

**PLANNING AND REGULATORY COMMITTEE  
NOTICE OF MEETING**

**Date:** Wednesday, 20 June 2018  
**Place:** Ashcombe Suite, County Hall, Kingston upon Thames, Surrey KT1 2DN

**Contact:** Huma Younis or Emma O'Donnell, Room 122, County Hall  
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[For queries on the content of the agenda and requests for copies of related documents]

**APPOINTED MEMBERS [11]**

Tim Hall (Chairman)	Leatherhead and Fetcham East;
Matt Furniss (Vice-Chairman)	Shalford;
Mary Angell	Woodham and New Haw;
Natalie Bramhall	Redhill West & Meadvale;
Stephen Cooksey	Dorking South and the Holmwoods;
Edward Hawkins	Heatherside and Parkside;
Ernest Mallett MBE	West Molesey;
Andrew Povey	Cranleigh & Ewhurst;
Mrs Penny Rivers	Godalming North;
Keith Taylor	Shere;
Rose Thorn	Godstone;

**EX OFFICIO MEMBERS (NON-VOTING) [4]**

David Hodge CBE	Leader of the Council	Warlingham;
John Furey	Deputy Leader	Addlestone;
Peter Martin	Chairman of the Council	Godalming South, Milford & Witley;
Tony Samuels	Vice-Chairman of the Council	Walton South & Oatlands;

**APPOINTED SUBSTITUTES [11]**

Mike Bennison	Hinchley Wood, Claygate and Oxshott;
Nick Darby	The Dittons;
Jonathan Essex	Redhill East;
Will Forster	Woking South;
David Goodwin	Guildford South-West;
Richard Hampson	Haslemere;
Nick Harrison	Nork & Tattenhams;
Julie Iles	Horsleys;
Yvonna Lay	Egham;
Chris Townsend	Ashtead;
Richard Wilson	The Byfleets;

**Register of planning applications: <http://planning.surreycc.gov.uk/>**

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## AGENDA

### 1 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

To receive any apologies for absence and notices of substitutions under Standing Order 41.

### 2 MINUTES OF THE LAST MEETING

(Pages 1 - 24)

To confirm the minutes of the meeting held on 23 May 2018

### 3 PETITIONS

To receive any petitions from members of the public in accordance with Standing Order 84 (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 85 (please see note 8 below).

### 5 MEMBERS' QUESTION TIME

To answer any questions received from Members of the Council in accordance with Standing Order 68.

### 6 DECLARATIONS OF INTERESTS

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter

- (i) Any disclosable pecuniary interests and / or
- (ii) Other interests arising under the Code of Conduct in respect of any item(s) of business being considered at this meeting

#### NOTES:

- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest
- As well as an interest of the Member, this includes any interest, of which the Member is aware, that relates to the Member's spouse or civil partner (or any person with whom the Member is living as a spouse or civil partner)
- Members with a significant personal interest may participate in the discussion and vote on that matter unless that interest could be reasonably regarded as prejudicial.

### 7 SP18/00282/SCC OAKLEAF FARM, HORTON ROAD, STANWELL MOOR, SURREY TW19 6AP

(Pages 25 - 60)

For the construction and use of a recycling, recovery and processing facility for construction and demolition waste on a site of approximately 9.4 hectares without compliance with Condition 3 of planning permission ref: SP17/00438/SCC dated 7 September 2017; to allow 55 heavy goods vehicles to be based at the site and to be located within the designated lorry parking area, and for 55 heavy goods vehicles (110 movements) to access and egress the

site between the hours 18:00 to 07:00 Monday to Saturday, and 13:00 on a Saturday to 07:00 on a Monday.

**8 APPLICATION FOR VILLAGE GREEN STATUS UPDATE: LAND AT LEACH GROVE WOOD, LEATHERHEAD, SURREY** (Pages 61 - 74)

The Committee is asked to note the outcome of a judicial review of a decision of this committee, regarding an application by Philippa Cargill to register land at Leach Grove Wood, Leatherhead as a Village Green.

**9 DATE OF NEXT MEETING**

The next meeting of the Planning & Regulatory Committee will be on 11 July 2018.

**Joanna Killian  
Chief Executive**

Published: Monday 11 June 2018

**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.

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**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 no later than midday on the working day before 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 policies 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.

## **TOWN AND COUNTRY PLANNING ACT 1990 – GUIDANCE ON THE DETERMINATION OF PLANNING APPLICATIONS**

This guidance forms part of and should be read in conjunction with the Planning Considerations section in the following committee reports.

Surrey County Council as County Planning Authority (also known as Mineral or Waste Planning Authority in relation to matters relating to mineral or waste development) is required under Section 70(2) of the Town and Country Planning Act 1990 (as amended) (1990 Act) when determining planning applications to “*have regard to (a) the provisions of the development plan, so far as material to the application, (b) any local finance considerations, so far as material to the application, and (c) any other material considerations*”. This section of the 1990 Act must be read together with Section 38(6) of the Planning and Compulsory Purchase Act 2004 (2004 Act), which provides that: “*If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.*”

### **Development plan**

In Surrey the adopted development plan consists of the:

- Surrey Minerals Local Plan 2011 (comprised of the Core Strategy and Primary Aggregates Development Plan Documents (DPD))
- Surrey Waste Plan 2008 (comprised of the Core Strategy, Waste Development and Waste Development Control Policies DPDs)
- Aggregates Recycling Joint DPD for the Minerals and Waste Plans 2013 (Aggregates Recycling DPD 2013)
- Any saved local plan policies and the adopted Local Development Documents (development plan documents and supplementary planning documents) prepared by the eleven Surrey district/borough councils in Surrey
- South East Plan 2009 Policy NRM6 Thames Basin Heaths Special Protection Area (apart from a policy relating to the former Upper Heyford Air Base in Oxfordshire the rest of the plan was revoked on 25 March 2013)
- Any neighbourhood plans (where they have been approved by the local community at referendum)

Set out in each report are the development plan documents and policies which provide the development plan framework relevant to the application under consideration.

### **Material considerations**

Material considerations will vary from planning application to planning application and can include: relevant European policy; the March 2012 National Planning Policy Framework (NPPF) and updates; the March 2014 national Planning Practice Guidance (PPG) and updates; National Planning Policy for Waste (NPPW) October 2014; Waste Management Plan for England 2013; extant planning policy statements; Government Circulars and letters to Chief Planning Officers; emerging local development documents (being produced by Surrey County Council, the district/borough council or neighbourhood forum in whose area the application site lies).

### **National Planning Policy Framework and Planning Practice Guidance**

The March 2012 [National Planning Policy Framework](#) (NPPF) and subsequent updates replaced 30 Planning Policy Statements, Planning Policy Guidance Notes, Minerals Policy Statements and Minerals Policy Guidance Notes and related Practice Guides, some Government Circulars and letters to Chief Planning Officers and provides consolidated guidance for local planning authorities and decision takers in relation to decision-taking (determining planning applications) and in preparing plans (plan making).

The NPPF sets out the Government's planning policies for England and how these are expected to be applied and the associated March 2014 [Planning Practice Guidance](#) (PPG) provides related guidance. The NPPF should be read alongside other national planning policies on [Waste](#), [Travellers](#), [Planning for Schools Development](#), [Sustainable Drainage Systems](#), [Parking](#), and [Starter Homes](#).

At the heart of the NPPF is a presumption in favour of sustainable development which the document states "*should be seen as a golden thread running through both plan-making and decision-taking*" (paragraph 14). The NPPF makes clear the purpose of the planning system is to contribute to the achievement of sustainable development which has three dimensions: economic, social and environmental. These give rise to the need for the planning system to perform a number of mutually dependent roles: an economic role, a social role and an environmental role. The NPPF sets out 12 core land-use planning principles that should underpin both decision-taking and plan making.

The NPPF does not change the statutory principle that determination of planning applications must be made in accordance with the adopted development plan unless material considerations indicate otherwise. The NPPF is one of those material considerations. In determining planning applications the NPPF (paragraph 14) states that development proposals that accord with the development plan should be approved without delay; and where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole; or specific policies in the NPPF indicate development should be restricted.

The NPPF aims to strengthen local decision making and reinforce the importance of up to date plans. Annex 1 paragraph 215 states that in determining planning applications local planning authorities should give due weight to relevant policies in existing plans according to their degree of consistency with the NPPF (the closer the policies are to the policies in the Framework, the greater the weight they may be given). For emerging plans the NPPF (paragraph 216) states that, unless material considerations indicate otherwise, weight may also be given to relevant policies in emerging plans according to:

- *"The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given), and;*
- *The degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."*

## **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.

**MINUTES** of the meeting of the **PLANNING AND REGULATORY COMMITTEE** held at 10.30 am on 23 May 2018 at Ashcombe Suite, County Hall, Kingston upon Thames, Surrey KT1 2DN.

These minutes are subject to confirmation by the Committee at its meeting on Wednesday, 20 June 2018.

(\* present)

**Elected Members:**

- \* Mr Tim Hall (Chairman)
- \* Mr Matt Furniss (Vice-Chairman)
- \* Mrs Mary Angell
- \* Mrs Natalie Bramhall
- \* Mr Stephen Cooksey
- Mr Edward Hawkins
- \* Mr Ernest Mallett MBE
- \* Dr Andrew Povey
- \* Mrs Penny Rivers
- \* Mr Keith Taylor
- Mrs Rose Thorn

**1/18 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS [Item 1]**

Apologies for absence were received from Mr Edward Hawkins and Mrs Rose Thorn. There were no substitutions.

**2/18 MINUTES OF THE LAST MEETING [Item 2]**

The Minutes were agreed as an accurate record of the previous meeting.

**3/18 PETITIONS [Item 3]**

There were none.

**4/18 PUBLIC QUESTION TIME [Item 4]**

There were none.

**5/18 MEMBERS' QUESTION TIME [Item 5]**

There were none.

**6/18 DECLARATIONS OF INTERESTS [Item 6]**

Dr Andrew Povey declared a non-pecuniary interest in that he was a trustee of the Surrey Hills Society.

Mr Stephen Cooksey declared a non-pecuniary interest as a Member of Mole Valley District Council (MVDC). Mr Cooksey explained that he had just been appointed to the MVDC Planning Committee; although he was not sitting on that Committee at the time of the consultation of the Bury Hill Wood application. Further, it was added that Mrs Margaret Cooksey was currently the Vice-Chairman of the MVDC Planning Committee.

**7/18 MINERALS/WASTE MO/2016/1563- LAND AT BURY HILL WOOD, COLDHARBOUR LANE, HOLMWOOD, SURREY, RH5 6HN [Item 7]**

**Two update sheets and a letter from Leith Hill Action Group were tabled at the meeting, and these are attached to these minutes as Annexes 1a, 1b, 1c.**

**Officers:**

Caroline Smith, Planning Development Manager  
Samantha Murphy, Principal Planning Officer  
Nancy El-Shatoury, Principal Solicitor

**The Principal Solicitor updated the Committee on the legal position of this application.**

1. It was explained that this application first came to the Committee for determination in October 2017. Planning permission was granted. This was subsequently challenged by Leith Hill Action Group (LHAG) with a Letter Before Action.
2. The County Planning Authority (CPA) responded to the Letter Before Action on Counsels advice, rebutting the challenge.
3. On 8 December 2017, LHAG responded with a claim for judicial review. The CPA was required to respond by 1 January 2018, in compliance with the timetable for the judicial review process.
4. The CPA sought Queen's Counsel's (QC) advice and attended a conference. QC advised that whilst LHAG's other grounds for claim were not tenable, the CPA was advised to concede because of the way Green Belt Policy had been dealt with in the planning report in October 2017. QC was of the view that a challenge could be successful on that ground.
5. The officer report had relied upon the Planning Inspectors decision when dealing with Green Belt Openness, and, it transpired that whilst his decision had not been challenged, the Planning Inspector was also in error on this point.
6. The CPA therefore advised LHAG that their application for judicial review would not be contested; and a draft order was drafted between the CPA, LHAG and the applicant's solicitors, requesting that the planning permission be quashed.
7. This order was considered by the Planning Court on 29 March 2018, and the planning permission for MO/2016/1563 was quashed.
8. The application comes afresh to the Committee for determination.

**Speakers:**

Alan Hustings, local resident, made the following points:

1. When the exploratory development was approved by the Planning Inspector in 2015, by appeal, the permission had a number of conditions attached to it. Condition 6 stated "no lights or fences other than those permitted in this application shall be installed erected at the application site".
2. As a freestanding application, to be judged on its own merits, this is simply an application for a fence and to erect some buildings in an

Area of Outstanding Natural Beauty (AONB), defined as inappropriate development in the Green Belt.

3. The Committee is being asked to approve a freestanding application, to be judged on its own merits, but the officer report then also states that this is an additional component to the hydrocarbon well-site. This is contradictory and this approach leaves the Council once again open to legal challenge.
4. A freestanding application for fences and buildings is not mineral extraction, it is inappropriate development in the Green Belt and the Committee should refuse this application.

Lucy Barford, local resident, made the following points:

1. Questioned why the application was not included in the submissions to the Public Inquiry in 2015, which would have allowed the Planning Inspectorate to make a decision with the full facts before them.
2. The 30% increased site footprint and severe visual impact could have led to the permission not being granted by the Planning Inspector.
3. Over the last nine years, the applicant has not secured any community buy in until ordered to do so by this Committee in October 2017.
4. The right to protest is part of any democracy and is included in Article 11 of the European Convention on Human Rights. Exercising of that democracy does not require additional fencing.
5. The applicant already has a security fence around the site. If the public requires additional fencing to make the site safe, the permitted development site must be unsafe by implication.
6. The application should be rejected as it is unwarranted and risks exacerbating an already tense situation.

Vicki Elcoate, local resident, made the following points:

1. Without LHAG, the Council would have taken a decision that was wrong in law.
2. The fence is unnecessary, there is already a fence on the site covering the area permitted by the Planning Inspector, in place and an injunction on the land. There have been no intrusions onto the site since the eviction of the protestor camp almost a year ago.
3. The fence would have a large environmental impact. It would not be well screened as it would run along the roadside. It would bring an unwanted industrial feel to the area, not in-keeping with the rural character of Coldharbour Lane.
4. The timeframe of the proposal is irrelevant. If a fence is erected, openness of the Green Belt will be lost.
5. MVDC unanimously raised objection on the grounds that it is inappropriate development in the Green Belt, not linked to the minerals extraction operation proposed, with no special circumstances and is an attempt to significantly amend the plan that was scrutinised by the Planning Inspectorate.
6. The application should be turned down.

Max Rosenberg, local resident, made the following points:

1. The planning permission for this application was quashed at the High Court on 29 March 2018.

2. Represents inappropriate development in the Green Belt as there is harm to openness, including visual impact.
3. The increased footprint would allow the applicant to erect industrial fencing and buildings, visible from the roadside in an AONB.
4. The Planning Inspector granted planning permission for the exploratory drilling on the understanding there would be no visibility from Coldharbour Lane. This assurance by the applicant explicitly informed his decision.
5. The Council accepted, in the consent to quash the planning permission, that any harm to openness of the Green Belt necessarily made the application inappropriate development.
6. The visual impact is indisputable, and I would encourage the Committee to refuse on the grounds of inappropriate development in the Green Belt.

Victoria Yeandle, applicant's agent made the following points:

1. The application is for a temporary period. The development proposed will be in place for 18 weeks and form an enclosure around the temporary oil and gas exploratory well site.
2. The security environment has changed substantially since the 2015 consent was granted. It is now standard industry practise to have enhanced security on sites, even for conventional on-shore oil exploration wells.
3. Europa has a duty of care to protect its employees and the public at large. The temporary security fence will maximise the safety of the operation.
4. It was acknowledged that there would be some impact on openness on the Green Belt, however it is a temporary proposal for 18 weeks and entirely reversible.
5. In close proximity, the fencing and welfare facilities would be noticeable, however this would be temporary and any visual harm is outweighed by the short term nature of the development.
6. The development is located within Forestry Commission managed woodland and is enclosed by woodland on all sides. No trees will be removed to facilitate the development. The deer fence posts will be driven in to the ground to avoid tree roots and root protection zones. The welfare facilities, office and WCs would be placed in an area where there are no trees.
7. There will be a total of 28 vehicular movements. This comprises of eight vehicular movements to drop off and collect the fencing, and 20 vehicular movements to drop off and collect the welfare facilities.
8. There will be no additional external lighting, and a condition will be imposed to reflect this.

Hazel Watson, Local Member, made the following points:

1. The site is in an AONB and Area of Great Landscape Value.
2. The proposed fencing and structures do not preserve the openness of the Green Belt, therefore constituting inappropriate development in the Green Belt.
3. The fencing would be one metre from Coldharbour Lane and therefore of an adverse visual impact for visitors and local residents. Furthermore, fencing being one metre from the road would obscure sightlines and therefore road safety would be compromised.

4. Application enlarges the site by 25%. It is questionable whether the Planning Inspector would have approved the application for oil exploration in 2015, as he relied upon the lack of visibility from Coldharbour Lane when making his decision.
5. If this application is inextricably linked to the oil exploration, then the same conditions should apply. Condition 6 would therefore mean this application would not be permissible.
6. Request the Committee to vote against this planning application.

