

**PLANNING AND REGULATORY COMMITTEE
NOTICE OF MEETING**

Date: Wednesday, 8 August 2018
Time: 10.30 am
Place: Ashcombe Suite, County Hall, Kingston upon Thames, Surrey KT1 2DN

Contact: Huma Younis or Joss Butler, Room 122, County Hall
Telephone: 020 8213 2725 / 020 8541 9702
Email: huma.younis@surreycc.gov.uk / joss.butler@surreycc.gov.uk
 [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/>

**If you would like a copy of this agenda or the attached papers in another format, eg large print or braille, or another language please either call our Contact Centre on 08456 009 009, write to Surrey County Council at County Hall, Penrhyn Road, Kingston upon Thames, Surrey KT1 2DN, Minicom 020 8541 0698, fax 020 8541 9004, or email huma.younis@surreycc.gov.uk/
joss.butler@surreycc.gov.uk. This meeting will be held in public. If you would like to attend and you have any special requirements, please contact Huma Younis or Joss Butler on 020 8213 2725 / 020 8541 9702.**

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 - 12)

To confirm the minutes of the meeting held on Wednesday 20 June 2018 as a correct record.

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 MINERALS AND WASTE APPLICATION MO/2018/0444 - BROCKHAM WELLSITE, FELTON'S FARM, OLD SCHOOL LANE, BROCKHAM, SURREY RH3 7AU

(Pages 13 - 100)

For the retention of the BRX4 well, the regularisation of the BRX4Z side-track, and the appraisal of BRX4Z using production plant and equipment within the existing site, for a temporary period of three years (part retrospective).

**8 MINERALS/WASTE SP18/00282/SCC- OAKLEAF FARM,
HORTON ROAD, STANWELL MOOR, SURREY TW19 6AP**

(Pages 101 -
160)

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.

**9 APPLICATION FOR VILLAGE GREEN STATUS- LAND AT
WOODSIDE MEADOW, CHIDDINGFOLD**

(Pages 161 -
254)

The Committee is asked to consider whether or not to register the land the subject of this application as a Village Green. Application for Village Green status by Antonia Cowley and Angus de Watteville dated 10 September 2015 relating to land at Woodside Road, Chiddingfold.

10 DATE OF NEXT MEETING

The next meeting of the Planning & Regulatory Committee will be on Wednesday 12 September 2018.

Joanna Killian
Chief Executive
Friday 27 July 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.

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

Thank you for your co-operation

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

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

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

NOTES:

1. The Chairman will adjourn the meeting for lunch from 12.45pm unless satisfied that the Committee's business can be completed by 1.15pm.
2. Members are requested to let the Regulatory Committee Manager have the wording of any motions and amendments not later than one hour before the start of the meeting.
3. Substitutions must be notified to the Regulatory Committee Manager by the absent Member or group representative at least half an hour in advance of the meeting.
4. Planning officers will introduce their report and be able to provide information or advice to Members during the meeting. They can also be contacted before the meeting if you require information or advice on any matter.
5. A record of any items handled under delegated powers since the last meeting of the Committee will be available for inspection at the meeting.
6. Members of the public can speak at the Committee meeting on any planning application that is being reported to the Committee for decision, provided they have made written representations on the application at least 14 days in advance of the meeting, and provided they have registered their wish to do so with the Regulatory Committee Manager 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 [National Planning Policy Framework](#) (NPPF) was updated in July 2018. This replaces the first version published in March 2012. It continues to provide 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), as amended, 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 (paragraph 10). The NPPF makes clear that the planning system has three overarching objectives in order to achieve sustainable development, which are interdependent and need to be pursued in mutually supportive ways in order to take opportunities to secure net gains across each of the different objectives. These objectives are economic, social and environmental.

The presumption in favour of sustainable development in 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 11) states that development proposals that accord with the development plan should be approved without delay. Where there are no relevant development plan policies, or the policies which are most important in determining an application are out of date, permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

The NPPF aims to strengthen local decision making and reinforce the importance of up to date plans. Annex 1 paragraph 213 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).

HUMAN RIGHTS ACT 1998 – GUIDANCE FOR INTERPRETATION

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

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

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

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

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

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

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

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

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

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MINUTES of the meeting of the **PLANNING AND REGULATORY COMMITTEE** held at 10.30 am on 20 June 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, 8 August 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

Substitute Members:

- * Mr Richard Wilson
- * Mr Jonathan Essex

11/18 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS [Item 1]

Apologies for absence were received from Mrs Penny Rivers and Mr Matt Furniss. Mr Jonathan Essex substituted for Mrs Penny Rivers and Mr Richard Wilson substituted for Mr Matt Furniss.

12/18 MINUTES OF THE LAST MEETING [Item 2]

Subject to a few grammatical corrections on page 2, the Minutes were agreed as an accurate record of the previous meeting.

13/18 PETITIONS [Item 3]

There were none.

14/18 PUBLIC QUESTION TIME [Item 4]

There were none.

15/18 MEMBERS' QUESTION TIME [Item 5]

There were none.

16/18 DECLARATIONS OF INTERESTS [Item 6]

There were none.

*Mr Richard Wilson arrived to the meeting at 10:35am
Dr Andrew Povey arrived to the meeting at 10:37am.*

17/18 SP18/00282/SCC OAKLEAF FARM, HORTON ROAD, STANWELL MOOR, SURREY TW19 6AP [Item 7]

An update sheet was tabled at the meeting. This is attached to the minutes as annex 1.

Officers:

Caroline Smith, Planning Development Manager
Jeffrey Ng, Planning Officer
Stephen Jenkins, Deputy Planning Development Manager
Nancy El-Shatoury, Principal Solicitor

Speakers:

No members of the public registered to speak on the item.

Robert Evans, Local Member, made the following points:

1. Stanwell Moor is a small village next to Heathrow airport. Its close proximity to the airport means that roads are continually blocked with minicabs waiting to pick up passengers.
2. The village is already affected by aircraft noise, night flights and pollution due to its location.
3. Oakleaf Farm is designated Green Belt land. Since 2008, the area has been designated as suitable for waste management.
4. In 2017, permission was granted at the site for cardboard and coffee cup recycling. This has led to an increase of litter in the area, particularly at the roadside and gutters as waste falls off the lorries as they go into the recycling centre. Residents have complained and Spelthorne Borough Council have been requested on several occasions to conduct additional clearances as a result.
5. The application seeks to more than double the amount of night time HGV movements, which in turn will double the level of disturbance to residents.
6. Urge Members to consider the facts and reject the application.

Key points raised during the discussion:

1. The Planning Officer introduced the report. It was explained that this application is to seek an amendment to Condition 3 of the existing planning permission.
2. Members commented that the HGVs should be sheeted, as stated in the report, to prevent litter falling off the lorries. A Member of the Committee stated that she had witnessed concrete and waste falling off a sheeted lorry in her local area.
3. Members voiced concerns about the noise impact of the operation at night and stated that the Committee should be able to review the Noise Management Plan before a decision is taken.
4. The Planning Officer clarified that the applicant had already submitted a Noise Management Plan as part of the existing planning permission and that the County Noise Consultant requested this be reviewed

within three months to take into account the increased number of night time HGV movements

5. A Member sought clarity on movement numbers. The Planning Officer explained that the applicant had a Goods Vehicle Operators Licence for 55 HGVs. The Planning Development Manager added that whilst there were currently restrictions regarding the number of vehicle movements overnight, there was no limit for total movements.
6. Members were concerned that the number of movements during the day may not decrease when the overnight movements increase and therefore an Air Quality Assessment should be submitted.
7. The Deputy Planning Development Manager explained that Condition 16 prevents HGVs travelling through Stanwell Moor Village outside of the daytime working hours set out in Condition 2.
8. The Deputy Planning Development Manager informed the Committee that the Noise Consultant was satisfied that subject to the submission of an amended night-time noise management plan. Members stated that it was not unreasonable for the Committee to want to see this prior to taking a decision.
9. The Deputy Planning Development Manager suggested that the Condition could be re-worded to state that the plan be approved by the Country Planning Authority prior to the commencement of the development.
10. The Chairman suggested that the informative regarding litter ought to be strengthened or made into a Condition. Officers suggested that the Enforcement team can be asked to monitor Condition 11.
11. The Deputy Planning Development Manager explained that the planning application is to enable the operator to move some daytime collections to the evening at the request of their customer base. Members stated however, there was no guarantee that there would be a decrease in daytime movements, and therefore no guarantee there would be the same number of total HGV movements.
12. The Planning Development Manager confirmed that the existing planning permission did not have any limitations on daytime vehicle movements.
13. Members questioned why Condition 3 was previously imposed. The Planning Development Manager explained that this was imposed because the applicant originally applied for daytime operation and subsequently later applied for an amendment to the condition to allow 24 HGV movements overnight.
14. Members raised concern that the report mentioned the usage of trailers and that if the applicant were to purchase additional trailers, the movements could be further increased without restriction.
15. A Member suggested the introduction of a mechanism to ensure that there would be a commensurate reduction of movements during the day in order to allow for the increased number of movements at night.
16. The Chairman suggested that officers liaise with Spelthorne Borough Council regarding the litter issues. A Member also suggested that the Committee should see evidence of the type of sheeting used on the HGVs to prevent windblown litter.
17. The Chairman moved the vote to defer the application. There were 9 votes for deferral with 2 abstentions. The application was therefore deferred.

RESOLVED:

That application SP18/00282/SCC Oakleaf Farm, Horton Road, Stanwell Moor, Surrey, TW19 6AP be **DEFERRED** for the following reasons:

- in order to receive additional information on the overall level of movements generated by the site during the day in order to devise a mechanism to control movements during the day to take into account the increased movements at night
- the need to update the noise management plan prior to commencement
- to review waste on the highway as a result of the site and,
- to review the sheeting used by vehicles to and from the site
- to check the need for an Air Quality Assessment if there was to be a net increase in total vehicle movements.

18/18 APPLICATION FOR VILLAGE GREEN STATUS UPDATE: LAND AT LEACH GROVE WOOD, LEATHERHEAD, SURREY [Item 8]

Officers:

Helen Gilbert, Commons Registration Officer

Judith Shephard, Lawyer

Key points raised during the discussion:

1. Members were updated on the outcome of a Judicial Review of a decision taken by the Committee on 23 September 2015 to register land at Leach Grove Wood as a Village Green.
2. Members were informed that the owners of the land at Leach Grove Wood, NHS Property Services, applied to Judicially Review the decision. This was heard at the High Court in June 2016.
3. The Commons Registration Officer explained that the judge upheld the application by the NHS and overturned the decision due to the lack of consideration of the legal concept of statutory incompatibility.
4. Members noted the decision of the High Court was appealed to the Court of Appeal. The Court of Appeal overturned the decision of the High Court judge on the grounds of statutory incompatibility, therefore the land is a Village Green, and the NHS has been ordered to pay the costs of Surrey County Council in defending itself at the High Court.
5. Officers have been informed the NHS is applying to the Supreme Court for permission to appeal further, and Members were informed that if the appeal is allowed, an outcome is not likely for around two years.
6. Members noted that the definition of neighbourhood was key. The issue of statutory incompatibility may be a consideration where the landowner is a public authority of statutory undertake; and the breadth of this concept is one of the grounds of appeal to the Supreme Court.
7. The Lawyer explained that the Committee's decision has been upheld and it is now for the Supreme Court to decide whether they agree with the Court of Appeal. The Lawyer added that permission to appeal or not would depend on whether the Supreme Court considered the matter to be of public interest.

RESOLVED:

The Committee noted the report and thanked officers for their work on this case.

19/18 DATE OF NEXT MEETING [Item 9]

The date of the next meeting was noted.

Meeting ended at: 11:40

Chairman

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UPDATE SHEET

MINERALS/WASTE SP18/00282/SCC

DISTRICT(S) SPELTHORNE BOROUGH COUNCIL

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 .

RECOMMENDATION

1. Conditions 3, 4, 6, 10, 13 and 18 are amended as follows: (changes in bold and underlined)

Conditions:

Condition 3 Hours of Working

Current Wording:	Revised Wording:
<p>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:</p> <p>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</p> <p>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.</p>	<p>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) <u>dated 7 June 2018</u> 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 <u>each of</u> the following times:</p> <p>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</p> <p>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.</p>

Condition 4 Hours of Working

Current Wording:	Revised Wording:
<p>There shall be no loading and unloading by any vehicles except between the following times:</p> <p>0700-1800 Mondays to Fridays 0700-1300 Saturdays</p> <p>There shall be no loading & unloading on a Sunday or any public holiday.</p>	<p>There shall be no loading and unloading of any vehicles except between the following times:</p> <p>0700-1800 Mondays to Fridays 0700-1300 Saturdays</p> <p>There shall be no loading and unloading on a Sunday or any public holiday.</p>

Condition 6 Operation

Current Wording:	Revised Wording:
<p>Only commercial and industrial and construction and demolition waste shall be imported onto the application site as outlined within the application documents 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.</p>	<p>Only commercial and industrial and construction and demolition waste shall be imported onto the application site as outlined within the application documents 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 facility.</p>

Condition 10 Operation

Current Wording:	Revised Wording:
<p>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.</p>	<p>The two profile height posts erected within the stockpiling area as delineated on <u>Drawing No.1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009)</u> to display the profile heights and maintained for the duration of the use hereby authorised.</p>

Condition 13 Traffic and Highways

Current Wording:	Revised Wording:
<p>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.</p>	<p>The parking/turning area as shown on Drawing No.2056/13 (Location of Dedicated Lorry Parking Area) dated 7 June 2018 shall be used and retained exclusively for its designated purpose.</p>

Condition 18 Rights of Way

Current Wording:	Revised Wording:
<p>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.</p>	<p>The Public Rights of Way 3 (<u>Staines</u>) (bridleway and footpath) along the southern boundary of the site shall be maintained free of vegetation to provide a minimum width of 4m.</p>

2. Reasons for Conditions 24, 27 and 28 are amended as follows:

Reason for Condition 24

Current Wording:	Revised Wording:
To minimise the attractiveness of flat roofs and soil stockpiles to birds which could engaged the safe movement of aircraft.	To minimise the attractiveness of flat roofs and soil stockpiles to birds <u>which</u> could endanger the safe movement of aircraft <u>in accordance with Surrey Waste Plan Policy 2008 DC3.</u>

Reason for Condition 27

Current Wording:	Revised Wording:
To prevent the encroachment of the development on watercourses which has a potentially severe impact on their ecological value.	To prevent the encroachment of the development on watercourses which has a potentially severe impact on their ecological value <u>in accordance with Surrey Waste Plan Policy 2008 DC3.</u>

Reason for Condition 28

Current Wording:	Revised Wording:
To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.	To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site <u>in accordance with Surrey Waste Plan 2008 Policy DC3.</u>

3. Informatives 5, 6, 10, 11, 13 and 18 are amended as follows:

Informative 5

Current Wording:	Revised Wording:
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.	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 ₁ 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.

Informative 6

Current Wording:	Revised Wording:
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 0845 850 2777 for further information.	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 Thames Water Developer Services, Contact Centre on 0845 850 2777 for further information.

Informative 10

Current Wording:	Revised Wording:
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.	Details of the highway requirements necessary for inclusion in any application seeking approval of reserved matters may be obtained from the <u>County Highway Authority (Transportation Development Planning)</u> .

Informative 11

Current Wording:	Revised Wording:
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.	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 <u>County</u> Highway Authority.

Informative 13

Current Wording:	Revised Wording:
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).	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 <u>Appendix A of</u> Circular 11/95 provides that conditions may be suitable to control this).

Informative 18

Current Wording:	Revised Wording:
The applicant is reminded that they may wish to contact with Cadent if they have any	The applicant is reminded that they may wish to contact <u>Cadent Gas Ltd. on 0800 688 588</u>

enquires regarding the National Grid apparatus.	<u>for</u> enquires regarding the National Grid apparatus.
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TO: PLANNING & REGULATORY COMMITTEE

DATE: 8 August 2018

BY: PLANNING DEVELOPMENT MANAGER

DISTRICT(S) MOLE VALLEY DISTRICT COUNCIL

ELECTORAL DIVISION(S):
Dorking Rural
Mrs Clack

PURPOSE: FOR DECISION

GRID REF: 518986 148678

TITLE: MINERALS AND WASTE APPLICATION MO/2018/0444

SUMMARY REPORT

Brockham Wellsite, Felton's Farm, Old School Lane, Brockham, Surrey RH3 7AU

The retention of the BRX4 well, the regularisation of the BRX4Z side-track, and the appraisal of BRX4Z using production plant and equipment within the existing site, for a temporary period of three years (part-retrospective).

Brockham Wellsite is situated approximately 2km south east of Dorking in an area of Low Weald Farmland. The wellsite comprises an established oil and gas site originally constructed in 1987. The wellsite benefits from planning permission for the production of hydrocarbons until 31 December 2036. Following its acquisition by the current operator, the wellsite has been subject to a significant programme of improvement and refurbishment. Three wellheads are located centrally within the site comprising BRX1, BRX2 and BRX4. A side-track off BRX2, known as BRX2-Y is an oil production well where hydrocarbons are produced from the Portland Sandstone Formation.

This part-retrospective application is concerned with the exploration and appraisal stages of on-shore hydrocarbon development using conventional methods. For the avoidance of doubt, the proposal does not involve hydraulic fracturing. The BRX4 well was originally drilled during 2007 to a True Vertical Depth (TVD) of 689 metres under a temporary permission until 31 December 2008, although the well and wellhead gear have remained in place.

Owing to technical difficulties which rendered the BRX4 well no longer capable of sustained production, the well was plugged and a new side-track was drilled during January 2017 to a TVD of 1,197 metres without the benefit of planning permission. The resulting side-track, designated as BRX4Z, terminated in the Oxford Clay Formation with the target reservoir consisting of various horizons within the Kimmeridge Clay Formation. All operations were undertaken with the full agreement of the Health and Safety Executive (HSE). As required by law, appropriate, independent well examination arrangements were in place and all waste was handled in accordance with a Waste Management Plan approved by the Environment Agency (EA).

The operator had concluded that no planning permission was required for the drilling of the BRX4Z side-track well. However, the County Planning Authority's (CPA) legal advice explained that planning permission was required. Following discussions between the CPA and the site operator, the operator agreed to make this part-retrospective planning application.

The purpose of the application is to retain the BRX4 wellhead, regularise the drilling of the BRX4Z side-track, and enable the appraisal of BRX4Z for a temporary period of up to 3 years.

The intention is to ascertain whether the oil accumulations found in the Kimmeridge Clay Formation are capable of being economically exploited.

The oil and gas industry is heavily regulated and requires a range of licences, permits and consents from the Oil and Gas Authority (OGA), the EA, the HSE and the Mineral Planning Authority (MPA). In relation to policy development and decision making, national planning policy requires local planning authorities to focus on whether the development itself is an acceptable use of the land, and the impact of that use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities are required to assume that these regimes will operate effectively.

Brockham Wellsite is located within Petroleum Exploration and Development Licence (PEDL) 235 which is on the northern side of the geological feature of the Weald Basin. This licence relates to conventional oil and gas. PEDLs are issued by the OGA after a competitive process following an assessment of applications for operator competency, financial capability, geotechnical analysis and the proposed work programme. The OGA has no responsibility for onshore environmental legislation in England which is a matter for the Environment Agency and the Mineral Planning Authority. A PEDL comprises a production license which covers exploration drilling, appraisal, development and production within a defined area or block. They give the licence holder(s) exclusive rights to search, bore for and produce hydrocarbons (oil and gas) subject to necessary drilling / development consents and planning permission.

In determining this application, it is necessary to consider the proposal against National and Development Plan policies and to assess any environmental impacts of the development against those policies. The advice provided by statutory and non-statutory consultees and the views expressed by other bodies, groups and individuals will also need to be considered.

The application site is not located within a statutorily designated area for its landscape or nature conservation importance. It is situated within a rural landscape within the Green Belt and is surrounded to the north, east, south and west by land in agricultural use.

The CPA has considered the proposal and recommended that the preparation of an Environmental Impact Assessment (EIA) in support of the development is not required. Further, in response to a third party EIA Screening Direction request to the Secretary of State, the Secretary of State has directed that the proposed development is not EIA development.

A key consideration is the need for the development. Government policy is set out within the National Planning Policy Framework (NPPF), the Annual Energy Statement, the Government's Energy Security Strategy, the UK's Energy White Paper and Department for Business, Energy and Industrial Strategy (BEIS) statistics. This requires planning authorities to give great weight to the benefits of mineral extraction, including to the economy, when determining planning applications.

