) is *'land which is used [by a statutory undertaker] for the purposes of carrying on their undertaking'.* The

land here is not used and never has been used by the NHS for the purposes of carrying on their undertaking (of health care functions). Indeed, it has been fenced off from the hospital site for the entirety of the qualifying period.

(o) Accordingly, the applicant submits that it has no case to answer on statutory incompatibility.

Further submissions of the objector in reply on the issue of statutory incompatibility

(p) The objector does not accept that its approach on this issue would have the effect of excluding all public authorities from the ambit of section 15; nor does the decision in *Newhaven* narrowly confine the doctrine of statutory incompatibility to (a) operational land (b) statutory undertakers, and (c) public bodies whose powers arise from a special Act.

(i) The objector does not cast the doctrine as widely as the applicant suggests. It is accepted that the court did not seek to extend the doctrine to local authorities who might in future wish to develop land: *Newhaven* [101]

(ii) The position of local authorities is entirely different from the NHS. Local authorities and some other public bodies (e.g.: development corporations) have a range of express powers to hold land for open spaces and recreation and are therefore in a position to protect their position regarding public access to land by holding land for recreational purposes under a swathe of powers, including e.g. Open Spaces Act 1906, as well as powers to dedicate land for recreational purposes when held for e.g. highways, housing or planning.

(iii) The Courts have been willing to infer that where such power exists (for example the 1906 Act) and where land has been used for recreation by the public, it can be inferred that it holds the land under such powers, even where it is not held or appropriated for other purposes: see *Naylor* at [45] and, indeed, the ratio in *Barkas*. For these reasons, following *Barkas*, local authorities with powers to hold land for recreational purposes are largely immune from claims under section 15.

(iv) By contrast, the NHS has no power to hold land for public recreational purposes. It is only able to hold land for 'NHS' purposes.

(v) In enacting the 2006 Act, it cannot have been intended by Parliament that those public bodies who hold land only for health purposes and are unable to prevent prescriptive rights from being created, are nevertheless subject to section 15.

(vi) The objector's case is that the scope of the doctrine of statutory incompatibility is much narrower than that attributed to it as *'every public authority which holds land for statutory purposes'* by the applicant in her further submissions, and would apply to a relatively narrow band of public bodies which have no power to hold land as recreational open space and which are thereby precluded from relying on the decision in *Barkas*.

(vii) *Newhaven* recognised the relevance of this at [79] in describing the private law of prescription: *'As prescription is based on the fiction of a grant, a landowner who could not have granted the claimed easement cannot suffer prescription'.*

(viii) The point is explored further at [91]:

'As we have said, the rules of prescriptive acquisition apply only by analogy because Parliament in legislating for the registration of town and village greens has chosen similar wording (indulging 'as of right' in lawful sports and pastimes) in the 1965 and 2006 Acts. It is, none the less, significant in our view that historically in both English law and Scots law, albeit for different reasons, the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired land for specified statutory purposes and continued to carry out those purposes, where the user founded on would be incompatible with those purposes. That approach is also consistent with the Irish case, McEvoy v Great Northern Railway Co [1900] 2 IR 325, (Palles CB at 334-336) which proceeded on the basis that the acquisition of an easement by prescription did not require a presumption of grant but that the incapacity of the owner of the servient tenement to grant excluded prescription.'

(ix) The objector acknowledges that this is not the complete answer: see *Newhaven* [92]:

'In this case if the statutory incompatibility rested only on the incapacity of the statutory body to grant an easement or dedicate land as a public right of way, the Court of Appeal would have been correct to reject the argument based upon incompatibility

because the 2006 Act does not require a grant or dedication by the landowner. But in our view the matter does not rest solely on the vires of the statutory body but rather on the incompatibility of the statutory purpose for which Parliament has authorised the acquisition and use of the land with the operation of section 15 of the 2006 Act." [emphasis added]

(x) In other words, the statutory incompatibility may arise where both (a) the public body has no power to hold land for recreational purposes; and (b) the use of the land for section 15 user would be incompatible with the exercise of the statutory purposes.

(q) In response to the applicant's submission that the court in *Newhaven* did not cast the doctrine in the wide terms advanced by the objector:

(i) The objector says that *Newhaven* addressed all possible future activities of the port operator. It was also unnecessary for the port operator to show current interference with its operational activities. Indeed, there was an express finding that *'There has been no user as of right by the public of the Beach that has interfered with the harbour activities"* [92]. It is, therefore, unnecessary, in order to demonstrate statutory incompatibility, to show either (a) that there is current active use of the land for statutory purposes, or (b) proven actual conflict between the relevant statutory purposes and the claimed user as of right.

(ii) The three cases at [98] to [101] of *Newhaven* are distinguished by the Supreme Court on the basis that (a) there was no statutory incompatibility alleged, and (b) the question did not arise. All three cases related to local authorities. None related to NHS or NHS purposes.

(r) There is nothing in the *Newhaven* decision which restricts the doctrine to statutory undertakers who hold the land under a *duty*, such as that involving the duty under section 49 of the 1847 Act. Rather, the decision is concerned with, and repeatedly uses the term, *'purposes'*. Statutory incompatibility is not confined to rights which conflict with *duties*, but arises wherever there is a conflict between those rights and any statutory *purposes*, whether they are established in the form of powers, duties or functions. The ratio of *Newhaven* is that it is not possible to acquire rights by prescription against a public authority which had acquired land for specified statutory

purposes when the use of the land for those purposes would be incompatible with those statutory purposes: [91]

(s) The objector says that the applicant is wrong in not applying the doctrine to operational hospital land.

(i) The objector relies on the full definition of *'operational land'* in section 263 of the Town and Country Planning Act 1990 and associated regulations which are much more complex than the short definition in subsection 1(a). Section 263 provides as follows:

'(1) Subject to the following provisions of this section and section 264, in this Act 'operational land' means, in relation to statutory undertakers:

(a) land which is used for the purpose of carrying on their undertaking

(b) land in which an interest is held for that purpose.