**Key points raised during the discussion:**

1. The Planning Officer introduced the report, and advised Members of a correction to the number of representations in the report summary. The correct number of representations was 378.
2. A Member commented that given the temporary nature of the application, he was supportive of the application. A suggestion was made that an informative could be added to emphasise that the CPA would not be minded to support any permanent fencing beyond the 18 weeks, or extension to the permission.
3. A Member stated that as the proposal would not preserve the openness of the Green Belt. The applicant should have considered earlier in the process whether additional security or additional facilities would have been required. It was added that traffic arrangements had not been properly explored and that delivery of fencing and facilities would cause difficulties on Coldharbour Lane.
4. Members sought clarity on some points raised by the public speakers; particularly regarding whether this was a freestanding application or not; some detail about the existing fence and the injunction mentioned; and clarity of planning reasons as to why the footprint would be enlarging by 25-30%.
5. The Planning Officer explained that the application was freestanding in that it has its own red line boundary and cannot be a section 73 to the hydrocarbon wellsite. It is however inextricably linked to the hydrocarbon wellsite and the Secretary of State, when screening for the EIA, said that it should be seen as an overall project. The proposal would not be required unless the wellsite had permission and wasn't moving forward. The Planning Officer was unable to provide details of the terms and conditions of the injunction as she had not seen a copy of it other than to assume it was so that if people were on the land they could be removed. Regarding the existing fence, the Planning Officer explained that the fence was to protect the groundwater boreholes that were sunk in 2017. It was confirmed that the existing fence does not cover the full extent of the application site.
6. The Planning Development Manager informed Members that the Planning Inspector did foresee the potential need for additional or different fencing proposals to those included in the original application. In Paragraph 105, the Inspector said "The Environment Agency (EA) believes that the initial proposals for the fence surrounding the site may need to be reviewed to ensure that there is adequate site security."
7. The Planning Development Manager also clarified the officer report stance regarding harm to Green Belt. Previously, the report set out limited harm, mitigated by the need, limited duration and full reversibility of the development. On the basis of case law and legal advice, officers have taken the view that, due to the need, the short duration and full reversibility, there is no harm and openness is

preserved. The Planning Development Manager referred to case law (Samuel Smith vs North Yorkshire), whereby the term 'preserve' was defined as 'to keep safe from harm' rather than 'to maintain a state of things'. This site would be kept safe from harm as it would be restored to forestry use and would not impact on the openness of the Green Belt.

8. A Member commented that modern companies should know that environmental activists would be at the forefront of such an application, campaigning to protect the AONB, so this should have been pre-empted and included in the previous application.
9. A Member stated that the case provides mitigation and is fully reversible. It is not just a case about whether there is harm or not to the Green Belt.
10. A Member questioned how long the protestor camp had been erected for. The protest camp moved onto the site in November 2016. They were there until June 2017 when Europa obtained an injunction to remove them from the site, and they have since moved to the other site of the Lane. The Member further commented that the protestor camp is equally inappropriate in the Green Belt and that 18 weeks of fencing in the Green Belt was a better solution.
11. The Planning Officer clarified that the increased scale of the site is due to having a patrol zone all the way around the site.
12. Mr Stephen Cooksey moved a motion to refuse the application due to inappropriate development in the Green Belt which is harmful to the openness of the Green Belt and the visual amenities of the Green Belt. He added that there were serious highway issues that depend on the Traffic Management Plan which does not exist. There were 4 votes for this motion and 5 votes against, therefore the motion was lost.
13. Members sought clarification as to whether this application, if granted, would expire on 8 August 2018 in line with the expiry date of the oil exploratory planning permission.

*The meeting was adjourned at 11:41am whilst this point was clarified.*

*The meeting was reconvened 11:50am*

14. The Planning Officer explained that Condition 3 in the report would be amended to include a reference back to the appeal decision, stating "Within 18 weeks of the commencement of the development hereby permitted, all buildings, fencing, the generator, the water and fuel cell and the ramp 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 application site shall be reinstated to a condition suitable for forestry on or before 7 August 2018."
15. Officers clarified that by amending this condition, this tied it into the mineral extraction application so they will both expire on 8 August 2018.
16. The Chairman moved the motion to permit, subject to the amended conditions. There were five votes for and four votes against, therefore the motion was carried.
17. The Chairman advised the applicant's agent that the officer team and LHAG would welcome early insight into the applicants plans for its next steps.

**RESOLVED:**

That application **MO/2016/1563**, Land at Bury Hill Wood, Coldharbour Lane, Holmwood, Surrey, RH5 6HN be **PERMITTED**, subject to the conditions and informatives listed in the report, information included in the update sheets and the amended Condition 3 as agreed at the meeting.

**8/18 SCC PROPOSAL MO/2018/0640, THE PRIORY SCHOOL, WEST BANK, DORKING, SURREY RH4 3DG [Item 8]**

**Officers:**

Caroline Smith, Planning Development Manager.

**Key points raised during the discussion:**

1. Members were advised that this item had been withdrawn from the agenda on 22 May 2018.
2. It had become apparent at the Member site visit on 17 May 2018 that the parent drop off arrangements as described in the submitted application were not possible on the ground following the construction of fencing and gates that were not on the application drawings; nor were they there when the planning officer visited the site in April 2018.
3. The applicant has been asked to revise their arrangements before the application can be determined at a future Committee meeting.
4. A Member suggested that the applicant should be advised that the revised submission should address travel planning, as the Committee had previously taken a strong view regarding Travel Plans.

**9/18 MINERALS/WASTE MO/2017/1797- PARK PIT, REIGATE ROAD, BUCKLAND, SURREY, RH3 7BE [Item 9]**

**An update sheet, a letter from the Parish Council and a letter from the Local Member were tabled at the meeting. These are attached to the minutes as Annexes 2a, 2b, 2c.**

**Members conducted a site visit on 17 May 2018.**

**Officers:**

Stephen Jenkins, Deputy Planning Development Manager  
 Caroline Smith, Planning Development Manager  
 Andrew Stokes, Transport Development Planning Team Leader  
 Nancy El-Shatoury, Principal Solicitor

**Speakers:**

Mr Graham Hanson, local resident, made the following points:

1. Objection in relation to the inadequacy of the conditions proposed, which overrule the considered and justified proposed conditions by the local parish and district councils to sought to ensure that any activities would be low key and safeguard the natural environment.
2. Overruled conditions from the local council included making an article 4 direction to withdraw the temporary use of land rights; so that non water-based recreation activities such as triathlons and car boot fairs and craft fairs should be removed from any list of allowable activities,

as triathlons are not suitable and car boot fairs do not accord with the aims of maximising public amenity whilst minimising impact on natural environment.

3. Another overruled condition was to prevent the use of amplified music or speech in the open air or in any other temporary structure. The proposed condition prevents amplified music but leaves open the risk of noise nuisance from megaphones.
4. Object to the pavilion as it is open air structure and risks noise nuisance from group dining including at night time.
5. Object to the Surrey County Council proposal to allow extended opening hours for organised group events until midnight. There is no definition proposed to restrict size or type of groups, leaving it open for the café being used for late night parties.
6. This is a nature and wildlife preservation site, with no need for the café to be open after 6pm and certainly not midnight. There will be noise from departing cars and no means of monitoring the closing time.
7. The opening hours proposed do not support the activities as people do not birdwatch, fish or do water recreation activities at night time.

Dominic Sanders, director of the applicant, made the following points:

1. This is not a nature reserve. The vision for the site is to open it to the public for the first time ever, it is a green site balancing open recreation and public access.
2. Require some flexibility to justify making the investment in the site for infrastructure; and ongoing revenue to ensure safety, staffing and maintenance.
3. In terms of sound, activities have been addressed. Sound tests have been conducted. It has been agreed that there would be no music after 6pm and there would be black out blinds in place for any after dark use of the café.
4. The extended hours would not be a free for all and would be proportionate to the activities on-site, in particular long summer evenings.
5. Hope that opening the site to the public would be a step forward for local residents.

Key points raised during the discussion:

1. The officer introduced the report and explained that there would be some changes to the access A25 junction, subject to a condition from highways.
2. It was explained that the car parking area would be formed using existing grass rather than tarmac or concrete. It was further added that temporary buildings would be clad to remain in-keeping with the existing boathouse and the area.
3. Members raised some concern about car boot sales and how this might impact on car parking. Permitted development rights allow 28 days per year, but that could still be significant and it was questioned if anything further that could be done to pre-empt that issue.
4. A Member commented that, as a privately owned site, it was a commercial venture that would need an income generation stream in order to make the site work otherwise the public wouldn't have the opportunity to enjoy these type of sites.

5. A Member sought more detail about the ecological gains of the site. The Deputy Planning Development Manager explained that this is managed by the county ecologist in the form of an ecological plan, in synergy with the proposed uses.
6. The Transport Planning Development Team Leader stated that the application provides 150 parking spaces with an overflow for an additional 150. In addition, if there was a significant event taking place on site, the site access road was wide enough to accommodate additional cars and it was unlikely that there would be any overspill onto the A25.
7. Members noted the withdrawal of permitted development rights was not something that could be done without exceptional circumstances. Noise can be controlled by conditions. By restricting, it could impact on income generation for the site. It was added that, if an issue was to arise, the CPA can serve an article 4 direction to take away rights in relation to a permission.
8. The Chairman suggested the addition of an informative stating that all activities would need to be compatible with on-site parking. The Principal Solicitor highlighted that an informative cannot be enforced. A Member suggested the wording "The committee would strongly discourage any events that would result in parking along the A25".
9. The Chairman moved the recommendation to permit the application. Members voted unanimously in favour of the application, therefore the application was permitted.

#### **RESOLVED**

That application **MO/2017/1797** Park Pit, Reigate Road, Buckland, Surrey, RH3 7BE be **PERMITTED** subject to conditions and informatives listed in the report and the additional informative agreed at the meeting.

#### **10/18 DATE OF NEXT MEETING [Item 10]**

The date of the next meeting was noted.

Meeting ended at: 12.29 pm

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**Chairman**

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**UPDATE SHEET****MINERALS/WASTE MO/2016/1563****DISTRICT(S)** MOLE VALLEY DISTRICT COUNCIL**Land at Bury Hill Wood, Coldharbour Lane, Holmwood, Surrey RH5 6HN**

**The installation of perimeter security fencing consisting of 2 metre (m) high Heras fencing and 3m high deer fencing; an office and wc at the site entrance; and office, welfare accommodation, water fuel and a generator, all ancillary to and in association with appeal decision APP/B3600/A/11/2166561 dated 7 August 2015.**

**Paragraph text**

Paragraph 204 of the Officers report should be amended to say:

*“The development proposed in this application forms part of the exploratory well-site project and is therefore considered to be an inevitable precursor step, falling within the meaning of the words ‘mineral extraction’ as they appear in the NPPF and in Mineral Core Strategy policy MC3”*

**Government Policy and Material Considerations**

On Thursday 17 May, the Secretary of State for Business, Energy and Industrial Strategy released a Written Statement (“the Statement”) on energy policy<sup>1</sup>. The Statement states it is a material consideration in plan making and decision taking with regards to hydrocarbon development. Whilst the Statement primarily focuses on shale gas exploration, it has messages which cover hydrocarbon development generally. These include:

- *The UK must have safe, secure and affordable supplies of energy with carbon emissions levels that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations. We believe that gas has a key part to play in meeting these objectives both currently and in the future.*
- *Gas still makes up around a third of our current energy usage and every scenario proposed by the Committee on Climate Change setting out how the UK could meet its legally-binding 2050 emissions reduction target includes demand for natural gas.*
- *The ongoing decline in our offshore gas production has meant that the UK has gone from being a net exporter of gas in 2003 to importing over half (53%) of gas supplies in 2017 and estimates suggest we could be importing 72% of our gas by 2030.*
- *However, we believe that it is right to utilise our domestic gas resources to the maximum extent and exploring future the potential for onshore gas production from shale rock formations in the UK.*
- *The Government expects Mineral Planning Authorities to give great weight to the benefits of mineral extraction, including to the economy.*
- *Applications must be assessed on a site by site basis and having regard to their context.*

**Further letters of representation**

A further letter of representation has been received on this application raising the following concerns:

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<sup>1</sup> <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-05-17/HCWS690>

- Surprised the Officer report is recommending approval of this application as it is the same application that was successfully challenged by LHAG in High Court on the grounds that this is not appropriate development in the green belt.
- If this application is approved, it can be reasonably expected that LHAG would challenge it again, and the High Court would rule in their favour again. As a local resident paying council tax to you I oppose such frivolous decision making.
- Whether you impose five, 20 or 100 conditions on this development to try and make it compliant, this will not change the fact that it is inappropriate development in the green belt. I am categorically opposed to this application. It is a very unwelcome intrusion on this area and everyone who enjoys it.
- The argument about this development being temporary is absolutely ridiculous. In this case the reality of the situation, which is that Europa are drilling this well to take it to the appraisal, and probably production stage, should be recognised above the flawed planning guidance.

# LEITH HILL ACTION GROUP

*c/o Chasemore End, Coldharbour, Surrey RH5 6HF*

Caroline Smith  
 Planning Development Manager  
 County Hall  
 Kingston upon Thames  
 Surrey KT1 2DY

22<sup>nd</sup> May 2018

Dear Caroline,

## **MO/2016/1563 Redetermination**

In your recent email you invited LHAG to raise matters arising from your Officers' Report prior to the meeting on the 23<sup>rd</sup>. Whilst this letter contains little that will be new to you, it may help to bring focus to the Committee's deliberations on Wednesday. I would therefore request that it be circulated to members of the Committee as an addendum.

The question of whether this fencing application is or is not an application for mineral extraction is crucial. If it is not mineral extraction, then paragraph 90 of the National Planning Policy Framework does not apply and the proposed development is therefore inappropriate development in Green Belt which should be refused ("except in very special circumstances") (NPPF para 87).

**If this application is for mineral extraction**, then there are further conditions to be fulfilled before it can be determined not to be inappropriate development in Green Belt. One of these is that it should preserve the openness of the Green Belt. The Court quashed the October 2017 permission granted by the County Council because the County Council's conceded that the finding of "limited harm" to the Green Belt (Officers' Report ("OR") Oct 2017, para 177) could not lead to the conclusion that the openness of the Green Belt was conserved. As this (May 2018) OR says (para 211), the decision as to whether a development harms openness or not is a matter of planning judgement. Formerly, (October 2017 OR, para 177) your judgement was that "limited harm" would be caused to the openness of the Green Belt. Now (OR May 2018, para 220) your judgement is that no harm will be caused to the openness of the Green Belt. You have put forward no explanation of that change of judgement. It is open to the Committee to make a different judgement. If they do so, then the application must be refused as inappropriate development in Green Belt.

**We continue to maintain that this application is not for mineral extraction.** This was Ground 1 the Statement of Facts and Grounds for LHAG's successful claim for Judicial Review of the October 2017 decision. Because of the County Council's concession on Ground 2 (harm to openness, as discussed above), Ground 1 has not yet been tested by the Court.

At paragraph 203 of their Report, Officers cite the High Court's determination that the phrase "mineral extraction" in the NPPF also covers "the inevitable precursor steps of exploration and appraisal". They go on to say, at para 204, that the proposed development "forms part of the exploratory wellsite and is therefore **[!]** .. an inevitable precursor step" and so is mineral extraction. It is not inevitable: it was not proposed until eight years after the initial application for the primary development was made and a year after permission was granted. And the Court ruled that exploration and appraisal, where they are necessary, fall within the term "mineral extraction"; it did

not rule that any precursor step to exploration falls within the term exploration, and is therefore mineral extraction.

Further, the application is for fencing, buildings and a ramp. Not drilling.

The OR claims that the proposed development is “an additional component to the hydrocarbon exploratory wellsite” (para 168). And that it is inextricably linked to” (paras 186, 197), “inextricably associated with” (para 208), and “a part of” the approved hydrocarbon development. At the same time, paragraph 197 states “the current proposal is free-standing and must be determined on its own merits”.

We invite the County Council to reconsider its position as to whether or not this application is an application for mineral extraction. Failing that, the Committee must decide whether it agrees that the proposed development is mineral extraction, in which case the point can be determined by the Court); or whether it agrees that the proposal is free-standing and must be judged on its own merits, in which case it is manifestly not for mineral extraction and must be refused as inappropriate development in Green Belt.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Alan Hustings', with a long horizontal flourish extending to the right.

Alan Hustings  
for Leith Hill Action Group

**UPDATE SHEET 2****MINERALS/WASTE MO/2016/1563****DISTRICT** MOLE VALLEY DISTRICT COUNCIL**Land at Bury Hill Wood, Coldharbour Lane, Holmwood, Surrey RH5 6HN**

**The installation of perimeter security fencing consisting of 2 metre (m) high Heras fencing and 3m high deer fencing; an office and wc at the site entrance; and office, welfare accommodation, water fuel and a generator, all ancillary to and in association with appeal decision APP/B3600/A/11/2166561 dated 7 August 2015.**

**FURTHER LETTER FROM LEITH HILL ACTION GROUP**

- 1 A further letter of objection has been received from the Leith Hill Action Group (LHAG). This has been circulated to Members in advance of the meeting. The main points raised are as follows:
  - The Report gives no reason for the change from 'limited harm' in the October 2017 Committee Report to 'no harm' to the openness of the Green Belt in the current Committee Report. This is a matter of Planning Judgement and Members are entitled to come to their own view.
  - The proposal is not for mineral extraction and it is not an inevitable precursor to development, further it is for a stand-alone application and therefore cannot be considered to be an 'integral part of the approved hydrocarbon development'. This issue was not tested by the court previously.

**OFFICER'S COMMENT**

- 2 The planning permission that was granted by the October Planning and Regulatory Committee has now been quashed. As such, the October Committee Report has no status. Officers have reviewed and revised the approach taken to Green Belt openness on the basis of QC's advice and recent case law. Officers agree with LHAG that the determination of 'harm' is a matter of planning judgement and that Members are entitled to come to their own conclusion on this matter. Previously Officers took the view that there was 'limited harm' that was mitigated by the need, limited duration and full reversibility. On the basis of case law and legal advice received, the view is that due to the need, the short duration and the full reversibility, there is no harm and the openness of the Green Belt is preserved.
- 3 Officers do not agree with LHAG's view that the proposal is not for mineral extraction and is not an inevitable precursor. The fencing and welfare facilities are inextricably linked to the development of the wellsite and the need to maintain health and safety. The Planning Inspector acknowledged this in paragraph 105 of the decision letter for APP/B3600/A/11/2166561 where he states *'the EA believes that the initial proposals for the fence surrounding the site may need to be*

*reviewed to ensure that there is adequate site security*'. At that stage it was envisaged that it could be dealt with by a Section 73 application to vary the original planning permission. The security requirements of the site have changed in the intervening period as explained in the Committee Report and the area required for the security fencing and associated facilities now exceeds that available in the original site area, hence the need for a separate application. That this is a separate application by no means diminishes the need or the interrelationship. There would be no need for the fence if there was no proposal for exploratory drilling.