Government policy makes it clear that oil and gas remains an important part of the UK's energy mix and recognises the continuing importance of fossil fuels, whilst at the same time aims to manage our reliance on them, their potential environmental effects and the risks associated with security of supply. While the Government manages the transition to a low carbon energy mix, oil and gas will remain a key element of energy supply for years to come, especially for transport and heating. Government policy therefore recognises the need to maximise both onshore and offshore indigenous oil and gas resources.

Exploration is the first phase of hydrocarbon development and is necessary in order to prove the existence of oil and gas. Appraisal or testing is the second phase of hydrocarbon development. This is required to gather additional information about the extent of the deposit or its production characteristics. Based on this information, it is then possible to establish whether viable hydrocarbon reserves are present, which may be capable of supporting longer term production

in line with Government policy. Production represents the third phase of hydrocarbon development. This would require a separate planning permission should the oil be found to be capable of being economically exploited. Officers give significant weight to Government Policy to maximise the potential of the UK's hydrocarbon reserves and conclude that there is a national need for this development.

The majority of representations received object to the application for a wide range of reasons. These include concerns in relation to the part-retrospective nature of the application and that the proposal involves hydraulic fracturing or the use of acid which would pose a significant risk to the environment and human health. There are also concerns in relation to the integrity and competence of the operator, the proposals for water re-injection, the lack of a risk assessment, the risk of accidents, explosions and earthquakes and the robustness of the regulatory process. Planning guidance enables a local planning authority to invite a retrospective planning application. Although the CPA had advised the applicant that the drilling of the side-track would require planning permission, the applicant had been advised by other parties that the works could be undertaken under existing permissions. The other matters come under the regime of other regulators who have raised no objection to the development and are responsible for ensuring that safeguards and permitting requirements are satisfied.

Objections have also been raised in relation to the additional number of Heavy Goods Vehicle (HGV) movements proposed combined with the unsuitability of local roads, the excessive duration of the proposal, and the need for the development. Objections have also been made concerning the lack of consultation and monitoring, the absence of an EIA, the visual and landscape impact, light pollution, the impacts in terms of groundwater, flood risk, noise, ecology, heritage, odour and Green Belt and the cumulative impact of the proposal.

A number of representations have been received in support of the application. These refer to the country's over-reliance on imports, the national need for oil in order to meet Government policy on energy security, how the proposal supports the transition to a low carbon economy, its contribution to UK employment opportunities, economic growth and prosperity and the rigorous testing of the proposal undertaken by other regulators. No objections have been received from Technical Consultees in relation to the environmental impact of the development.

Having assessed the merits of the application, the proposal is considered acceptable in transportation terms subject to the imposition of conditions. The environmental and amenity impacts of the proposal have been assessed including in relation to landscape and visual impact, ecology, noise, air quality (including dust and odour), lighting, surface water, groundwater, heritage assets and restoration. Taking into account the advice of technical consultees, Officers conclude that any adverse impacts are capable of being mitigated to an acceptable degree or controlled through the imposition of conditions.

Minerals-related development need not be inappropriate in the Green Belt provided that it preserves openness and does not conflict with the purposes of including land in the Green Belt. If the appraisal of BRX4Z reveals that commercial production is not commercially viable, all plant and machinery associated with this application will be removed, the BRX4Z side-track well plugged and the BRX4 wellhead restored as an operational area of the wider site. If appraisal testing reveals that hydrocarbon resources could be extracted economically, this would require further planning permission.

The application site comprises an existing production wellsite which benefits from planning permission until 2036 when it is to be restored back to agriculture. Officers consider that the proposal would enable the highest environmental standards to be maintained and the land to be well-restored to a beneficial after-use consistent with Green Belt objectives and within agreed time limits. Accordingly, the proposal meets the policy requirements for mineral development in the Green Belt.

Taking into account the need for the development in the context of national policy and other relevant policy tests, Officers recommend that the application be permitted subject to appropriate conditions to protect the environment and amenity.

The recommendation is to permit subject to conditions.

APPLICATION DETAILS

Applicant

Angus Energy Plc

Date application valid

19 February 2018

Period for Determination

21 May 2018

Amending Documents

Email from planning agent entitled, "Planning Application MO/2018/0444 (SCC Ref: 2017/0215): Brockham Wellsite dated 13 June 2018 containing the following attachments:

- Report No. LS0180439 entitled, "H1 Air Quality Impact Assessment of Release from an Emergency Flare", SOCOTEC UK Limited for Angus Energy Plc, Issue 2, dated 29 May 2018;
- Drawing No. AEP-04-BRO-022: Well Schematic Diagram for BR X4Z, Revision 2, 24 March 2017.

Report No. LS0180132 entitled, "H1 Air Quality Impact Assessment of A Well Site Gas Engine and Ancillary Plant", SOCOTEC UK Limited for Angus Energy Plc, Issue 3, dated 28 June 2018.

SUMMARY OF PLANNING ISSUES

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

	Is this aspect of the proposal in accordance with the development plan?	Paragraphs in the report where this has been discussed
Need for the Development	Yes	100 - 168
Highways, Traffic and Access	Yes	169 - 191
Landscape and Visual Impact	Yes	195 - 215
Ecology and Biodiversity	Yes	216 - 226
Noise and Vibration	Yes	227 - 242
Air Quality	Yes	243 - 274
Lighting	Yes	275 - 282
Water Environment and Geotechnical	Yes	283 - 306
Heritage Assets	Yes	307 - 319
Restoration	Yes	320 - 325
Green Belt	Yes	330 - 350

ILLUSTRATIVE MATERIAL

Site Plan

Plan 1 – Site Location and Application Site Area
 Plan 2 – Indicative Site Layout Plan

Aerial Photographs

Aerial 1 – Site Location Showing the Surrounding Area to the Application Site
 Aerial 2 – Site Location Showing the Application Site Area

Site Photographs

Figure 1 – Site Access from Old School Lane Looking North
 Figure 2 – Entrance to Wellsite Compound Looking West
 Figure 3 – Existing Wellsite Compound Looking North West
 Figure 4 – Existing Wellsite Compound Looking East
 Figure 5 – BRX4 Well and Bunded Storage Area

BACKGROUND

Site Description

1. Brockham Wellsite is situated on land at Felton's Farm. It comprises an established oil and gas site constructed in 1987. The wellsite compound, associated bunds and access track extend to 1.2 hectares. The site is located within a rural landscape and is surrounded to the north, south, east and west by agricultural land.
2. The wellsite lies within the Metropolitan Green Belt approximately 1km south west of Brockham Village and 2km south east of Dorking. It is served by an existing private access track which connects the wellsite to Old School Lane some 570 metres to the east. To avoid the village of Brockham, access for heavy goods vehicles (HGVs) is only permissible to and from the south. This requires HGVs to travel to and from the A24 at South Holmwood via Old School Lane, Bushbury Lane, Roothill Lane, Red Lane, Blackbrook Road and Mill Road.
3. All operational plant is located within the wellsite compound which extends to around 0.5 hectares and is constructed on a sealed membrane. The compound contains a 48.5 square metre area of concrete hardstanding. It is secured by 2.4 metre high palisade fencing with vehicle access gates in the south east corner of the site. There is an emergency access on the eastern boundary. Soils stripped during the site's original construction are stored in grassed bunds of around 3 metres in height, which extend along the northern and eastern boundaries of the site. The wellsite has been subject to a significant programme of improvement and refurbishment following its acquisition by the applicant. This has resulted in a well maintained, modern site designed to meet current environmental standards.
4. There are three existing well heads located centrally within the wellsite compound. These comprise Brockham 1 (BRX1), Brockham 2 (BRX2) and Brockham 4 (BRX4). BRX1 and BRX2 have both been plugged and abandoned. A side-track off BRX1, known as BRX3, is used for water reinjection. There are two side-tracks off BRX2. These comprise BRX2Z which is a former production well that has been abandoned and BRX2Y which is a

production well where planning permission exists to extract hydrocarbons from the Portland Sandstone Formation.

5. To the north of the wellheads, oil storage tanks and other production equipment are located within a bunded area, with a tanker loading bay to the east and a water tank situated in the north east corner of the compound. The site contains a number of buildings / container units ranging between approximately 2.4 and 2.6 metres in height. To the west of the wellheads, beyond an 'L' shaped site drain, lies a containerised steam boiler, an electrical control building, a diesel generator unit and two diesel fuel tanks. A security office, site toilet facility and mess facility, each consisting of self-contained steel cabins, are located to the west of the site entrance immediately beyond which is an area set aside for car parking. To the north of the site entrance is a site office and two storage containers. The wellsite and its associated equipment benefits from planning permission until 31 December 2036 by which date the site is required to be restored to agricultural use.
6. The closest residential properties to the wellsite compound are numbers 47 and 48 Tilehurst Lane. These properties are situated approximately 520 metres to the south-south west of the wellsite. They are located on the opposite side of the Dorking to Horsham railway line which passes around 250 metres to the west of the wellsite compound. Views of the wellsite from these properties are partly obscured by a railway embankment.
7. A complex of agricultural buildings, which include the residential properties of Felton's Cottage and Felton's Farmhouse, are situated just off Old School Lane. These are located approximately 585 metres to the east of the wellsite compound and around 150 metres south east of the site access track. Further, land known as the Wood Yard at Feltons Farm is located to the north of the junction between the site access and Old School Lane. This is used for the storage of timber, logs and associated arboricultural materials and benefits from a certificate of lawful use (ref: MO08/1059).
8. The site access road crosses over Tanner's Brook around 465 metres to the east of the compound area. Tanner's Brook discharges into the River Mole approximately 1,100 metres north-northeast of the site. A small eastward flowing tributary of Tanner's Brook runs parallel to the southern boundary of the site, at a distance of 35 metres at its nearest point. Footpath 86 runs north to south and crosses the private access track 260 metres to the east of the compound. Footpath 92 connects Old School Lane with Footpath 86 and runs parallel with and around 35 metres south of the site access track.
9. The wellsite is not situated on land that is covered by, or adjacent to, any areas of local, national or higher-level nature conservation designations or any areas of local or national level landscape designations. It is situated approximately 950 metres to the south and 875 metres to the east of the Surrey Hills Area of Outstanding Natural Beauty (AONB) and Area of Great Landscape Value (AGLV). The closest Site of Special Scientific Interest (SSSI) is Mole Gap to Reigate Escarpment 2.1 km to the north, the greater part of which is also designated as a Special Area of Conservation (SAC).
10. Four Sites of Nature Conservation Importance (SNCIs) are located within 2.2km of the wellsite, the closest of which, Glory Wood SNCI, lies 1.4 km to the west. The nearest Local Nature Reserve (LNR), Inholms Clay Pit, lies 1.8km to the south west and the closest area of Ancient Woodland is located 200 metres to the north west.
11. The nearest Scheduled Monument is 'Betchworth Castle' which is situated 1.3km to the north. The nearest listed building is Grade II listed Felton's Farm Cottage which is situated on Old School Lane around 585 metres east of the wellsite. There are two further Grade II listed buildings situated around 600 metres north west of the wellsite comprising Dairy at Park Farm and Home Farmhouse. The Brockham Conservation Area lies approximately 700 metres to the north east of the wellsite and the nearest Registered Park and Garden

(the Grade II* 'The Deepdene (including Chart Park)' is situated around 880 metres to the west.

12. The application site is not located within, or close to, an Air Quality Management Area. The wellsite lies within Flood Zone 1 (<0.1% annual probability of flooding) although in the vicinity of Tanner's Brook, the private access track cuts through an area of Zone 2 (0.1% to 1.0% annual probability of flooding) and Zone 3 (>1.0% annual probability of flooding). The application site is not underlain by any groundwater bodies classified under the Water Framework Directive in relation to the surface geology. However, the rocks drilled through to reach the hydrocarbon target formations pass through the Tunbridge Wells Sands and the Ashdown Beds which are classified as secondary aquifers.

Planning History

13. Planning permission (ref: MO86/1112) was originally granted in May 1987 for the drilling of an exploratory well and access road. The exploratory well (well head BRX 1) was drilled in August 1987.
14. Planning permission (ref: MO92/0969) was granted in January 1995 for the retention of the existing wellsite for further appraisal, the drilling of up to five additional wells and the installation of production and road tanker facilities. This included the drilling of well head BRX2 which was drilled in 1998. The planning permission was also subject to a legal agreement dated 9 January 1995. This included a lorry routeing agreement requiring access to and from the south only in order to ensure that HGVs avoid the village of Brockham, a restriction on the number of tankers to 6 loads or (12 movements) per day for the duration of flow testing for up to a maximum of six months, and improvements to the local highway in respect of the provision of lay-bys and passing places, which were to be maintained in good condition.
15. Planning permission (ref: MO00/1706) was granted in December 2000 for the retention of an existing wellsite and access road for a temporary period of 12 months and the temporary installation of equipment for the carrying out of production testing operations over a 3 month period. This testing was for BRX1 and was completed in May 2001.
16. Planning permission (ref. MO01/1288) was granted in December 2001 for the retention of the existing 1.2 ha wellsite and access road, the erection of production equipment and the production of oil for export by tanker. Condition 4 required the development to cease on or before 31 December 2006 and the applicant's permitted development rights were restricted under Condition 5. This application was primarily for BRX1, as BRX2 required further exploration and appraisal. The permission also included a range of on-site equipment comprising:
 - a beam pump;
 - four/five stock oil tanks;
 - an oil/water heater;
 - oil and water export pumps;
 - a gas vent stack;
 - a diesel powered generator;
 - a small office / site hut; and,
 - two storage containers.
17. Planning permission (ref. MO06/1294) was granted in May 2007 for the continued use of 1.2ha of land for the production, treatment and export of crude oil from an existing wellsite without compliance with Condition 4 of planning permission ref: MO01/1288 dated 11 December 2001 such that the development shall cease and the site be restored by 31

December 2036. The applicant's permitted development rights were restricted under Condition 4. The permission allowed production from both the BRX1 and BRX2 wellheads. It was subject to a legal agreement dated 25 April 2007 which superseded the previous legal agreement dated 9 January 1995. This required the passing bays and lay-bys created in respect of vehicle access and routeing, between the application site and the junction of Red Lane and Blackbrook Road, to be maintained to the reasonable satisfaction of the Council. The planning permission also allowed a variety of on-site equipment including:

- gas and diesel storage tanks;
 - security lighting and fencing;
 - container storage facility;
 - container workshop;
 - port-a-cabin site office;
 - containerised steam boiler;
 - containerised super silenced generator;
 - heat exchangers;
 - two wellheads and beam pumps with equipment;
 - electrically driven pump;
 - three oil storage tanks; and,
 - water holding tank.
18. Planning permission (ref: MO07/0161) was granted in June 2007 for the installation and operation of a drilling rig for a workover programme on an existing well (BRX1) and the drilling of a new well, BRX3 (now known as BRX4). This permission was time limited and required all works to cease by 31 December 2008. The BRX4 well was subsequently drilled in July 2007 and was intended to replace lost production from BRX1.
19. Planning permission (ref: MO08/0894) was granted in September 2008 for the construction of a concrete hardstanding of some 1,841 square metres. This was required as a result of an environmental review and discussions with the Environment Agency. The hardstanding would be removed from the site on or before 31 December 2036 and the land restored in accordance with the approved restoration scheme.
20. Planning permission (ref: MO/2017/0196) was granted retrospectively in September 2017 for the installation of on-site facilities comprising: hardstanding; site office; site toilet facilities; site security office and mess facility; storage containers; lighting units incorporating CCTV equipment; 2.4 metres high palisade fencing and gates; electrical control buildings; portable site generator with two enclosed fuel tanks and a parking area for cars and vans until 31 December 2036 with restoration to agriculture.

THE PROPOSAL

21. This part retrospective planning application is seeking planning permission for the retention of the BRX4 well, the regularisation of the BRX4Z side-track, and the appraisal of BRX4Z using production plant and equipment within the existing site for a temporary period of three years. The sole target reservoir consists of various horizons within the Kimmeridge Clay Formation.
22. The intention is to ascertain whether the oil accumulations found in the Kimmeridge Clay Formation are capable of being economically exploited in the longer term. This application is concerned with the exploration and appraisal stages of on-shore hydrocarbon development using conventional methods. For the avoidance of doubt, it does not relate to the exploitation of hydrocarbons through hydraulic fracturing.

Retention of BRX4 Well

23. The BRX4 well was originally drilled during 2007 in line with planning permission ref: MO07/0161. The well was progressed to a True Vertical Depth (TVD) of 689 metres. This was for a temporary period until 31 December 2008 to allow hydrocarbon production from the Portland Sandstone. However, the well and wellhead gear have remained in place.
24. Owing to technical difficulties, BRX4 was found to be incapable of sustained production and the well was subsequently plugged. At the beginning of 2017, BRX4 was side-tracked to create BRX4Z without the benefit of planning permission. The BRX4Z side-track was drilled to a TVD of 1,197 metres, terminating in the Oxford Clay. This was intended to assess the longer-term production prospects of the Portland Sandstone and deeper Kimmeridge Clay Formations. Retrospective planning permission is now being sought to retain the BRX4 Well for a temporary period of three years to enable the appraisal of the BRX4Z side-track well.

Drilling of BRX4Z Side-track

25. The side-tracking operations were undertaken using an IDECO BIR H35 workover rig, with a maximum mast height of 29 metres. The rig and associated equipment were mobilised to the site in late December 2016 / early January 2017, remaining until late January 2017. In addition to the rig, a range of temporary plant / buildings were installed at the site to support the operations, including pipework, mud pumps, mud tanks, mud logging cabin, tool-house, crew cabin and waste skips. The existing site infrastructure (bund area, offices, welfare facilities etc.) were also utilised as required to support the operations.
26. The applicant states that all operations were undertaken with the full agreement of the HSE which, pursuant to the Boreholes Sites and Operations Regulations, was notified in advance of works commencing. This included all required information including the directional path, the depth and the location of the drilling.
27. Further, as required by law, the applicant has confirmed that appropriate, independent well examination arrangements were in place. This involved a complete examination of the well design and construction, conducted by an independent and competent person (known as a Well Examiner). The company produced a report on the proposed side-tracking operation which the Well Examiner reviewed and approved prior to the operations commencing.
28. All waste generated during the side-tracking operations was handled in accordance with a Waste Management Plan, approved by the EA. This was intended to ensure that there were controls over the management of waste, emissions to air, water or land, odour, noise and vibration. The applicant is now seeking retrospective planning permission for the drilling of the BRX4Z side-track which forms part of the exploration stage of hydrocarbon development.

Appraisal of BRX4Z Side-track

29. In order to assess BRX4Z, it will be subject to a period of appraisal in order to confirm whether the volume and flow of hydrocarbons is economically viable to support longer-term commercial production. This will involve producing the well to assess its productivity, and at the same time, measuring and sampling the produced fluids. The rate of decline of production will also be measured as an indicator of the potential volumes present in the reservoir.

30. The appraisal is an open ended process. Throughout the appraisal period, the process will continue to evolve and be actively managed, based on the information gathered. In order to allow sufficient time to complete this process, and if required prepare and submit a planning application for longer term production, the applicant is therefore seeking planning permission for a three year period.
31. The proposed appraisal of the BRX4Z side-track would involve a number of distinct elements as described below.

Initial Well Clean-Up

32. The initial perforation and start up will involve different processes to the ongoing appraisal. Tubing will be installed inside the existing well casing to produced fluids to the surface. The tubing will then be perforated at the depth of the reservoir to allow flow from that section, and that section alone, into the well and to the surface. The installation of the tubing and the perforation of the casing is likely to require the use of either a workover rig or a crane. Whilst it is impossible to predict the exact plant to be used, any workover rig would be similar to that used in the drilling of BRX4Z.
33. The existing contents of the well will initially need to be displaced by incoming fluids in order to allow oil to pass to the storage tanks and gas to the generator. Before perforating, the fluid level in the well will be reduced as far as possible to create differential pressure from the reservoir to the wellbore, which will allow a rapid clean-up of the perforations. Upon perforation any nitrogen or air within the well will be displaced. The expelled fluids and perforating debris will pass into a temporary tank which is to be located within the bunded area. The fluids collected in the tank will be transferred to an accredited disposal company for off-site disposal and, following the clean-up process, the tank will be removed from the site.