(2) *Paragraphs (a) and (b) of subsection (1) do not include land which in respect of its nature and situation, is comparable rather with land in general than with land which is used or in which interests are held,, for the purpose of carrying on of statutory undertakings.'*

(ii) The curious wording of subsection (2) is for the purpose of excluding shops, offices, showrooms and dwelling houses even if used in some way for the undertaking: see discussion in Encyclopaedia of Planning Law Vol 2 at P263.04 and *Minister of Fuel and Power ex p. Warwickshire County Council* [1957] 1 WLR86; 8P&CR 305.

(iii) Moreover the definition of operational land does apply expressly to certain land acquired with the intention of using it for the purpose of the undertaking where the acquisition occurred before 1968. For the full explanation of the term, the inspector is referred to the relevant pages of the Encyclopaedia of Planning Law Volume 2 at P263 and P264 which makes it clear that land can acquire the status of *'operational land'* through a range of different means, including having at one time had temporary planning permission for development which would, if carried out, involve its use for the purpose of carrying on the undertaking, even if that permission is spent and has expired.

(iv) In short, *'operational land'* is not concerned only with land in active use for the purposes of the statutory undertaking.

(v) The doctrine does not distinguish between land which is, at any given time, being *actively* used from land which may, at any time, be inactive but would qualify as being *'in use'* in the sense of being held for that purpose. The term *'use'* in the definition of Operational Land in the TCPA 1990 is not concerned with distinguishing active use *within* the land held by statutory undertakers for their statutory undertaking, but rather with distinguishing land which is held for their statutory functions by one means or another, and land which is not. Port authorities and other statutory undertakers are often large private companies (e.g. BAA) which may hold land for whatever purpose they please and their land holdings may and usually does include both *'operational land'* and land which is not *'operational land'*.

(vi) In the case of Leatherhead Hospital the application land is (a) part of the same title, and (b) is held under identical powers for identical functions and purposes. In any case, *Newhaven* does not suggest that the beach was in such active use, nor had any interference with the statutory duties or purposes occurred as a result of the use of the beach for LSPs.

172. **Locality of polling district XB**

Submissions of the applicant

(a) Dr Bowes submits that a polling district can amount to a locality for the purposes of the 2006 Act. In *Paddico (267) Ltd v Kirklees Borough Council* [2012] EWCA Civ. 262 Sullivan LJ approved the commentary in *Halsbury's Laws of England* that a locality is:

'…some legally recognised administrative division, as for instance a county, a hundred, a forest, a region of marshland, a city, a town or borough, a parish, a township within a parish, a villa, a hamlet, a liberty, a barony, an honour, or a manor'.

(b) A polling district is defined by reference to section 18A of the Representation of the People Act 1983. It is, therefore, the applicant asserts a *'legally recognised administrative division'.*

(c) Dr Bowes mentions that Sullivan LJ overruled the finding of Vos J in *Paddico* that a conservation area could be a locality. As previously indicated, he said this at [2012] EWCA Civ 262 at [29]:

'It is true that its boundaries are legally significant, but they are legally significant for a particular statutory purpose, and those boundaries would have been defined by reference to its characteristics as an area "of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance" (see section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990) – rather than by reference to any community of interest on the part of its inhabitants.'

(d) Although not mentioned specifically by Dr Bowes, again in *Paddico*, Carnwath L.J also stated at [62]:

'The alternative suggestion of the Conservation Area seems wholly implausible, since it is not a description of a community, and in any event it was not in being for the whole of the relevant period. I accept that, where one has an historic district to which rights have long become attached, it may not matter if subsequently the boundaries are affected by local government reorganisation, so long as it remains an identifiable community. However where the relevant locality does not come into existence in any legal form until after the beginning of the relevant twenty year period, it seems to me impossible to show the necessary link.'

(e) Dr Bowes submits that a polling district's boundaries are defined in accordance with strict rules, as set out in section 18A(3) of the 1983 Act:

'(3) The following rules apply–

(a) the authority must seek to ensure that all electors in a constituency in its area have such reasonable facilities for voting as are practicable in the circumstances;

(b) in England, each parish is to be a separate polling district;

(c) in Wales, each community is to be a separate polling district;

(d) in Scotland, each electoral ward (within the meaning of section 1 of the Local Governance (Scotland) Act 2004) is to be divided into two or more separate polling districts.'

Dr Bowes continues by stating that it is as such a requirement that polling districts are defined by reference to *'community of interest[s] on the part of its inhabitants'* because it is a statutory requirement to preserve existing communities. He says that that legislative requirement is re-enforced by the Electoral Commission Guidance at 5.15:

'The following should be considered as part of the assessment of the suitability of polling district boundaries:

Are the boundaries well-defined? For example, do they follow the natural boundaries of the area? If not, is it clear which properties belong in the polling district?

Are there suitable transport links within the polling district, and how do they relate to the areas of the polling district that are most highly populated? Are there any obstacles to voters crossing the current polling district and reaching the polling place e.g. steep hills, major roads, railway lines, rivers?'

(f) Dr Bowes also points out that *'polling districts'* is used as an example of a *'locality'* by the editors of *Gadsden* at 14-26.

(g) Dr Bowes submits that the clear object of local custom is certainty. The full text of the section of *Halsbury's Laws* (Vol/12(1) at para/616) approved by Sullivan LJ in *Paddico* reveals this objective. As such, the requirement is not whether the polling district is visible on a map (in the sense, I take it, of having definable boundaries) but rather if it is sufficiently certain, as *Halsbury's Laws* explains:

'A custom must be certain in respect of the locality where it is alleged to exist … Some definite limit must therefore be assigned to the area in which the custom is said to obtain'.

(h) Dr Bowes therefore submits that a *definite limit* <u>does</u> reveal itself from the polling district and *Paddico* represents no barrier to recognising a polling district as a locality. Dr Bowes does, however, accept that the boundaries of the polling district will have

changed but he says that this does not preclude its recognition as a locality in law for the purposes of the 2006 Act. He cites three authorities in support of this proposition.