- 4 It is accepted that the recent judicial review proceedings did not consider whether or not the proposal constitutes 'mineral extraction'. As indicated above, Officers are of the view that it is 'mineral extraction' for the reasons specified, LHAG disagree.

## UPDATE SHEET - AGENDA ITEM 9

Planning &amp; Regulatory Committee 23 May 2018

Minerals &amp; Waste Application: MO/2017/1797

2

**Park Pit, Reigate Road, Buckland, Surrey RH3 7BE**

The development of Buckland Park Lake comprising: 1) a café with associated terrace and disabled parking; 2) outdoor activity centre comprising mobile units; 3) observation pavilion; 4) entry kiosk; 5) two bird hides; 6) a picnic lawn with steps; 7) children's playground area; 8) car park; 9) water tank/pond; 10) floating pontoon. All for public use in association with the approved water-based recreation and proposed land-based outdoor recreation afteruse, of the former silica sand quarry, known as Park Pit.

Please note the Committee Report should be amended / corrected as follows:

**CONSULTATIONS AND PUBLICITY**

17 AONB Officer  
No objection

26 Buckland Parish Council  
The local parish has submitted a further letter dated 18 May 2018, which has been circulated to the P&R Committee Members. Helyn Clack, the local Member has also submitted an email summarising and endorsing this response from the parish, as she cannot attend the committee meeting. The local Member asks that her email and the letter from the Chairman of the Buckland Parish Council be taken into account in the deliberation of this Item on Park Pit. The local Member states that '*Our concern being that the conditions of permission as laid out in the report need to be more robust in these specified areas to reflect the detailed and locally negotiated agreement between the community and the owners of the pit, which is supported overall by residents and myself.*'

The points raised by the parish are summed up by the local Member as follows:

- *The hours of operation for the facilities are strictly limited between 08.00hrs and 18.00hrs. All activity on the site should cease by 22.00hrs*
- *No external lighting shall be erected on the buildings with the exception of infrared (pir switched) security lighting to minimise any light pollution*
- *No use of amplified music or speech, whether live or recorded, in the open air, in a marquee or in any other temporary structure erected to support events or activities.*
- *Live or recorded amplified music or speech to be limited to within the café facility between the operational hours of 08:00hrs to 18:00 hrs.*
- *To restrict water based recreational activity to non-motorised craft with a specific exemption to allow the use of safety craft within the lagoon area subject to a requirement for the safety craft to be propelled by a battery powered (silent) outboard and fitted with a propeller guard;*
- *No fireworks are to be allowed.*

- *With the support and assistance of Mole Valley District Council ("MVDC")) to make a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 to withdraw the rights set out in part four class B 'temporary use of land'.*

#### **Officer's comment**

In response to the local Members comment regarding the agreement between the owner and the community, there was no agreement on conditions and or restricting permitted development rights.

*Hours of operation* – Officers consider that the condition is clear and enforceable, and is supported by an operational noise condition recommended by the County Noise Consultant. In view of the concerns from the parish and further guidance from the County Noise Consultant, Officers are recommending that Condition 3 be amended to cover up to 23:00 hours, for the organised evening events, and in addition a further condition covering evening noise levels, due to a lower background level.

*Lighting* – Officers consider that security lights are needed and the proposed lighting would not cause significant adverse light pollution.

*Music/noise* – Officers have amended Condition 5 (below) to restrict amplified music but see no reason to restrict amplified speech. The existing condition in respect of motorboats is considered appropriate. There are restrictions (Fireworks Regulations) on the use of fireworks and when they can be set off, however there are no restrictions on local Councils. Officers see no planning reason to ban fireworks.

*Management* – The Parish have asked for permitted development rights to be withdrawn, specifically the rights set out in Part 4 Class B 'temporary use of land', which read as follows:

*'B. The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of—*  
*(a) the holding of a market;*  
*(b) motor car and motorcycle racing including trials of speed, and practising for these activities,*  
*and the provision on the land of any moveable structure for the purposes of the permitted use.'*

The proposed temporary events which the Parish is seeking to restrict are a replacement to the initially proposed wedding party events (now withdrawn), which had the agreement of the local interested parties, in the Business Ideas Workshop referred to in the application.

The national Planning Practice Guidance states that '*Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances.*' Officers have considered this issue under para.61 of the report and point out that there would be a limited number of occasions that temporary events can take place on site, and that noise will be controlled by way of condition. A condition removing permitted development rights would not pass the test of necessity and there are no exceptional circumstances.

## RECOMMENDATION

### CONDITIONS

#### Hours of Operation

- 3 With the exception of organised group events (e.g. bird watchers, open water swimming, outdoor activity centre), 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:

08:00 – 18:00 hours

For organised group events this time period will be extended to 23:00 hours

#### Noise

- 5 No outdoor live or amplified music is permitted on site at any time.
- 8 Between 08:00 and 18:00 hours, the Rating Level, LAr(1hr), of the combined noise emissions from the plant and activities associated with the application site shall not exceed the existing representative LA90 background sound level at any time by more than +5 dB(A) at the nearest noise sensitive receptor (NSR). The assessment shall be carried out in accordance with British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound'. The existing representative LA90 background noise level shall be determined by measurement that shall be sufficient to characterise the environment and the recommended level should be justified following guidance contained within BS 4142:2014.
- 9 Between 18:00 and 23:00 hours, the Rating Level, LAr(1hr), of the combined noise emissions from the plant and activities associated with the application site shall not exceed the existing representative LA90 background sound level at any time by more than +5 dB(A) at the nearest noise sensitive receptor (NSR). The assessment shall be carried out in accordance with British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound'. The existing representative LA90 background noise level shall be determined by measurement that shall be sufficient to characterise the environment and the recommended level should be justified following guidance contained within BS 4142:2014.

Due to the addition of this new Condition 9 covering evening noise levels, Conditions 9 to 13 would be renumbered to Conditions 10 to 14

The following new conditions are also recommended to be added.

- 15 Prior to the use of the proposed fish tank, a detailed design shall be submitted to and approved in writing by the County Planning Authority. The fish tank shall be constructed in accordance with the approved design.
- 16 The floating pontoon and associated pumping equipment shall be maintained in a state of repair capable of fulfilling its emergency role or removed from the site if no longer required.

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**Item 9- MINERALS AND WASTE MO/2017/1797: Park Pit, Reigate Road, Buckland, Surrey, RH3 7BE**

*On 18 May 2018, at 14:24*

Dear Tim,

I am writing to you as Chairman of the Planning and Regulatory Committee at Surrey County Council, with regard to the Buckland Park Pit Application which is coming to your committee next Wednesday. Unfortunately I am on leave after Council on Tuesday for a few days and will not be able to attend. I am sure that if I had been able to attend you would have invited me to speak and give my view as the local County Councillor.

So instead, I hope you will accept this email and attached letter from the Chairman of the Buckland Parish Council as my contribution to the debate. Our concern being that the conditions of permission as laid out in the report need to be more robust in these specified areas to reflect the detailed and locally negotiated agreement between the community and the owners of the pit, which is supported overall by residents and myself.

These can be summed up as follows:-

- The hours of operation for the facilities are strictly limited between 08.00hrs and 18.00hrs. All activity on the site should cease by 22.00hrs
- No external lighting shall be erected on the buildings with the exception of infrared (pir switched) security lighting to minimise any light pollution
- No use of amplified music or speech, whether live or recorded, in the open air, in a marquee or in any other temporary structure erected to support events or activities.
- Live or recorded amplified music or speech to be limited to within the café facility between the operational hours of 08:00hrs to 18:00 hrs.
- To restrict water based recreational activity to non-motorised craft with a specific exemption to allow the use of safety craft within the lagoon area subject to a requirement for the safety craft to be propelled by a battery powered (silent) outboard and fitted with a propeller guard;
- No fireworks are to be allowed.
- With the support and assistance of Mole Valley District Council ("MVDC") to make a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 to withdraw the rights set out in part four class B 'temporary use of land'.

I would be most grateful if you could let me have your and your Officers views on these amendments to the report and also would be pleased if you could circulate this email and attachment to members of your committee.

I believe that if your committee can incorporate these more precise conditions as an addition to those recommended in the report, then the residents overall will support this application.

Kind regards  
Helyn

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## BUCKLAND PARISH COUNCIL

18<sup>th</sup> May 2018

Dear Helyn,

Thank you again for your help in this matter.

Further to our conversation yesterday, the following sets out what we consider to be important elements of any conditions that might be applied to the granting of planning permission.

The issue is simply that the case officer's report and the manner in which the conditions have been set out, are either ambiguous or not written in a robust enough form to be enforced; accordingly, as with all poorly written rules, they would be open to misinterpretation.

Whilst I can admit to some modest expertise with regard to planning, the wording of the suggested conditions do need to be considered and either scrutinised by the county's legal team, or wording adopted that is considered to be standard and tested.

From the Parish Council's perspective, we believe we have distilled the comments and concerns of the community as follows:

### **Hours of operation**

The report seems to refer to a number of different timings which are served to confuse and will be almost impossible to enforce. The intention of limiting hours is to avoid noisy and disruptive activities in the evening. In practice, whilst small organised events for 'birdwatchers', for example, are unlikely to have any material impact, such organised groups do not need to use the café facility etc. Accordingly, we would suggest that the restrictive condition is simplified as follows:

*The hours of operation for the facilities are strictly limited between 08.00hrs and 18.00hrs*

*All activity on the site should cease by 22.00hrs*

### **Lighting**

One reason for limiting the operational hours is to avoid light pollution, and whilst we accept there is a good argument for PIR security lights, infrared versions are available and could be used without having any light impact.

*No external lighting shall be erected on the buildings with the exception of infrared (pir switched) security lighting to minimise any light pollution*

**Nigel Husband, Chairman**

Dove Tree Cottage, Rectory Lane, Buckland, Betchworth, Surrey. RH3 7BH  
Telephone: 01737 842310

## BUCKLAND PARISH COUNCIL

### Music/noise

This was the most emotive issue in the various meetings held to discuss future use; accordingly, a robust and clear condition is needed to manage this issue, and referring to the Parish Council letter of 15<sup>th</sup> March 2018, we would seek the following;

*No use of amplified music or speech, whether live or recorded, in the open air, in a marquee or in any other temporary structure erected to support events or activities.*

*Live or recorded amplified music or speech to be limited to within the café facility between the operational hours of 08:00hrs to 18:00 hrs.*

*To restrict water based recreational activity to non-motorised craft with a specific exemption to allow the use of safety craft within the lagoon area subject to a requirement for the safety craft to be propelled by a battery powered (silent) outboard and fitted with a propeller guard;*

*No fireworks are to be allowed.*

### Management

The withdrawal of the parish council's objection based on community consultation was on the principal that activities on the site would be controlled. As such it was on the basis that the PD development rights in regard to activities on the site be withdrawn, as follows

*With the support and assistance of Mole Valley District Council ("MVDC") to make a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 2015 to withdraw the rights set out in part four class B 'temporary use of land'.*

As enforcement of any conditions will, in time, rely upon officers at MVDC, we would urge you to ensure they are consulted as to workable wording. MVDC officers have already expressed their concern to the Parish Council that the current wording suggested for the conditions will not be workable in their present form e.g. the hours referred to in the noise conditions do not correspond to the proposed hours of operation.

I hope this helps to clarify our concerns and I would be happy for you to use the above as part of your letter to Chairman of the Planning and Regulatory Committee as discussed.

Needless to say, if you have any queries or wish to discuss the above, please do not hesitate to give me a call,

Kindest regards



**Nigel Husband, Chairman**

Dove Tree Cottage, Rectory Lane, Buckland, Betchworth, Surrey. RH3 7BH  
Telephone: 01737 842310

**TO:** PLANNING & REGULATORY COMMITTEE **DATE:** 20 June 2018  
**BY:** PLANNING DEVELOPMENT MANAGER  
**DISTRICT(S)** SPELTHORNE BOROUGH COUNCIL **ELECTORAL DIVISION(S):**  
**Stanwell & Stanwell Moor**  
**Mr Robert Evans**

**PURPOSE:** FOR DECISION **GRID REF:** 504453 174372

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**TITLE:** MINERALS/WASTE SP18/00282/SCC

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### SUMMARY REPORT

#### Land at Oakleaf Farm, Horton Road, Stanwell Moor, Surrey TW19 6AP

**The construction and use of a recycling, recovery and processing facility for construction and demolition waste on a site of approximately 9.4 hectares without compliance with Condition 3 of planning permission ref: SP17/00438/SCC dated 7 September 2017 to allow 55 heavy goods vehicles to be based at the site and to be located within the designated lorry parking area, and for 55 heavy goods vehicles (110 movements) to access and egress the site between the hours 18:00 to 07:00 Monday to Saturday, and 13:00 on a Saturday to 07:00 on a Monday .**

Oakleaf Farm is located in north-eastern Surrey, some 500 metres south-west of London Heathrow Airport's western perimeter, approximately 75 metres north of King George VI Reservoir and 1 kilometre south east of junction 14 of the M25 motorway. The site lies in the southern end of the Colne Valley Regional Park and is within the Metropolitan Green Belt and Site of Scientific Interest (SSSI) Impact Zone. The site is identified in the adopted Surrey Waste Local Plan 2008 as a site suitable for development as a waste management facility.

Oakleaf Farm site is a former mineral working and has a complicated planning history. In November 2009, planning permission ref: SP08/0992 was granted for a permanent recycling, recovery and processing facility for construction & demolition wastes (including commercial & industrial wastes), with an attached Section 106 legal agreement to secure a landscape and ecology management plan and footpath upgrade. Several Section 73 planning applications have been received since 2014, which have been permitted to allow variation of conditions. The latest planning permission for the recycling, recovery and processing facility was granted in September 2017 (ref: SP17/00438/SCC) to allow minor amendments to the design and layout of the development, and an amended dust action plan.

The applicant is one of the tenants of Oakleaf Farm and was granted planning permission (ref: SP17/00304/SCC) on 7 September 2017, for the redesign of part of the layout of the Recycling Facility at Oakleaf Farm; to provide for increased recycling facilities comprising a baling operation for cardboard and coffee cups, including two storage bays and a glass collection bay; increased HGV parking; a site office, training room, welfare facilities and associated parking; diesel tanks; various plant and structures and perimeter fencing in the north-eastern part of the site.

There are no limitations on the daytime number of HGV movements to and from the site between 07:00 and 18:00 on Monday to Friday. The existing planning permission allows up to 24 HGVs to enter and leave the site during night-time hours, generating a total number of 48 HGV movements, between 18:00 and 07:00 on Mondays to Saturdays; and between 13:00 on

Saturday and 07:00 on Monday. This Section 73 planning application seeks to redistribute the existing HGV vehicle flows by increasing the total number of HGVs able to access and egress the site between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday from 24 to 55 (48 to 110 movements). The applicant states that this is to help redistribute some of the HGV movements to night-time to facilitate a more flexible waste collection practice.

The applicant has an existing Goods Vehicle Operators Licence (VOL) to operate 55 HGVs from the application site. This proposal will not result in an increase in the number of HGVs based at the site or an increase in the number of vehicular movements overall but it will give the applicant the flexibility to undertake waste collection when traffic flows on the highway network are low and disruption to businesses is minimal.

The County Planning Authority has received comments from the Stanwell Moor Residents' Association and 11 letters of representation from local residents, all objecting and raising various concerns with the application in respect of traffic and highways, noise and air quality. The implications of the proposal have been assessed against Green Belt policy and in terms of impacts to the local environment and amenity, including traffic and highways, noise and air quality. Officers consider that, following advice from technical consultees, and subject to the imposition of planning conditions, the proposal would not cause further harm to the Green Belt and that the proposal would not give rise to any adverse impact on amenity and environmental impacts. Therefore, Officers consider that planning permission should be granted subject to conditions.

**The recommendation is to PERMIT subject to conditions.**

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## APPLICATION DETAILS

### ***Applicant***

CAMO LTD T/A Simply Waste Solutions

### ***Date application valid***

19 February 2018

### ***Period for Determination***

29 June 2018

### ***Amending Documents***

- Email dated 11 April 2018 regarding the noise conditions
- Email dated 15 April 2018 with the letter dated 14 April 2018 regarding the additional information on the application
- Email dated 20 April 2018 regarding the air quality assessment
- "Out of Hours" Vehicle Movements Technical Note dated 30 April 2018
- Email dated 11 May 2018 with the drawing No 1163/6Nb 'Site Layout Plan' dated January 2008 (Revision Nb dated 11 May 2018)

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## 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.

	<b>Is this aspect of the proposal in accordance with the development plan?</b>	<b>Paragraphs in the report where this has been discussed</b>
Environment and Amenity	Yes	37 - 64
Metropolitan Green Belt	No	65 - 76

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## ILLUSTRATIVE MATERIAL

### Site Plan

Drawing Ref. 2056/9 Site Location Plan dated 1 February 2017

### Aerial Photographs

Aerial 1      Oakleaf Farm, Stanwell Moor  
 Aerial 2      Oakleaf Farm, Stanwell Moor

### Site Photographs

Figure 1      Main entrance of the Oakleaf Farm (Horton Road)  
 Figure 2      Parking area  
 Figure 3      Site-office area and a road sweeper owned by the applicant

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## BACKGROUND

### *Site Description*

1. Oakleaf Farm is located in north-eastern Surrey, some 500 metres south-west of London Heathrow Airport's western perimeter and approximately 75 metres north of King George VI Reservoir and 1 kilometre south east of junction 14 of the M25 motorway. The site lies in the southern end of the Colne Valley Regional Park and is within the Metropolitan Green Belt and the Site of Scientific Interests (SSSI) Impact Zone. Oakleaf Farm was identified in the adopted Surrey Waste Local Plan 2008 as a site suitable for development as a waste management facility.