On-going Appraisal of BRX4Z Side-track

34. Following completion of the initial clean-up works the well will flow normally and appraisal works will commence. Pressure gauges within the well will allow surveys to be undertaken to measure the rate of inflow from different parts of the reservoir, with the flow of oil and gas to the surface being controlled at the wellhead.
35. Whilst the well is initially expected to flow fluids to the surface without the need for a pump, it is likely that during the appraisal process the flow to the surface will reduce. Accordingly, should it be required, an appropriate pump will be installed to help raise fluids. The operator intends to utilise one of the two existing jack/nodding donkeys previously approved under planning permission MO06/1294. This will be linked to the storage tanks and production plant within the existing bunded area by above ground pipework. The applicant states that all such pipework will be designed, installed and operated in accordance with the appropriate standards.
36. As no recent production data is available on the Kimmeridge reservoir, the appraisal works are considered important by the applicant to confirm how the reservoir performs. The well will therefore be subject to more extensive technical evaluation than normal production wells. It is initially planned that the well will be produced for a period of up to eighteen months, during which time the bottom hole and surface pressures will be continually monitored and the results of downhole surveys analysed. Following approximately twelve months of data gathering and detailed study, the applicant envisages that the operator will have sufficient information to issue a report to the OGA detailing the results of the appraisal, including an estimate of the resource present. Further appraisal will be dependent upon the results of these initial works and, if required, further data gathering will be undertaken.

Fluid Storage and Export

37. Above-ground pipework will be installed to link the wellhead to the previously consented production plants and storage tanks. Fluids will be temporarily stored in tanks located within the bunded area to allow stabilisation (oil and water separation) via gravity. This production stabilisation and storage equipment was previously approved under planning permission ref: MO06/1294.
38. Once separated, the produced water will be routed off to a dedicated water storage tank, and will be reinjected via the existing BRX3 well, whilst oil will be stored in a dedicated tank pending export by road tanker.

Gas Utilisation

39. The produced fluids will contain gas which will be separated from the oil and water and utilised to produce electricity and in local process heating. The power generated will be used to meet the site's electricity requirements, with any surplus exported to the grid.
40. A suitable grid connection will be installed by the local electricity provider under their statutory powers and these works do not form part of this application. The grid connection will supply electricity to the site when the generator is not running (prior to the start-up of the well or during shut downs) therefore reducing the need for the ancillary portable diesel generator on site permitted under planning permission ref: MO/2017/0916. During normal operations the connection will run in reverse, supplying any surplus electricity from the generator to the grid.

Gas Management

41. The rate of production from the BRX4Z well will be constrained by the capacity of the generator. Should the gas produced start to exceed the capacity of the generator to accept it then the well rate will be choked back. The applicant understands that the existing generator is capable of being configured to run on a variety of fuel sources, including gas. Further, a portable diesel generator is also permitted by planning permission ref: MO/2017/0916.
42. Whilst it is possible for the existing generator to utilise the gas, given the relatively short term nature of the proposed appraisal works, it is likely that the existing generator will be replaced with a new, hired in unit. This would consist of a 375kVA gas generator with an output range of 511 kW per hour (at 50% power) to 933 kW per hour at 100%.
43. At a production rate of 300 barrels of oil per day (BOPD) the associated gas from the Kimmeridge is anticipated to be in the region of 71 cu m per hour which is equivalent to approximately 770kW. The electrical output will be matched to the available gas output, i.e. the electrical output will be increased when more gas is available (higher pressure) and decreased when less gas is available (lower pressure).
44. No routine flaring will take place. However, an emergency flare stack is proposed to be installed to provide a suitable method by which to deal with any gas during an emergency shut-down. The exact location and design of the flare have not yet been finalised although it will be installed close to eastern boundary of the site to the south of the fire water tank. Indicative details submitted by the applicant indicate that the overall height of the flare stack will be approximately 12.2 metres comprising a 3.1 metre high, ground mounted burner, with an 8.5 metre long by 2 metre diameter flame shroud to minimise noise and light emissions. The flare stack is designed for use during land operations allowing gas to be burned at a safe distance from the work area, protecting workers and the environment.

45. The flare will be used only in abnormal situations, for example during a generator shut down during which it would take longer for the well to be shut down than the generator. It also provides for pressure relief of the process system should an overpressure occur for any reason.
46. It is not envisaged that any further gas treatment plant will be required and the gas will be fed from the production plant to the generator by above ground pipework. In addition to the planned use of gas in the generator, gas will also be utilised in process heating to prevent the risk of wax deposition. If wax is present within the oil there is the risk that large drawdowns in the initial flow period could combine with low ambient temperatures to result in problematic wax deposition.
47. Therefore, until the oil properties are verified, a small proportion of the gas will be utilised in a process heater to heat the incoming oil pipework and separation equipment. If wax is not found to be an issue then the use of the heater would be discontinued. However, there may be an ongoing requirement to use the gas in the local heating of the separation train. Whilst the exact nature of any heating plant required is not yet known, it would be relatively limited in size.

Maintenance

48. Throughout the works, the applicant will implement a programme of preventative maintenance. Despite this, there may be instances where well maintenance is required to address mechanical breakdowns, typically for a one to two week period. Such interventions will require the use of either a crane or a workover rig. Any workover rig required would be similar in size to the rig used in the drilling of BRX4Z. If a crane were to be utilised instead of a workover rig, this would typically be an 80 tonne mobile crane. Details submitted by the applicant show that the IDECO BIR H35 rig used to drill the BRX4Z side-track has a maximum mast height of 28.95 metres and is fixed to the rear of a 4 axle crane carrier. Indicative details submitted for the 80 tonne crane show that this would have a maximum height of 50 metres although the Indicative Section Plan (Drawing No. 0745-1-5, Revision A, dated 19 February 2018) submitted by the applicant confirms that this would only need to be extended to a similar height as a workover rig at around 29 metres.

Operational Issues

Working Hours

49. Except for the flowing of hydrocarbons, the use of gas in on-site processes and essential site monitoring or maintenance, no operations will be undertaken, and no light (except that essential for security or health and safety purposes) will be illuminated, except for between 07:30 and 18:00 hours Mondays to Fridays and 08:00 to 13:00 hours on Saturdays.

Monitoring, Security and Lighting

50. During normal operations up to two staff will be on site during the working day to monitor operations. The site compound is secured by 2.4 metre high green palisade fencing, with both the main vehicular access and an emergency access secured by gates of a similar design, which are locked when the site is not in use.
51. The workover rig utilised in the side-tracking operations included a number of lights which were essential for health and safety purposes. Lighting is provided by five units of approximately 6 metres in height with CCTV equipment fitted towards the top of the

lighting columns. The appraisal works will not require any lighting over and above that previously approved.

Site Office and Welfare Facilities

52. The site facilities have recently been upgraded, with the situation regularised through the grant of planning permission ref: MO/2017/0916. These facilities include the site office, security office, toilet and mess facilities and storage containers. No additional office or welfare facilities will be required during the appraisal works.

Restoration

53. If the appraisal of BRX4Z reveals that hydrocarbon reserves are not of sufficient quantity and / or quality to allow progression to commercial production, all appraisal plant and machinery will be removed and BRX4Z plugged in accordance with the relevant guidelines in force at that time. Should the appraisal testing reveal that hydrocarbon reserves could be viably extracted in future, an appropriate planning application will be submitted to propose longer term production activities.
54. An extant planning permission requires the entire site to be restored back to agricultural use by 31 December 2036 in accordance with a scheme to be submitted for the approval of County Planning Authority (CHA).

CONSULTATIONS AND PUBLICITY

District Council

55. **Mole Valley District Council**

Objection: The proposed 3 year time period for appraisal is unacceptable and consider that a period of 18 months would be more appropriate.

The District Council commented that the applicant should be required to provide:

- an up to date risk assessment of the proposed development;
- clarification of whether the operations should be categorised as production; and
- clarification whether the appraisal will utilise acidisation in the side-track well.

Mole Valley District Council also requested that:

- site activities should be closely monitored during the appraisal process, particularly emissions from the flare stack; and
- the County Council should assess the cumulative impact of oil extraction from multiple sites.

56. **Environmental Health**

No views received.

Consultees (Statutory and Non-Statutory)

57. **Environment Agency**

No objection in principle. Advised that:

- existing equipment and processes are still being assessed to inform a review of the existing environmental permit at Brockham in order to bring it up to modern standards;
- details associated with the flare and generator may change as the EA review the type proposed and their specification as part of the environmental permit variation process;

- revised site drainage does not discharge to a septic tank as claimed by the applicant. It is collected on site in a sealed tank and is disposed of to an off-site facility;
- the operator has been advised that a Hazardous Substances Planning Consent may be required depending on the outcome of ongoing discussions;
- clear technical details regarding the appraisal of the Kimmeridge Clay Formation as part of the re-permitting process have yet to be received;
- the risks posed to aquifers underlying the site and the mitigation proposed will be assessed as part of the re-permitting process to ensure adequate groundwater protection measures are in place;
- as re-injection of process waters is still proposed, further monitoring of the groundwater bodies within the first 400 metres below ground level is likely to be required as part of any revised permit;
- information has been requested as part of the re-permitting process on the integrity of the membrane underlying the site to ensure adequate levels of containment and environmental protection; and
- changes may be required in relation to the storage of fluids within the previous consented tanks inside the existing bunded process area as details of site containment are reviewed through compliance assessment and during the environmental permit variation.

58. **County Highway Authority: Transportation Development Planning**

No objection on highway safety, capacity or policy grounds, subject to conditions.

59. **Rights of Way**

No views received.

60. **County Noise Consultant**

No objection subject to existing noise conditions, which ideally should be updated in accordance with current guidance and applied to the whole site if feasible to do so, and the imposition of an additional noise condition covering daytime operations.

61. **County Lighting Consultant**

No objection.

62. **County Air Quality Consultant**

No objection. Requested the submission of further information as the air quality impacts from the flare and generator had not been assessed and the statement that there will be no significant increase in emissions to air had not been justified. Following the submission of addition information, commented that the applicant has now provided sufficient information to conclude that the air quality effects on the surrounding area are not significant. Also commented that a detailed assessment of vehicle emissions is not necessary and that the proposed approach to managing dust is acceptable.

Odour is expected to fall under the Environmental Permitting regime and the Environment Agency would require Best Available Techniques to be applied to minimise odour. Provided the odour abatement and Waste Management Plan outlined in the Planning Statement are effectively implemented, the residual odour impact on surrounding land users will be acceptable.

63. **Lead Local Flood Authority - SUDS and Consenting Team**

No comments as there is no increase in the impermeable area and the surface water regime is unlikely to change.

64. **County Geological / Geotechnical Consultant**

No objection. Hydrogeology / Groundwater Pollution: Agree with the applicant's assessment that the drilling and sub-surface operations present minimal risk of contamination to any groundwater. Soil / Land Contamination: Commented that perhaps the applicant could be advised that when a final decommissioning / restoration scheme is submitted for approval under Condition 3 of planning permission ref: MO06/1294, the CPA will expect a rigorous scheme of inspection and testing for legacy contamination to be included. Flood Risk and Drainage: No comments as drainage arrangements have been in place since the compound was constructed and are remaining unchanged and there is no change to flood risk as a result of the proposed works.

65. **County Ecologist**

No objection. The applicant's assessment that the site has limited ecological value is considered reasonable, no further surveys are necessary and accepts that the restoration is adequately covered.

66. **Health and Safety Executive - Quarries & Oil and Gas**

No views received.

67. **Thames Water**

No views received.

68. **Sutton and East Surrey Water**

No view received.

Parish/Town Council and Amenity Groups

69. **Brockham Parish Council**

The Parish Council have raised concerns over: the general wellbeing and safety of residents given a very greatly increased volume of production from the site; the narrow access roads and lack of passing places combined with the increase in the number of tankers; the poor state of the highway verges in places which are heavily churned up; the risk of accidents and spillage of inflammable material which would be transported across a narrow bridge over Tanner's Brook; the risk to other road users; additional noise; the adverse visual impact of the 12 metre flare stack which is contrary to the area's status as an area of landscape value; and the lack of an Environmental Impact Assessment.

70. **Brockham Oil Watch**

Brockham Oil Watch have objected to the application on a number of grounds which include the following:

- proximity to housing;
- acknowledgement and protection of Tanners Brook;
- adequacy of temporary storage tank size;
- appraisal process should be shorter and the 3 year planning permission is not justified and unacceptable;
- inadequate flood risk assessment;
- concern over discharges from the wellsite and control over pollution;
- traffic statement is not sufficient considering the large number of HGVs on rural country roads;
- question over output power of new gas generator and concerns over emissions;
- BRX4 should have been restored in accordance with planning permission;
- drilling of unauthorised side-track not justified;
- health / air quality impacts from flare and generator;
- want more information on the detailed technical processes downhole which are part of the permit application and not mentioned under planning;

- storage and handling of hazardous materials on site;
- greenhouse gas emissions;
- risk of a major accident / incident;
- adverse impact on biodiversity;
- fear and perceived harm;
- lack of public engagement;
- the need for the development;
- the need for an Environmental Impact Assessment (EIA); and
- the variation to the Environmental Permit has not yet been completed.

Should planning permission be granted, Brockham Oil Watch would want conditions in respect of: storage of hazardous materials; the use of non-conventional methods; traffic movements and more passing places on local roads; timetable for appraisal works; the prohibition of well testing pending the variation of the environmental permit; and restriction over permitted development rights for further workover rigs.

71. **Brockham Green Village Society**

No views received.

72. **Friends of the Earth** (England, Wales and Northern Ireland)

Object to the application for the following reasons:

- poor operator behaviour and the issue of a retrospective application;
- visual impact of new rig/crane;
- traffic movements;
- noise;
- landscape;
- climate change;
- incremental impacts to Green Belt openness;
- impacts on the natural and historic environment;
- impacts on human health;
- BRX4 should have been restored;
- concern over the use of acid in downhole processes;
- inadequate assessment of the impact of drilling and hydrogeology;
- cumulative impacts on the land use; and
- impact on seismicity from reinjection wells.

73. **Frack Free Balcombe Residents' Association (FFBRA)**

FFBRA have called for a detailed air quality assessment to be submitted for nitrogen dioxide, Volatile Organic Compounds and hydrogen sulphide, for evidence to support the assumed sulphur content of the gas, and for proper mitigation measures to be employed.

Summary of publicity undertaken and key issues raised by public

74. The application was publicised by the posting of three site notices and an advert was placed in the local newspaper. A total of 5 owner/occupiers of neighbouring properties were directly notified by letter. A second consultation exercise was carried out by the County Planning Authority following the submission of amplifying information for the application on 13 June 2018. This resulted in a total of 26 letters of notification being sent to neighbouring properties and people and organisations who had expressed an interest in the application prior to the receipt of the additional information received.
75. A total of 99 written representations have been received to date, with 11 in support and 88 objecting. The 11 in support of the proposal raise the following points: National need for oil for meeting UK policy; over reliance on oil and gas imports; UK employment opportunities

and economy; minimal to no impact historically; need to make use of natural resources; not new drilling as existing well; and rigorously overseen and regulated by the OGA, HSE and EA.

76. The remaining 88 representations object to the application. The main reasons are summarised as follows: not clear of the processes and whether acid and hydraulic fracturing would be employed; the 3 year time period is too long; the operator lacks integrity and competency; there is no need for the development; an Environmental Impact Assessment is required; massive increase in HGV traffic and unsuitable country roads; emission to air and pollution to Brockham Village; adverse impact on groundwater; increased risk of flooding and need for flood risk assessment; visual and landscape impact; noise; ecology; heritage; light pollution; odour; Green Belt; integrity of well and reinjection of water; seismic activity; risk of major accident; lack of trust in other regulatory bodies and lack of resources for monitoring; lack of local public engagement by operator; cumulative impact of future oil and gas development; BRX4 site restoration; contrary to development plan policy; safety concerns and proximity to Brockham village.

Officer Comment

77. A large number of the representations received raise concerns regarding matters that come under the regime of other regulators who are responsible for ensuring that safeguards and permitting requirements are satisfied. In particular, these relate to: the use of hydraulic fracturing or acid; the proposals for water re-injection; the lack of a risk assessment; the risk of accidents; explosions and earthquakes; operator liability; and the impact on house prices.

PLANNING CONSIDERATIONS

Introduction

78. The guidance on the determination of planning applications contained in the Preamble / Agenda front sheet is expressly incorporated into this report and must be read in conjunction with the following paragraphs. In this case the statutory development plan for consideration of the application consists of the Surrey Minerals Plan Core Strategy Development Plan Document 2011 (SMP CS DPD 2011), the saved policies contained within the Mole Valley Local Plan 2000, (MVL 2000), and the Mole Valley District Core Strategy 2009 (MVCS 2009). The district council have started work on the preparation of a new Local Plan 'Future Mole Valley' which will set out plans for development in the District over a fifteen year period between 2018 and 2033. However, the Plan remains at a very early stage of preparation and is not expected to be adopted until December 2019.
79. Mole Valley District Council also published a Landscape Supplementary Planning Document (SPD) in 2013. The Landscape SPD identifies important characteristics of the landscape throughout the district. It focuses on the rural areas and the landscape setting of towns and villages. The SPD also provides general guidance on landscape issues and how they should be addressed by developers and is intended to assist with the implementation of MVCS 2009 Policy CS13 (Landscape Character). The SPD includes the application site as being located within the Low Weald Regional Character Area and the Open Weald County Landscape Character Area.
80. In addition, regard should be had to other material considerations which include the recently revised National Planning Policy Framework (NPPF) and the national Planning Practice Guidance (nPPG). The recent Ministerial Statement on Energy Policy made on 17 May 2018 is also material.
81. In considering this application, the acceptability of the proposed development will be assessed against relevant development plan policies and material considerations. 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: need, Green Belt, highways, the water environment and geotechnical, air quality, noise, visual and landscape impacts and ecology.

82. Government Planning Guidance states that:

“A local planning authority can invite a retrospective application. In circumstances where the local planning authority consider that an application is the appropriate way forward to regularise the situation, the owner or occupier of the land should be invited to submit their application (section 73A of the Town and Country Planning Act 1990) without delay. It is important to note that:

although a local planning authority may invite an application, it cannot be assumed that permission will be granted, and the local planning authority should take care not to fetter its discretion prior to the determination of any application for planning permission - such an application must be considered in the normal way;”.

83. In September 2016, Angus Energy sought agreement from the County Planning Authority (CPA) for them to undertake maintenance work on the wellsite using a 15 metre work-over rig on one of the three wells located within the site compound. The CPA advised the operator that the proposed work would be covered under existing maintenance agreements, but that the drilling of any new wells, including side-tracks, plus the testing or production from wells not already authorised, would not be permitted as they would require planning permission.
84. Angus Energy advised the CPA that due to the presence of hydrocarbons within the BRX4 well, it was viewed as being ‘live’, which meant a maintenance safety program had to be carried out through the night. Officers relayed this information to the Health & Safety Executive (HSE), who agreed that on the basis of good practise it was considered reasonable to allow the night working for a period of one week to provide a safe environment for those working on site whilst the work-over was completed.
85. It subsequently transpired that a new side-track well had in fact been drilled off the existing BRX4 well. Angus Energy believed that they had planning permission for this operation. Officers did not agree with that view and sought counsel’s opinion, which supported Officers views. However, Angus Energy also obtained counsel’s view, which apparently upheld their belief that the drilling of the side-track was authorised. The CPA encouraged the submission of a retrospective planning application to regularise the unauthorised drilling of the side-track and for the intended testing/appraisal of this side-track, which Angus Energy’s planning consultant agreed would be done.
86. This unauthorised development has highlighted discrepancies between the various legislators of the oil and gas industry, as permits for the drilling of a new side-track well were issued by both the Environment Agency (EA) and the Oil & Gas Authority (OGA), as their legislative requirements do not require planning permission to be in place before they are issued. Therefore, both the OGA and the EA were satisfied that adequate environmental and safety controls were in place for this side-track to be drilled. Whilst perfectly understandable in terms of legislation, it makes it somewhat confusing and at times misleading for both those involved and those monitoring such development.
87. In this case, the applicant took the view that they did not need planning permission for the drilling of the side-track and had received advice from Justine Thornton QC to that effect. The planning authority took advice from David Elvin QC, who confirmed the County Council’s view that planning permission was required. In view of this, the planning

authority wrote to the applicant in October 2017 inviting them to make a planning application. Following discussions between the applicant's representatives and the County Council, the current planning application was submitted. The applicant made it clear that the planning application was submitted in order to regularise the situation. The fact that the application is part retrospective in no way gives the applicant any advantage – as stated above 'it must be considered in the normal way'.