(a) *Bremner v Hull (1866) LR 1 CP 748*: this case concerned a dispute involving the correct basis for the elections of churchwardens in the parish of Prestwich in Lancashire, a matter regulated by custom. The claimant had established what would otherwise have been a custom as to the election of the churchwardens. However, it objected to the custom on the basis that in 1848 the township of Whitefield had been severed from the parish and became a new district. Before that time, the arrangements for churchwardens from the township of Whitefield had been the same as those in respect of the other five unsecured townships. Erle CJ held that the 1848 change was not relevant to establishing a custom on the basis of 20-year custom:

'As to the effect of the order in council creating Whitefield a new district, I am unable to see any difficulty. Taking away the care of souls in a portion of a parish or district does not affect the cure of souls in the rest of the parish or the rights, powers and duties of the ecclesiastical officers appointed thereto.'

(b) *R v Inhabitants of the Hundred of Oswestry (1817) 6 M & S 361* concerned the obligation of the inhabitants to maintain a bridge over the River Tanah. Originally, the Hundred of Oswestry had comprised 60 townships, but in 1543 another was established by statute. Abertanah, had transferred from the county of Merioneth in Wales. It was thus argued that Abertanah was not liable to maintain the bridge. However, the High Court rejected the argument holding that the Hundred of Oswestry had a legal existence independently of its precise boundaries. Holroyd J stated:

'Although the hundred has varied at different times in its component parts, still it may be charged as a hundred immemorially.'

(c) In *Leeds Group v Leeds CC* [2010] EWHC 810 (Ch.) at [89] HHJ Behrens held that notwithstanding that Yeadon had ceased to exist in 1937 on its own terms, it still was capable of being a locality because the boundaries of Yeadon were *'defined'*.

(i) In light of these authorities, Dr Bowes contends that the *'overriding policy objective'* in customary law is that of certainty of entitlement (see *Halsbury's Laws* at Vol.32 para.16). He submits that the relevant polling station, which is the candidate locality in this instance, qualifies at it is:

- known to the law as defined pursuant to statute;
- defined by reference to the convenience of its inhabitants as a matter of law;
- certain at the point of registration because of the statutory list of streets.

Submissions of the objector on the claimed polling station locality

(j) Mr Clay makes the point that the chosen locality was not specifically relied on by the applicant herself or any of her witnesses in their evidence. There is, of course, no reason why it should be as a locality either exists in law or it does not. There is, for instance, no necessity to show that it is a cohesive community as applies in the case of a statutory neighbourhood.

(k) Mr Clay submits that a polling district is neither an administrative district nor an area with legally significant boundaries. It is no more than a bare list of addresses and is more akin to a postal code. It is an area within which electors are required to use a certain polling station. It has nothing to do with the community and they hold nothing in common other than a shared polling station which they are required to use at elections.

(l) Dr Clay submits that there is no precedent for a polling district. He also says that the older cases [*Bremner* and *Oswestry*] in relation to custom, relied on by the applicant, do not assist in determining whether a polling district is a locality for the purposes of the 2006 Act. He argues that the essential component of certainty is absent in that the applicant is unable to identify the existence of the current boundaries throughout the whole of the 20 year qualifying period. He clearly relies on the fact that the current polling district only came into being in February 2013 once the 20 year qualifying period had expired. He says that the applicant has produced no evidence to identify where the boundaries of the polling station were either at the beginning or end of the qualifying period. Moreover, he says that the polling district has no boundaries shown

on any published document and merely comprises a list of addresses falling within its catchment.

(m) As Mr Clay puts it, whilst sympathising with the applicant's difficulties in obtaining information in relation to the predecessor polling districts, we are nonetheless bound by what Carnwath LJ said in *Paddico* at [62]:

' ... where the relevant locality does not come into existence in any legal form until after the beginning of the relevant twenty year period, it seems to me impossible to show the necessary link.'

Nor, he says, does it enjoy *'a community of interest'* (Sullivan LJ at [29]) who says in the case of a Conservation Area that it does not exist *'by reference to any community of interest on the part of its inhabitants.'* In dealing with this in his closing oral submissions, Mr Clay distinguished a ward which returned members and polling stations which did not.

Late submissions from the applicant on locality

(n) Dr Bowes sent me a further submission in which he stated that the applicant had been informed by County Councillor Tim Hall (a current member of SCC representing Leatherhead as well as being a member of MVBC between 1988-2010) who evidently chaired the SCC committee responsible for overseeing the boundary changes in 2013 which led to the change in what Dr Bowes describes as the *'ward patterns and the need to change polling districts'*. Mr Hall has evidently confirmed to the applicant that since 1988 there has always been a polling district B within the ward of Leatherhead South. It only received the addition of an 'X' in 2000 (as it is put to me):

'because the first letter represents where the ward comes on the list of wards (each ward is given a letter (e.g. X in the case of Leatherhead South) and then another letter to denote a polling district, e.g. B - thus Leatherhead South Polling Districts are XA, XB, XC, and XD).'

(o) Dr Bowes says that Mr Hall is able to confirm that the only change in the boundaries of the polling district since 1991 has been the relocation of the properties around Tyrrells

Wood and Highlands Farm (of whose location I am unaware) to the new polling district XC in 2013 (this is to the East of the A24).

(p) On the face of it, I am being told that the boundaries of the relevant polling district (that is, by reference to the list of its constituent streets) have been constant throughout the qualifying period with the exception of the two areas which moved into the next polling district of XC.

(q) Dr Bowes therefore says that this means that there is now sufficient clarity when it comes to the boundaries of the claimed locality and the position is consistent with the ratio of *Oswestry* and *Bremner*. The point is that variations in the extent of the subject locality will not necessarily destroy the custom.

173. **Further submissions from the applicant on neighbourhood**

(a) Dr Bowes submits that neighbourhood can be shown *'by very mundane characteristics'*. Reference is made to the obiter dictum of HH Judge Behrens QC in *Leeds Group Ltd v Leeds CC [21010] EWHC 810 at [98-107]*. Dr Bowes emphasises (a) the fact that the claimed neighbourhood is contained within 3 roads (the so-called *'hard-edged urban boundaries'*) and (b) the fact that there is a change in character in the case of the settlement to the south of Highlands Road and his outline closing submissions at [29] in which he mentions the various facilities to which reference has already been made herein ranging from the church (which actually lies outside the boundary of the claimed neighbourhood) and St Mary's Primary School (now closed)). An important point made by Dr Bowes is that the boundary roads constitute *'distinctive urban boundaries, serving to bind the smaller interconnecting streets within them together'*. I certainly see the point being made by Dr Bowes about this but I think cohesiveness calls for something more than an area which is merely bounded by distributor roads otherwise the term *'neighbourhood'* in the 2006 Act would be practically meaningless.