### *Planning History*

2. The Oakleaf Farm site, of some 9.4 hectares, is a former mineral working and has a complicated planning history. In November 2009, planning permission ref: SP08/0992 was granted for a permanent recycling, recovery and processing facility for construction & demolition wastes (including commercial & industrial wastes), with an associated Section 106 (S106) legal agreement to secure a landscape and ecology management plan (to provide long-term management of the ecological and biodiversity area to the northwest of the application site) and to facilitate the upgrading the footpath to the south of the application site to a bridleway. The following details pursuant to planning permission ref: SP08/0992 were approved:
  - Method of Construction Statement (Condition 13)
  - Details of Bird Hazard Management Plan (Condition 20)
  - Scheme of landscaping, planting and maintenance (Condition 24)
  - Method statement for controlling Japanese knotweed (Condition 25)
  - Scheme for the provision and management of a buffer zone alongside ditch (Condition 26)
  - Scheme of surface water drainage (Condition 27)
  - Details of external materials for buildings (Condition 28)
  - Details of Dust Action Plan (Condition 29)
3. In April 2012, a non-material amendment to planning permission ref: SP08/0992 (ref: SP11/00418) was granted for the increase of base level within the compound to 21m AOD from 20m AOD.

### Section 73 planning applications to vary Planning Permission SP/08/0992

4. The following Section 73 planning applications to vary SP/08/0992 have been received and determined since 2014:

Date	Ref.	Description of Development (Variation of Conditions)	Decision
March 2015	SP/14/01125/SCC	To allow operations to be carried out within the MRF Building 24 hours per day, 7 days per week (Condition 3 and 21)	Granted, following completion of a variation to the Section 106 legal agreement
December 2016	SP1401125/SCD1	To allow operational flexibility for the access and egress of vehicles based at the site (Condition 2 and 4)	Granted, following completion of a variation to the Section 106 legal agreement
September 2017	SP17/00438/SCC	To allow minor amendments to the design and layout of the development, and an amended dust action plan (Condition 1 and 35)	Granted <sup>1</sup>

5. The two Section 73 applications under ref. SP/14/01125/SCC for changes to the type and times of equipment operated inside the MRF building permitted in 2009 and ref: SP14/01125/SCD1 to allow operational flexibility for the access and egress of vehicles based at the site were both permitted by Surrey County Council subject to a deed of variation to the S106 agreement to bring the requirements of the S106 forward under the new consents. Following completion of a variation to the Section 106 legal agreement planning permission SP/14/01125/SCC was issued on 13 March 2015 and ref. SP/14/01125/SCD1 was issued on 30 November 2016.
6. In January 2018, the following detail pursuant to planning permission ref: SP14/01125/SCD1 was approved:
- Night-time Noise Management Plan (Condition 20)
7. The latest planning permission for the recycling, recovery and processing facility was granted in September 2017 (ref: SP17/00438/SCC) to allow minor amendments to the design and layout of the development, and an amended dust action plan.

Other planning applications at the Oakleaf Farm site

8. The following additional planning applications have been made on this site:

Date	Ref.	Description of Development	Decision
March 2016	SP15/01184/SCC	The installation and use of a concrete crushing plant for the processing of construction and demolition wastes to produce recycled aggregate	Granted
April 2016	SP/15/00929/SCC	The construction and use of 2.47 hectares of new concrete hardstanding to resurface the	Granted

<sup>1</sup> Planning permission ref: SP17/00438/SCC was granted without any variation to the Section 106 legal agreement.

		existing unmade compound area at Oak Leaf Farm waste recycling, recovery and processing facility	
June 2017	SP17/00360/SCC	The erection of Sprinkler Tank and Associated Pump Kiosk	Granted
September 2017	SP17/00304/SCC	The redesign of part of the Oakleaf Farm Recycling Facility layout to provide for increased recycling facilities comprising a baling operation for cardboard and coffee cups, including two storage bays and a glass collection bay; increased HGV parking; a site office, training room, welfare facilities and associated parking; diesel tanks; various plant and structures and perimeter fencing	Granted

9. In June 2017, the following detail pursuant to planning permission ref: SP/15/00929/SCC was approved:
  - Details of the Sustainable Drainage System (Conditions 3, 4 and 5)
10. In January 2018, planning application ref: SP18/00089/SCC was received for the development of part of the Oakleaf Farm Waste Recycling Facility without compliance with Condition 3 of planning permission ref: SP17/00304/SCC dated 7 September 2017 in order to allow an increase in the number of heavy goods vehicles (HGV) from 24 to 55 with an increase in the total number of HGV vehicle movements from 48 to 110. This application has been withdrawn.

**THE PROPOSAL**

11. This planning application, made under Section 73 of the Town and Country Planning Act 1990 (as amended), seeks to amend Condition 3 of planning permission ref: SP17/00438/SCC dated 7 September 2017.
12. Condition 3 states: *The development hereby permitted shall allow the limited site access and egress of 24 heavy goods vehicles (HGV) (defined as any vehicle in excess of 3.5 tonnes gross vehicle weight) based at the site and to be located within the lorry parking area shown on drawing number 1163/60 dated 8 June 2017 outside of the hours specified in Condition 2 of this permission with no more than a total number of 48 HGV movements between the following times:*

*1800 Monday to 0700 Tuesday  
 1800 Tuesday to 0700 Wednesday  
 1800 Wednesday to 0700 Thursday  
 1800 Thursday to 0700 Friday  
 1800 Friday to 0700 Saturday, and  
 1300 on a Saturday to 0700 Monday morning*

*The operator of the site shall maintain accurate records of the number of HGV movements accessing and egressing the site daily between these times (including vehicle prefix) and these records shall be provided to the County Planning Authority within 5 working days upon written request.*
13. The applicant is one of the tenants of Oakleaf Farm and was granted planning permission ref: SP17/00304/SCC on 7 September 2017, to allow a baling operation for cardboard and coffee cups, including two storage bays and a glass collection bay;

increased HGV parking; a site office, training room, welfare facilities and associated parking; diesel tanks; various plant and structures and perimeter fencing in the north-eastern part of the site.

14. The site operator has a Goods Vehicle Operators Licence (VOL) to operate 55 HGVs from the application site. There are no planning conditions limiting on the daytime number of HGV movements to and from the site between 07:00 and 18:00 on Monday to Friday. Currently only 24 of the authorised HGVs are permitted to enter and leave the site during night-time hours, generating up to 48 HGV movements, between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday.
15. The applicant seeks to increase the number of HGVs from 24 to 55 with a commensurate increase in the total number of HGV movements from 48 to 110, between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday. However, these increases are not additional to the existing total number of HGVs based at the site which remains as previously authorised.
16. The applicant claims that the redistribution of HGV movements can help facilitate the collection of waste during the night time as there is less disruption and the roads carry less traffic. The increase in the number of HGV movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday would also enable the applicant to operate a more flexible waste collection practice.
17. The applicant does not intend to change the hours for unloading and loading of HGVs, site operations or type and volume of waste permitted for handling at the site. The site operates under a waste licence issued and monitored by the Environment Agency. The unloading and loading of HGVs would take place during the permitted daytime working hours for the site, which are between 07:00 to 18:00 Mondays to Fridays and between 07:00 to 13:00 Saturdays.

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## **CONSULTATIONS AND PUBLICITY**

### ***District Council***

18. Spelthorne Borough Council  
No objection.
19. Environmental Health Officer  
No objection and make the comments regarding the air quality issues.

### ***Consultees (Statutory and Non-Statutory)***

20. County Environmental Assessment Officer  
A screening opinion under the Environmental Impact Assessment (EIA) Regulations 2017 was adopted on 16 May 2017, which evaluated the proposed development in line with the EIA Regulations and the advice set out in the National Planning Practice Guidance on EIA. It was concluded that there are not likely to be any significant environmental effects in terms of the meaning of significant given in the above Regulations and therefore the proposed development would not be EIA development.
21. County Noise Consultant  
No objection subject to conditions.
22. County Air Quality Consultant  
No objection.

23. County Highways Authority  
No objection.
24. Traffic Commissioners for Great Britain  
The applicant has a valid licence subject to conditions.
25. Cadent Gas Ltd  
Concerns about the proposal may affect the Cadent and/or National Grid apparatus in proximity to the specified area.

#### ***Parish/Town Council and Amenity Groups***

26. Stanwell Moor Residents' Association  
Object to the proposal and make the following comments:
  - The entrance to the site at Horton Road is frequently blocked with HGVs queuing and the increase in HGV traffic will exacerbate the problem.
  - Concern regarding the waste material carried by HGVs is not securely stored and would lead to public health issues.
  - A restriction in the hours of operation is welcomed as the 24/7 site operation and the environmental issues of the site affects Stanwell Moor.

#### ***Summary of publicity undertaken and key issues raised by public***

27. The application was publicised by the posting of 2 site notices and an advert was placed in the local newspaper. A total of 91 of owner/occupiers of neighbouring properties were directly notified by letter. 11 letters of representation have been received, all letters object to the development. These letters raise the following comments:
  - The increase in HGV traffic will lead to negative impacts on air quality.
  - The increase in HGV traffic will lead to noise pollution.
  - Concerns about the increase in HGV traffic in the congested road.
  - Potential threat to other road users (i.e. pedestrian crossing, private cars and cyclists).
  - The increase in HGV traffic will lead to the damage on the road surface.
  - Concerns regarding the insecurely stored waste material carried by HGVs.
  - Concerns about the enforcement issue on the turning agreement of the existing HGVs.

#### **Officers' comments**

28. Officers point out that planning conditions are already imposed to restrict the hours of operation of the overall site (Condition 2) and to require all HGV loads shall be sheeted when entering and leaving the site (Condition 11). Given that this planning application is seeking to increase the number of HGV movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday, Officers acknowledge the concerns made by the public and consider that these can be addressed by attaching suitable conditions to any planning permission granted.

## **PLANNING CONSIDERATIONS**

### **Introduction**

29. The guidance on the determination of planning applications contained in the Preamble/Agenda frontsheet is expressly incorporated into this report and must be read in conjunction with the following paragraphs.

30. In considering this application the acceptability of the proposed development will be assessed against relevant development plan policies and other material considerations. In this case the statutory development plan for consideration of the application consists of the Surrey Waste Plan 2008, the Spelthorne Borough Local Plan 2001 Saved Policies and Proposals and the Spelthorne Borough Core Strategy and Policies Development Plan Document February 2009.
31. In assessing the application against development plan policy it will be necessary to determine whether the proposed measures for mitigating any environmental impact of the development are satisfactory. In this case the main planning considerations are Environment and Amenity and Metropolitan Green Belt.
- Spelthorne Borough Local Plan 2001 saved policies
32. Spelthorne Borough Council adopted the Spelthorne Borough Local Plan in April 2001. In December 2004 it adopted alterations to Policies H5 and H6. The Planning and Compulsory Purchase Act 2004 introduced a new system of plan making called Local Development Frameworks. As part of the new system all existing Local Plans expired on 27 September 2007 unless the Secretary of State directed that specific policies or proposals should be saved beyond that date.
33. In March 2007 the Council made an application to the Secretary of State to save eight policies and five proposals in the Local Plan. This was confirmed by a direction issued by the Secretary of State on 21 September 2007.
34. Following the adoption of the Council's Core Strategy and Policies Development Plan Document (DPD) on 26 February 2009, saved policies RU8 (Plotlands) and BE14 (Protected Urban Open Space) ceased to have effect from that date and have been replaced by policies EN2 and EN4 respectively. The Allocations Development Plan Document was adopted by the Council on 17 December 2009 and the saved proposals, P7, P8, P11, P12 and P17, ceased to have effect from that date.

### **National Grid**

35. Cadent Gas Limited has raised concerns about the proposal may affect the Cadent and/or National Grid apparatus in proximity to the specified area. Officers do not consider that there will be any potential impacts on the Cadent and/or National Grid apparatus as this planning application is for the increase the number of HGV traffic with an increase in the total number of HGV vehicle movements and there are no ground works involved. However, Officers agree that an informative should be imposed to remind the applicant that they may wish to contact with Cadent if they have any enquires regarding the National Grid apparatus.

### **Environmental Impact Assessment**

36. The proposed development was evaluated by the County Planning Authority in line with the Town & Country Planning (Environmental Impact Assessment) Regulations 2017 and the advice set out in the National Planning Practice Guidance on Environmental Impact Assessment (EIA). On 16 May 2017 the County Planning Authority adopted a screening opinion under Regulation 7 of the above EIA Regulations, where it considered the proposed development in the context of Schedule 2, and based on the information submitted, is of the opinion that there are not likely to be any significant environmental effects (in terms of the meaning of significant in the EIA Regulations) and therefore it was recommended that the proposed development would not be EIA development.

## ENVIRONMENT AND AMENITY

### **Surrey Waste Plan 2008 (SWP 2008)**

Policy WD2 – Recycling, Storage, Transfer, Materials Recovery and Processing Facilities (Excluding Thermal Treatment)

Policy DC3 – General Considerations

### **Spelthorne Borough Core Strategy and Policies**

### **Development Plan Document February 2009 (SBCSP 2009)**

Policy EN3 – Air quality

Policy EN11 – Development and Noise

37. The National Planning Policy Framework 2012 (NPPF) does not contain policies relating to waste management. Instead national waste management policies are contained within the National Planning Policy for Waste 2014 (NPPW) and Waste Management Plan for England 2013 (WMP).
38. NPPW requires waste planning authorities, in determining planning applications, should work on the assumption that the relevant pollution control regime will be properly applied and enforced, ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located, and consider the likely impacts on the local environment and amenities against the criteria set out in Appendix B (Locational Criteria), which include the following factors:
  - protection of water quality and resources and flood risk management
  - land instability
  - landscape and visual impacts
  - nature conservation
  - conserving the historic environment
  - traffic and access
  - air emissions, including dust
  - odours
  - vermin and birds
  - noise, light and vibration
  - litter
  - potential land use conflict
39. SWP 2008 Policy WD2 states that planning permissions for development involving the recycling, storage, transfer, materials recovery and processing (including in-vessel composting but excluding thermal treatment) of waste will be granted at the site as shown on the Site Boundary Maps (i.e. Oakleaf Farm in Stanwell Moor is one of the sites as shown on the Site Boundary Maps), provided that the proposed development does not have any significant impacts and where very special circumstances can be demonstrated in accordance with the provisions of Policy CW6 for Development in the Green Belt.
40. SWP 2008 Policy DC3 states that planning permissions for waste related development will be granted provided it can be demonstrated by the provision of appropriate information to support a planning application that any impacts of the development can be controlled to achieve levels that will not significantly adversely affect people, land infrastructure and resources. Relevant assessments and appropriate mitigation should be identified so as to minimize or avoid any material adverse impact and compensate for any loss.
41. SBCSP 2009 Policy EN3 states that the County Planning Authority will seek to improve the air quality of Spelthorne and minimise harm from poor air quality by:

- supporting measures to encourage non-car based means of travel,
- supporting appropriate measures to reduce traffic congestion where it is a contributor to existing areas of poor air quality,
- requiring an air quality assessment where development:
  - a) is in an Air Quality Management Area, and
  - b) generates significant levels of pollution, or
  - c) increases traffic volumes or congestion, or
  - d) is for non-residential uses of 1000 m<sup>2</sup> or greater, or
  - e) is for 10 or more dwellings, or
  - f) involves development sensitive to poor air quality
- refusing development where the adverse effects on air quality are of a significant scale, either individually or in combination with other proposals, and which are not outweighed by other important considerations or effects and cannot be appropriately and effectively mitigated,
- refusing development where the adverse effects of existing air quality on future occupiers are of a significant scale which cannot be appropriately or effectively mitigated and which are not outweighed by other material considerations

42. SBCSP 2009 Policy EN11 states that the County Planning Authority will seek to minimise the adverse impact of noise by:

- requiring developments that generate unacceptable noise levels to include measures to reduce noise to an acceptable level,
- requiring appropriate noise attenuation measures where this can overcome unacceptable impacts on residential and other noise sensitive development proposed in areas with high noise levels. Development will otherwise be refused.

### Traffic and Highways

43. Paragraph 29 of the NPPF states that different policies and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Paragraph 30 continues to state that encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce emissions.
44. 9 letters of representation and Stanwell Moor Residents' Association have raised objections to the proposal as they concerned about the increase in HGV traffic on a congested road. 5 letters of representation also consider that the proposal is a potential threat to other road users, such as pedestrian, private cars, emergency services and cyclists. 2 letters of representation raise concerns that the increase in HGV traffic will damage the road surface. 1 letter of representation also points out that there is an enforcement issue in relation to vehicles turning.
45. The applicant stated that they have been operating their HGVs from the application site since January 2017 in accordance with their Goods Vehicle Operators Licence (VOL) granted by the Traffic Commissioner for London and the South East<sup>2</sup>. The applicant also points out that the proposed HGV movements in this planning application are **NOT** additional to the existing total movements already generated by the site but a redistribution in terms of times. There is no limitation on the overall numbers of HGV movements generated by the site, the only exception being a limitation on the number of

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<sup>2</sup> OK1141423 Camo Ltd, 55 vehicles and 6 trailers, following conditions attached: When exiting the operating centre vehicles shall turn right towards the A3044. When entering the operating centre vehicles shall approach from the A3044 and turn left into the centre.

movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday.

46. Further to the correspondence from the comments from the public and Stanwell Moor Residents' Association, the applicant has also submitted a letter to state that all their vehicles do not block the road and leave the site by turning right out of the site and left on the Stanwell Moor Road.
47. The County Highway Authority has raised no objection to the proposal as the additional movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday would be outside of the peak periods. It is not considered that highway safety or capacity would be compromised. Officers acknowledge that there are concerns about the perceived increase in the number of HGVs and their turning arrangements at the access. However, Officers point out that the VOL restricts the number of HGVs based at the site and requires that all vehicles on the operators licence must turn right towards the A3044 when exiting the site and approach from the A3044 and turn left into the centre when entering the site.
48. Officers agree that there are adequate planning controls on the access to and from the site under the existing planning permission ref: SP17/00438/SCC dated 7 September 2017 and these relevant conditions are retained, which include restrictions on accessing the site to the west (left) on Horton Road, the erection of signage advising drivers to turn right out of the site and to use the route via the A3044, and the restriction on the HGV movements during the permitted hours other between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday.
49. It is important to note that during consideration of planning permission ref: SP17/00304/SCC dated 7 September 2017, the impacts from the potential additional traffic generation from an increase to 55 HGVs were assessed<sup>3</sup>. Given that the current planning application is to extend the existing HGV movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday and there is no overall increase in the number of HGVs and vehicle movements, Officers consider the details submitted are acceptable and the proposal would not give rise to any adverse impacts on the surrounding environment, subject to conditions.