88. Planning Policy was changed in 2015 through a letter from the Chief Planner and a ministerial statement to introduce a requirement that intentional unauthorised development should be a material consideration to be weighed in the determination of all planning applications and appeals received after 31 August 2015. This was in response to a number of situations where development in the countryside had been deliberately concealed in order to benefit from immunity from enforcement. Whilst in this case the drilling of the side-track was intentional, and the County Council had advised the applicant that such works would require planning permission, the applicant had been advised by other parties that the works could be undertaken under existing permissions. Applications for development undertaken where the applicant has been advised that it is unlawful must be weighted in the planning balance against compliance with the development plan, the NPPF and all other material considerations.

Licensing

89. The European Union's Hydrocarbon Licensing Directive 94/22/EC sets out the licensing rules for the issuing of licenses for the prospection, exploration and production of hydrocarbons. The directive was implemented in the UK by means of the Hydrocarbon Licensing Directive Regulations 1995 (SI 1995/1434).
90. Oil and gas exploration drilling requires planning permission but also requires licensing. Licences are issued by the Oil and Gas Authority (OGA), a government company, limited by shares, with the Secretary of State for Business, Energy and Industrial Strategy the sole shareholder. The objective of the licensing regime is to secure the exploration and appraisal of the United Kingdom's (UK's) oil and gas resources and the economic development of discovered reserves. The Petroleum Exploration and Development License (PEDL) issued by the OGA under powers granted by the Petroleum Act 1998, covers all the three stages of oil and gas development - exploration, appraisal and production.
91. The OGA has discretion in the granting of licences to help maximise the economic recovery of the UK's oil and gas resources. All companies on a licence share joint and several liability for obligations and liabilities that arise under it. Each licence takes the form of a deed, which binds the licensee to obey the licence conditions. As an example, these will typically require the avoidance of harmful methods of working through maintaining all apparatus and appliances in good repair and condition and the execution of all operations in a proper and workmanlike manner in accordance with good industry practise.
92. A license does not confer any exemption from other legal/regulatory requirements, such as the need to gain access rights from landowners, health and safety regulations, or planning permission. Once a PEDL has been granted, planning permission must be obtained before the OGA will authorise consent to drill and extended well testing (EWT). The consent to drill and for EWT is obtained from the OGA via the Petroleum Operations Notice (PONS) approval process.
93. Further, both the Health and Safety Executive (HSE) and the Environment Agency (EA) have regulatory roles to play in relation to the proposed development under The Borehole Sites and Operations Regulations 1995 and the established pollution control regime. The existence of a PEDL does not absolve Mineral Planning Authorities (MPAs) from seeking

to control development in accordance with the appropriate planning legislation and guidance.

94. One of the objectives of the regulatory regime for oil and gas exploration and production established under The Petroleum Act 1998 is to protect the taxpayer from any residual liability. Exploration for and production of hydrocarbons can only be carried out under the licence terms issued by the OGA and license holders are liable for operations conducted under the licence.

Environmental Impact Assessment

95. The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 implement European Union Directive 2011/92/EU (as amended by Directive 2014/52/EU) on the assessment of the effects of certain public and private projects on the environment. Development proposals falling under Schedule 1 of the regulations require an EIA in every case while those under Schedule 2 only require an EIA where development is likely to have significant environmental effects. Schedule 2 lists mineral extraction amongst the types of development where an EIA may be required. Where any part of the proposal is in a sensitive area, such as an AONB, a SSSI, AONB, Special Protection Area or Special Area of Conservation for example, or exceeds / meets certain thresholds or criteria, then an EIA may be required.
96. The development to which the current application relates was the subject of a request for an EIA Screening Opinion in October 2017 which was made under the EIA Regulations 2017. The County Council adopted a Screening Opinion on 7 December 2017. This concluded that an EIA was not required given that: (i) the proposed development does not seek to increase the area of the existing wellsite; (ii) past oil production from the site has been consistently lower than the 500 tonnes per day threshold specified in Schedule 1 of the EIA Regulations, as well as the 100,000 tonnes per year threshold specified in the PPG for Schedule 2 development, and the proposal would not involve extraction of hydrocarbons at a commercial rate; and, (iii) the application site is not situated within, or in close proximity to, a sensitive area. Brockham Parish Council have raised concerns, Brockham Oil Watch have objected and some representations have raised objection as the application is not supported by an EIA.
97. The National Planning Casework Unit received requests from a third party dated 19th April, 3rd May and 18th May for the Secretary of State to issue a Screening Direction on whether the proposed development constitutes 'EIA development' within the meaning of the EIA Regulations 2017. The Secretary of State's decision letter and written report was issued on 6 June 2018. The decision letter explains that the Secretary of State considers that the proposal is not likely to have significant effects on the environment and directs that the proposed development is not 'EIA development'.
98. In reaching a decision, the Secretary of State had regard to advice contained in the PPG. This states that whilst all applications must be assessed on a case-by-case basis, it is unlikely that an Environmental Impact Assessment will be required for exploratory drilling operations which do not involve hydraulic fracturing. It also says that indicatively, EIA is more likely to be required for: (i) deep drilling operations involving development of a surface site of more than five hectares, having regard to the likely wider impacts on surrounding hydrology and ecology; and, (ii) surface industrial installations for the extraction of hydrocarbons where the site area is ten hectares or more or production is expected to exceed 100,000 tonnes of petroleum per annum.
99. In reaching a decision, the Secretary of State did not consider that a significant environmental effect was likely in relation to:

- the impact on natural resources which are non-renewable or in short supply;
- the risk of accidents;
- the risk to sensitive receptors;
- the release of hazardous, toxic or noxious substances;
- land being susceptible to earthquakes, subsidence, landslides, erosion, flooding or adverse climatic conditions;
- congestion or other environmental constraint in relation to traffic including HGV movements;
- the location of the development in relation to surrounding land uses, flood risk, major groundwater bodies and national or higher level designations in respect of landscape, nature conservation and biodiversity and the historic environment; or
- the magnitude and complexity of impact in terms of areas and populations affected.

Need

100. There are three separate phases of oil and gas development: exploration, appraisal and production. Each requires separate planning permission. This part-retrospective application is for the first two phases, exploration and appraisal. It relates to the retention of the BRX4 well, the drilling of a side-track (BRX4Z) in January 2017, and the appraisal of the Kimmeridge Clay Formation to assess the viability of future hydrocarbon production. The development is proposed within an established wellsite that was originally constructed in 1987 and has planning permission until 31 December 2036, by which time the site is required to be restored.
101. The applicant, Angus Energy, is an independent onshore oil and gas development company focussed on meeting the energy demands of the United Kingdom (UK) without utilising hydraulic fracturing. For the avoidance of doubt, this application relates to conventional hydrocarbon extraction and does not relate to the extraction of shale gas through hydraulic fracturing.¹ One of the key considerations in the determination of this application will be the need for the development.
102. The applicant states that the development will help to deliver significant economic benefits by exploring the potential to increase the UK's indigenous hydrocarbon production, in line with national energy policy, which confirms a need to exploit indigenous oil and gas reserves. The proposal is described as being an essential step towards any potential commercial production. The applicant has sought to demonstrate the need for the proposal by identifying the contribution that the safe and sustainable exploration of indigenous onshore energy mineral reserves can make towards boosting domestic supplies and supporting the wider economy. This, the applicant has pointed out, is against a backdrop of a decline in production from the UK's own oil and gas reserves since 1999 and the UK being a net importer of energy since 2004. The applicant has also explained how the proposal will help to determine whether viable hydrocarbon reserves are present which may be capable of supporting longer-term production, and refers to the substantial economic contribution made by the UK's oil and gas industry in terms of supporting around 450,000 jobs.

Development Plan Policy

103. The SMP CS DPD 2011 paragraph 3.17 explains that the exploration and appraisal of hydrocarbons has occurred fairly widely across the southern part of the county since the 1950s. The plan refers to two operational sites currently producing oil at Palmers Wood, Godstone and Felton's Farm, Brockham where production was expected to continue

¹ Please refer to Surrey County Council's website for information: <http://www.surreycc.gov.uk/environment-housing-and-planning/minerals-and-waste-policies-and-plans/oil-and-gas-development> on oil and gas development

beyond the end of the plan-period. Paragraph 3.19 states that further exploration and appraisal activity within the licensed areas is likely as UK offshore resources decline, although it is not possible to identify in advance locations within the licensed areas where proposals will be forthcoming and each must be treated on its merits. SMP CS DPD Policy MC1 (Spatial Strategy - Location of Mineral Development in Surrey) states that oil and gas development will be concentrated in the southern half of the county.

104. Paragraphs 5.35 - 5.40 discuss oil and gas development in the county. Paragraph 5.36 states that conventional oil and gas development, such as this application, differs from other mineral development as it involves continuous periods of working. However the paragraph recognises that most of this disturbance is at the exploration and appraisal stage (which are usually of relatively short duration). Paragraph 5.37 explains that applications for exploratory wells will be considered on their individual merits in accordance with all levels of policy guidance. Key considerations are site location to minimise intrusion, controlling vehicular activity and vehicle routeing, and controlling noise and light emissions from drilling rigs. Paragraph 5.38 outlines that subsequent proposals for appraisal will need to consider these issues afresh given that this may lead to further applications for production.
105. SMP CS Policy MC12 (Oil and Gas Development) states that applications for drilling boreholes for the exploration, appraisal or production of oil and gas will be permitted only where the mineral planning authority is satisfied that, in the context of the geological structure being investigated, the proposed site has been selected to minimise adverse impacts on the environment. Planning Applications for drilling to appraise potential oil or gas fields will only be permitted where the need to confirm the nature and extent of the resource, and potential means of its recovery, has been established. Wellsites, including the re-use of well heads used at the exploratory stage, should be located such that there are no significant adverse impacts.

Government Planning Policy

106. National Planning Policy on onshore oil and gas is set out within the NPPF which has been recently revised. This explains that it is essential that there is a sufficient supply of minerals to provide the infrastructure, buildings, energy and goods that the country needs. It recognises that minerals are a finite natural resource and can only be worked where they are found and best use needs to be made of them to secure their long-term conservation.
107. Paragraph 205 outlines that when determining applications for mineral development, local planning authorities should give great weight to the benefits of mineral extraction, including to the economy, while ensuring there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety.
108. Paragraph 209 says that minerals planning authorities should recognise the benefits of on-shore oil and gas development for the security of energy supplies and supporting the transition to a low carbon economy. It also states that when planning for on-shore oil and gas development, local planning authorities should clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production) and address constraints on production and processing within areas that are licensed for oil and gas exploration or production.
109. Part 9 (Planning for Hydrocarbon Extraction) of the minerals section of the nPPG sets out guidance for the determination of planning applications for oil and gas development.

Paragraph 094² explains that planning applications can cover more than one phase extraction. Paragraph 95³ states that the exploration phase seeks to acquire geological data to establish whether hydrocarbons are present and that it may involve seismic surveys and exploratory drilling. Paragraph 098⁴ sets out that typically, exploratory drilling is a short term and intensive activity with site construction, drilling and site clearance taking between 12 and 25 weeks.

110. In terms of the appraisal stage, paragraph 99⁵ explains that this takes place following exploration when the existence of oil or gas has been proved, but the operator needs further information about the extent of the deposit or its production characteristics to establish whether it can be economically exploited. Paragraph 100⁶ states that the appraisal phase can take several forms including additional seismic work, longer-term flow tests, or the drilling of further wells. Paragraph 124⁷ outlines that MPAs should take account of Government energy policy, which makes it clear that energy supplies should come from a variety of sources and this includes onshore oil and gas.

UK Energy Supply and Demand

111. Oil and gas form an integral part of the UK's energy and generation mix maintaining energy security, affordability and decreasing carbon emissions in the UK. The UK oil and gas industry has been the largest sector of industrial development throughout the past four decades predominantly from production of the UK's Continental Shelf (UKCS). The Annual Energy Statement 2014 (paragraph 39) explains that in order to enhance energy security and reliability and also deliver wider energy goals, the Government is undertaking measures to maximise the economic production of domestic oil and gas reserves and prevent possible disruptions to energy supplies.
112. The British Geological Survey (BGS) Mineral Planning Factsheet "Onshore Oil and Gas" (2011) states that the UK economy is highly dependent on oil and gas as primary sources of energy play an important role for generating electricity and domestic heating; and being essential fuels for transport on land, sea and in the air alongside their use in millions of products made from chemical processing. The Factsheet states that "*whilst onshore oil production, and particular gas, is small there will be a ready market and continuing need for these minerals for the foreseeable future*".
113. The European Commission (EC) has adopted Green Papers and Strategic Energy Reviews to advance the agenda on sustainability, competitiveness and security of supply. A core goal of European energy policy is to ensure safe, secure, sustainable and affordable energy for all and is of fundamental importance to the EU's economy, industry and citizens.
114. The European Council in 2007 adopted ambitious energy and climate change objectives for 2020 – to reduce greenhouse gas emissions by 20%, to increase the share of renewable energy to 20%, and to make a 20% improvement in energy efficiency. To address the challenges of energy security and climate change, the EU's energy and climate goals are incorporated into the Europe 2020 Strategy for smart, sustainable and inclusive growth, which was adopted by the European Council in June 2010, and into its flagship initiative 'Resource efficient Europe'.

² Para 094 Reference ID: 27-094-20140306

³ Para 095 Reference ID: 27-095-20140306

⁴ Para 098 Reference ID: 27-098-20140306

⁵ Para 099 Reference ID: 27-099-20140306

⁶ Para 100 Reference ID: 27-100-20140306

⁷ Para 124 Reference ID: 27-124-20140306

115. The concern about delivering secure, sustainable energy at affordable prices whilst moving towards a low carbon economy, led the EC to publish a 'Security and Solidarity Action Plan' in November 2008 which focussed on improvements to the energy supply of the European Union (EU) by:
- promoting investment in energy infrastructure, to increase interconnection between Member States and diversify the types, sources and routes of the EU's energy supply;
 - strengthening the EU's external energy relations with important energy producers and consumers;
 - improving Europe's ability to respond to disruptions to supply;
 - increasing the EU's energy efficiency; and
 - making better use of the EU's indigenous resources. (This includes sustainable use of fossil fuels).
116. The European Union Climate and Energy Package December 2008 commits members of the EU to reducing greenhouse gas by 20% (compared to 1990 emissions) by 2020. The Package has four parts and covers the:
- EU Emission Trading System Directive 2009/29/EC;
 - Greenhouse gas effort sharing decision No 406/2009/EC;
 - Renewables Directive 2009/28/EC; and
 - Carbon Capture and Storage Directive 2009/30/EC.
117. The current EU Energy Strategy sets out that the EU imports more than half of all the energy it consumes. Its import dependency is particularly high for crude oil (more than 90%) and natural gas (66%). The total import bill is more than €1 billion per day. Global energy markets are becoming tighter, with developing Asian countries and the Middle East accounting for most of the growth in global demand. As the world's largest energy importer, the EU is likely to be more vulnerable to supply risks as a result.
118. National Policy with regard to energy is set out in the UK's Energy White Paper 'Meeting the Energy Challenge' published on 23 May 2007 (2007 Energy White Paper) and incorporates EU objectives towards energy and climate. The 2007 Energy White Paper recognises that '*energy is essential in almost every aspect of our lives, as well as for the success of our economy*'. The 2007 Energy White Paper sets out the Government's response to the long-term energy challenges posed by the need to tackle climate change and reducing CO₂ emissions, and ensuring that the country has secure, clean and affordable energy supplies. The four energy policy goals in the White Paper are to:
- cut emissions by some 60% by about 2050, with real progress by 2020;
 - maintain the reliability of energy supplies;
 - promote competitive markets in the UK and beyond; and
 - ensure that every home is adequately and affordably heated.
119. It is recognised in the 2007 Energy White Paper that a large percentage of the UK's energy needs are met by oil, gas and coal and that even though renewables and low carbon technologies will have an increasing role, fossil fuels will continue to be the predominant source of energy for some decades. In paragraph 4.03, it explains that while the UK has benefitted from indigenous reserves of oil and gas for many years, as the North Sea matures, we will become increasingly dependent on imported energy, and therefore we need to be confident that the market for fossil fuels, supported by appropriate Government policies, continues to ensure reliable supplies of these fuels and at competitive prices. Paragraph 4.06 recognises that fossil fuels will be relied upon for the foreseeable future. Paragraph 4.16 states that a supportive regulatory environment must

be maintained that attracts a wide range of companies to exploit existing and prospective fields.

120. The Government's summary of measures for oil, gas and coal are set out on page 124 of the 2007 Energy White Paper:

'Our policies recognise the continuing importance of fossil fuels in maintaining reliable and affordable energy supplies, but aim to manage our reliance on them, their potential environmental effects and the risks associated with higher levels of import dependency by:'

- *'encouraging energy efficiency to reduce the use of fossil fuels...'*
- *'supporting and maximising economic production of fossil fuels in the UK...'* and
- *'ensuring effective energy markets at home and abroad...'*

121. The Energy Act 2008 implements the legislative aspects of the 2007 Energy White Paper and reflects the changing requirements for security of supply infrastructure and adequate protection for the environment and the UK's population, as the energy market changes. The Government's intention was that along with the Planning Act 2008 and the Climate Change Act 2008, the Energy Act would ensure that legislation underpins the long term delivery of the UK's energy and climate change strategy. The Energy Act 2011 which received royal assent on 18 October 2011 has three principal objectives: to tackle barriers to investment in energy efficiency, enhance energy security and enable investment in low carbon energy supplies. The Energy Act 2016 received Royal Assent on 12 May 2016. This transferred the Secretary of State's existing regulatory powers (excluding environmental regulatory functions) in respect of onshore oil and gas licensing in England to the Oil and Gas Authority (OGA).
122. The Climate Change Act established a legally binding target to reduce the UK's greenhouse gas emissions by at least 80% below base year levels by 2050, to be achieved through action at home and abroad. To drive progress and set the UK on a pathway towards this target, the Act introduced a system of carbon budgets which provide legally binding limits on the amount of emissions that may be produced in successive five year periods, beginning in 2008. The first three carbon budgets were set in law in May 2009 and require emissions to be reduced by at least 34% below base year levels in 2020. The fourth carbon budget, covering the period 2023–27, was set in law in June 2011 and requires emissions to be reduced by 50% below 1990 levels.
123. The transition to a low carbon economy is being underpinned by several strategies. The UK Low Carbon Transition Plan: the national strategy for climate and energy (The Transition Plan) 2009 outlined policies and proposals that will be put in place to reduce carbon emissions by 2020. The Transition Plan is supported by the Renewable Energy Strategy, the Low Carbon industrial Strategy and Low Carbon Transport: A Greener Future. Some key measures in the Transition Plan are implemented by the Energy Act 2010 which has provisions on delivering financial incentives for carbon capture and storage, mandatory social price support, measures aimed at ensuring energy markets are working fairly for consumers and delivering secure and sustainable energy supplies.
124. In addition the Government introduced the 'The Carbon Plan: Delivering our low carbon future' in December 2011. The Plan sets out how the UK will achieve decarbonisation within the framework of our energy policy: to make the transition to a low carbon economy while maintaining energy security, and minimising costs to consumers, particularly those in poorer households.
125. The UK has signed up to the EU Renewable Energy Directive 2009/28/EC, which sets individual targets for each member state. The UK's target is to source 15% of energy

(electricity, heat and transport) from renewable sources by 2020. This target is included in the UK Renewable Energy Strategy published in 2009 where it is anticipated that it will 'contribute to the security of energy supplies in the UK through reductions in our demand for fossil fuels of around 10%, and gas imports by between 20 - 30% against our forecast use in 2020' (paragraph 5.1). The Government's approach to increasing renewable energy across the UK in the sectors of electricity, heat and transport has been set out in the UK Renewable Energy Roadmap published in July 2011 alongside the Electricity Market Reform White Paper. The Government believes that getting more renewable energy can give the UK 'much more security and a greater degree of energy independence - helping to shield us from global fossil fuel price fluctuation' (UK Renewable Energy Roadmap, page 4).