Further submissions from the objector on neighbourhood

(b) Mr Clay submits that the *'factual situation fatally undermines the applicant's position'*. He says the claimed neighbourhood has *'no particular cohesion, other than one which is thrown along the roads which surround a group of people who have completed a*

proforma/questionnaire'. He also reminded me that some of the applicant's witnesses, even the applicant herself, were not supportive of the boundaries of the claimed area.

(c) Mr Clay also submits that the area was somewhat contrived in that the applicant's case on the claimed neighbourhood seems to have been restricted to those who gave oral evidence. He also questions the exclusion of those features which were relevant to cohesiveness.

Discussion

174. **Sufficiency of use as of right for LSP on the land for at least 20 years (I shall be dealing with statutory incompatibility, locality and neighbourhood under separate heads)**

(a) Numerically, the application had ample support. As indicated, 54 individuals provided statements and EQs of whom 22 gave oral evidence. Of those giving oral evidence, 7 were 20 year plus users, another 7 were users for between 10 to 15 years with the remaining 8 having used the land for less than 10 years. In addition, albeit with some overlapping, there was a grand total of 362 EQs. If one turns to App/1, one sees the dashed blue line marking the boundaries of polling district XB. Within this area there are 1,644 electors (see email of Shaun Hughes dated 19/05/2015 at A1/E43). We have no population figures as such for either the claimed locality or the claimed neighbourhood (which are relatively small areas) but it seems to me that, without more, the numbers of those who supported the application to register were sufficient to justify registration.

(b) One has, of course, to look at all the evidence in the round to determine whether the number of people using the land would have been sufficient to signify that it is in general use by the local community for informal recreation. My impression of the evidence as a whole is that the claimed use for LSP was sufficient.

(c) Those who gave oral evidence all said that they observed others using the land and it is reasonable to assume that a number of these individuals would have lived within the claimed locality/neighbourhood in view of its proximity to their homes. Moreover, the written evidence of those who did not give oral evidence is also largely consistent with

and supportive of the oral evidence given by the applicant's witnesses in relation to the use of the application land for more than twenty years without permission or objection.

(d) The analysis of Sullivan J in *McAlpine Homes* at [73-77] is also very helpful under this head. It is clearly material that the land (for which the landowner had no use) is within easy walking distance of local housing and is plainly suitable for dog-walking and children's play. It is also easy to access the wood and there were no signs forbidding entry. Generally the circumstances were entirely consistent with the contentions of the applicant's witnesses that people were using the wood for informal recreation without restriction.

(e) Very sensibly, no issue was taken on spread as it was obvious that the supporters of the case for registration were adequately spread throughout the claimed locality/neighbourhood. This can be seen on the plan at O1/86A.

(f) No issue arises on *'as of right'*. There were no vitiating features in play which would preclude use as of right and the application land was at no time held by SCC or by any of the various NHS bodies mentioned herein for purposes which conferred an entitlement on members of the public to use the land for informal recreation. For instance, there was no evidence of any overt act or acts on the part of the objector, or its predecessor, to demonstrate that, before January 2013, the landowner was granting an implied permission for local inhabitants to use the wood. No issue either was taken on interruption. On the face of it, time did not stop running during the qualifying period.

(g) It seems to me that one can look at the expressions *'LSP'* and *'on the land'* together. In the case of LSP, there were credible accounts from a number of witnesses who spoke of their use of the wood as a place for informal recreation. This would have been mainly walking, with or without dogs, and children's play. The wood is an ideal environment for those who simply wish to wander around under the trees where there is plenty of space for dogs to roam off the lead. The place has much to commend it in environmental terms and there are plenty of openings off the main paths in which children can play, build camps or simply fool around on their bikes. There are a number of interconnecting paths and one can see just how easy it is to walk circuits around the wood, not least for those looking for a relatively short walk near their home.

The main 2/3 paths running through the wood are plainly heavily used. Grass no longer grows on these paths where the earth is very compacted and I consider that they would provide firm ground to walk on even in the wetter parts of the year.

(h) I have already indicated what my findings are in the case of each of the applicant's witnesses all of whom I found to be credible witnesses whose evidence I accept save that in the case of Timothy Jones I suspect that he may well have exaggerated the amount of photography which he did in the wood.

(i) In making this finding I have borne in mind that people are not very good at recalling accurately events that occurred some time ago. This reflection applies to many witnesses (on either side) at TVG inquiries, seeking to recall conscientiously events of many years ago. It will apply particularly where the events in question, such as walking dogs and playing with young children etc, are not of a kind to be particularly memorable. It applies with equal force to evidence which has not been subject to cross-examination. I also bear in mind that those giving evidence for the applicant will often be those who feel most strongly about development and who wish the wood to be retained for continuing recreational use. It seems to me that the overall pattern of events in the case of the wood, not least in relation to its long-standing planning status, is consistent with the evidence of the applicant's witnesses when taken as a whole, rather than giving undue emphasis to the evidence of particular witnesses.

(j) I turn next to LSP and the assertion (in effect) that the wood has predominantly been used as a place of transit on the established paths rather than as a destination in its own right for LSP. The law under this head has already been addressed (*Laing Homes* and *Oxfordshire* [47]) and, as it seems to me, the questions I have to decide fall within a narrow compass, namely (a) whether any proven use of the land was in the nature of transit over defined routes, and (b) whether any use outside these defined routes would have been only occasional and/or ancillary to the exercise of putative rights of way over the land. In my view, purely transitory use would undoubtedly have taken place but it was not the only or main use as I consider that there would also have been substantial use of the wood for LSP, such that it would have been plain to a reasonable landowner on the spot that such use was referable to a right to enjoy

recreation over the whole of a wider area of land rather than the lesser right, i.e. of a right of way.