## Noise Control

50. Paragraph 123 of the NPPF states that planning policies and decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development; mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions; recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established;<sup>4</sup> and identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.
51. 6 letters of representation have raised objections to the proposal as the increase in HGV traffic will lead to negative noise impact. The applicant has submitted a Technical Note dated 12 February 2018. According to the Note, a noise survey was undertaken on 23

<sup>3</sup> According to paragraph 57 and 58 of the Officers' Report for the planning application (ref: SP17/00304/SCC), it states that "the Transport Development Planning team commented that the proximity of the site to the A3044 Stanwell Moor Road and then onto the Motorway and Primary Route Network ensures that the site is easily accessible without needing to traverse less suitable residential roads. The team concluded that the potential additional traffic generation of the proposal would be insignificant in comparison to the annual average daily traffic on the A3044.

<sup>4</sup> Subject to the provisions of the Environmental Protection Act 1990 and other relevant law.

August 2017 between 0400 and 0600 of 15 minute duration at 121 Horton Road and Kestrels. The microphone was at a height of approximately 1.4 metres above local ground level, with a windshield used throughout. The result of the noise survey is summarised in the following table:

<b>Location</b>	<b>Range of Measured Ambient Noise Level dB L<sub>Aeq</sub>, 15 min free field</b>	<b>Range of Measured Background Noise Level dB L<sub>A90</sub>, 15 min free field</b>	<b>Range of Measured Maximum Noise Levels due to Site HGV Movement (within the site or on the access road) dB L<sub>Amax, f</sub></b>	<b>Range of Measured Maximum Noise Levels (all sources) dB L<sub>Amax, f</sub></b>
Kestrels (on pavement outside property)	57 and 59	41 and 45	54 to 56	40 to 80
121 Horton Road (on pavement opposite property)	60 and 65	44 and 50	45 to 50	42 to 86

52. The measured maximum noise levels of noise arising from HGV movements within the site and on the access road were below the levels stipulated in Condition 23<sup>5</sup> of the existing planning permission ref: SP17/00438/SCC dated 7 September 2017. The Note also summarised that the maximum levels due to HGV movements within the site and on the access road area were at the lower end of the measured range at night, in the context of the maximum measured noise levels at the two selected receiver locations in the vicinity of the site, as the noise criteria used for the HGV movements is related to the maximum rather than the cumulative noise level. As such, similar maximum noise levels at the dwellings would be generated from the additional HGV movements.
53. The County Noise Consultant has acknowledged that the measured maximum noise level complies with the noise limits in Condition 23 at a height of 1.5 metres. However, the County Noise Consultant has raised concerns that the noise survey does not demonstrate compliance with Condition 23 at the height of 4.0 metres. The survey also fails to demonstrate compliance with Condition 21<sup>6</sup> and 22<sup>7</sup> of the existing planning

<sup>5</sup> Condition 23 requires the external maximum level of noise arising from HGV movements within the site or on the access road shall not exceed 60dB L<sub>Amax, f</sub> as a facade level or 57dB L<sub>Amax, f</sub> as a free-field level at any residential or other noise sensitive building, assessed at a height of 1.5m for bedrooms on the ground floor or 4.0m for bedrooms on the first floor, during the times stated in Condition 3.

<sup>6</sup> Condition 21 requires the noise levels arising from the development shall not exceed the level of 55 L<sub>Aeq</sub> (1/2 hour) measured at, or recalculated as at, a height of 1.2m and at least 3.5m from the facade of the properties 121 to 149 Horton Road or 47 L<sub>Aeq</sub> (1/2 hour) measured at, or recalculated as at, a height of 1.2m and at least 3.5m from the facade of the noise sensitive locations at Pegasus Stables or the properties in Hithermoor Road, with the exception of the operation of shredding and sorting machinery within the MRF building between the hours of 1700 to 0730 hours.

<sup>7</sup> Condition 22 requires the level of noise arising from the night time operation of the MRF building and any associated activity, when recalculated as at a height of 4m above ground level and 3.5m from the facade of a residential property or other noise sensitive building that faces the site shall not exceed 33 L<sub>Aeq</sub>.

permission ref: SP17/00438/SCC dated 7 September 2017 to consider the cumulative effects of the entire site operating and it does not consider noise change associated with the additional HGV movements, which is important in the context of creeping noise impacts. The County Noise Consultant has recommended that Conditions 21, 22 and 23 should be retained and the applicant is advised to resubmit and update the noise assessment in order to demonstrate compliance with the conditions. The updated assessment should also consider noise change associated with the additional HGV movements. The County Noise Consultant also advised that Condition 20<sup>8</sup> should be retained and amended to secure that the applicant has to update and resubmit the night-time noise management plan.

54. Further to correspondence from the comments from the County Noise Consultant, the applicant submitted additional information regarding the noise survey. The applicant states that the noise levels at the height of 4.0 metres do not differ appreciably from the levels at the height of 1.5 metres unless there is a change in barrier attenuation between the two levels. As the highest measured levels presented in the noise survey were those when the HGVs were at the nearest point to the measurement locations, compliance with the Condition 23 is therefore demonstrated by the survey. The applicant also sets out that the noise change due to the additional HGV movements is not relevant in the context of Condition 23 as the Condition is related to the maximum noise levels due to HGV movements. The change in noise levels from HGV movements due to the increase in vehicle movements will be around +2.5 dB and this increased noise level is below the existing ambient noise levels in the area. As such, the overall calculated noise level is unlikely to be affected by the increase in HGV movements at night.
55. The applicant states that there is at least 20 dB difference between the site noise limit (55 dB  $L_{Aeq, \frac{1}{2} \text{ hour free field}}$  at 121 to 149 Horton Road and 47 dB  $L_{Aeq, \frac{1}{2} \text{ hour free field}}$  at Pegasus Stables and Hithermoor Road) and the calculated noise levels at the nearest properties to the access road at a height of 4 metres above local ground level due to the proposed HGV movements on site (in the range 31 to 35 dB  $L_{Aeq, \frac{1}{2} \text{ hour free field}}$ ). Therefore, the applicant summarises that the overall calculated noise level is compliance with the overall site noise limit in the Condition 21. The applicant also points out that Condition 22 is not relevant in this case as it relates to the night-time noise from the MRF building. However, the applicant agrees that amendment of the night-time noise management plan is required to reflect the current situation.
56. However, the County Noise Consultant (CNC) commented that the submitted technical report does not indicate that the properties assessed are single storey, nor does the technical report justify why noise levels at the first floor have not been provided or considered. Given the bund around the working area, associated barrier attenuation effects will be less at first floor levels (4.0m) and hence the assessment should include this information as specifically required by Condition 23. The report also only considers the maximum noise levels in relation to Condition 23 but does not consider the overall noise level in relation to Condition 21. Therefore, the CNC recommends that the noise assessment should be updated and resubmitted to demonstrate compliance with Conditions 21 and 23.
57. Subject to the requirement of the County Noise Consultant (CNC), the applicant submitted a revised technical note regarding noise. The CNC is satisfied with the revised noise assessment and has raised no objection to the proposed development

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during any 5 minute period for the properties 121 to 149 Horton Road or 28  $L_{Aeq}$ , during any 5 minute period at Pegasus Stables, during the hours of 1700 to 0730 hours.

<sup>8</sup> Condition 20 requires the development hereby permitted shall not commence until a Night-time Noise Management Plan which shall include best practice and mitigation measures for noise management of night-time HGV site traffic and associated activities be specified in the planning application, has been submitted to and approved in writing by the County Planning Authority. The Plan shall cover the hours 1800 to 0700 on any night. The scheme shall be implemented and maintained as approved.

subject to a condition requiring the submission of an amended night-time noise management plan.

## Air Quality

58. Paragraph 30 of the NPPF states that encouragement should be given to solutions which support reduction in greenhouse gas emissions and reduce congestion. Paragraph 2.7 of the SBCSP 2009 states that Spelthorne is designated as an Air Quality Management Area (AQMA) because of poor air quality. SBCSP 2009 Policy EN3 advocates that the County Planning Authority should minimise harm from poor air quality by requiring an air quality assessment where development is in an AQMA, and generates significant levels of pollution, increases traffic volumes or congestion, is for non-residential uses of 1000 m<sup>2</sup> or greater, is for 10 or more dwellings, or involves development sensitive to poor air quality.
59. Six letters of representation have raised objections to the proposal as the increase in HGV traffic will lead to negative impact on air quality. 9 letters of representation and Stanwell Moor Residents' Association have raised objections to the proposal as they concerned about the increase in HGV traffic in a congested road.
60. Further to the correspondence from the comments from the public and Stanwell Moor Residents' Association, the applicant points out that this planning application is only seeking to redistribute and extend the existing HGV movements to the permitted hours stated in Condition 3 due to the purposes of operational need. As such these movements are not additional to the existing total number of HGV and vehicle movements already handled at the site which remains as the existing.
61. The County Air Quality Consultant has raised no objection to the proposal as it will not significantly affect air quality. The Environmental Health Officer of Spelthorne Borough Council has also raised no objection to the proposal and has commented that the additional HGV movements proposed exceed the suggested threshold in the EPUK/IAQM Planning for Air Quality Guidance January 2017. Therefore, an air quality assessment should be undertaken as the application site is within an AQMA. Given that the air quality impacts of the proposal are considered to be negligible, the Environmental Health Officer has agreed that an air quality assessment is not required but has raised concerns about the cumulative impacts on local air quality if there is a gradual increase in the total HGV movements from site and the level of impacts may depend on whether the proposed night-time movements actually reduce the day-time movements or are considered as additional movements.
62. Officers agree with the Environmental Health Officer that an air quality assessment is not required even though this development is within an AQMA and the proposed additional movements exceed the suggested threshold in the EPUK/IAQM Planning for Air Quality Guidance January 2017. This is on the basis that that this planning application is to redistribute and extend the existing HGV movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday and there is no overall increase in the number of HGVs and vehicle movements.
63. Officers acknowledge that the Environmental Health Officer has raised concerns about the proposed night-time additional movements and the cumulative air quality impacts on the local amenity. However, Officers consider that Condition 18<sup>9</sup> of the existing planning

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<sup>9</sup> Condition 18 requires there shall be no more than 8 inbound HGV movements accessing the site from Stanwell Moor per hour (90 inbound HGV movements in any one weekday/50 inbound HGV movements in any one Saturday) and none of these movements shall be outside of the hours of working specified in Condition 2. The site operator shall conduct surveys of the number of HGVs accessing the site daily from Stanwell Moor for a period of five consecutive days including one Saturday, to be undertaken at greater than two within the first year of operation (with a minimum of six months between the two surveys) and subsequent reviews at intervals thereafter to be approved by the County Planning Authority following the

permission ref: SP17/00438/SCC dated 7 September 2017 has already restricted the number of HGV movements affecting residents to the west of the site during the hours of working. The VOL granted by the Traffic Commissioner restricts the total number of vehicles parked at the site. Officers therefore consider that it is unlikely to have any cumulative impact on local air quality as there are already adequate planning control on the vehicle movements during both the day-time and night-time subject to conditions.

64. Officers therefore consider that the proposal will redistribute the existing HGV movements and reduce traffic congestion where it is a contributor to existing areas of poor air quality. Given the proposed increase in HGV movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday, and the potential to reduce HGV movements at times when the highway network is more congested, Officers therefore consider that the proposal would not give rise to any adverse impacts on the surrounding environment and the amenity.

## **METROPOLITAN GREEN BELT**

### **Surrey Waste Plan 2008 (SWP 2008)**

Policy CW6 – Development in the Green Belt

Policy WD2 – Recycling, Storage, Transfer, Materials Recovery and Processing Facilities (Excluding Thermal Treatment)

### **Spelthorne Borough Core Strategy and Policies**

#### **Development Plan Document February 2009 (SBCSP 2009)**

Strategic Policy SP6 – Maintaining and Improving the Environment

### **Spelthorne Borough Local Plan 2001 (SBLP 2001)**

Policy GB1 – Development proposals within the Green Belt (saved)

65. The protection of Green Belts around urban areas is one of the key planning principles of the National Planning Policy Framework (NPPF). Paragraph 79 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
66. Paragraph 87 states that “inappropriate development is by definition, harmful to the Green Belt and should not be approved except in very special circumstances” and paragraph 88 goes on to state that when considering “any planning application” 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.”
67. Paragraph 89 and 90 continues to state that what types of developments are “appropriate” in the Green Belt. Waste-related development is not included in paragraphs 89 and 90 and therefore, waste-related development is considered to be an “inappropriate” development in the Green Belt.
68. SWP 2008 Policy CW6 states that *“there will be a presumption against inappropriate waste related development in the Green Belt except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.”* It goes on to state that the following considerations may contribute to very special circumstances:
- the lack of suitable non-Green Belt sites;
  - the need to find locations well related to the source of waste arisings;

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submission of the second survey. The survey shall be submitted to the County Planning Authority on completion.

- the characteristics of the site; and
  - the wider environmental and economic benefits of sustainable waste management, including the need for a range of sites.
69. SWP 2008 Policy WD2 states that planning permissions for development involving the recycling, storage, transfer, materials recovery and processing (including in-vessel composting but excluding thermal treatment) of waste will be granted at the site as shown on the Site Boundary Maps (i.e. Oakleaf Farm in Stanwell Moor is one of the sites as shown on the Site Boundary Maps), provided that the proposed development does not have any significant impacts and where very special circumstances can be demonstrated in accordance with the provisions of Policy CW6 for Development in the Green Belt.
70. SBCSP 2009 Strategic Policy SP6 states that the development should promote the improvement of poor quality environments both within the urban area and in the Green Belt.
71. SBLP 2001 Policy GB1 (saved) states that the Green Belt shown on the Proposals Map will be permanent and within it development will not be permitted which would conflict with the purposes of the Green Belt and maintaining its openness. Subject to the above, development will not be permitted except for uses appropriate to the Green Belt, comprising:
- agriculture and forestry
  - essential facilities for outdoor sport and recreation, for cemeteries, and for other uses of land which preserve the openness of the Green Belt and which do not conflict with the purposes of including land in it
  - limited extension, alteration or replacement of existing dwellings
  - appropriate re-use of buildings
  - appropriate engineering and other operations
72. The application site is located in the Green Belt where there is a general presumption against inappropriate development. Waste-related development is not deemed compatible with the objectives of the Green Belt and maintaining openness of the Green Belt.
73. However, this is a Section 73 planning application seeking non-compliance with Condition 3 of the planning permission ref: SP17/00438/SCC dated 7 September 2017 to allow 55 HGVs based at the site the flexibility to access and egress the site between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday. Currently, the applicant has an operator's licence to operate 55 HGV vehicles from the application site and the proposal would generate up to 110 vehicle movements (62 of which would be additional) between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday. However, these 110 vehicle movements do not represent an increase in movements to and from the site but are a redistribution of the times when HGV movements will take place. Other than these changes, there are no other changes proposed to existing waste activities permitted at the site.
74. In so far as the consideration of Green Belt policy for the Oakleaf Farm Waste Recycling Facility is concerned, it is important to note that planning permission (ref: SP08/0992) has already been granted for the redevelopment of the permanent waste facility<sup>10</sup>. It is also noted that Oakleaf Farm is one of the allocated sites in the SWP2008. Given that

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<sup>10</sup> In November 2009, planning permission ref: SP08/0992 was granted for a permanent recycling, recovery and processing facility for construction & demolition wastes (including commercial & industrial wastes), attached to a Section 106 legal agreement to secure a landscape and ecology management plan and footpath upgrade.

this planning application is seeking permission for an increase in the number of HGVs and corresponding increase in the number of HGV movements between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday, for what is fundamentally (from a planning perspective) an already permitted development, it is difficult to see how, prima facie, granting this planning permission could or would result in any new or additional harm to the Green Belt.

75. In this case, the County Planning Authority needs to consider the question of the proposal and the implications on the Green Belt. The principle of the need for the Waste Recycling Facility and the potential impacts on openness in this Green Belt location were assessed as part of the original planning permission<sup>11</sup>, and it was accepted that there was a number of factors which together constituted very special circumstances that clearly outweighed the harm to the openness of the Green Belt and any other harm, such that an exception to Green Belt policy could be made. The factors included a need for recycling construction and demolition waste and other waste streams handled at the site, thereby moving this waste further up the hierarchy, contributing to the County Council's targets for recycling and towards sustainable waste management in general, and that there is a lack of alternative sites within north west Surrey and wider catchment area for this site.
76. Therefore, the proposal is not considered to have a materially greater impact on the purposes of the Green Belt or its openness or to give rise to any potential harm from the proposed activity on the local environment and amenity with regard to noise impact, air quality and traffic and highways matters have been assessed above within this report. Officers consider that the very special circumstance under the planning permission ref: SP08/0992 for the permanent siting and operation of the Waste Recycling Facility which outweigh any potential harm to the Green Belt by reason of inappropriateness still exist and are material in the case of this proposal.

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## HUMAN RIGHTS IMPLICATIONS

77. The Human Rights Act Guidance for Interpretation, found at the end of this report, is expressly incorporated into this report and must be read in conjunction with the following paragraph.
78. 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.

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## CONCLUSION

79. This Section 73 planning application seeks to redistribute the existing HGV vehicle flows, by increasing the night-time number of HGVs accessing and egressing the site from 24 to 55 with a commensurate increase in the total number of HGV movements from 48 to 110, between 18:00 and 07:00 on Mondays to Saturdays and between 13:00 on Saturday and 07:00 on Monday. This proposal will not result in an increase in the number of HGVs based at the site or an increase in the number of vehicular movements overall but it will give the applicant the flexibility to undertake waste collection when traffic flows on the highway network are low and disruption to businesses is minimal

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<sup>11</sup> On 19 November 2009, planning permission ref: SP08/0992 was granted for the construction and use of a recycling, recovery and processing facility for construction and demolition waste on a site of approximately 9.4 hectares comprising: MRF building, site office and workshop; wheel wash and two weighbridges; lorry and car parking areas; storage areas; site entrance and access road; and landscaped bunds.