126. The Government acknowledges that in the longer term, energy security will go hand in hand with climate security and in 2012 the Government set out its future strategy for energy security in the Department of Energy and Climate Change (DECC) Energy Security Strategy published in November 2012. The Energy Security Strategy 2012 (Page 20) explains the exploitation of our North Sea oil and gas reserves has brought significant energy security as well as commercial benefits. Although UK production still provided the equivalent of 72 per cent of our oil use (including bunkers) and 55 per cent of our net gas use, the UKCS is on a downward trend. By 2020 it expects the UK will be net importers of 43 per cent of the UK oil demand and 53 per cent of gas demand.
127. Reserves of indigenous oil and gas reserves are declining with production having reached its peak and has fallen by 60% from 2000 to 2011. Consequently there has been an increase in terms of energy reliance on gas imports from outside the UK and Europe. The Government states through its Gas Generation Strategy (2012) that it is determined to ensure that the UK maximises its indigenous oil and gas resources as any over-reliance on gas or any energy source, could put the UK at risk of disruption in supply.
128. The Government is committed to produce Annual Energy Statements of energy policy to be put before Parliament. The first of these statements was issued on 27 July 2010. This recognises that the UK economy is reliant on fossil fuels and is likely to be so for some time to come with, for example, our road, sea and air transport being almost wholly dependent on oil (page 8). The statement recognises that encouraging the necessary investment in oil and gas production is an important component of the transition towards a low carbon economy (page 8/9).
129. It also sets out an outline programme and timetable for decisions in four key areas. The second area concerns 'delivering secure energy on the way to a low carbon energy future', alongside such issues as: working for secure, low carbon energy on the international stage; securing oil and gas supplies; and developing low carbon forms of heat and technology-specific actions. The latest Annual Energy Statement was published in 2014 and states that the Government's energy policies seek to meet three primary objectives: (i) ensuring light, power, heat and transport are affordable for households and businesses; (ii) providing energy security; and, (iii) reducing carbon emissions in order to mitigate climate change (paragraph 1). The statement advocates a balanced approach towards securing a reduction in energy consumption. This includes husbanding domestic supplies to reduce the reliance on imports, in combination with bringing forward cost effective renewables as part of a balanced, low carbon and secure energy mix.
130. The statement recognises at para 9 that energy consumers need to have access to reliable and secure energy supplies. It says that the production of gas and oil from UK's own reserves has been declining since 1999, and since 2004, the UK has been a net importer of energy. It explains that this has changed the way in which we need to view and tackle our energy security. In 2013, gas supplied a quarter of the energy to generate electricity with oil being substantially lower at 1%. At para 39 the statement outlines that to

enhance energy security the measures to be deployed are for flexible gas and low carbon generation, maximising economic production of domestic oil and gas reserves; and preventing possible disruptions to energy supply. This is to be carried out in combination with a reduction in energy consumption.

131. The need for the Government to ensure a secure and resilient oil supply at affordable prices whilst supporting investment and jobs is also recognised in paragraph 243 of the statement. It explains that in 2013, demand for oil products stood at 66 million tonnes (mt), with transport fuels (petrol, diesel and jet fuels) accounting for around 69% of UK oil consumption. Imports made up 43% of the total UK oil demand in 2013, which were principally used to meet the shortfall in production of diesel and jet fuels.
132. The UK Energy in Brief 2017, published by the Department for Business, Energy & Industrial Strategy (BEIS), provides a summary of some of the key developments in the UK energy system. This includes how energy is produced and used and the way in which energy use influences greenhouse gas emissions. The UK Energy in Brief summarises data from the BEIS energy and climate change statistical publication, the Digest of UK Energy Statistics, Energy Statistics, Energy Prices, Energy Consumption in the UK and annual Fuel Poverty Statistics.
133. On 17 May 2018, the Secretary of State for BEIS published a written statement on Energy Policy on behalf of himself and the Secretary of State for Housing, Communities and Local Government which should be considered in planning decisions. This sought to reiterate the Government's view that the country should utilise its domestic gas resources to the maximum extent and explore the potential for onshore gas production from shale rock formations. Although concerned with shale gas, more generally the statement remains consistent with previous policies aimed at securing a diverse supply of energy sources to meet ongoing need, keeping energy prices under control, reducing our reliance on imports, recognising the economic benefits from the development of indigenous resources, and expecting MPAs' to give great weight to the benefits of mineral extraction, including to the economy. In particular, the statement outlines that:
- the UK must have safe, secure and affordable supplies of energy with carbon emissions that are consistent with the carbon budgets defined in our Climate Change Act and our international obligations;
 - in part as a result of the UK's diverse range of energy sources, we have had competitively-priced energy since 1990 whilst reducing carbon emissions across the country by 49%;
 - the UK imported over half (53%) of gas supplies in 2017 and estimates suggest we could be importing 72% of our gas by 2030;
 - the Government intends to publish revised planning guidance on shale development ensuring clarity on issues such as cumulative impact, local plan making and confirmation that planners can rely on the advice of regulatory experts;
 - a consultation is planned in summer 2018 on whether non-hydraulic fracturing shale exploration development should be treated as permitted development; and
 - the Government is to set up a Shale Environmental Regulator in England which will bring the regulators together to act as one coherent single face for the public, MPAs and industry. This is in view of the complex nature of the existing regulatory system where it is not always transparent who is responsible for what.

Need for Hydrocarbon Supply

134. As outlined above, oil and gas form an integral part of the UK's energy and generation mix maintaining energy security, affordability and decreasing carbon emissions in the UK. Brockham Oil Watch together with a number of members of the public have objected to

the application having questioned the need for further oil and gas exploitation for the reasons outlined in the 'Consultation and Publicity' section above.

135. The nPPG requires that in determining a planning application for oil and gas development, MPAs should take account of government energy policy, which makes it clear that energy supplies should come from a variety sources which includes onshore oil and gas.
136. The Annual Energy Statement 2014 (paragraph 45) states that "... *bringing forward new UK oil and gas fields before the existing infrastructure is decommissioned will ensure that as much as possible of the potential of UK oil and gas is tapped while it is cost effective to do so*". The Annual Energy Statement 2013 (paragraph 3.69) states that with oil and gas remaining key elements of the energy system for years to come (especially for transport and heating), the Government is committed to maximising indigenous resources, onshore and offshore, where it is cost-effective and in line with safety and environmental regulations to help ensure security of supply. In 2012 UK oil and gas production provided 41% of the UK's primary energy needs and £6.5 billion of direct tax receipts in 2012/13.
137. The UK Energy in Brief 2017 published by BEIS sets out the energy industries' current contribution to the UK economy. The Brief highlights on page 4 how oil and gas extraction has been the major energy contributor to the UK economy. The statistics show a general decline from the peak contribution of 10.4% of GDP in 1982 to an estimated 2.3% in 2016, the lowest level to date. Further, oil and gas extraction accounted for 29% of the energy total in 2016, up 1 percentage point on the previous year, with electricity (including renewables) and gas broadly unchanged at 44% and 16% respectively. In addition the energy industry supports 178,000 jobs directly and indirectly, with an estimated 152,000 in support of the UKCS production.
138. Climate change and energy policies are interlinked. The Government recognises that the way we produce and use energy plays a major part in meeting the challenge of climate change and has emissions targets and policies in place for a transition towards a low carbon energy mix. Energy statistics published by BEIS in the UK Energy in Brief 2017 (page 11) show that there has been a steady increase in primary energy from low carbon sources (nuclear, wind, solar, hydro, bioenergy, transport fuels and other). In 2016, the UK obtained 17% of its primary energy from low carbon sources (of which 47% was from nuclear power), up from 9.4% in 2000. The second largest component of low carbon was bioenergy, accounting for 35% of the total low carbon energy sources.
139. The UK Energy in Brief 2017 (page 13) reports that in 2016, UK greenhouse gas emissions were provisionally estimated to be 466.0 mt of carbon dioxide equivalent, representing a 6% fall compared to 2015. This comprised 374 mt of carbon dioxide, 52 mt of methane and 16 mt of nitrous oxides. Based on energy production and consumption in 2016, the UK Energy in Brief 2017 estimates that carbon dioxide emissions were 7.4% lower than 2015 and 37% lower than in 1990.
140. Estimates for greenhouse gas emissions by sector (page 14) indicate that UK greenhouse gas emissions in 2015 were 495.7 mt of carbon dioxide equivalent which was 38% lower than in 1990. The energy supply sector was the largest single source accounting for 29% of total emissions, followed by the transport and residential sectors at 24% and 13% respectively. The transport sector has seen the largest rise in greenhouse gas emissions which accounted for 15% of total emissions in 1990, whereas the energy supply and residential sectors have decreased from their 1990 levels by 48% and 17% respectively. Although some hybrid and electric vehicles are now available, there are currently few commercial alternatives to petrol for transportation.
141. The UK Energy in Brief 2017 illustrates that petroleum remains a key part of the UK's energy mix despite a decline in demand since 1990 (page 19). Transport now represents

nearly 80% of energy use of oil products, a substantially larger share than in 1990 as the use of fuel oil for electricity generation has declined and air travel has become more common.

142. The Digest of UK Energy Statistics 2017 published by BEIS states that around 40% of the UK's total energy production is from crude oils extracted from the UKCS, and UK refineries produce around 60 mt of oil products (paragraph 3.1). The digest explains that gas is one of the key pillars of the UK's energy mix, accounting for over 30 per cent of the UK's energy production and is second only to oil. Gas production from the UKCS would be sufficient to meet nearly 60 per cent of gas demand (paragraph 4.1).
143. Paragraph 3.3 of the digest explains that although UK oil demand from refineries in 2016 has dropped by around a third since 2000, there has been a far steeper decline in oil production from the UKCS. The UK Energy in Brief 2017 states that while total indigenous oil and gas production increased by 4% between 2015 and 2016, due to the start of new operations at North Sea oil fields, this was in contrast to the year on year decline rate of around 6% since production reached its peak in 1999 (page 21). In 2016, the UK imported 34% of its oil and 47% of its gas.
144. During the 1980s and 1990s, the UK was largely self-sufficient in oil and gas. The decline in production from the UKCS meant that by 2004, the UK became a net energy importer. In 2013, imports of petroleum products exceeded exports following the closure of the Coryton refinery. The UK is now a net importer of all main fuel types, although remains a net exporter of some products such as petrol and fuel oil. In 2016, 36% of energy used in the UK was imported, down sharply from the 2014 level due to the increases in indigenous oil and gas output (UK Energy in Brief 2017, page 9).
145. As North Sea oil and gas production declines the UK's import dependency will grow and the UK will become increasingly exposed to the pressures and risks of the global market which are in a period of significant change. The UK is likely to face greater competition for more expensive oil and gas resources over the next two decades as global energy consumption increases substantially, driven by the rapid expansion of Asia economies (Energy Security Strategy 2012, DECC, paragraph 2.16).
146. The Energy Security Strategy 2012 sets out Government measures for maximising the economic production of UK oil and gas resources. This states on page 20 that the Government will work to achieve this through:
- *Licensing rounds, which ensure this reliable source can continue to deliver supplies for as long as possible;*
 - *Providing a fiscal regime that encourages further investment and innovation in the North Sea, while ensuring a fair return for UK taxpayers; and*
 - *Considering the potential for UK unconventional gas production, and whether it will prove technologically, environmentally and economically sustainable.*
147. The Government is also undertaking activities in a number of areas to enhance energy security whilst also delivering wider energy goals. This includes measures to: incentivise deployment of flexible gas and low carbon generation; maximise economic production of domestic oil and gas reserves; and prevent possible disruptions to the UK energy supply. A more energy efficient UK will have lower exposure to international energy market prices and volatility. Therefore, reducing energy consumption will improve the UK's energy security (Annual Energy Statement 2014, DECC, paragraphs 39 and 40).
148. Government energy policy set out in the Energy White Paper 2007 states on page 19 that: '... to meet our security of supply challenges, we will maximise the economic production of

our domestic energy sources which, together with our energy saving measures, will help reduce our dependence on energy imports;...'

149. In this context, the importance of domestically produced oil and gas is recognised in paragraph 4.02 which states that. *'Renewables and other low carbon technologies will play an increasing role in our energy mix over the longer term; however, fossil fuels will continue to be the predominant source of energy for decades to come.'* The Government's summary of measures for oil, gas and coal set out on page 124 state that: *'Our policies recognise the continuing importance of fossil fuels in maintaining reliable and affordable energy supplies, but aim to manage our reliance on them, their potential environmental effects and the risks associated with higher levels of import dependency by:*
- *encouraging energy efficiency to reduce the use of fossil fuels;*
 - *supporting and maximising economic production of fossil fuels in the UK; and*
 - *ensuring effective energy markets at home and abroad.'*
150. To maximise the potential of a reserve, it is important to fully husband that reserve, once it has been identified as economically and practically viable.
151. Guidance on the Government energy policy provided in the nPPG makes it clear that energy supplies should come from a variety of sources including onshore oil and gas. Onshore oil and gas have only been discovered and produced in commercial quantities from certain sedimentary basins onshore. In the south of the UK, the Wessex-Channel covers the productive Weald Basin and the Wessex Basin where the Jurassic rocks and the existence of trapping structures are suitable for hydrocarbon accumulation.
152. The current proposal falls within the Weald Basin, which extends from Hampshire to Kent and East Sussex and includes the Humbly Grove oilfield in Hampshire, along with the oil producing Horndean, Stockbridge, Storrington, Woodworth and Singleton oilfields. In Surrey the Weald covers Palmers Wood Oilfield near Oxted, Brockham Oilfield near Dorking and Horse Hill, Horley.
153. The application is for the exploration and appraisal stages of hydrocarbon development at Brockham Wellsite. These stages are a necessary precursor to the production stage. The intention is to ascertain whether commercially viable reserves of oil are present within the Kimmeridge formation. Subject to the results of the appraisal identifying the presence of a viable reserve, this may lead to a future planning application for production. The production stage takes place following the exploration and appraisal stages and when the existence of commercially viable volumes of hydrocarbons have been proven.
154. Brockham Wellsite is located within Petroleum Exploration and Development Licence (PEDL) 235 which is on the northern side of the geological feature of the Weald Basin. This licence relates to conventional oil and gas. PEDLs are issued by the OGA after a competitive process following an assessment of applications for operator competency, financial capability, geotechnical analysis and the proposed work programme. The OGA has no responsibility for onshore environmental regulation in England which is a matter for the Environment Agency (EA) and the MPA. A PEDL comprises a production license which covers exploration drilling, appraisal, development and production within a defined area or block. They give the licence holder(s) exclusive rights to search, bore for and get petroleum subject to necessary drilling / development consents and planning permission.
155. There must be some consideration of the nature, scale and circumstances of the proposed development. The application involves the carrying out of exploration and appraisal testing for oil for a temporary period of three years. The proposal is considered to be short term in nature, does not involve the construction of any permanent buildings and the BRX4Z wellhead would be plugged and restored as an operational area of the wider site, which is

in turn required to be restored back to agriculture by the end of 2036. A detailed assessment of the various impacts of the proposal is provided below.

Representations on Need

156. Some of the representations received in support of the proposal point to the national need for oil, the country's over reliance on imports, and the contribution of on-shore oil and gas resources towards energy security and supporting the transition to a low carbon economy, which includes increasing the focus on renewable energy. Brockham Oil Watch have objected to the application on the grounds that the application is at odds with the commitments contained within the Climate Change Act 2008 to reducing greenhouse gas emissions, and the miniscule contribution of the oilfield towards meeting the country's demand for oil. Similar points have been raised in representations received on the application which also refer to the very low number of jobs than will be created. Representations received also object due to the need to prioritise renewable energy over non-renewable sources, with some calling for an outright ban or a managed decline in the exploration for new fossil fuel reserves.
157. As outlined above, climate change and energy policies are closely inter-linked and maintaining energy security, increasing supplies from renewable sources and minimising the cost of energy to consumers form important elements of the Government's commitment to enable the transition to a low carbon economy. The nPPG also makes it clear that energy supplies should come from a variety of sources including onshore oil and gas. Whilst overall volumes of oil produced from any single on-shore facility may not be significant, cumulatively, production from a multitude of sites is likely to add up to something more substantial. The same holds true in relation to job creation.
158. Mole Valley District Council and Brockham Oil Watch have objected to the length of the appraisal process. The district council believe that this is unacceptable and that a period of 18 months would be more appropriate. Brockham Oil Watch have said that this is excessive compared to appraisal programmes elsewhere in the Weald Basin, such as Horse Hill, Horley, where a period of 4 to 6 months has typically been applied for. They have raised concern that the extended period of up to 3 years is an attempt to enable the operator to go into full scale production and that a condition should be imposed marking a definitive end to the appraisal period. A number of representations received have raised similar objections with some believing that no more than 4 weeks should be allowed for flow testing and others pointing out that drilling was only proposed for 18 weeks at Bury Hill Wood, Coldharbour. It is also suggested that less time is required as the side-track was drilled in January 2017 and enough data should now be available to enable a shorter time period to complete the appraisal.
159. The CPA is required to treat each application on its merits. Given the inherent differences between each application, comparisons are not always valid or appropriate. The nPPG provides an indication of the time period for exploration and appraisal as explained below.
160. Officers consider that it is likely that the proposed time period for future appraisal would need to factor in time for the analysis of the appraisal testing results. Officers also acknowledge that the applicant has stated that the well will be subject to more extensive technical evaluation than normal production wells as no recent data is available on the Kimmeridge reservoir.
161. Paragraph 99 of the nPPG states that the appraisal phase takes place following exploration when the existence of oil or gas has been proved, but the operator needs further information about the extent of the deposit or its production characteristics to establish whether it can be economically exploited. Paragraph 100 explains that the appraisal phase can take several forms including additional seismic work, longer-term flow

tests, or the drilling of further wells and that much will depend on the size and complexity of the hydrocarbon reservoir involved. As a consequence, while an estimate for the time period required for exploration is provided in the nPPG, the typical duration of the appraisal phase is not specified.

162. Further, the applicant has explained that as no recent production data is available on the Kimmeridge reservoir, the well will need to be subject to more extensive technical exploration than normal production. Hence, the need for the well to be produced for up to 18 months to enable monitoring and survey work to be undertaken and the results analysed.
163. Brockham Oil watch have also objected to allowing the operator to be able to carry out maintenance activities throughout the life of the permission given the impact in terms of the number of HGVs movements and transporting a rig to and from the site. Traffic is addressed separately in the Highways, Traffic and Access section of this report.
164. The applicant states that a programme of preventative maintenance will be implemented throughout the works. Despite this, the applicant acknowledges that there may be instances where well maintenance is required to address any unforeseen mechanical breakdowns and as a consequence, it is impossible to predict when, or even if, any maintenance will be required. However if maintenance is required, the application has sought to address the visual impact of the workover rig or crane. Further, unless in response to an emergency, the application restricts such activities to within normal working hours and explains that this would be limited to typically between one and two weeks. Officers accept that the need for and frequency of any maintenance required cannot be predicted in advance and note the applicant's commitment to inform the CPA of the intention to carry out such works at the earliest available opportunity.

Conclusion

165. SMP CS DPD Policy MC12 requires consideration to be given to the identification and use of the proposed site. In this regard, the proposal involves the use of an existing and established wellsite, which has recently been subject to a significant programme of improvement and refurbishment. The continued use of existing infrastructure on site has not given rise to a significant adverse impact. The proposal would not involve physically expanding the wellsite.
166. As can be seen from Government planning policy and guidance highlighted above, the Government recognises that there is a need to maintain a stable and reliable supply of indigenous energy sources including onshore oil and gas into the future. The objective of managing the transition to a low carbon energy mix is also very much apparent. This will mean that oil and gas remain key elements of the energy system for years to come. The Government does not seek to differentiate between the size or stage of projects, instead aiming to maximise the potential of the UK's conventional oil and gas reserves in an environmentally acceptable manner.
167. Maximising the potential would include the consideration of even relatively small oilfields. It is therefore appropriate that such potential indigenous supplies of oil, regardless of how small in volume, are properly evaluated and appraised. It is only through this process that the commercial viability of longer term production can be verified. Cumulatively, such reserves could add up to something more substantial and make a meaningful contribution to the stated intention of maximising the recovery of the UK's indigenous oil and gas supplies and thereby contribute towards the achievement of the country's energy security.
168. Officers are satisfied that the proposed three year duration of the permission sought is reasonable and consistent with the temporary time period permitted at other oil and gas

sites. The need to allow some flexibility for any necessary maintenance to be undertaken during the life of the development is accepted. In view of the clear policy intention of maximising indigenous supplies of oil and gas, Officers conclude that on the basis of Government policy and guidance, there is a demonstrable need for the proposal which carries significant weight in the determination process.