(k) I have borne in mind those passages within *Laing Homes* [102-105] which require me to discount user which would suggest to a reasonable landowner that users believed they were exercising a public right of way which would include situations where a dog off the lead roams freely outside the footpath whilst its owner remains on the footpath or where owners are forced to retrieve their dogs which have run away from the footpath or where walkers casually or accidentally stray from the paths without any intention of going onto other parts of the application land. In my view, dog-walkers are liable to be using the tracks and roaming elsewhere within the wood. As I say, there are a number of interconnecting tracks on what is a small compact site. This is not, for instance, a case involving circular paths around fields or that of a single path or short cut leading to a specific destination (say shops) beyond the land where one might reasonably expect a flow of pedestrian traffic using the land mainly for the purposes of transit. This, however, is a case involving a small wood with a plethora of tracks which is likely to be magnet for local dog-walkers and children looking for somewhere interesting to play not too far away from their homes. Having said that, I do accept that the wood would have been used as a place of transit for parents and children walking to and from St Mary's Primary School yet, by the same token, there was evidence of children's play on the way home after school. For instance, Mrs Hollingshead said that what should have been a 5 minute walk home from the playgroup and, later on, the primary school, usually lasted for 30 minutes with the children finding things of interest to do in the wood such as collecting nuts, fir cones or looking out for the wildlife. Sometimes their school friends would join them.

(l) I should address the issue of *'on the land'*. The objector asserts that not all of the land would have been used for LSP. If this is right then I have to consider severance. As previously indicated, it is my impression that around 60-70% of the wood is reasonably accessible for LSP. This is not a case like *Oxfordshire* where only 25% of the land area, which was scrubland, was occupied by paths and clearings which would have been reasonably accessible to what was described as the hardy walker. Despite this, the House of Lords still found that such a narrow area of use would not necessarily be

inconsistent with a finding that there was recreational use of the land as a whole. As Lord Hoffmann put it at [67]:

'For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk'.

In the event, the House of Lords chose not to interfere with the factual finding of the inspector, taking the view that every case depended on its own facts.

(m) It is clearly understood that the expression *'on the land'* in section 15 does not mean that the registration authority has to look for evidence that every square foot of the land has been used. In my view, in determining whether it can sensibly be said that the whole of the land in this instance is registrable, the correct approach is to determine whether the unused areas are in fact integral to the enjoyment of the land as a whole. A wood such as this is a case in point. There are areas of mature growth which are unused or used only occasionally but they are palpably integral to the enjoyment of the wood as a whole. It would be absurd to sever out these unused areas.

175. **Statutory incompatibility**

(a) Put shortly, the issue is whether land held for the statutory purposes of the NHS falls within the same category as land held by a statutory undertaker for the purposes of its operations such that, consistently with the decision in *Newhaven*, the land in this instance would not be registrable as a matter of law.

(b) I have set out the competing submissions of the parties on this issue at [171] and, having considered the matter carefully, I prefer those of the applicant under this head.

(c) I agree with the applicant that the fact that the application land forms part of the same freehold title as the hospital site should not mean that it must be treated as part of the working hospital site when, as a matter of fact, it plainly is not and never has been.

(d) I also agree with the applicant's submission that the objector’s case on statutory interpretation would in practice emasculate the provisions of the 2006 Act when it came to land held by public bodies for specific statutory functions. This can hardly

have been parliament's intention and support for what the applicant argues can clearly be found from what was said by Lord Neuberger at [101] in *Newhaven*:

'The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour.'

(e) Dr Bowes rightly draws attention to what Lord Neuberger said at [93], namely that the doctrine was held to apply only to land that was acquired and held by a statutory undertaker (which does not apply in this instance) whose continuing use (because of the conflict between the applicable statutory regimes) would be inconsistent with its registration as a TVG. In *Newhaven* the operational land of the harbour (of which the beach formed part) was subject to statutory provisions which imposed on the undertaker a positive duty to maintain and support the operational land of the harbour which, in the event that works had to be executed in a way which affected the public's use of the beach were it registered as a TVG, there would be an obvious and irreconcilable clash as between the conflicting statutory regimes. The position of the NHS is quite different in that no positive duty (analogous to that imposed on the undertaker in *Newhaven*) arises on the part of the landowner to do anything in the case of the land (in contrast to *Newhaven*) and the general duty imposed on the Secretary of State to promote a comprehensive health service is wholly unaffected.

(f) It seems to me that it is irrelevant that the land may be held under the same title as the remainder of the hospital site. The fact that the relevant NHS bodies had (and still has) the capacity to use the land for health and ancillary purposes is no different to any other public body holding land for a purpose which they do not choose to exercise for the time being. As Dr Bowes says, in *Barkas* at [66] Lord Carnwath explained that land in public ownership is not outside the 2006 Act and to suggest that any land held for purposes inimical to TVG rights would be outside the 2006 Act would be absurd, not least as it might give rise to unnecessary speculation and debate about what the landowner's future intentions were for the land in contrast to the wholly proper analysis which, in my view, arises from *Newhaven* which focuses on the specific duty or duties

which are imposed on a landowner (in its capacity as a statutory undertaker) with regard to its holding and management of the land which would clash with registration of the land as a TVG. As indicated, no such conflict impacts on the holding of the land in this instance in the performance of the statutory health functions of the NHS and those bodies through whom they are discharged.

(g) Nor do I accept either that the principle in *Newhaven* applies only to those public bodies which have no power to hold land for public recreation since it might mean in practice that all or most publicly held land is outside the 2006 Act. This is because land held for statutory purposes which embraces the principle in *Barkas*, or which otherwise entitle local inhabitants to use the land for recreation, would be non-qualifying, as would land held by public bodies with no powers to permit recreation such as might apply, for instance, in the case of land held for education. In my view, if registration was to have been avoided during the relevant qualifying period in this instance then the answer was permissive signage or making user contentious.

(h) I therefore take the view that the doctrine of statutory incompatibility has no application in this case.

176. **Is a polling station a locality in law?**

(a) I agree with the submissions of the objector on this issue. The claim being made by the applicant is not one for which there is any authority which would bind the registration authority to accede to this submission.