80. Oakleaf Farm is identified in the adopted Surrey Waste Local Plan 2008 as a site suitable for development as a waste management facility. It is within the Metropolitan Green Belt and a Site of Scientific Interests (SSSI) Impact Zone and it lies in the southern end of the Colne Valley Regional Park.
81. Officers consider following advice from technical consultees and subject to the imposition of planning conditions, the proposal would not result in an unacceptable impact on the amenity including traffic and highways, noise and air quality. The principle of the development at this Green Belt site has been previously established when planning permission for the Waste Recycling Facility was granted and Officers consider that the proposal will not have a significantly greater material impact on the purposes of the Green Belt or its openness or to give rise to any other harm compared with the extant planning permission. The proposal seeks to provide the applicant with operational flexibility on their waste collection practice. Taking account of all these matters, Officers consider that planning permission should be granted subject to conditions.

## RECOMMENDATION

**The recommendation is to PERMIT subject to the following conditions:**

Conditions:

### Approved Documents

1. The development hereby permitted shall be carried out in all respects strictly in accordance with the following plans/drawings:
  - Drawing No. 1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009)
  - Drawing No. 2056/9 Site Location Plan dated 1 February 2017
  - Drawing No. 2037/1A Cross Sections dated August 2016
  - Drawing No. 1163/60 Plot Layout Plan dated 8 June 2017
  - Drawing No. 16060-300 Site Layout dated 10.10.2016 (Revision A dated 04.01.2017)
  - Drawing No. 16060-301 Site Surfacing Drawing dated 10.10.2016 (Revision 0)
  - Drawing No. 16060-302 Proposed Roof Plan dated 10.10.2016 (Revision 0)
  - Drawing No. 16060-303 MRF Building Proposed Elevations sheet 1 of 2 dated 10.10.2016 (Revision 0)
  - Drawing No. 16060-304 MRF Building Proposed Elevations sheet 2 of 2 dated 10.10.2016 (Revision 0)
  - Drawing No 16060-305 Office Layout & Elevations dated 10.10.2016 (Revision A dated 04.01.2017)
  - Drawing No 16060-306 Weighbridge & Weighbridge Cabins dated 10.10.2016 (Revision 0)
  - Drawing No 16060-307 Site Fencing Drawing dated 13.10.2016 (Revision 0)
  - Drawing No 1163/9E Bunds Sections dated September 2008 (Revision E dated 9 May 2011)
  - Drawing No 1163/10H Planting Plan dated March 2008 (Revision H dated 26 August 2010)
  - Drawing No 1163/12 Buffer Strip Access Plan dated March 2009
  - Drawing No 1163/37B MRF Lighting Layout dated May 2014
  - Drawing No 2056/13 Location of Dedicated Lorry Parking Area dated 7 June 2018
  - Drawing No 16-2261 Airflow Direction: Oakleaf London dated 09.06.2017

## Hours of Working

2. With the exception of:
  - a) those HGVs referred to in Condition 3 below, and
  - b) the 24 hour operation of shredding and sorting machinery within the Materials Recycling Facility (MRF) building and associated activities permitted under planning permission ref: SP/14/1125/SCC dated 13 March 2015;

No other authorised operations or activities hereby permitted or under planning permission ref: SP08/0992 dated 19 November 2009 shall be carried out, and no lights illuminated, except between the following times:

0700-1800 Mondays to Fridays  
0700-1300 Saturdays

Neither shall any servicing, maintenance or testing of plant be carried out between 1800 and 0700 hours nor shall any other operation or activity take place on a Sunday or any public or bank holiday. This shall not prevent the carrying out of emergency operations, but these should be notified in writing to the County Planning Authority within 24 hours.

3. The development hereby permitted shall allow the limited site access and egress of 55 heavy goods vehicles (HGV) (defined as any vehicle in excess of 3.5 tonnes gross vehicle weight) based at the site and to be located within the lorry parking area shown on Drawing No.2056/13 (Location of Dedicated Lorry Parking Area) outside of the hours of working specified in Condition 2 of this permission. There shall be no more than a total number of 110 HGV vehicle movements between the following times:

1800 Monday to 0700 Tuesday  
1800 Tuesday to 0700 Wednesday  
1800 Wednesday to 0700 Thursday  
1800 Thursday to 0700 Friday  
1800 Friday to 0700 Saturday, and  
1300 on a Saturday to 0700 Monday morning

The operator of the site shall maintain accurate records of the number of HGV movements accessing and egressing the site daily between these times (including vehicle prefix) and these records shall be made available to the County Planning Authority within 5 working days upon written request.

4. There shall be no loading and unloading by any vehicles except between the following times:

0700-1800 Mondays to Fridays  
0700-1300 Saturdays

There shall be no loading & unloading on a Sunday or any public holiday.

## Removal of Permitted Development Rights

5. Notwithstanding any provision to the contrary under Schedule 2 Part 2, Part 4 and Part 7 (Class L) of the Town and Country Planning (General Permitted Development) Order 2015 or any subsequent Order,
  - a) No plant, building or machinery whether fixed or moveable shall be erected on the application site without the prior written approval of the County Planning Authority in respect the location, design, specification and appearance of the installation,

such details to include the predicted levels of noise emission and their tonal characteristics;

- b) No external lighting or fencing other than those permitted by this application shall be installed or erected at the application site.

### **Operation**

6. Only commercial and industrial and commercial and demolition waste shall be imported onto the application site as outlined within the application documents submitted with planning permission ref: SP08/0992 dated 19 November 2009 for handling and processing at the site and within the Materials Recycling Facility (MRF) building. All other waste shall be removed from the site and disposed of at a suitably licensed landfill.
7. The operation of shredding and sorting machinery for processing commercial and industrial waste as referred in Condition 6 above shall only take place inside the MRF building as shown on Drawing No.1163/60 Plot Layout Plan dated 8 June 2017.
8. Concrete crushing machinery shall only be operated at the site in accordance with planning permission Ref. SP15/01184 SCC dated 7 April 2016.
9. All processed and unprocessed waste stockpiled externally at the site, shall be stored within the areas delineated on Drawing No.1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009). Stockpile heights shall not exceed a height of 6 metres above ground level.
10. The two profile height posts erected within the stockpiling area as delineated on Plan 1163/6N to display the profile heights and maintained for the duration of the use hereby authorised.

### **Traffic and Highways**

11. All loads entering and leaving the application site shall be sheeted.
12. In accordance with the requirements of planning permission ref: SP08/0992 dated 19 November 2009 the former site access to the west of the main site access on Horton Road shown on Drawing No. 2056/9 Site Location Plan dated 1 February 2017 shall be maintained permanently closed.
13. The parking/turning area as shown on Drawing No.2056/13 (Location of Dedicated Lorry Parking Area) shall be used and retained exclusively for its designated purpose.
14. The wheel wash facilities as approved under planning permission ref: SP08/0992 dated 19 November 2009, and as shown on Drawing No.1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009), shall be retained and used whenever the operations which involve the movement of materials in bulk to or from the site are carried out.
15. A sign shall be permanently maintained at the site exit advising HGV drivers to turn right out of the site and to use the vehicle route via the A3044 rather than turning left onto Horton Road and travelling through Stanwell Moor village. This sign shall not prohibit local deliveries, defined as those within Stanwell Moor, from turning left.
16. There shall be no more than 8 inbound HGV movements accessing the site from Stanwell Moor per hour (90 inbound HGV movements in any one weekday/50 inbound HGV movements in any one Saturday) and none of these movements shall be outside of the hours of working specified in Condition 2 of this permission. The site operator shall conduct surveys of the number of HGVs accessing the site daily from Stanwell Moor for

a period of five consecutive days including one Saturday, to be undertaken at no greater than two within the first year of operation (with a minimum of six months between the two surveys) and subsequent reviews at intervals thereafter to be approved by the County Planning Authority following the submission of the second survey. The surveys shall be submitted to the County Planning Authority on completion.

### **Rights of Way**

17. The ditch as shown on Drawing No. 1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009) shall be cleaned and regularly maintained so as to contain any run off from the bund and prevent water flowing on to Public Rights of Way 3 (Staines).
18. The Public Rights of Way 3 (bridleway and footpath) along the southern boundary of the site shall be maintained free of vegetation to provide a minimum width of 4m.

### **Noise and Vibration**

19. Within three months of the date of this permission, an amended Noise Management Plan (NMP) shall be submitted for approval in writing by the County Planning Authority. The NMP shall include details of best practice and mitigation measures for the noise management of night time HGV site traffic and associated activities as specified in the planning application to cover the hours 1800 to 0700 on any night. The NMP shall be implemented and maintained as approved.
20. With the exception of the operating of shredding and sorting machinery within the MRF building between the hours of 1700 to 0730, noise levels arising from the development shall not exceed the level of 55 LAeq (1/2 hour) measured at, or recalculated as at, a height of 1.2 metres and at least 3.5 metres from the facade of the properties 121 to 149 Horton Road or 47 LAeq (1/2 hour) measured at, or recalculated as at, a height of 1.2 metres and at least 3.5 metres from the facade of the noise sensitive locations at Pegasus Stables or the properties in Hithermoor Road.
21. During the hours of 1700 to 0730 hours the level of noise arising from the night time operation of the MRF building and any associated activity, when recalculated as at a height of 4 metres above ground level and 3.5 metres from the facade of a residential property or other noise sensitive building that faces the site shall not exceed 33 LAeq, during any 5 minute period for the properties 121 to 149 Horton Road or 28 LAeq, during any 5 minute period at Pegasus Stables.
22. During the times stated in Condition 3 of this planning permission, the external maximum level of noise arising from HGV movements within the site or on the access road shall not exceed 60dB LAmax, f as a facade level or 57dB LAmax, f as a free-field level at any residential or other noise sensitive building, assessed at a height of 1.5 metres for bedrooms on the ground floor or 4.0 metres for bedrooms on the first floor.
23. The level of noise arising from any operation, plant or machinery on the site in association with construction activities when measured at or recalculated as at a height of 1.2 metres above ground level and 3.6 metres from the facade of any residential property or other occupied building shall not exceed Leq = 70dB (A) when measured over any 60 minute period.

### **Bird Management Plan**

24. The Bird Hazard Management Plan received on 12 July 2010 approved by planning permission ref: SP10/0430 dated 3 August 2010 shall be implemented strictly in accordance with the approved details contained therein.

## Landscaping

25. The scheme of landscaping, planting and maintenance approved by planning permission ref: SP10/0278 dated 23 September 2010 shall be implemented strictly in accordance with the approved scheme contained therein. All landscaping and planting in accordance with the approved scheme shall be carried out within a period of 12 months from the date on which the development of the site commenced and shall be maintained for a period of 10 years, such maintenance to include the replacement of any trees and shrubs that may die or are severely damaged with trees or shrubs of a similar size and species in the next available planting season.

## Japanese Knotweed

26. The detailed method statement for the removal or eradication of Japanese Knotweed approved by planning permission ref: SP10/0390 dated 6 September 2010 shall be implemented strictly in accordance with the approved details contained therein.

## Flood Risk and Surface Water Drainage

27. The scheme for the provision and management of a buffer zone alongside the ditch approved by planning permission ref: SP10/0278 dated 23 September 2010 shall be implemented in accordance with the approved details contained therein.
28. The scheme to dispose of foul and surface water approved by planning permission ref: SP10/0734 dated 20 December 2010 shall be implemented in accordance with the approved details contained therein.

## Details of Buildings

29. The details of materials to be used externally on new buildings approved by planning permission ref: SP10/0617 dated 29 September 2010 shall be carried out and completed in all respects in accordance with the Details of Building Materials dated 28 June 2010.

## Dust

30. Operations and activities at the site shall be carried out in accordance with the submitted Dust Action Plan Version 05 dated 3 July 2017 (including the measures, controls and actions contained therein, or as may be subsequently amended and approved following periodic reviews of the Plan which are to be undertaken at no greater than two year intervals in the first six years and five year intervals thereafter for the duration of the use of the site).
31. No activity hereby permitted shall cause dust to be emitted from the soil processing area and stockpiling area so as to cause nuisance or loss of amenity at sensitive receptors. Should such emissions occur the relevant activity shall be suspended until it can be resumed without causing any unacceptable emissions.
32. Notwithstanding the requirements of Conditions 30 and 31 above, the operators shall employ appropriate control and mitigation measures in accordance with Section 6 'Proposed Mitigation Measures' provided within the Air Quality Assessment October 2008 and amending information dated 18 February 2009 and approved by planning permission ref: SP08/0992 dated 19 November 2009. The scheme shall be implemented in accordance with the recommendations of the report and complied with at all times.

## Reasons:

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

2. To enable the County Planning Authority to exercise planning control and to safeguard the environment and local amenity in accordance with Surrey Waste Plan 2008 Policy DC3.
3. To enable the County Planning Authority to exercise planning control and to safeguard the environment and local amenity in accordance with Surrey Waste Plan 2008 Policy DC3.
4. To enable the County Planning Authority to exercise planning control and to safeguard the environment and local amenity in accordance with Surrey Waste Plan 2008 Policy DC3.
5. To enable the County Planning Authority to exercise control over the development and to minimise its impact on the amenities of the local area and local environment in accordance with Surrey Waste Plan 2008 Policy DC3.
6. To comply with the terms of the application and in the interests of the local environment and amenity, and to comply with Surrey Waste Plan 2008 Policy DC3.
7. To comply with the terms of the application and in the interests of the local environment and amenity, and to comply with Surrey Waste Plan 2008 Policy DC3.
8. To comply with the terms of the application and in the interests of the local environment and amenity, and to comply with Surrey Waste Plan 2008 Policy DC3.
9. To comply with the terms of the application and in the interests of the local environment and amenity, and to comply with Surrey Waste Plan 2008 Policy DC3.
10. To comply with the terms of the application and in the interests of the local environment and amenity, and to comply with Surrey Waste Plan 2008 Policy DC3.
11. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policies CC2 and CC3 of the Spelthorne Borough Core Strategy and Policies DPD 2009.
12. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policies CC2 and CC3 of the Spelthorne Borough Core Strategy and Policies DPD 2009.
13. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policies CC2 and CC3 of the Spelthorne Borough Core Strategy and Policies DPD 2009.
14. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policies CC2 and CC3 of the Spelthorne Borough Core Strategy and Policies DPD 2009.
15. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policies CC2 and CC3 of the Spelthorne Borough Core Strategy and Policies DPD 2009.
16. In order that the development should not prejudice highway safety nor cause inconvenience to other highway users in accordance with Policies CC2 and CC3 of the Spelthorne Borough Core Strategy and Policies DPD 2009.
17. To protect the route of the public footpaths and bridleways and the amenities of the users and comply with the National Planning Policy Framework 2012.

18. To protect the route of the public footpaths and bridleways and the amenities of the users and comply with the National Planning Policy Framework 2012.
19. To ensure the minimum disturbance and avoid nuisance to the locality to comply with Surrey Waste Plan 2008 Policy DC3.
20. To ensure the minimum disturbance and avoid nuisance to the locality to comply with Surrey Waste Plan 2008 Policy DC3.
21. To ensure the minimum disturbance and avoid nuisance to the locality to comply with Surrey Waste Plan 2008 Policy DC3.
22. To ensure the minimum disturbance and avoid nuisance to the locality to comply with Surrey Waste Plan 2008 Policy DC3.
23. To ensure the minimum disturbance and avoid nuisance to the locality to comply with Surrey Waste Plan 2008 Policy DC3.
24. To minimise the attractiveness of flat roofs and soil stockpiles to birds this could endanger the safe movement of aircraft.
25. To ensure that the landscaping is maintained to provide for the long-term visual amenities of the area/nature conservation in accordance with Surrey Waste Plan 2008 Policy DC3 and Spelthorne Borough Core Strategy and Policies DPD 2009 Policy EN8.
26. To prevent the spread of Japanese Knotweed (*Fallopia japonica*) which is an invasive plant, which the spread of is prohibited under the Wildlife and Countryside Act 1981. To prevent its spread as a result of the development there would be the risk of an offence being committed and avoidable harm to the environment is occurring.
27. To prevent the encroachment of the development on watercourses this has a potentially severe impact on their ecological value.
28. To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
29. In order to retain proper planning control over the development and in the interests of safeguarding the environment and local amenity in accordance with the Spelthorne Borough Core Strategy and Policies DPD 2009 Policy EN1.
30. To allow a review of the effectiveness of control mechanisms and allow necessary action to be taken if the dust mitigation practices need to be modified in accordance with Surrey Waste Plan 2008 Policy DC3.
31. In the interests of local amenity and to comply with Surrey Waste Plan 2008 Policy DC3.
32. In the interests of local amenity and to comply with Surrey Waste Plan 2008 Policy DC3.

**Informatives:**

1. The developer should note that the granting of planning permission does not obstruct the developer to manage, manage and implement the approved Landscape and Ecology Management Plan (7<sup>th</sup> Revision) dated 8 October 2010 and the approved scheme for the facilitation of an upgrade of footpath number 3 to bridleway status as shown and detailed on plan drawing No. Section 106 Bridleway 1163/14 dated May 2010, in accordance with the Section 106 legal agreement dated 30 November 2016 attached to planning permission ref.SP14/01125/SCD1 dated 13 December 2016.