Highways, Traffic and Access

Surrey Minerals Plan Core Strategy 2011

Policy MC15: Transport for Minerals

Mole Valley Core Strategy 2009

Policy CS18: Transport Options and Accessibility

Mole Valley Local Plan 2000

'Saved' Policy MOV2: The Movement Implications of Development

169. SMP CS DPD 2011 paragraph 7.1 recognises that lorry traffic is one of the most significant impacts of mineral working in Surrey, and the one that usually causes the most public concern. This is because they are usually noisier and more intimidating than ordinary traffic. Paragraph 7.7 explains that it is important that mineral development does not compromise highway safety and to consider the needs of pedestrians, cyclists, horse riders and other vulnerable road users. Paragraph 7.9 refers to the need to ensure that the effects of mineral traffic on local communities, the environment and the local road network, are carefully considered. Paragraph 7.10 recognises the need to consider the routing of vehicles between the proposed development and the motorway and primary route network including the use of lorry routing agreements where appropriate.
170. Policy MC15 states that applications for mineral development should include a transport assessment of potential impacts on highway safety, congestion and demand management and explore how movement of minerals within and outside the site will address issues of emissions control, energy efficiency and amenity. Mineral development involving transportation by road will be permitted only where:
- i) there is no practicable alternative to the use of road based transport that would have a lower impact on communities and the environment;
 - ii) the highway network is of an appropriate standard for use by the traffic generated by the development or can be suitably improved; and
 - iii) arrangements for site access and the traffic generated by the development would not have any significant adverse impacts on highway safety, air quality, residential amenity, the environment or the effective operation of the highway network.
171. Policy CS18 of the Mole Valley Core Strategy (MVCS) states that the availability of travel options and access will be given significant weight in considering development proposals and that transport schemes that lead to improvements in accessibility and give priority to the needs of pedestrians, cyclists and users of public transport will be supported. The policy also requires development proposals to be consistent with, and contribute to the implementation of the Surrey Local Transport Plan.
172. Mole Valley Local Plan (MVL) 'saved' Policy MOV2 states that "*Development will normally only be permitted where it can be demonstrated that it is or can be made compatible with the transport infrastructure and the environmental character in the area, having regard to all forms of traffic generated by that development ... proposals for major developments will only be permitted where it can be demonstrated that in order to accommodate the traffic generated by that development appropriate measures are made to obviate the environmental impact*". The policy also requires appropriate provision for:
- *vehicular access and egress and movement within the site;*

- *capacity on the transport network and in the vicinity of the development;*
 - *access and egress to be obtained, or improved, to and from the primary route and distributor road networks; and*
 - *pedestrians and cyclists.*
173. Paragraph 111 of the NPPF states that all developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. It also explains that: decisions should take account of whether: safe and suitable access to the site can be achieved for all people; and, transport improvements can be undertaken that cost effectively limit the transportation impacts of the development. Further, development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
174. The wellsite is served by a private access track running west from Old School Lane. Old School Lane is a relatively narrow and lightly trafficked rural lane and is largely devoid of any road markings. A complex of agricultural buildings, including the residential properties of Felton's Cottage and Felton's Farmhouse, are situated to the south of the site access. As the route along Old School Lane towards the A25 to the north via Brockham is deemed unsuitable for HGV traffic, a lorry routeing agreement was put in place in accordance with a legal agreement dated 9 January 1995. This required lorry access / egress to and from the site from the south with traffic directed along Old School Lane, Bushbury Lane, Roothill Lane, Red Lane, Blackbrook Road and Mill Road, in order to travel to and from the A24 at South Holmwood. The legal agreement also required highway improvements in respect of the provision of lay-bys and passing places between the application site and the junction of Red Lane and Blackbrook Road, which were to be maintained in good condition.
175. The legal agreement was subject to a variation and was superseded by a new legal agreement dated 25 April 2007. This was prepared in association with planning permission ref: MO06/1294 for the retention of the wellsite until 2036. The current legal agreement requires the passing bays and lay-bys to be maintained. Following the completion of restoration, the passing bays and lay-bys are to be removed and the highway reinstated to the reasonable satisfaction of the Council.
176. The applicant states that the lorry routeing agreement will continue to be adhered to as part of the proposal. They also confirm that prior to any HGVs accessing the site, the haulier / supplier is provided with a transport routeing plan and informed of the time restrictions on HGV movements which the applicant will continue to adhere to. Following reports that some lorry drivers were not adhering to the routeing agreement, the applicant has advised the CPA that this has been addressed with all hauliers / suppliers who have been reminded of the requirement to comply with the routeing agreement.
177. The proposed retention of the BRX4 well will have no impact in transportation terms as the well has already been drilled in accordance with planning permission ref MO07/0161. In terms of the proposed regularisation of the drilling of the BRX4Z side-track, this part of the application is retrospective and involved a total of 76 HGV movements (38 in and 38 out) with the delivery and removal of all/ plant and equipment associated with the drilling operations taking place over five weeks. This equates to an average of no more than 3 HGV movements per day which is not considered significant in transportation terms. In the event that some of these HGV movements were concentrated on particular days within this period, any impacts or inconvenience caused are likely to have been fairly limited and temporary in nature.
178. Regarding the exploration and appraisal of the BRX4Z side-track, the combined production operations, based on those approved under planning permission ref: MO06/1294 as well as this proposal, will result in no more than 24 HGV movements on any day. Further information submitted by the applicant in June 2018 confirmed that of

these, around 12 HGV movements will be associated with this proposal which includes the export of oil by road tanker. This is a worst case scenario as the applicant states that it is likely that the daily number will be significantly lower. It is noted that HGV movements to and from the site are authorised to take place 8.5 hours per day Mondays to Fridays and 5 hours per day on Saturdays. This indicates that the proposal would result in an average of no more than 1.5 HGV movements per hour, or an average of 3 movements per hour cumulatively when combined with the existing permitted operations at the site. These numbers of HGV movements are again not considered to be significant in transportation terms.

179. During normal operations, two staff will be on site, which is anticipated to give rise to no more than 8 car/light vehicle movements per day which is considered negligible. In terms of maintenance, the applicant estimates that any future workover that may be required is likely to involve 40 - 60 HGV movements, which would typically be spread over a one to three week period. This would involve a rig or crane being transported to and from the site. Assuming a worst case scenario, if 60 HGVs movements were required over a one week period, then this would average around 10 HGV movements per day or 1.3 HGV movements per hour. This is not considered significant in transportation terms, particularly given the very temporary nature of any future maintenance work.
180. The County Highway Authority (CHA) have assessed the application on highway safety, capacity, and policy grounds and raise no objection. They recommend the imposition of four planning conditions. These relate to: (i) compliance with the previously agreed HGV routeing agreement; (ii) compliance with existing restrictions on the timing of HGV movements and time restrictions on HGVs being laid up / waiting on Old School Lane and Bushbury Lane; (iii) the submission of a scheme for prior approval to prevent the creation of dangerous conditions for public highway users in relation to mud on the road; and (iv) a requirement for the applicant or operator to repair any damage caused by the development to the highway between the site and Red Lane.
181. Having considered the need for the third suggested condition which seeks to protect the public highway from mud, the CPA do not believe that this is justified in this particular case for a number of reasons. Officers are mindful that the site has been in existence for 21 years. The Planning Enforcement Team have confirmed that mud on the road has not been an issue or a cause for concern previously. It is noted that a 500 metre concrete surfaced access track connects the wellsite compound to the public highway which means any debris is likely to be discarded prior to vehicles reaching Old School Lane. The application site itself comprises a clean hard concrete surface. Further, the nature of the proposed development itself indicates that any mud that is generated is likely to be physically contained and not deposited onto the ground where it could be picked up by vehicles and carried onto the public highway.
182. Mole Valley District Council have commented that the County Council should assess the cumulative impact of oil extraction from multiple sites. Brockham Parish Council has raised concern due to the narrow access roads, lack of passing places, the increased number of tankers, the poor state of the highway verges, the risk of accidents, spillages and the safety of other road users. Friends of the Earth have also expressed concerns about the impact of additional traffic.
183. Brockham Oil Watch object to the lack of a Transport Assessment (TA), including more details on the number of HGV movements. They consider that up to 24 HGV movements per day is unacceptable compared to two tanker movements per week in recent years, and suggest that this could delay emergency services given the lack of passing places. In relation to maintenance, they argue that more specific details of the expected periods of increased traffic should be provided. In order to protect the amenity of the surrounding area, Brockham Oil Watch have also recommended the imposition of three planning

conditions should planning permission be granted. These include: (i) a requirement for the CPA's prior written approval of details relating to the methods of transport, storage and use of acid and other hazardous material to protect the amenity of the surrounding area; (ii) limiting the number of HGV movements to 8 a day; and, (iii) the provision of an adequate number of passing places in Old School Lane and Root Hill Lane.

184. The applicant states that the development is unlikely to have any significant cumulative impact given the relatively minor addition proposed to the site's activities, the site's relatively remote location and the general lack of significant industry or commercial activities throughout the immediate area. In terms of oil and gas activity in the vicinity, notwithstanding the extent of the separation distances between the application site, Bury Hill Wood, Coldharbour and Horse Hill, Horley, the access routes to and from each site and the average daily / hourly numbers of additional HGVs, the CHA have not objected to the proposal on highway safety, capacity or policy grounds. Officers are therefore satisfied that the proposal would not have a significant cumulative impact in terms of traffic.
185. It is acknowledged that HGVs need to pass through some narrow country roads in order to access and egress the site. The site has been established for over 20 years. A lorry routeing agreement, time restrictions on the movement of HGVs to avoid peak periods and the provision of passing places and layby's have been provided to ensure that the operation of the site is acceptable in transportation terms. The number of additional HGV movements generated by the proposal is not considered significant. The CHA do not consider that there is a need for any additional lay-by's or passing places and is satisfied that the additional HGVs can be accommodated without having an unacceptable impact on highway safety or capacity. The risk of material being deposited on or damaging the highway from vehicles is not a planning matter and is covered under the Highways Act 1980. The CPA is aware of damage caused to the highway verge around the time that the side-tracking operations were taking place. The CHA has advised that the poor state of the highway verges can be addressed through the imposition of a planning condition requiring the applicant or operator to repair any damage in liaison with the CHA, in the event that any damage is caused to the public highway between the site and Red Lane.
186. In terms of the lack of a TA in support of the proposal, the CHA do not consider that a TA is required and the NPPF only requires a TA or Transport Statement where a development generates significant amounts of movement. Any HGV movements related to maintenance would have to comply with existing time restrictions which can be imposed by way of a planning condition. In terms of the planning conditions suggested by Brockham Oil Watch, the transport, use and storage of any acid or hazardous substances that may be required is covered by the Environment Agency who will address the need to prevent and control any potential for pollution to occur. In addition, neither a restriction of 8 HGV movements per day or the provision of additional passing spaces are considered justifiable on highway safety, capacity or policy grounds in view of the response received from the CHA.
187. A number of representations have been received objecting to the planning application on traffic grounds. The primary concern relates to the extent of the increase in HGV traffic on unsuitable narrow country roads and the impacts on noise, air quality and more vulnerable road users given the increased risk of accidents. There are claims that HGVs will cause damage to the road surface resulting in an increase in maintenance costs that will need to be paid for through an increase in taxes. It has been suggested that the access roads are particularly busy during peak periods and poor sight-lines and a lack of passing places will result in significant disruption to other road users. A number of representations believe that the application should be supported by a TA. There are also concerns that HGVs are not always adhering to the agreed routeing agreement and that the main road through Brockham is unsuitable for HGVs.

188. Despite concerns about the increase in HGV movements, the unsuitable nature of access routes to the site, and the effect on more vulnerable road users, the impact is not regarded as being significant on its own, or cumulatively. Further, the County Highway Authority have raised no objection on highway capacity, safety or policy grounds.
189. Neither an average of 3 HGV movements per day over a period of 5 weeks associated with the initial drilling of the side-track, 1.5 HGVs per hour in connection with the proposed exploration and appraisal of the side-track, or up to 10 HGVs per day, or 1.3 HGVs per hour, in relation to any maintenance requirements are considered to have an unacceptable adverse impact in terms of noise or air quality. Existing restrictions only allow HGV movements between 07:00-08:00, 09:00-15:30 and 18:00-19:00 hours Mondays to Fridays and between 08:00-13:00 on Saturdays. These limits prevent HGV traffic using the site during the night time or during the busiest periods of the day and can be extended to apply to this proposal through the imposition of a planning condition. Further, the application site is not located within or close to an Air Quality Management Area.
190. The repair of any damage to the road is a highway maintenance issue and is beyond the remit of the CPA. The Highways Act enables the Highway Authority to charge developers for damage caused by excessive weight and movements of vehicles to and from a site. Condition 9 of planning permission ref: MO06/1294 requires sight-lines to be maintained to the reasonable satisfaction of the CPA. The CHA does not consider that there is a need for a TA or the provision of further passing places in order to accommodate the additional HGV traffic. The existing lorry routeing agreement requires HGVs to access and egress the site to and from the south to avoid Brockham. Prior to any HGVs accessing the site, the haulier / supplier is provided with a transport routeing plan and informed of the time restrictions on HGV movements. The applicant has confirmed that all relevant parties have been spoken to and reminded of their responsibilities to adhere to this agreement.

Conclusion.

191. In view of the above assessment, the proposed development is considered acceptable in transportation terms and any associated environmental impacts are capable of being mitigated to a satisfactory degree. The CHA has raised no objection to the proposal on highway capacity, safety or policy grounds subject to conditions in respect of restrictions on the timing of HGV movements, the timing of HGVs being laid up or waiting on Old School Lane and Bushbury Lane, lorry routeing and the submission of a scheme for prior approval containing measures to prevent mud on the road. However, the CPA does not consider that this final condition is justifiable for the reasons outlined in the above assessment. With these measures in place, the CPA is satisfied that the proposal is not likely to give rise to unacceptable impacts in relation to congestion, highway safety or residential amenity in terms of noise and air quality. Taking all these matters into account, Officers consider that from a traffic, access, highway capacity and safety point of view, the proposal is acceptable and complies with the requirements of SMP CS DPD Policy MC15, MVCS Policy CS18 and MVLP 'saved' Policy MOV2.

ENVIRONMENT & AMENITY

Surrey Minerals Plan Core Strategy 2011

Policy MC12: Oil and Gas Development

Policy MC14: Reducing the Adverse Impacts of Mineral Development

Policy MC17: Restoring Mineral Workings

Policy MC18: Restoration and Enhancement

Mole Valley Core Strategy 2009

Policy CS13: Landscape Character

Policy CS14: Townscape, Urban Design and the Historic Environment

Policy CS15: Biodiversity and Geological Conservation

Policy CS20: Flood Risk Management

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Policy ENV4: Landscape Policy
 Policy ENV15: Species Protection
 Policy ENV22: General Development Control Criteria
 Policy ENV23: Respect for Setting
 Policy ENV39: Development in Conservation Areas
 Policy ENV57: Lighting Proposals
 Policy ENV61: Hazardous Substances Development
 Policy ENV67: Groundwater quality

Introduction

192. Policy MC14 of the SMP CS DPD states that mineral development will be permitted only where a need has been demonstrated and the applicant has provided information sufficient for the mineral planning authority to be satisfied that there would be no significant adverse impacts arising from the development. The policy sets out a number of criteria which, when determining a planning application for minerals development, should be considered in terms of any potential impacts. The criteria in the policy relevant to this planning application are: i) noise, dust, fumes, vibration, illumination; ii) flood risk, water quality and land drainage; iii) the appearance, quality and character of the landscape and any features that contribute to its distinctiveness; iv) the natural environment and biodiversity; v) sites or structures of archaeological or historic interest and their setting; vi) the rights of way network; vii) the use of land and soil resources; viii) the need to manage the risk of bird strike to aircraft; and ix) cumulative impacts arising from the interactions between mineral developments, and between mineral and other forms of development.
193. In relation to oil and gas, paragraph 5.37 of the SMP CS DPD recognises that there are three separate phases of development, comprising exploration, appraisal and production. It also expects applications for exploratory wells to consider locating sites to minimise intrusion, control vehicular activity and vehicle routing, and control noise and light emissions from drilling rigs especially during night-time operations. In terms of appraisal, paragraph 5.38 expects proposals to consider the above issues afresh given that this may lead to further applications for production. It also recognises that the appraisal stage may require the drilling of further wells to determine the extent of a field as well as the need to consider the short and long-term impacts associated with these locations. This includes directional drilling which may offer the prospect of reducing impacts on particular features.
194. SMP CS DPD Policy MC12 states that planning applications for the drilling of boreholes for the exploration and appraisal of oil and gas will only be permitted where the MPA is satisfied that, in the context of the geological structure being investigated, the proposed site has been selected to minimise adverse impacts on the environment. In terms of appraisal, Policy MC12 sets out that planning applications for drilling to appraise potential oil or gas fields will only be permitted where the need to confirm the nature and extent of the resource, and potential means of its recovery, has been established. Wellsites, including the re-use of wellheads used at the exploratory stage, should be located such that there are no significant adverse impacts.

Landscape and Visual Impact

195. The application site extends to 0.85 hectares and comprises the existing wellsite compound (approximately 0.5 ha), containing all operational plant, and private access track (approximately 0.35 ha). The compound is covered by an area of hardstanding and is secured by 2.4 metre high palisade fencing. Soils stripped during the site's original construction are stored in grassed bunds of around 3 metres in height. These extend along the northern and eastern boundaries of the wider 1.2 hectare site. Existing planting effectively screens the site from any views into the site from the south and partly screens

views into the site from the west, albeit from privately owned agricultural land with no public access.

196. The wellsite compound contains three existing wellheads, a bunded storage area (comprising oil storage tanks and other production equipment), a tanker loading bay, water tank, containerised steam boiler, electrical control building, diesel generator unit, two diesel fuel tanks, car parking area and a number of buildings / container units ranging between approximately 2.4 and 2.6 metres in height. These include a series of self-contained steel cabins comprising a security office, toilet facility, mess, site office and two storage containers. The wellsite and its associated equipment benefits from planning permission until 31 December 2036 by which date the site is required to be restored to agricultural use.
197. National policy set out in the NPPF looks to the planning system to contribute and enhance the natural and local environment by protecting and enhancing valued landscapes. Policy MC14 of the SMP CS DPD seeks to protect the appearance, quality and character of the landscape. MVCS Policy CS13 requires all new development to respect and, where appropriate, enhance the character and distinctiveness of the landscape character area in which it is proposed. The policy also seeks to protect the AONB in accordance with the objectives of the Surrey Hills Management Plan and, relevant to this proposal, with particular focus on the impact of development on ridgelines and significant views.
198. MVLP 'saved' Policy ENV4 aims to ensure that development proposals conserve and will not detract from the character of the local landscape. In determining planning applications account will be taken of the visual impact of the proposed development on the landscape, the extent to which the impact of new buildings has been softened and integrated into the landscape by careful consideration of siting, design, colour and associated planting. 'Saved' Policy ENV22 of the MVLP explains that where the proposed development accords with the other Plan policies, a design and layout will be required which, relevant to this application, respects the character and appearance of the locality and provides any necessary screening and landscaping suitable to the character of the locality.
199. The applicant states that the site does not lie within any statutorily designated landscape, being located 0.95km to the south and east of the closest boundary of the Surrey Hills AONB and the Surrey AGLV. It is located within National Character Area 121 (Low Weald) and, more specifically, the 'WF1 - Dorking to Hookwood Low Weald Farmland' landscape character area, as defined in the 2015 Landscape Character Assessment for Surrey. The Dorking to Hookwood Low Weald Farmland is a large character area stretching south-east from Dorking to the county boundary near Gatwick Airport. Its key characteristics include a relatively low lying landscape with a gently undulating landform. The farmland landscape includes an irregular pattern of arable fields with well maintained hedgerows, with smaller pastoral fields located along watercourses, and paddocks and small holdings associated with farmsteads and settlements. There are unconstrained views across the character area including views across the Weald from more elevated areas.
200. The Planning Statement explains that the site has been present as a feature in the local landscape since the late 1980s, and is surrounded by agricultural land on all sides. It is located over 500m from the nearest residential property and is well-screened in the landscape by a combination of topography, existing hedgerows, trees and bunds along its northern and eastern boundaries. It is therefore argued that the site does not therefore represent a prominent feature within the landscape. This argument is accepted.
201. The retention of the BRX4 well for a further three years is considered to have a negligible impact in landscape and visual terms given that the wellhead gear has remained in place and in view of its location within an existing operational wellsite. In terms of new

development, Officers note that the drilling of the side-track involved a workover rig and associated equipment being brought onto the site. The rig had a maximum mast height of 29 metres and, together with the associated equipment, was retained on site for approximately 3 to 4 weeks. The associated equipment included pipework, mud pumps, mud tanks, mud logging cabin, tool-house, crew cabin and waste skips. The Planning Statement explains that all items were located so as to minimise their visibility from outside of the site, although for health and safety reasons, some periods of 24 hour working were required.