(b) Mr Clay is, in my view, right when he submits that a polling district is not a qualifying locality within the meaning of this term where it is first used in section 15(3). I accept that a polling district is an area with legally significant boundaries but it has nothing to do with any community of interest on the part of its inhabitants. It is concerned entirely with the practicalities of administering the electoral process within a given area and has no reference to any community of interest on the part of its inhabitants (see *Paddico* at [29] and [62]). It is not as if polling districts return members.

(c) In arriving at the above view, I have taken into account the current Guidance of the Electoral Commission when it comes an overview of the legislative requirements when it comes to polling districts and polling places.

For instance, at 5.15 it is stated as follows under the heading *'Polling Districts'*:

'The following should be considered as part of the assessment of the suitability of polling district boundaries:

- *Are the boundaries well-defined? For example, do they follow the natural boundaries of the area? If not, is it clear which properties belong in the polling district?*
- *Are there suitable transport links within the polling district, and how do they relate to the areas of the polling district that are most highly populated? Are there any obstacles to voters crossing the current polling district and reaching the polling place e.g. steep hills, major roads, railways lines, rivers?'*

The foregoing matters plainly focus on the administrative practicalities at elections.

(d) Whilst I accept that polling districts may well be chosen for the convenience of its inhabitants, it seems to me that this is not a description of a community falling within the meaning of the term locality where used in section 15(3). If it did then the term 'locality' would, in my view, be devoid of any coherent meaning at all and could feasibly embrace legally significant boundaries of more or less any description without having any credible relationship at all with the claimed TVG, and, in my view, this cannot have been the statutory intention.

(e) A further difficulty facing the applicant under this head is that she is unable to identify with any or adequate precision the boundaries (or even its existence) of the relevant polling district (or any of its predecessors serving the area) throughout the whole of the relevant qualifying period. What we have is a current polling district created in February 2013 once the qualifying period had already expired. As Carnwath LJ stated in *Paddico* at [62]:

' ... where the relevant locality does not come into existence in any legal form until after the beginning of the relevant twenty year period, it seems to me impossible to show the necessary link.'

(f) On the face of it, however, in view of the claimed evidence from Mr Hall, it seems that the applicant may now be able prove this. As indicated above, the late submission from Dr Bowes dated 1/06/2015, if true (and there is no suggestion that the information coming from Mr Hall is or is likely to be erroneous), suggests that the applicant is now able to demonstrate with sufficient clarity both the existence and boundaries of the polling district throughout the qualifying period. On the other hand, although the current process is admittedly an informal one, it is, as it seems to me, very unfortunate indeed that on such an important point as this the applicant was unable to lay out such evidence on the final day of the inquiry. I do not know what Mr Clay thinks about this new information emanating from Mr Hall and which comes to me via the applicant and then through her counsel without any verifying documentation in support. I suspect that Mr Clay would be calling on me to ignore it as it is unsupported by any credible documents and also comes very late in the day. At any rate, it was still open to Mr Clay to deal with this in further submissions but he has chosen not to do so and, accordingly, I deal with the matter on the basis of the evidence as it has been presented to me which I take to be accurate.

(g) However, because of the view I take on the inability of a polling district to constitute a locality in law I do not consider that anything turns on this evidence from Mr Hall.

177. **Neighbourhood**

(a) The term 'neighbourhood' is an ambiguous term. It may mean *'the vicinity'* of a place or a person (see e.g. *Stride v Martin [1897] 77 LT 600*) but it may also refer to an area that is recognisable as having a degree of coherence such that people would recognise it as being separate or different from the areas immediately surrounding it. It is, in this sense, that the term 'neighbourhood' is used in the 2006 Act. It seems plain to me that a neighbourhood must be understood as meaning a cohesive area which is capable of meaningful description in some way. But beyond that it has no particular requirement, and whether the claimed neighbourhood is made out is a question of fact.

(b) In my view, it must, I think, be substantially a matter of impression whether the claimed area is a neighbourhood or not. My impression, and my considered view having heard the evidence and visited the area, is that the claimed neighbourhood is not a

neighbourhood within the meaning of the 2006 Act. Whilst it is correct that it is enclosed within busy, or relatively busy, roads, it did not seem to me that the character of the residential areas differed substantially or significantly from that within the adjoining areas.

(c) The residential properties comprised a mix of styles and ages and there was nothing in the way of facilities (that is, with the exception of the land itself) serving predominantly the claimed neighbourhood and none other. There are undoubtedly a number of community facilities located within the claimed neighbourhood but without exception these facilities serve (or rather served in the case of St Mary's Primary School) a much wider catchment. In these cases, one is always on the lookout for local shops or true community facilities such a small parade of shops with a post office, licensed premises, local schools, churches and the like, in other words, the sort of facilities that create a self-contained small community. It is the absence of those features which would indicate that one would need to see some other factor indicating cohesiveness but, with the exception of the land itself and perhaps the allotments as well, there is very really nothing beyond the fact that many of the applicant's witnesses, when asked to cast their mind to it, considered that their neighbourhood was simply the area in their own particular vicinity or where their friends mainly lived. I also think that most of the applicant's oral witnesses were unduly influenced by being presented with App/1 in their support of the claimed neighbourhood.

(d) It was also significant that a number of the applicant's witnesses took the view that the neighbourhood should in fact have been more extensive than claimed. In other words, there was no unanimity amongst the applicant's witnesses that App/1 was the true neighbourhood. See, for instance, the evidence of the applicant herself (who it seemed to me - as she herself accepted - did not really have a correct understanding of the terms neighbourhood and locality) and that of Sandra Sullivan, Julia Jarrett, Ken Ellis, Les Prescott, Heather Ward, Michael Brian and David Brett. For instance, more than one witness was puzzled as to why the church was not included within the claimed neighbourhood (whereas the church hall on the other side of the road was) which struck me as a bizarre omission. Indeed, it was the evidence of Imani Ayimba-Golding that she attended a Sunday club at the church hall in Church Road. Evidently they would all troop across the road to the church at the end of the morning service.

(e) Lastly, this neighbourhood had no name. That is not a necessary requirement, but if there is historical cohesiveness in respect of an area, one might expect it to have acquired some form of collective description.