2. The Applicant's attention is drawn to the advice set out within the letter from BAA dated 15 December 2008 with regard to bird management plans.
3. The Applicant's attention is drawn to the Rights of Way memo of 10 December 2008 and the accompanying plan.
4. The applicant is reminded that all authorised vehicles must turn right towards the A3044 when exiting the site and approach from the A3044 and turn left into the site when entering the site and in accordance with the requirements under the valid Vehicle Operator Licence granted by the Traffic Commissioners for Great Britain.
5. It is the responsibility of the developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of ground water. Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required. They can be contacted on 0800 009 3921.
6. The London Water Ring Main or a large diameter stored water tunnel is in the area and special precautions will be required to avoid any damage that may occur as a result of the proposed development. The applicant is advised to contact Developer Services, Contact Centre on 0800 009 3921 for further information.
7. The Applicant should note that the protection afforded to species under UK and EU legislation is irrespective of the planning system and the applicant should ensure that any activity they undertake on the application site (regardless of the need for planning consent) must comply with the appropriate wildlife legislation. Failure to do so may result in fines and potentially a custodial sentence.
8. The Applicant is reminded that the granting of planning permission does not authorise the obstruction of interference with a public right of way.
9. The Applicant's attention is drawn to the possible need for the concrete crusher to have a permit under the relevant Environmental Permitting Regulations.
10. Details of the highway requirements necessary for inclusion in any application seeking approval of reserved matters may be obtained from the Transportation Development Management Division of Surrey County Council.
11. The permission hereby granted shall not be construed as authority to obstruct the public highway by the erection of scaffolding, hoarding or any other device or apparatus for which a licence must be sought from the Highway Authority.
12. The permission hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence must be obtained from the Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.
13. When a temporary access is approved or an access is to be closed as a condition of planning permission an agreement with, or licence issued by, the Highway Authority will require that the redundant dropped kerb be raised and any verge or footway crossing be reinstated to conform to the existing adjoining surfaces at the developers' expense. (Note: It is preferable where possible to arrange for the adjacent highway to be included

in the area edged red on the application when Circular 11/95 provides that conditions may be suitable to control this).

14. The developer is reminded that it is an offence to allow materials to be carried from the site and deposited on or damages the highway from uncleaned wheels or badly loaded vehicles. The Highway Authority will seek, wherever possible, to recover any expenses incurred in clearing, cleaning or repairing highway surfaces and prosecutes persistent offenders. (Highways Act 1980 Sections 131, 148, 149).
15. The applicant is advised that Public Footpath 3 and Public Bridleway 3 runs through the application site and it is an offence to obstruct or divert the route of a right of way unless carried out in complete accordance with appropriate legislation.
16. The applicant is advised that as part of the detailed design of the highway works required by the above condition(s), the County Highway Authority may require necessary accommodation works to street lights, road signs, road markings, highway drainage, surface covers, street trees, highway verges, highway surfaces, surface edge restraints and any other street furniture/equipment.
17. An HGV shall mean any goods vehicle 3.5 tonnes Gross Vehicle Weight (GVW) and above and shall include any skip vehicle, irrespective of weight.
18. The applicant is reminded that they may wish to contact with Cadent if they have any enquires regarding the National Grid apparatus.
19. In determining this application the County Planning Authority has worked positively and proactively with the applicant by entering into pre-application discussions, scoping of the application, assessing the proposals against relevant Development Plan policies and the National Planning Policy Framework including its accompanying technical guidance and European Regulations providing feedback to the applicant where appropriate. Further, the County Planning Authority has identified all material considerations, forwarded consultation responses to the applicant, considered representations from interested parties, liaised with consultees and the applicant to resolve identified issues, and determined the application within the timeframe agreed with the applicant. Issues of concern have been raised with the applicant including impacts of and on dust, landscape, visual impact and Green Belt and addressed through negotiation and acceptable amendments to the proposals. This approach has been in accordance with the requirements of paragraphs 186-187 of the National Planning Policy Framework 2012.

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#### **CONTACT**

Jeffrey Ng, Planning Officer

#### **TEL. NO.**

020 8541 8095

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#### **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**

Planning Practice Guidance

National Planning Policy Framework 2012

##### **The Development Plan**

Surrey Waste Plan 2008 (SWP 2008)  
Spelthorne Borough Core Strategy and Policies  
Development Plan Document February 2009 (SBCSP 2009)  
Spelthorne Borough Local Plan 2001 (SBLP 2001)

**Other Documents**

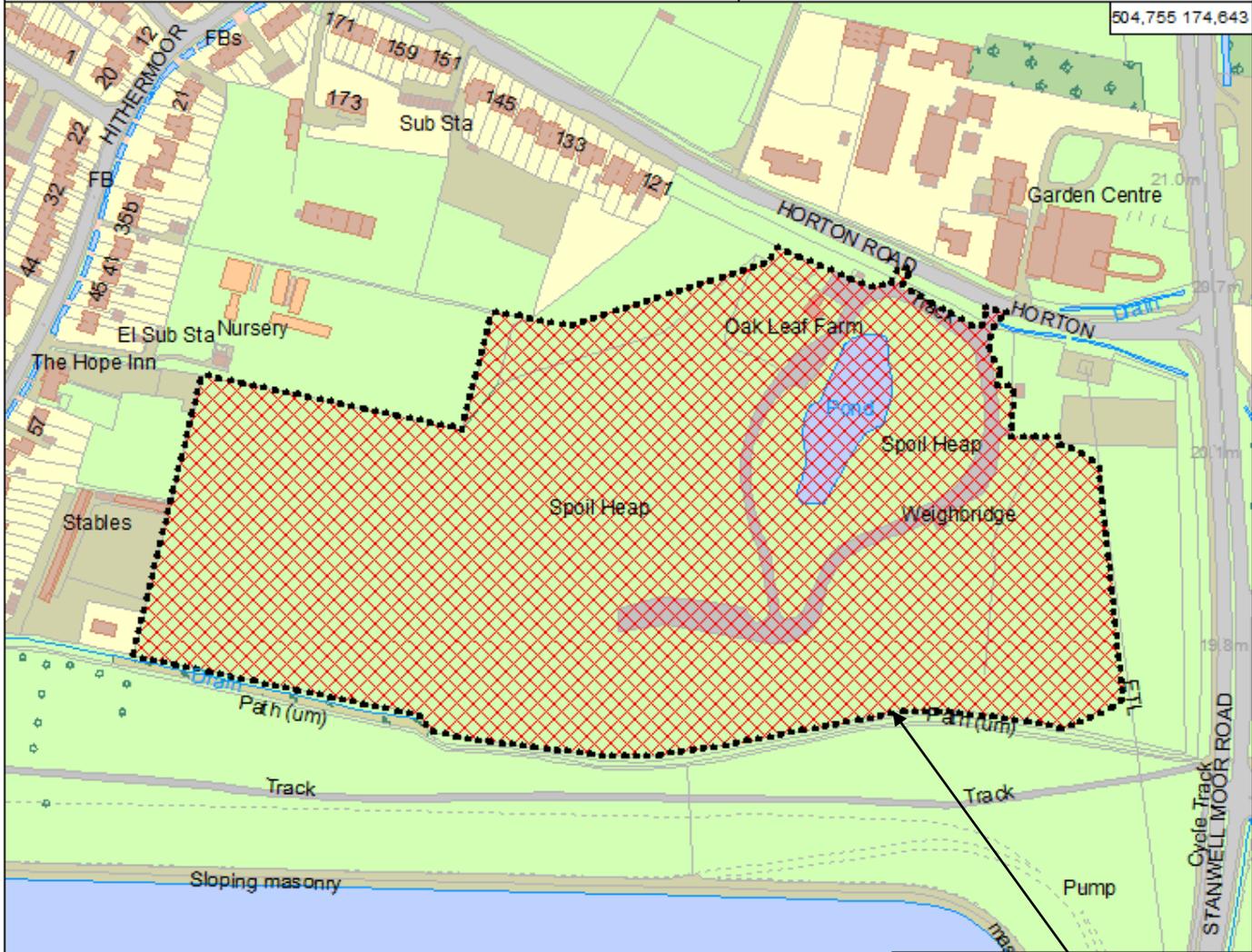
Surrey Hills AONB Management Plan 2014-2019  
EPUK/IAQM Planning For Air Quality Guidance January 2017

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<p style="text-align: center;"><b>Site Location</b></p> <p>Scale 1:44,101</p>	<p><b>Oakleaf Farm, Horton Road, Stanwell Moor, Surrey TW19 6AP</b></p> <p>Development of part of the Oakleaf Farm Waste Recycling Facility without compliance with Condition 3 of planning permission ref: SP17/00438/SCC dated 7 September 2017 in order to allow an increase in the number of heavy goods vehicles (HGV) from 24 to 55 with an increase in the total number of HGV vehicle movements from 48 to 110.</p> <p>Application No(s): SP18/00282/SCC</p> <p>Electoral Division(s): Stanwell &amp; Stanwell Moor</p>
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This plan is for indicative purposes only



<p>504,122 174,132</p> <p>GRID NORTH</p>	<p>Ref No: SCC REF 2018/0018</p> <p>Date printed: 17/04/2018</p>	<p>0 15 30 60 90 120 150 180 210</p> <p>Metres</p>	<p style="text-align: center;"><b>Application Site Area</b></p> <p>Scale 1:3,300</p>
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# 2012-13 Aerial Photos

## Aerial 1 : Oakleaf Farm, Stanwell Moor



Page 55



All boundaries are approximate

# 2012-13 Aerial Photos

## Aerial 2 : Oakleaf Farm, Stanwell Moor



Page 56



All boundaries are approximate

Figure 1 : Site Entrance



Figure 2 : Site Entrance



Figure 3 : Horton Road towards A3044



## Figure 4 : Street parking along Horton Road towards Hithermoor Road



**TO:** PLANNING & REGULATORY COMMITTEE

**BY:** HEAD OF LEGAL SERVICES

**DISTRICT (S):** MOLE VALLEY

**ELECTORAL DIVISION:**  
LEATHERHEAD AND  
FETCHAM EAST  
Tim Hall

**PURPOSE:** FOR INFORMATION

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

**SUMMARY REPORT**

The Committee is asked to note the outcome of a judicial review of a decision of this committee regarding an application by Philippa Cargill to register land at Leach Grove Wood, Leatherhead as a Village Green.

The County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 and 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 (TVG) on application, provided it meets the statutory criteria.

**ANNEXE**

Annexe A – Commons Register definitive map

Annexe B – Counsel's summary of the High Court's decision

**BACKGROUND**

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 statutory 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.”*

An objection to the application was received from NHS Property Services Ltd (NHSPS) in its capacity as freehold owner of the application land. The land is adjacent to Leatherhead Hospital.

A non-statutory public inquiry was held before an experienced independent barrister, sitting as the Inspector. The Inspector's report formed a background paper to the report from the Commons Registration Officer to this committee on 23 September 2015.

In his report, the Inspector advised that, because the applicant had not satisfied the neighbourhood test, the application should be rejected. In his opinion there was not sufficient cohesion to form a neighbourhood.

The view of this committee was that there was sufficient cohesion to form a neighbourhood and the committee decided to accept the application and register the land as a new TVG.

### **Judicial Review**

The NHSPS applied to judicially review the decision of this committee and the case was heard in the High Court in June 2016 before Mr Justice Gilbart.

The issues raised in the case were:

- (1) Was the council under a duty to give reasons for its decision?
- (2) If so, what standard of reasoning was required?
- (3) Did the council give adequate reasons for finding that the criteria were met?
- (4) Was the finding that there was a 'neighbourhood' one which the council could reasonably make?
- (5) Given the absence of any consideration or reasoning relating to the question of statutory incompatibility, has the council shown that there was no basis for concluding that there was statutory incompatibility?
- (6) Was the conduct by the council of the meeting which considered the issue fair to the Claimant NHSPS?

The Judge's decision on each issue was:

- (1) There is a duty to give reasons and the reasons given must be of the appropriate standard.
- (2) The appropriate standard is, on controversial issues, not just to consider the issues, but to give reasons for the conclusions reached.
- (3) In this instance, there was no criticism of the committee's approach to the issue. The committee was required to address the 'neighbourhood' question as it stood before them, and the arguments for and against the case. The Inspector's expertise lay in the law and practice relating to village greens, not in their identification, even assuming that such an expertise could exist. It was very much a matter of impression where elected members could have just as much expertise as the Inspector.
- (4) The finding that there was a neighbourhood was undoubtedly a decision which the committee could reasonably make.
- (5) There was an absence of any consideration or reasoning relating to the question of 'statutory incompatibility'. This means that where land is held under one statute it may be incompatible with the land being registered as a TVG. The argument was that the land was held by the NHS for health purposes which was incompatible with the land being used for recreational purposes as a TVG. There was statutory incompatibility and for this reason the judicial review was allowed.
- (6) Concern was raised about the fact that Mr Tim Hall was Chairman of the Committee. The Judge considered that this was a point of no substance. Mr Hall was entitled to present his view as ward member to the meeting, which

he did after vacating the chair, and having given his representations, he left the meeting. In the judge's view he acted with complete propriety, and no complaint can be made of his conduct.

So far as the question of the representations from the two parties were concerned, it was established that Dr Bowes' correspondence was circulated in hard copy, but the correspondence of the NHSPS was not. Further, several members did not receive the latter because the council's email server junked them. As a result, the NHSPS suffered a disadvantage because it was responding to Dr Bowes' late submission.

The judge did not consider that Dr Bowes conduct caused any actual unfairness. He was entitled to send a late submission to the committee in light of the recommendation to reject the application, and the NHSPS was entitled to respond.

The question is whether the disadvantage caused to the NHSPS by members having Dr Bowes's representations before them but not the NHSPS's, caused any actual prejudice which could have affected the decision. In Mr Justice Gilbert's judgement the decision which the committee reached, and the reasons it gave, were unaffected by that.

The decision of the Judge was to uphold the application of the NHSPS and to overturn the decision of this committee, due only to the lack of consideration of the legal concept of statutory incompatibility. This meant that the land was not a TVG.

A more detailed background note is provided at Annexe B by the Counsel's junior barrister, Katherine Barnes, which was prepared following the High Court decision prior to the NHSPS appeal to the Court of Appeal.

### **Appeal to the Court of Appeal**

The original applicant had by now moved out of the area and her application was taken over by Mr Timothy Jones. Mr Jones appealed from the decision of the High Court to the Court of Appeal. The appeal was heard in October 2017 and the judgment was published on the 12 April 2018.

The Court of Appeal overturned the decision of the High Court judge on the grounds of statutory incompatibility. Therefore the land is a TVG.

The NHSPS has been ordered to pay the costs of this council defending itself in the High Court. The council did not take part in the appeal.

### **Application to appeal to the Supreme Court**

The Court of Appeal refused the application of the NHSPS to appeal further. However, the council has now received notification that the NHSPS is applying for an extension of time to apply to the Supreme Court itself for permission to appeal further. The decision of the Supreme Court is awaited as to whether it will allow an extension of time and, as to whether it will allow the NHSPS to appeal. If an appeal is allowed, it is unlikely that the decision will be issued for about another two years.

The grounds of appeal are primarily on statutory incompatibility and on the definition of locality and neighbourhood. They are also testing the need for sufficient reasoning

by the decision maker. Thus, as the law currently stands, the original decision of this committee has been upheld but we wait to see what will happen.

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**CONTACT**

Helen Gilbert, Commons Registrations Officer

**TEL. NO.**

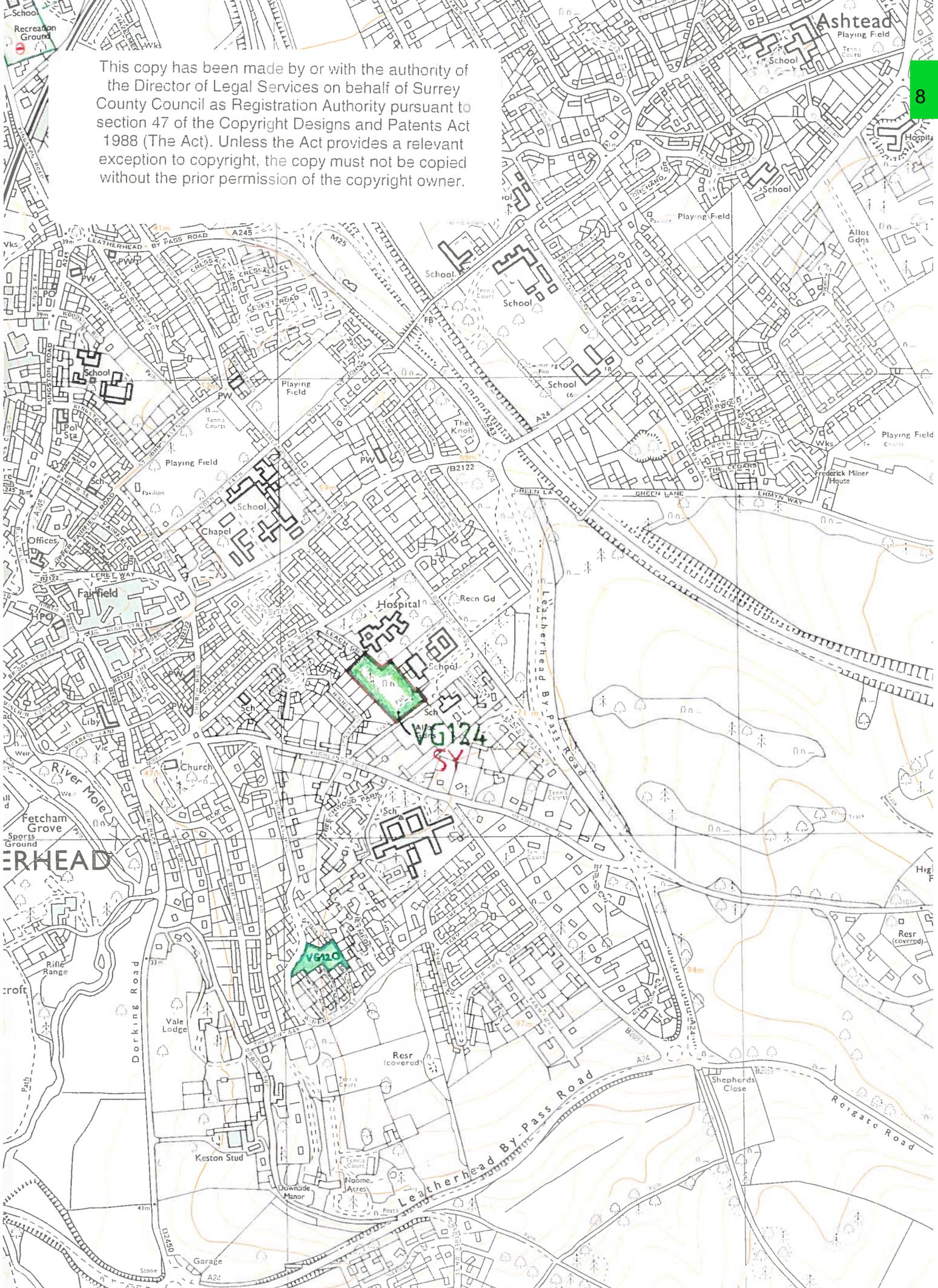
020 8541 8935

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**BACKGROUND PAPERS**

All papers referred to in the report

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**R (NHS Property Services Limited) v Surrey County Council and Jones [2016] EWHC 1715 (Admin)**