202. The applicant acknowledges that the development's greatest potential for visual impact resulted from the side-tracking operation. The Planning Statement acknowledges that whilst the exploratory side-tracking may at times have resulted in limited short term localised impacts, no further drilling is sought within this application. It is argued that the workover rig was only on site for a relatively short period and that the majority of the plant required was not visible from outside of the site, with only the mast of the workover rig being visible above the bunds. Given the relatively short-term duration of these operations, coupled with the distance to notable receptors, the applicant suggests that the potential visibility of the rig's mast is not considered to have resulted in significant visual impact, with any perceived impact being minimal.
203. It is accepted that the location of the site relative to the nearest sensitive receptors, the presence of the screen bund, the existing vegetation planting around the site and the temporary nature of the works all played an important part in mitigating the impact of the side-tracking operation. The presence of the workover rig, and the occasional need for 24 hour lighting will have had the most significant impact, including on users of public footpath FP86 that crosses the private access track around 260 metres to the east of the wellsite. However, these aspects of the side-tracking operation are not considered unacceptable given their relatively short duration. The crane is also likely to have been visible from certain locations within the AONB although given the separation distance involved and the short duration of the works, it is considered unlikely to have formed a prominent feature in the landscape.
204. In terms of future appraisal, the majority of the plant required is already on site as the site benefits from an existing planning permission for production. The applicant states that the appraisal works will require only limited additional plant over and above the existing permitted plant and facilities at the site, which have recently been upgraded to ensure compliance with the highest standards of environmental protection.
205. The additional equipment required is likely to include a workover rig or crane for a short time period in order to install the tubing inside the existing well casing and to undertake any maintenance (for typically between one and two weeks) if required. Any workover rig would be similar in size to that used in the drilling of the side-track. Indicative details of the crane suggest that this could be extended up to 50 metres in height although an Indicative Section Drawing submitted by the applicant confirms that it would only need to be extended to a similar height as the workover rig at around 29 metres. The applicant states that during any maintenance operations, the main body of the workover rig or crane would be well screened, with only the mast / boom being visible from outside the site. Further, the Planning Statement sets out that any workover operations which may be required will be of both limited scale and duration and will not result in any significant adverse impacts.
206. Further, an emergency flare stack and replacement generator are proposed for the duration of the development. Indicative details of the flare stack suggest that it will have an overall height of approximately 12.2 metres. It will consist of a 3.1 metre high ground mounted burner with an 8.5 meter long x 2 metres diameter wide flame shroud and will be installed close to the eastern boundary of the site, to the south of the fire water tank. The indicative details of the replacement generator suggest that it will be 6.06 metres long by

- 2.44 metres wide and have a height of 2.59 metres. Other equipment to be brought on site includes a temporary tank for the initial well clean-up to be installed within the bunded area, a single process heater to prevent the risk of wax deposition, a pump to help raise fluids should the flow to the surface reduce over time, a small transformer in association with the connection to the national grid and above ground pipework.
207. Further information submitted by the applicant in 2018 indicates that the temporary tank will measure approximately 3 metres by 3 metres and the process heater will be installed to the south west of the bunded area and will measure 6 metres long by 2.4 metres wide by 2.9 metres height. However, these dimensions and locations are indicative and may be subject to minor change. The small transformer will be 'washing machine' sized and will be located on the concreted pad close to the site entrance. The pump will be installed inside the well and will have no visual and landscape impact.
208. The Planning Statement sets out that the majority of the plant required for the proposed appraisal works has been previously permitted and will not be visible from outside the site. The only item of plant required for the appraisal process which will be visible will be the emergency flare stack, with the flame shroud visible above the site bunds. Whilst this will remain in place throughout the appraisal process, the Planning Statement argues that it will not be prominent and, given the site's relatively remote location, will not result in any significant landscape or visual impact.
209. In terms of the rig or crane, the Planning Statement explains that any works would be limited to the normal working hours and would be of limited duration. Whilst the mast of any such rig will remain visible from outside of the site, owing to its very temporary nature this will not result in any significant visual impact. As such, the appraisal of the BRX4Z well will not result in any notable visual impacts. Further, as no additional lighting is proposed over and above that which has been previously permitted, the applicant considered that lighting associated with the development will not give rise to any adverse visual impacts.
210. Brockham Parish Council have expressed concerns due to the visual impact of the 12 metre flare stack which they claim is contrary to the area's status as 'an area of landscape value'. Friends of the Earth object to the landscape and visual impact suggesting that the rig or crane will be visible from outside the site. Representations have been received objecting to the impact on the countryside and the AONB which they say should be preserved, the impact on the peaceful and rural character and beauty of the landscape. In particular, it is argued that the flare stack will constitute an incongruous feature and will have an adverse visual impact on the low lying surrounding area and views from nearby footpaths including on views from the AONB to the north and from properties in Brockham.
211. The majority of new plant and equipment will not be visible from public vantage points outside the site with the exception of the flare and the rig or crane. The application site is not located within the AONB or an Area of Great Landscape Value, which lie approximately 900 metres to the west of the site at their nearest point, and contains no environmental designations.
212. The rig or crane will be present on site for no more than a few weeks at a time as and when required although at a height of around 29 metres, it will be visible from the surrounding area, including parts of the AONB, albeit for a very short time period. The flare stack will be present on site for the full three year duration of the development. However in terms of height, it will be around 17 metres lower than the rig or crane. It will be partly screened by the existing 3 metre high bund along the northern and eastern site boundaries and a scattering of trees planted between the security fence and the bund. The impact on any views from the AONB is not considered significant.

213. The activity and movement associated with the development would involve disturbance in some degree to the landscape during the temporary three year period sought. The 570 metre long private access track is partly screened by hedgerows and trees although there are some substantial gaps with large open agricultural fields to the north and south. As the proposal is not intensive in terms of the proposed numbers of HGV movements that will be generated, the impact of such disturbance in visual and landscape terms is not considered significant.
214. In terms of lighting, the appraisal of the side-track will have no additional visual and landscape impact as the works do not require any lighting over and above that previously approved. In addition, except for intermittent security or safety lighting, Condition 5 of planning permission ref: MO06/1294 restricts lights within the site from being illuminated except between 07:30 and 18:00 hours Mondays to Fridays, and 08:00 to 13:00 hours on Saturdays.

Conclusion

215. In view of the location of the development within an existing established wellsite that has been present in the local landscape for over 20 years, existing bunds and vegetation screening, the relatively remote location of the site relative to the nearest sensitive receptors, the temporary nature of both the previous side-tracking operation and the future appraisal stage, the short duration in which the rig or crane will be present on site, and the site not being the subject of any environmental designation, Officers consider that the impact of the proposal on the appearance, quality and character of the landscape, including in terms of views from the AONB and public footpaths is not significant. Taking the above considerations into account, Officers are satisfied that the proposal is in accordance with the requirements of SMP CS DPD Policy MC14, MVCS Policy CS13, and MVLP 'saved' policies ENV4 and ENV22.

Ecology and Biodiversity

216. Government policy on ecology and biodiversity at paragraph 170 of the NPPF requires the planning system to contribute to and enhance the natural environment by minimising impacts on biodiversity and providing net gains to biodiversity where possible. Paragraph 175 states that when determining planning applications a number of principles should be considered in order to conserve and enhance biodiversity. These include: if significant harm from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then the proposal should be refused; opportunities to incorporate biodiversity in and around development should be encouraged, especially where this can secure measurable net gains for biodiversity; and, planning permission which would result in irreplaceable habitat, ancient woodland and veteran trees being lost should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists.
217. Government guidance contained in paragraph 016 of the natural environment section of the nPPG states that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. Where an EIA is not needed, an ecological survey may still be required where, for example, protected species may be present. Paragraph 017 advises that biodiversity enhancements can take the form of habitat restoration, re-creation and expansion; improved links between existing sites; buffering of existing important sites; new biodiversity features within development; and securing management for long term enhancement. Paragraph 018 outlines the mitigation hierarchy for biodiversity which includes avoidance, mitigation and compensation and advises that development which cannot satisfy these requirements should be refused.

218. Policy MC14 of the SMP CS DPD states that mineral development will be permitted only where a need has been demonstrated and sufficient information has been provided for the mineral planning authority to be satisfied that there would be no significant impacts arising from the development. This includes potential impacts in relation to the natural environment and biodiversity. SMP CS DPD Policy MC18 states that the MPA will encourage and work with mineral operators and landowners to deliver benefits such as enhancement of biodiversity interests.
219. MVCS Policy CS15 seeks to protect and enhance biodiversity including the retention of all water courses, mature hedges and trees within development sites. All development schemes are expected to include planting and other schemes that promote biodiversity focusing on native species and particularly trees. 'Saved' policy ENV15 of the MVLP requires the applicant to undertake a thorough site investigation and for consultation to be carried out with the local nature conservation bodies where it is evident that a proposed development would be likely to result in harm to a protected species or its habitat. Development that would materially harm a protected species or its habitat will not be permitted.
220. In relation to MVCS Policy CS15, the Planning Statement sets out that the application relates to the temporary use of the operational area of an existing site, within which no planting would be feasible. Whilst the application does therefore not include any planting, it should be noted that the wider site includes bunds which include a range of vegetation that provides local biodiversity interest and benefits from a previously approved restoration scheme. It therefore concludes that the development does not involve any aspects which may be detrimental to biodiversity.
221. The Planning Statement also explains that the site is remote from any statutorily designated site and the operational area within which all works related to this application will take place is well established and is devoid of any significant flora or fauna. The operational areas are surfaced either with concrete or aggregates and, as such, provide limited habitats. Whilst established hedgerows and trees lie in relatively close proximity to the site, the boundary fencing effectively confines the operations, ensuring that there will be no direct impact upon any vegetation. In addition, it states that whilst the area of woodland, which lies 150 metres to the north-west at its nearest point, includes an area of ancient semi-natural woodland, it is separated from the site by agricultural land. Given the distance between the site and the closest area of woodland, and taking account of the scale and type of works involved in the development, the applicant considers that the woodland will not be affected.
222. The County Ecologist has not objected to the application and has advised that the assessment provided by the applicant, which indicates that the site has limited ecological value, is reasonable. Consequently, the County Ecologist is satisfied that no further surveys such as Preliminary Ecological Assessment are required and that the restoration of the site is adequately covered under conditions 3 and 16 of planning permission ref: MO06/1294. These conditions require the site to be returned to a condition suitable for agriculture by 31 December 2036.
223. Brockham Oil Watch have objected to the application as they consider that the absence of a Biodiversity Assessment to assess the presence of protected species and how they will be impacted upon is a serious omission. They believe that an assessment is necessary because of the importance of agricultural surroundings, ancient hedgerows, trees and woodland 150 metres to the north-west for protected species including bats, badgers and breeding birds. Representations have been received objecting to the proposals due to impact on the ecology of local water courses from risk of spillage of toxic acid or other chemicals and discharge from the site. It is claimed that hydraulic fracturing will damage wildlife and a SSSI and there are fears that a major gas leak from flare or generator could

be disastrous for the bird population and that even normal emissions could result in premature deaths. However, the application does not propose hydraulic fracturing.

224. The County Ecologist is satisfied with the information submitted by the applicant and has concluded that no further assessment work is required. Issues concerning pollution prevention and control are addressed by the EA. They are currently in the process of assessing the proposed development with a view to updating the existing Environmental Permit with a view to bringing it up to modern standards. In relation to policy development and decision making, national planning policy requires local planning authorities to focus on whether the development itself is an acceptable use of the land, and the impact of that use, rather than the control of processes or emissions themselves where these are subject to approval under pollution control regimes. Local planning authorities are required to assume that these regimes will operate effectively.
225. Any risks to ecology and biodiversity interests as a consequence of the retention of the BRX4 well, the drilling of the BRX4Z side-track and the proposed exploration and appraisal of the side-track are not considered significant. This is given the location of the development within the operational area of a secure and enclosed existing wellsite which contains a hard surface, the extent of the separation distance between the wellsite and any statutory designated sites and woodland to the north-west and the scale and temporary nature of the proposal. Further, Officers accept that there is a lack of potential to provide biodiversity enhancements. This is in view of the existing requirement to return the site to agricultural use in accordance with a scheme to be submitted for the approval of the CPA by 31 December 2031, or 5 years prior to the cessation of mineral working whichever is the sooner.

Conclusion

226. Having regard for the conservation of ecology and biodiversity and taking account of the views of the County Ecologist, Officers are satisfied that in view of the location, scale and nature of all three elements of the application, the extent of separation between the wellsite, designated sites and woodland and the nature of the previously approved restoration, the application will not have a significant impact on ecology and biodiversity within the locality, including protected species and their habitats, and provides little scope for enhancement of biodiversity interests. For these reasons, the proposal complies with SMP CS DPD policies MC14 and MC18, MVCS Policy CS15 and MVLP 'saved' Policy ENV15.

Noise

227. Unwanted sound may have an adverse effect on the environment and on the quality of life enjoyed by individuals and communities. The NPPF at paragraph 180 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:
- mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and quality of life;
 - identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason; and
 - Limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

228. Specifically in relation to noise from minerals development proposals, paragraph 205 of the NPPF states that when determining planning applications, local planning authorities should ensure that unavoidable noise is controlled, mitigated or removed at source, and establish appropriate noise limits for extraction in proximity to noise sensitive properties.
229. The nPPG sets out guidance on the consideration of noise when determining planning applications for all development. Para 003 of the noise section states that in decision taking this should take into account the acoustic environment and in doing so should consider whether or not a significant adverse effect is occurring or likely to occur; whether or not an adverse effect is occurring or likely to occur; and whether or not a good standard of amenity can be achieved. Paragraph 006 recognises that some types and level of noise will cause a greater adverse effect at night than if they occurred during the day or because there is less background noise at night; that noise may be more noticeable if it is non-continuous and may have a tonal nature to it. The paragraph additionally notes that the local topography should also be taken into account.
230. The nPPG also provides specific guidance on determining the impact of noise for a mineral development proposal. Paragraph 019 of the noise section states that those making mineral development proposals should carry out a noise impact assessment which should identify all sources of noise and, for each source, take account of the noise emission, its characteristics, the proposed operating locations, procedures, schedules and duration of work for the life of the operation and its likely impact on the surrounding neighbourhood. The paragraph sets out bullet points to consider for the control or mitigation of noise emissions which should:
- consider the main characteristics of the production process and its environs, including the location of noise-sensitive properties and sensitive environmental sites;
 - assess the existing acoustic environment around the site of the proposed operations, including background noise levels at nearby noise-sensitive properties;
 - estimate the likely future noise from the development and its impact on the neighbourhood of the proposed operations;
 - identify proposals to minimise, mitigate or remove noise emissions at source; and
 - monitor the resulting noise to check compliance with any proposed or imposed conditions.
231. The nPPG minerals section sets out in paragraph 021 what are considered to be appropriate noise standards for mineral operators for normal operations, these being a noise limit that does not exceed the background noise level (LA90, 1h) by more than 10dB during normal working hours. The paragraph recognises that where it will be difficult not to exceed the background level by more than 10dB(A) without imposing unreasonable burdens on the mineral operator, the limit should be set as near to that level as practicable. Although, in any event the total noise from the operations during normal working hours should not exceed 55 dB(A) LA eq, 1h. For night time noise these limits should be set so as to reduce to a minimum any adverse impact and should not exceed 42dB(A) LAeq, 1h at a noise sensitive property.
232. Surrey has produced its own 'Guidelines for Noise Control Minerals and Waste Disposal 1994' (the Guidelines). These Guidelines echo the approach set out in the NPPF and nPPG and specifically address oil and gas related development. They also recognise that noise control from temporary sources is of the utmost importance at night time. Drilling is a temporary operation, although it involves constant operation of the drilling rig from which there is a fairly steady noise output. This drilling must be continuous and will normally be the only noise output from the development at night. In order to limit noise at night time the Guidelines stipulate a maximum night time noise limit of 42dB LAeq at a nearest noise sensitive property which echoes the standards set in paragraph 021 (Noise for Minerals) of the nPPG.

233. Policy MC14 of the SMP CS DPD states that mineral development will be permitted only where a need has been demonstrated and sufficient information has been provided for the mineral planning authority to be satisfied that there would be no significant impacts arising from the development, including potential impacts in relation to noise. There are no relevant 'saved' district local plan policies in relation to noise.
234. The application site is relatively remote from noise sensitive receptors with the nearest residential dwellings, numbers 47 and 48 Tilehurst Lane, being located approximately 520 metres to the south-south west of the wellsite. A complex of agricultural buildings, including the residential properties of Felton's Cottage and Felton's Farmhouse are situated just off Old School Lane approximately 585 metres to the east of the wellsite compound. Footpath 86 crosses the private access track 260 metres to the east of the wellsite compound. Footpath 92 runs parallel with and about 35 metres to the south of the access track and connects Old School Lane with Footpath 86.
235. The application site currently operates under two planning permissions. The wellsite is subject to existing noise conditions under planning application ref: MO06/1294. These require the applicant to include appropriate acoustic enclosures on all suitable equipment including the generator and water injection pumps and control tonality and low frequency noise as well as noise levels overall. In addition, Condition 5 also controls the hours of operation to 07:30 to 18:00 hours Monday to Friday and 08:00 to 13:00 hours on Saturdays, with no working on Sundays or Bank Holidays. Informative 3 of the most recent planning permission ref: MO/2017/0916 dated 15 September 2017 informs the applicant that the facility must operate in accordance with noise Conditions 12, 13, and 14 of planning permission ref: MO06/1294.
236. In relation to the drilling of the BRX4Z side-track, the applicant has acknowledged that this aspect of the proposal gave rise to the greatest potential for noise generation. The applicant states that the rig and associated equipment were mobilised to the site in late December / early January 2017, remaining until late January 2017. Wherever possible, the applicant explains that works were undertaken on a 12 hour basis however, for both operational and health and safety reasons, periods of 24 hour working were required. In order to minimise any potential noise emissions, the applicant states that wherever possible all plant utilised was either fitted with appropriate silencers on any exhausts and / or enclosed within appropriate acoustically-insulated enclosures. Furthermore the plant was arranged in a manner that ensured that noise emissions were baffled to the maximum extent by either the screening bunds, existing site plant and buildings, or the temporary equipment in order to reduce noise emissions.
237. In terms of the appraisal of BRX4Z, the applicant explains that this process will utilise the existing production plant and equipment and will therefore not result in any noise emissions over and above those which would typically be generated by the consented production operations at the site. The applicant acknowledges that the existing noise conditions covering the site (which were included as part of planning permission ref: MO06/1294 dated 10 May 2007) do not accord with the current guidelines and regulations. However, they believes that they provide a mechanism to ensure that noise from the site does not result in unacceptable impacts at any identified receptor.
238. In relation to the proposed emergency flare, the applicant points out that this will consist of a 3.1 metre high ground mounted burner with an 8.5 metre long x 2 metre diameter flame shroud which will minimise noise emissions. Whilst the existing site generator may be replaced, the applicant points out that any replacement will be of modern design and construction and will be extensively insulated to ensure that noise emissions are minimised. As such, the applicant does not anticipate that there will be any additional noise impacts from the day to day operation of the appraisal process. With regard to any

future requirements for occasional workovers of the BRX4Z well, the applicant maintains that this will not involve any further drilling and accordingly noise emissions associated with such works will be limited.

239. The County Noise Consult has assessed the proposal. They have commented that whilst noise emissions from plant, equipment and activities associated with appraisal and oil production are subject to night time noise Conditions 12, 13 and 14 of planning permission ref: MO06/1294, these conditions do not accord with current guidance. Ideally, the existing noise conditions would be updated in accordance with current guidelines and applied to the whole site, including on-site administration facilities, appraisal and oil production. Otherwise, any new modern noise conditions imposed on this application would result in different planning conditions covering different aspects of the site's operations, which would not be practicable or enforceable. However, as it is not possible to update the three current noise conditions, the County Noise Consultant considers that this planning application should be adequately covered by the existing planning conditions which can be imposed on this application. In terms of the day time, a new planning condition limiting noise limits during operational hours has been recommended by the County Noise Consultant.
240. Brockham Parish Council have raised concerns and Friends of the Earth have objected to the application on noise grounds with the latter referring to the drilling of the side-track and the proposed new gas generator specifically. Given the site's relatively remote location and the absence of any noise sensitive receptors in the immediate surrounding area, it is considered that the development can be undertaken without any unacceptable noise impacts. The applicant has provided an explanation of the noise mitigation measures associated with the drilling of the side-track and the new modern replacement generator which is to be extensively insulated. Further, the County Noise Consultant is satisfied that the application of existing noise conditions covering the site will ensure that proposal is acceptable in terms of noise.
241. Representations have been received raising concerns about the noise impacts of the flare and generator, the constant noise through the night, and people being woken up by HGVs travelling through the village at high speed. The applicant has explained how the noise impacts of the flare and generator will be minimised through the use of suitable acoustic enclosures which will help to protect the nearest residents and users of the local network of public rights of way. Further, the flare will only be used in an emergency situation and used for approximately 1 to 2 minutes before the well is shut in and the flow of gas stopped. Existing conditions restrict hours of operation between 18:00 and 07:30 hours and commercial vehicle movements between 19:00 and 07:00 hours. Existing controls concerning the hours of operation, the timing of HGV movements and noise limits during the night can be applied to this application to prevent any disturbance from the proposal taking place during the night time.