(f) I have also borne in mind that when Parliament amended the Commons Registration Act 1965 to permit registrations to take place by reference to *'a neighbourhood within a locality'* it intended to make it easier to register TVGs, and did so by allowing them to be registered by reference to a concept that was not precise either as to definition, or as to boundary (see *Oxfordshire* per Lord Hoffmann at [27]). However, notwithstanding this, my conclusion for the reasons I have set out above (i.e. because the area does not have sufficient individual cohesiveness or community identity) is that the claimed neighbourhood is not a 'neighbourhood' within the meaning of the 2006 Act.

(g) It seems to me that if Parliament had intended that a neighbourhood should be interpreted to mean the area in which the recreational users reside, then it would have said so. Moreover, whilst I accept that the bar is set low in the *Leeds Group* litigation, having been to the area in this case and heard the evidence, I take the view that, as a matter of fact and degree, the applicant has fallen well short of what is required to be proved in order to satisfy the neighbourhood element.

178. **Findings of fact and recommendation**

(a) I find that a significant number of the local inhabitants of the claimed locality shown within the blue dashed lines on App/1 (being the polling district XB within the Leatherhead South ward of MVDC) indulged as of right in LSP on the whole of the land for the period of at least 20 years ending on or about 9/01/2013.

(b) I find that a significant number of the local inhabitants of the claimed neighbourhood shown within the red lines on App/1 and falling within the locality of Leatherhead South ward also indulged as of right in LSP on the whole of the land for the period of at least 20 years ending on or about 9/01/2013.

(c) I find that the objection advanced by the objector that the land was not registrable on the ground of statutory incompatibility was not made out.

(d) I find that the claimed locality is <u>not</u> a locality within the meaning of section 15 of the 2006 Act.

(e) I find that the claimed neighbourhood is <u>not</u> a neighbourhood within the meaning of section 15 of the 2006 Act.

(f) Because the applicant has failed to satisfy all the elements necessary to justify the registration of the land as a TVG, my recommendation to the registration authority is that the application to register (under application number 1869) should be <u>rejected</u>.

179. Under reg.9(2) of the 2007 Regulations, the registration authority must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be *'the reasons set out in the inspector's report dated 9/06/2015.'*

William Webster

12 College Place

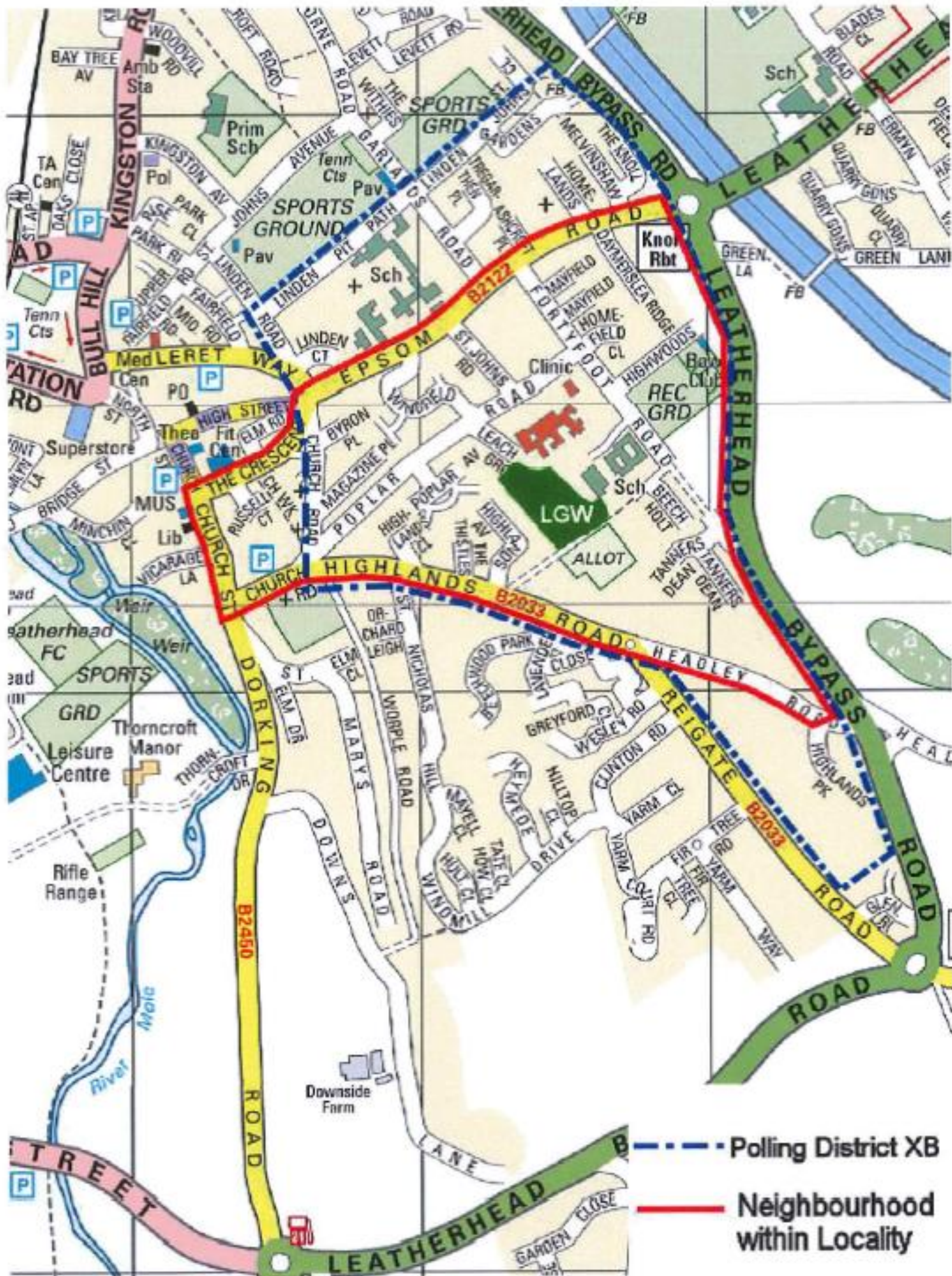
SOUTHAMPTON

SO15 2FE

Inspector

9th June 2015

Appendix 1


Polling District XB
Neighbourhood within Locality
EPSOM ROAD
B2122
HIGHLANDS ROAD
B2033
LEATHERHEAD BYPASS ROAD
DORKING ROAD
B2450
REIGATE ROAD
LEATHERHEAD ROAD
Knoll Rbt
SPORTS GROUND
LGW
Downside Farm
Thorncroft Manor
Leisure Centre
Rifle Range

Appendix 2

SURREY COUNTY COUNCIL COUNTY VALUER'S DEPT.