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**SUMMARY OF THE ABOVE  
DECISION OF MR JUSTICE GILBART**

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**Introduction**

1. In 2013 Mrs Cargill<sup>1</sup> made an application to Surrey County Council (“SCC”) for land known as Leach Grove Wood, Leatherhead, Surrey (“the Land”) to be registered as a town or village green (“TVG”). The statutory test for registration is contained in s.15 of the Commons Act 2006 (“CA 2006”). According to this test it is necessary that:

*“a significant number of the inhabitants of any locality, or neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.”*

2. The owner of the Land, NHS Property Services Limited (“NHSPS”), objected to the application. A non-statutory inquiry was held by an Inspector who recommended to SCC that the application be refused. While he found that there had been the indulgence as of right in lawful sports and pastimes for at least 20 years, the applicant had not identified a “locality” or a “neighbourhood within a locality”. However, he rejected the argument of NHSPS that there was a statutory incompatibility between the statutory purposes for which the land was held and registration under s.15 of CA 2006.
3. On 6 October 2015 SCC’s Planning and Regulatory Committee (“the Committee”) allowed the application to register the Land as a TVG (“the Decision”), concluding that the criteria in s.15 of the Commons Act were satisfied. In particular, the Committee concluded that the “neighbourhood within a locality” test was met. However, the Committee’s reasons for granting the application did not address the issue of statutory incompatibility. SCC’s reasoning provided:

*“Notwithstanding the Inspector’s view, Members formed a different impression. Having considered all the evidence before them they came to the view that the criteria laid down by the Commons Act 2006 had been satisfied by the applicant.”*

4. NHSPS judicially reviewed the Decision. In his written judgment Gilbert J found that the key issues raised by the challenge were as follows:
  - (a) Was SCC under a duty to give reasons for its decision?
  - (b) If so, what standard of reasoning was required?
  - (c) Did SCC give adequate reasons for finding that the criteria were met?
  - (d) Was the finding that there was a “neighbourhood” one which SCC could reasonably make?

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<sup>1</sup> Mrs Cahill has since emigrated. Another supporter of the application, Mr Jones, has taken her place in promoting the application and was an Interested Party in the judicial review proceedings.

- (e) Given the absence of any consideration or reasoning relating to the question of statutory incompatibility, has SCC shown that there was no basis for concluding that there was statutory incompatibility?
- (f) Was the conduct by SCC of the meeting which considered the issue fair to NHSPS?

## Law

### Statutory incompatibility

5. In addition to the criteria in s.15 CA 2006 set out above, land may not be registered as a TVG “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”<sup>2</sup> (emphasis added).

### *Powers under which the Land is held*

6. Here the Land forms part of an area of land which, in short, is owned by part of the National Health Service (“NHS”). The various statutory powers under which the Land has been held in the past and is currently held are set out at [18]-[33] of the judgment. Gilbert J summarised the position at [34]:

*“It follows from the above that at all relevant times, the land has formed a part of the land held by one of the various NHS bodies, and held for defined statutory purposes. There has at no time relevant to the application been a general power to hold the land for anything other than the statutory purposes set out above.”*

7. These statutory purposes can, very broadly speaking, be summarised as health purposes connected to the NHS such as the provision of: hospital accommodation; medical, dental, nursing and ambulance services; facilities for the prevention of illness, care of persons suffering from illness and the after-care of persons who have suffered from illness.

### The duty to give reasons under the TVG Regulations

8. The relevant regulations applicable to SCC are the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“C(RTV) Regs 2007”). Under these regulations, where a registration authority rejects an application it must give reasons for doing so. There is no duty to give reasons where an application is granted.
9. In contrast, the Commons Registration (England) Regulations 2014 (“CR(E) Regs 2014”) apply to certain pilot areas which do not include Surrey. Under these regulations there is a duty to give reasons where an application is granted or rejected.

### Section 31(2A) Senior Courts Act 1981

10. Section 31(2A) of the Senior Courts Act 1981 (“the SCA 1981”) is concerned with the circumstances in which the court must quash a decision if it identifies an error of law.

<sup>2</sup> R (*Newhaven Port and Properties Ltd*) v *East Sussex CC* [2015] UKSC 7 at [93].

Essentially, a decision should not be quashed if the error of law would not have made a difference to the outcome:

*“(2A) The High Court –  
 (a) must refuse to grant relief on an application for judicial review, and  
 (b) may not make an award under subsection (4) on such an application,  
 If it appears to the court to be highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred.”*

## **Analysis of Gilbert J**

### Preliminary issue: existence of a lawful locality

11. NHSPS had argued under its ground 2 that the applicant relied on an unlawful locality, a polling district, as the basis for its claimed “neighbourhood within a locality”. However, given that it is well established that an electoral ward can be a “locality” in law, and the applicant also put her case on this alternative basis, Gilbert J accepted that the Inspector’s Report should be read as finding the relevant locality to be Leatherhead South ward.<sup>3</sup> The key question was therefore “neighbourhood” rather than “locality”. As a result, ground 2 was unsuccessful.

### Issue (a): Was SCC under a duty to give reasons for its decision?

12. The Judge found that SCC was under a duty to give reasons for its decision in the circumstances.
13. The fact that there is no statutory duty to give reasons when granting an application under the C(RTV)Regs 2007 was not considered to be determinative given that the CR(E)Regs 2014 imposed such a duty in other parts of the country. It was therefore necessary to determine the matter with reference to first principles.
14. The Judge considered the effect of registration of land as a TVG on a landowner and found that it had grave consequences since it would seriously impede the way in which the landowner could use and develop the land in the future. As a result, the effect of registration is a determination of civil rights/obligations under Article 6 of the European Convention on Human Rights such that reasons are required.<sup>4</sup> Gilbert J then went on to consider the position under the common law. He considered that, in accordance with *R v Civil Service Appeal Board ex p Cunningham* [1991] 4 All ER 310, this was one of the scenarios in which fairness requires the giving of reasons:

*“In the case of registration, one has the situation of a landowner being at risk of losing his freedom to do as he wishes with his land. In my judgement that demands the provision of reasons, so that he may know whether the decision was made on lawful grounds, and may be able to determine whether he has grounds to challenge it in the courts.”<sup>5</sup>*

<sup>3</sup> [42(c); [95].

<sup>4</sup> *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605.

<sup>5</sup> [104].

Issue (b): If so, what standard of reasoning was required?

15. SCC had argued before the court that in circumstances such as this, where there is no statutory duty to give reasons, the standard of reasoning is lower than would otherwise be the case. However, Gilbert J was not persuaded by this approach. He found the starting point to be that while reasons can be shortly stated they “must be intelligible and deal adequately with the substance of the arguments advanced”<sup>6</sup> and the “principal controversial issues”.
16. It follows that in a TVG registration case the reasons must address:
- (a) whether the applicant for registration has shown that the criteria in s. 15 CA 2006 have been met, and why the tests have been met or not as the case may be;
  - (b) in a case where an objection has been made on a ground known to law, whether that objection is or is not well founded, and why it was or was not well founded as the case may be.<sup>7</sup>
17. As for the standard of those reasons, the losing party must know why they lost and what the legal justification was for doing so.<sup>8</sup>
18. In addition, Gilbert J noted that under the C(RTV) Regs 2007 SCC had to decide to proceed to consider the application, and in doing so (a) must consider all objections made by the date when it elects to proceed further, and (b) may consider those received afterwards up to the time it finally disposes of the application.<sup>9</sup> He concluded from this that SCC:

*“had to consider not just the application, but also all the objections made to it at both stages. The Claimant’s objection, which included the point about statutory incompatibility, was made at both stages. As it was one of the controversial issues, SCC was bound not just to consider it, but to give reasons for the conclusions it reached upon it.”*<sup>10</sup>

Therefore, to be lawful SCC’s reasons had to address the question of statutory incompatibility.

Issue (c): Did SCC give adequate reasons for finding that the criteria were met?

19. Although NSHPS had not initially argued that SCC’s reasons were inadequate due to their failure to address the question of statutory incompatibility, this was a matter raised by Gilbert J during the hearing. He concluded that this amounted to an “obvious and substantial omission in the SCC reasons”. As Gilbert J explained:

<sup>6</sup> [108]; *South Bucks v Porter* [2004] 1 WLR 1953.

<sup>7</sup> [109].

<sup>8</sup> [111].

<sup>9</sup> Regulation 6.

<sup>10</sup> [113].

*“At no point is the issue about statutory incompatibility ever addressed. There is not even a case to be made (and none was made to me) that it had been considered but not spelled out in the reasons. The officer’s report merely recites the bare conclusion of the IR at [178(c)] and the reasons in the Minutes are entirely silent on the topic. It is not possible to say that the Inspector’s view was adopted on this point, because there is not the slightest evidence that it was.”<sup>11</sup>*

20. However, Gilbert J rejected NSHPS’s original argument that the reasons were inadequate because they did not explain adequately the rationale for the Committee’s approach to “neighbourhood”. The Judge accepted SCC’s submissions that the cohesion of a “neighbourhood” is not a matter for experts but is a subjective question on which the Committee was entitled to form a view. He went on:

*“In that context, I do not consider that the Committee’s approach to the issue can be criticised. It considered the Inspector’s assessment, but then made its own, which it preferred. [...] [The Inspector’s] expertise lay in the law and practice relating to village greens, not in their identification, even assuming that such an expertise could exist. He is not a geographer or an anthropologist considering some technical test applied in field studies to the existence of a neighbourhood. This is not a case where the reporting Inspector officer is an expert in the fields for (for example) highway engineering in a debate about the design of a junction, or retails economics in a case where the extent of pent up demand is in issue [...]. The question of whether or not this was a neighbourhood in the sense used in the CA 2006 is not the same kind of question. It was very much a matter of impression where elected members could have just as much expertise as the inspector. They were not required to go through all of his reasoning, nor the various events at the inquiry. What they were required to do was to address the “neighbourhood” question as it stood before then, and the arguments for and against the Applicant’s case.”<sup>12</sup>*

21. Thus, SCC’s reasoning given in respect of the “neighbourhood” question was lawful.

Issue (d): Was the finding that there was a “neighbourhood” one which SCC could reasonably make?

22. Given that the Judge agreed with SCC that it is matter of impression whether there is sufficient cohesion for a “neighbourhood” to exist, SCC’s approach to determining this issue was entirely legitimate. The Inspector was no more of an expert on this issue than the Committee, and the Committee was entitled to form its own view on the subject.

Issue (e): Given the absence of any consideration or reasoning relating to the question of statutory incompatibility, has SCC shown that there was no basis for concluding that there was statutory incompatibility?

23. Having concluded that SCC’s reasons were unlawful for failing to address the question of statutory incompatibility, the Judge went on to apply s.31(2A) SCA 1981. In other words, he considered whether the Decision would have been the same (ie the

<sup>11</sup> [114].

<sup>12</sup> [117].

application would still have been granted) if SCC's error had not occurred. For this to be the case SCC had to show that there was no statutory incompatibility such that the reasons' failure to tackle this point was immaterial. However, this argument did not succeed because Gilbert J identified a statutory incompatibility between the powers under which the Land is held by the NHSPS and use of the Land as a TVG under the CA 2006. Thus, the failure of SCC's reasoning to deal with this question was highly material (to the extent that it was determinative) to the Decision.

24. The Judge's approach to statutory incompatibility was to examine the leading case on this issue, the Supreme Court decision of *Newhaven Port and Properties Ltd v East Sussex CC* [2015] UKSC 7, in some detail.<sup>13</sup> In *Newhaven* it was held that registration as a TVG was incompatible with the statutory powers governing the land's use as a port. The relevant test with regards statutory incompatibility was explained as follows:

*"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."*<sup>14</sup> (Emphasis added).

25. Having studied the relevant passages from *Newhaven* Gilbert J extracted three key principles from that judgment:

- (a) one must consider the actual statutory powers under which the land is held;
- (b) the fact that in some cases parcels of land belonging to some statutory bodies have been registered does not give rise to a rule that any land held by a statutory body can be registered;
- (c) it is not necessary that the land in question is used for a purpose incompatible with use as a village green. What matters is whether, as a matter of statutory construction, the relevant statutory purpose is incompatible with registration.<sup>15</sup>

26. Gilbert J went on to conclude that the recent decision of Ouseley J in *Lancashire CC v Secretary of State for the Environment and Rural Affairs and Bebbington* [2016] EWHC 1238 did not to alter these principles. In that case Lancashire County Council held the land in its capacity as education authority. The relevant question was whether, if the land had been held for educational purposes, there was any incompatibility between those purposes and TVG use (ie recreational purposes). Ouseley J concluded that there was no such incompatibility. In particular, he rejected the argument that the fact that the land was held for very general educational purposes required use of the land.

27. Having stressed the need to approach statutory incompatibility on a case by case analysis, Gilbert J considered the statutory powers under which the Land was held in this case. He pointed out none of the bodies which had held the Land over the relevant

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<sup>13</sup> [121]-[127].

<sup>14</sup> *Newhaven* at [93].

<sup>15</sup> [128].

period had a general power to hold land. Rather, land could only be acquired or held if done so for the specific purposes defined in the relevant Acts. These purposes do not include recreation or anything outside the purview of providing health facilities. The Judge went on to draw a contrast between the scenario here and that in *Lancashire*:

*“[I]t is very hard indeed to think of a use for the land which is consistent with those powers, and which would not involve substantial conflict with use as a village green. A hospital car park, or a clinic, or an administrative building, or some other feature of a hospital or clinic would require buildings or hard standing in some form over a significant part of the area used. By contrast, it is easy to think of functions within the purview of education, whereby land is set aside for recreation. Indeed, there is a specific statutory duty to provide recreational facilities, which may include playing fields, and other land, for recreation, the playing of games, and camping, among other activities – see section 507A Education Act 1996.”*<sup>16</sup>

28. Therefore, Gilbert J’s conclusion was that there is a conflict between the statutory powers in this case and registration of the Land as a TVG. Further, given that the Inspector reached the opposite conclusion and did not apply *Newhaven* as outlined above, the Inspector’s approach to the question of statutory incompatibility was wrong in law.

Issue (f): Was the conduct by SCC of the meeting which considered the issue fair to NHSPS?

29. The first of NHSPS’s complaints in relation to unfairness was that Cllr Hall should not have been present at the Committee meeting at which the Decision was made given that he had declared an interest in the matter. This argument was made despite the fact that Cllr Taylor took over from Cllr Hall as chairman for this item and Cllr Hall withdrew as soon as he made his representations. Gilbert J was not impressed with the submissions of NHSPS on this point: “In my judgement he [Cllr Hall] acted with complete propriety, and no complaint can be made of it.”<sup>17</sup>
30. NHSPS also argued that the proceedings were unfair because Dr Bowes (the applicant’s barrister) sent the Committee representations which were taken into account before the Decision was made, while the landowner’s response to these submissions (sent by their solicitors, Capsticks) was not. It was also suggested that the fact that Dr Bowes was on first-name terms with certain members was indicative of some sort of unfairness.
31. As became apparent over the course of the proceedings, Dr Bowes’ representations were provided to the Committee in hard copy while Capsticks’ representations were not. Moreover, the Capsticks’ representations were “junked” by the email server of the Council so that various Members did not see them until after the Decision had been taken. In these circumstances the Judge observed that, although officers did not intend for NHSPS to suffer any disadvantage, this was the consequence of what had occurred.

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<sup>16</sup> [135].

<sup>17</sup> [140].

32. While Gilbert J advised Dr Bowes to avoid familiar terms of address in similar situations in future, he found that Dr Bowes had not done anything wrong in making written representations to the Committee before it made the Decision – Dr Bowes was entitled to take this course of action and NHSPS was entitled to respond.
33. It was also necessary to consider the application of s.31 SCA 1981. The question was whether the disadvantage caused to NHSPS by the Committee having Dr Bowes' representations before it but not those of NHSPS actually affected the outcome of the Decision. Gilbert J concluded that it did not; it was highly likely that the Committee would still have allowed registration even if had seen the submissions of NHSPS at its meeting.<sup>18</sup> As a result, there was no basis for quashing the Decision on the ground that it was procedurally unfair.

### Conclusion

34. Ground 5 of the claim was successful because the Committee never considered the question of statutory incompatibility and gave no reasons in respect of this issue. Further, this meant it was appropriate to quash the Decision because Gilbert J considered that NHSPS' objection to registration on the ground of statutory incompatibility to be well-founded. However, as explained above, he rejected NHSPS' other arguments: Grounds 1-4.
35. In light of the judgment the following order was made:
- (a) The Registration of the Leach Grove Wood Town or Village Green of 6<sup>th</sup> October 2015 be quashed, and
  - (b) The application for registration shall be re-determined by the Defendant Registration Authority in accordance with the judgment of this Court.
36. As for costs, given that SCC had lost the case overall but succeeded on four of the five grounds of challenge, the Judge ordered SCC to pay NHSPS' costs of the judicial review, less any costs attributable to the hearing of the argument and submissions lasting more than one full hearing day.
37. The Interested Party, Mr Jones, made an application for permission to appeal the Judge's ruling on the statutory incompatibility point on the basis of the draft judgment. Gilbert J granted that application.

15 July 2016

KATHERINE BARNES  
FRANCIS TAYLOR BUILDING

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<sup>18</sup> [143].