LAND IN FORTYFOOT ROAD, LEATHERHEAD.

AREA COLOURED PINK : 7·1 ACRES. (APPROX)

SCALE : 1/1250

PREPARED BY | CHECKED BY | O.S. 1756

SURREY COUNTY COUNCIL
COUNTY VALUER'S DEPT.

56

3530

Appendix 3

O.S. Ref	TQ 1756 SW
Drawn by	
Date	9.5.86
Completed by	B C
Checked by	GT
Scale	1:1250

SURREY COUNTY COUNCIL, VALUATION AND ESTATES DEPARTMENT

PROPERTIES IN FORTYFOOT ROAD & LEACH GROVE LEATHERHEAD

PROPERTY SERVICES DEPARTMENT
DIRECTOR — I.G. BOBBETT

Valuation & Estate Management Division
County Hall
Kingston upon Thames
KT1 2DW

File Ref 5711 & 2572
Date 20-5-92
Plan Reg. No CV 47264
Plan File No D599

59

Appendix 4

Leatherhead Hospital (General)

POPLAR ROAD

WINDFIELD

Sherborne Walk

LEACH GROVE

POPLAR AVENUE

FORTYFOOT ROAD

Fortyfoot Recreation Ground

Bowling Grn

Health Clinic

Woodlands School

Swimming Pool

Radbroke

Fortyfoot Hall

Sub Sta

Tank

Poplar Road C of E Primary School Annexe

Estate Management Services

REPRODUCED FROM THE ORDNANCE SURVEY MAP WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE, CROWN COPYRIGHT RESERVED

EXTRACT FROM O.S. SHEET NO. TQ 1756 NW, SW

location	Leatherhead Hospital		
project ref.			
job			
title			
drawn		checked	
scale	1:1250	date	19 June 1991
approved		traced	
drawing no.	RB/MDS/MO/11.	rev.	

62

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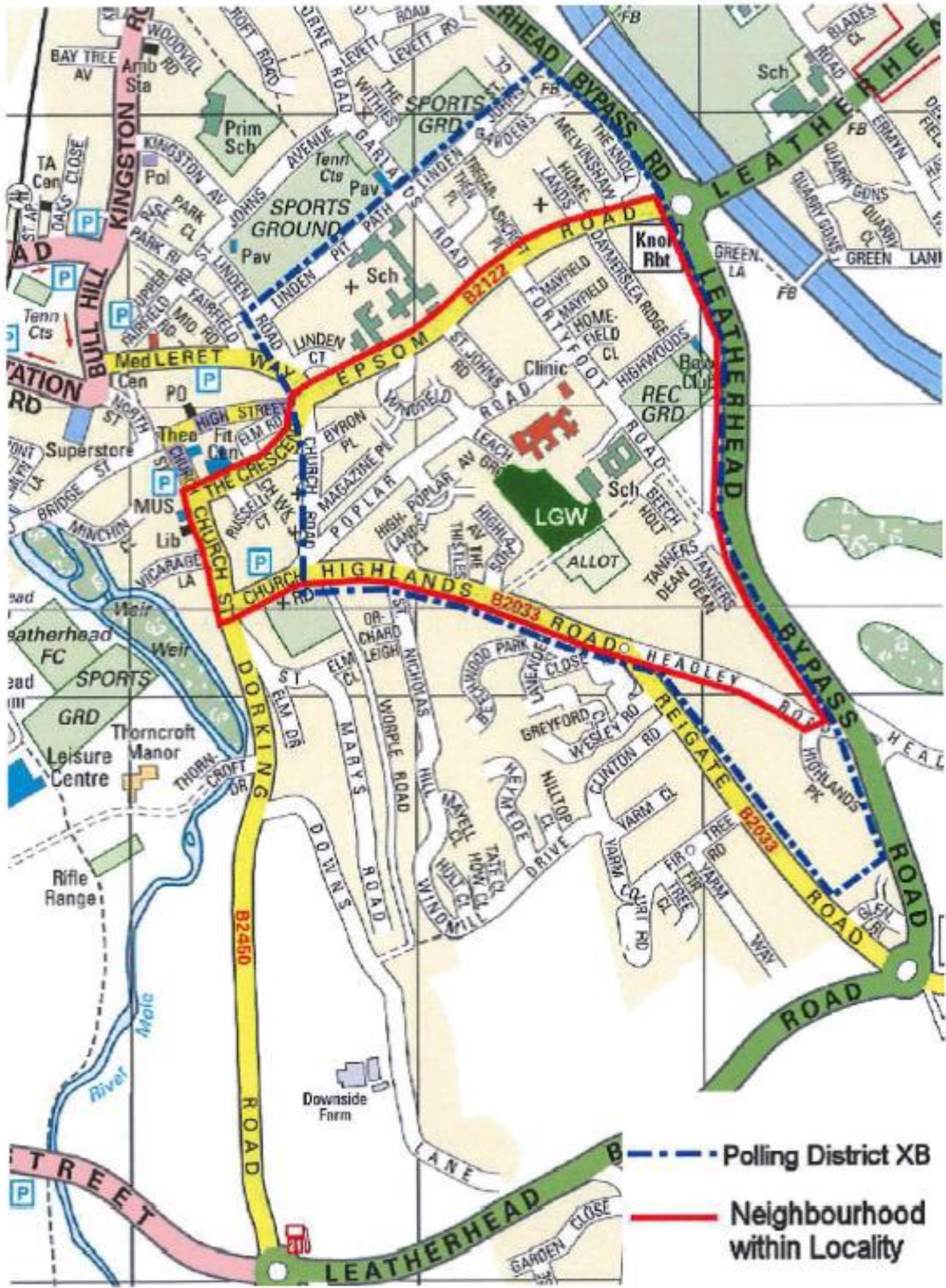
Polling District XB
Neighbourhood within Locality

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