Conclusion

242. Officers consider that in view of the relatively remote location of the application site, the extent of the separation distance between the wellsite and the nearest sensitive receptors, the mitigation measures outlined by the applicant and the nature of the development proposed, the proposals would not have a significant impact in relation to noise subject to the imposition of suitable conditions. For these reasons, the proposal meets the requirements of SMP CS DPD Policy MC14.

Air Quality

243. The primary driver for air quality management is the protection of human health, but it can also be an issue for the natural environment in terms of wildlife habitats and vegetation.

Dust and air quality are material considerations and should be taken into account when considering planning applications.

244. The NPPF at paragraph 170 states that the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from air pollution. Paragraph 183 advises that local planning authorities should focus on whether the proposed development is an acceptable use of land rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. The NPPF further states at paragraph 181 that decisions should take into account the presence of Air Quality Management Areas (AQMAs) and the cumulative impacts on air quality from individual sites in local areas. The application site is not located within, or close to, any AQMA and the district council has not declared any AQMAs within Mole Valley.
245. The nPPG provides guidance on how planning can take account of the impacts of new development on air quality. The nPPG (Air Quality) at paragraph 00512 states “whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate an air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation (including that applicable to wildlife).”
246. When determining a development proposal a mineral planning authority shall have regard to appropriate consideration of issues such as air quality, on both human health and on ecology. Particular attention should be paid to compliance with national air quality objectives and EU limit values. The UK’s objectives for air quality are set out in the UK’s National Air Quality Strategy (Defra, 2007), which provides air quality standards and objectives for key air pollutants, which are designed to protect human health and the environment. The Air Quality Strategy establishes limit values for concentrations in outdoor air of major pollutants harmful to public health and the environment including particulate matter (PM10 and PM2.5) and nitrogen dioxide (NO2). The UK’s established limit values are numerically identical to the EU Air Quality Directive. For the protection of habitats and species the EU’s Habitats Directive is transposed into English legislation in the ‘The Conservation of Habitats Species Regulations 2010’, ‘Wildlife and Countryside Act 1981’ and ‘Rights of Way Act 2000.’
247. Policy MC14 of the SMP CS DPD states that mineral development will be permitted only where a need has been demonstrated and sufficient information has been provided for the mineral planning authority to be satisfied that there would be no significant impacts arising from the development, including potential impacts in relation to fumes and dust including that related to traffic generated by the development. There are no relevant ‘saved’ district local plan policies in relation to air quality.
248. Guidance on air quality for planning is published in the EPUK/IAQM “Land Use Planning and Development Control: Planning for Air Quality” 2017 document. The guidance recognises that all new development will have emissions associated with them and therefore will have the potential to have associated adverse impacts. It is these impacts that require quantification and evaluation in the form of an Air Quality Assessment alongside the ability to assess the significance of those impacts. Para 6.2 of the document advises that where a development requires an Air Quality Assessment this should be undertaken using an approach that is robust and appropriate to the scale of the likely impacts.

249. The closest residential properties to the wellsite, numbers 47 and 48 Tilehurst Lane, are situated approximately 520 metres to the south-south west. A complex of agricultural buildings, which include the residential properties of Felton's Cottage and Felton's Farmhouse, are situated approximately 585 metres to the east of the wellsite compound and around 150 metres south east of the site access track. The wellsite is not situated on land that is covered by, or adjacent to, any areas of local, national or higher-level nature conservation designations or any areas of local or national level landscape designations. The closest Site of Special Scientific Interest (SSSI) is Mole Gap to Reigate Escarpment 2.1 km to the north, the greater part of which is also designated as a Special Area of Conservation (SAC). The nearest Local Nature Reserve (LNR), Inholms Clay Pit, lies 1.8km to the south west and the closest area of Ancient Woodland is located 200 metres to the north west.

Impact of emissions from plant and equipment

250. The applicant states that as the development does not involve routine flaring or the release of any significant volumes of gas to the atmosphere, and as vehicle movements will remain relatively low, the proposal is considered to have negligible potential to impact upon local air quality. The applicant also sets out that whilst the use of the generator will result in minor emissions to air, it should be noted that the site electricity is currently supplied by a generator, with the only proposed variation being the use of site derived gas rather than imported fuels. Accordingly, the applicant has stated that there will be no significant increase in emissions to air. Further, notwithstanding the potential emissions from the generator, the applicant explains that these will be regulated by the EA as part of the Environmental Permitting Regulations.
251. The applicant also confirms that no routine flaring is proposed. Instead, an emergency flare stack will be installed and used for only 1 to 2 minutes to provide a suitable method by which to deal with any gas during an abnormal situation before the well is shut in and the flow of gas stopped. This situation would arise during a generator shut down or should an over-pressure occur for any reason requiring the pressure relief of the process system. Shutting in the well is simply a case of closing the master valve on the wellhead. The flare will be used only in abnormal situations, for example during a generator shut down during which it would take longer for the well to be shut down than the generator.
252. The need for any further gas treatment plant is not envisaged by the applicant. The gas will be fed from the production plant to the generator by above ground pipework. Gas will also be utilised in a process heater to heat the incoming oil pipework and separation equipment to prevent the risk of wax deposition. No release of significant volumes of gas to the atmosphere is proposed.
253. The EA have no objection to the application in principle. They are currently reviewing the existing environmental permit at Brockham as part of a national review of existing permits at onshore oil and gas sites in order to bring it up to modern standards. Until they have completed their review, they cannot be specific about their final permitting requirements. For example, the EA have not yet agreed with the operator whether the flare falls into the emergency only category or if it may be used for gas disposal. Further, the proposals for the generator are being considered in a similar way. As a consequence, it is possible that proposals agreed in principle at the planning application stage, such as the details associated with the flare, may change to satisfy the environmental permitting requirements.
254. The County Air Quality Consultant is satisfied that the applicant has provided sufficient information to conclude that the air quality effects on the surrounding area, in relation to the specifications of the proposed plant and equipment provided by the applicant, are not significant. This follows a review of additional information submitted by the applicant to

demonstrate that there will be no significant increase in emissions to air in respect of the flare and generator.

255. The applicant points out that the independent assessment states that the flare could operate for up to 16 minutes in any one hour before process contributions exceed the screening assessment criteria. Therefore, in the event of an emergency situation the flare will be operating for considerably less time than the 16 minute time window calculated in the independent assessment, and subsequently there will be no significant increase in emissions to air.
256. In terms of the gas generator, the applicant states that this will operate on gas produced from the BRX4Z well and the independent assessment has considered a variety of pollutants, concluding that there will be no significant impact on air quality at the nearest residential location, some 500m away from the site. The independent assessment has concluded that the pollutant process contributions from the gas engine pose no significant threat to attainment of ambient air directive limits in the vicinity of the Brockham site.
257. In relation to the flare, the County Air Quality Consultant has commented that the results of the further assessment work undertaken by the applicant indicate that all process contributions such as nitrogen dioxide and non-methane volatile organic compounds (VOCs) are low enough to be screened out as insignificant. Consequently, no further assessment work is necessary.
258. Turning to the generator, the County Air Quality Consultant has commented that short-term process contributions are not considered significant at the nearest sensitive receptors. In terms of the long term effects of nitrogen dioxide and VOCs derived from the gas engine, the County Air Quality Assessment agrees that the long term effects are not considered to be significant based on the findings of the further assessment work. This demonstrates that long-term nitrogen dioxide process contributions are below 1% of the relevant air quality objective at all receptors and the long term predicted environmental concentration (process contributions + background) is well below the relevant environmental assessment level at each receptor. The County Air Quality Consultant has also confirmed that they are satisfied with the methodology and significance criteria used by the applicant to demonstrate that the impact of process contributions from the flare and generator on nature conservation sites are insignificant.
259. The County Air Quality Consultant has pointed out that if the proposed plant changes, then they can only be confident that the resultant air quality effects will not be significant if the applicant's commits to utilising plant with the same rating, emissions rates and stack height as those they have assessed. Otherwise, the applicant will need to provide assessment evidence demonstrating the envelope of parameters (ratings, emissions rates and stack height) within which no significant air quality effects would occur. It is important that the CPA is able to retain control over the development of the site should the proposals included in this application change in future as a result of the process of varying the Environmental Permit for the site which is being undertaken by the EA. To address this, a condition can be imposed removing permitted development rights and requiring the erection, extension, installation, rearrangement, replacement, repair or other alteration of any buildings, plant or machinery other than those permitted by this application, to be subject to the prior written approval of the CPA in respect of specific details of the plant, buildings or machinery that is being proposed including noise and air quality.
260. Mole Valley District Council have requested that site activities should be closely monitored during the appraisal process, particularly emissions from the flare stack. Brockham Oil Watch have objected to the applicant's claim that the gas generator will result in minor emissions to air which will not increase significantly in view of the indicative proposals provided. They have expressed concerns over the noxious and poisonous emissions

from the flare stack and generator and request the imposition of a planning condition prohibiting the carrying out of any well testing until the existing Environmental Permit has been varied by the EA.

261. Frack Free Balcombe Residents' Association have called for a detailed air quality assessment to be submitted for nitrogen dioxide, VOCs and hydrogen sulphide, and for evidence to support the assumed sulphur content of the gas and for proper mitigation measures to be employed if it is concluded that the impacts are not insignificant. Representations have also been received objecting to low level pollutants from uncontrolled emissions to air from the flare and generator.
262. Representations have been received supporting the response from Brockham Oil Watch and objecting to: methane emissions from any leaks in the casing and well-head; emissions from the well in general; the release of any greenhouse gases; increases in air pollution from hydraulic fracturing, the burning of oil and potential spillages of chemicals and acids; the implications of pollution on health in terms of gas releases from the use of the generator and flare stack; and, the risk of acid and chemical expulsion creating a poisonous cloud over Brockham.
263. As set out above, these concerns have been addressed to the satisfaction of the County Council's Air Quality Consultant who has concluded that the air quality effects on the surrounding area are not significant. The risk of pollution below the surface and the regulation of emissions from the flare stack are the responsibility of the EA and for the avoidance of doubt, there are no proposals for hydraulic fracturing.
264. If planning permission is granted, the EA have confirmed that the planning permission can be undertaken under the existing Environmental Permit pending the completion of the variation to the Environmental Permit to bring it up to modern standards with up to date environmental controls. However in such a scenario, the operator must comply with Regulatory Position Statement 392 dated May 2017. This relates to the environmental permitting of pre-existing onshore oil and / or gas facilities and is intended to ensure that there is no risk of pollution to the environment or harm to human health. The Environment Agency have powers to take enforcement action against the operator if any of the requirements are not complied with in full. Further, the development could not necessarily take place indefinitely as this would depend upon the outcome of the environmental permit variation process going forward. Under the circumstances, the EA have advised that placing a moratorium on oil and gas development pending the variation of existing Environmental Permits at onshore oil and gas sites would be unreasonable and could not be justified.

Impact of Vehicle Emissions

265. Regarding vehicle emissions, the County Air Quality Consultant has commented that The Environmental Protection UK (EPUK) & Institute of Air Quality Management (IAQM) 'Land-use Planning & Development Control: Planning for Air Quality' guidance sets out threshold, indicative criteria for determining when an assessment is required. For sites outside an AQMA, an assessment would be required for developments changing annual average daily traffic flows on the local road network by more than 500 for light duty vehicles and 100 for heavy duty vehicles.
266. Section 5.7 of the Planning Statement refers to this guidance and states that the "level of transport movements associated with the development are well below" the indicative screening criteria. Section 5.1 of the Planning Statement sets out the number of vehicle movements generated by the different activities. A representation has been received raising concerns about air quality emissions from HGVs. However, the County Air Quality

Consultant agrees that the indicative criteria are not exceeded for any of the activities and so a detailed assessment of vehicle emissions is not necessary.

Dust

267. The applicants states under section 5.7 of the Planning Statement that the development does not have the potential to generate significant quantities of fugitive dust, with the principal potential source arising from vehicle movements. Notwithstanding this, the applicant recognises that good operator practice and relatively simple measures can be incorporated into the design and operation of a site which will further reduce any potential for impacts.
268. The applicant explains that although the development involves mineral extraction, the operations are considered to be comparable to those undertaken on construction / demolition sites. Accordingly, the Institute of Air Quality Management's (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction Sites (2014)' is considered relevant by the applicant. The applicant points out that the screening criteria contained within this guidance include the presence of a human receptor within 350m and, as there are no residential properties within 350m of the wellsite, it is considered that no detailed assessment is required in respect of the site operations.
269. Notwithstanding this, the applicant sets out that should any visible dust emissions occur, the source of such emissions will be investigated and dealt with appropriately. Should unacceptable emissions be seen to arise from vehicle traffic on the access track, an appropriate speed limit will be enforced as necessary. If required areas of the site and access track will be dampened down and metalled sections will be swept or hosed as required to avoid the build-up of loose material. The applicant adds that all operations are undertaken with due regard to the need to minimise any fugitive dust and the site's relatively remote location helps to ensure that any minor fugitive dust emission that may occur will not result in any significant impact at any identified receptor. Should additional control measures be required they will be put in place as necessary and any operations giving rise to any significant nuisance will be temporarily suspended either until conditions ameliorate or until such additional controls as are required are in place.
270. No objections have been received from consultees and no representations have been submitted in relation to dust. The County Air Quality Consultant acknowledges that the applicant has used the screening distance of 350 metres set out in the relevant IAQM Guidance referred to above and that therefore a detailed dust risk assessment is not required given the distance to the nearest sensitive receptor being over 350 metres away. The County Air Quality Consultant also acknowledges the applicant's commitment to put in place measures to reduce dust emissions should any unacceptable emissions arise and considers this to be an acceptable approach.

Odour

271. Representations have been received raising concern that smells will occur from the burning off of natural gas in the flare or generator. In relation to the oil storage tanks, the Planning Statement explains that these include venting that enables the release of vapour and air to prevent over pressurisation. The pressure release vents will discharge via a common stack incorporating vapour recovery via an ammonia filled vapour liquid separator. This recovers production fluids and delivers them back to the storage tanks. In order to prevent the risk of odours escaping, ammonia filled vapour liquid separators are used, which effectively abate any odours.
272. The County Air Quality Consultant has commented that it is understood that the operation of the site is subject to an Environmental Permit. It can therefore be expected that the

operations would therefore fall under pollution prevention regulation by the EA under the Environmental Permitting regime and that the EA would require Best Available Techniques to be applied to minimise odour. The County Air Quality Consultant has also commented that section 3.3 of the Planning Statement explains that all waste generated during the side-tracking operations were handled in accordance with a Waste Management Plan, approved by the EA, which ensures control of the management of wastes, emissions to air, water or land, odour, noise and vibration. The County Air Quality Consultant therefore considers that provided the above odour abatement and Waste Management Plan are effectively implemented, the residual odour impact on surrounding land users will be acceptable.

273. In correspondence with the CPA, the EA have confirmed that although they have not required an Odour Management Plan for Brockham Wellsite, the variation to the Environmental Permit will include a condition covering odour. Although the precise wording has not yet been finalised, this is likely to require the operator to submit an Odour Management Plan to the EA for approval in the event that the operator is notified by the EA that the activities are giving rise to pollution outside the site.

Conclusion

274. Officers are satisfied that the information submitted by the applicant is sufficient to demonstrate that the proposals would not give rise to any significant adverse impacts in terms of emissions from both plant and equipment and vehicles, dust and odour. As some of the plant and equipment that has been assessed remains indicative, then should any changes in the nature of the development be required, then this can be addressed through the imposition of a planning condition removing the operator's permitted development rights. This would ensure that the CPA retains control over the development in the event that any aspects of the final development change from that which has been assessed. Consequently, the proposals are in accordance with the requirements of SMP CS DPD Policy MC14.

Lighting

275. SMP CS DPD Policy MC14 states that mineral development will be permitted only where a need has been demonstrated and sufficient information has been provided for the mineral planning authority to be satisfied that there would be no significant impacts arising from the development, including potential impacts in relation to illumination. MVLP 'saved' Policy ENV57 states that proposals for the illumination of buildings, car parks and other facilities will not be permitted where they would significantly and adversely affect the amenities of residential properties, conservation areas or listed buildings, or the character and appearance of the countryside. Where permission is granted, consideration will be given to imposing conditions to limit the impact of the illumination.
276. Guidance notes by the Institution of Lighting Professionals for the reduction of obtrusive light (2011) set out guidance on controlling light to avoid light pollution. The guidance states obtrusive light is a form of pollution and may also be a nuisance. The guidance goes on to state that care should be taken when selecting luminaires to ensure appropriate products are chosen to reduce the upward spread of light so that it is near to and above the horizontal to reduce spillage and glare to a minimum. The guidance advises that the angle of light should not be greater than 70 degree angle in order to avoid any potential glare.
277. The nearest residential property is situated approximately 520 metres to the south-south west of the wellsite. Given the rural location of the site where existing light levels are low, Officers recognise that the illumination of the site at night may give rise to some impact on local amenity. In terms of the drilling of the BRX4Z side-track, the applicant explains that

the workover rig utilised in the side-tracking operations included a number of lights which were essential for health and safety purposes. In addition, care was taken to ensure that all such lighting was kept to a minimum and was contained within the site.

278. The applicant sets out that lighting is provided by five units of approximately 6 metres in height, with all lights being located so as to face inwards. CCTV equipment is installed towards the top of the lighting columns. The applicant has confirmed that the appraisal works will not require any lighting over and above that previously approved. In relation to the proposed emergency flare, the applicant points out that light emissions will be minimised by the presence of an 8.5 metre long x 2 metre diameter flame shroud.
279. Lighting at the application site is controlled under Condition 5 of planning permission ref: MO06/1294 which allows the production, treatment and export of crude oil from the site with restoration to be completed by 31 December 2036. Condition 5 states that no light except intermittent security or safety lighting within the site shall be illuminated, except between 07:30 and 18:00 hours Mondays to Fridays, and 0800 to 1300 hours Saturdays. As the current application for appraisal requires no additional lighting, and is only for a period of three years, there is no need to replicate this condition as part of this current application.
280. The County Lighting Consultant has reviewed the information submitted by the applicant. This is in relation to the lighting associated with the drilling of the side-track, the existing lighting provided on site and the statement that no further lighting is required over and above that already approved. In view of the information provided, the County Lighting Consultant has raised no objection to the proposal.
281. No objections have been received by consultees in relation to lighting. However, representations have been received raising objection due to night time activity at the site resulting in bright lights and light pollution resulting from the flare and generator. Controls over hours of operation can be secured by condition. No lighting is required on the generator and light emissions from the emergency flare will be minimised by the flame shroud. Further, the flare is only proposed to be used for very short periods in the case of an emergency.

Conclusion

282. Officers have considered the impact of lighting associated with the development. In view of the mitigation measures employed during the drilling of the side-track, the existing controls over lighting covered by a planning condition, confirmation from the applicant that no further lighting is proposed as part of the appraisal process, and the comments received from the County Lighting Consultant, Officers are satisfied that the proposal would not significantly and adversely affect the amenities of residential properties, conservation areas or listed buildings, or the character and appearance of the countryside. Consequently, the proposals meet the requirements of SMP CS DPD Policy MC14 and MVLP 'saved' Policy ENV57.

Water Environment and Geotechnical Issues

283. The application site is located to the west of Old School Lane and, with the exception of a small part of the access track close to the junction with Old School Lane, is outside the indicative floodplain of any water body. The River Mole is the most significant water feature in the area and is situated 935 metres to the north of the site and its nearest point. The site access road crosses over Tanner's Brook around 465 metres to the east of the compound area which discharges into the River Mole. A small eastward flowing tributary of Tanner's Brook runs parallel to the southern boundary of the site, at a distance of 35 metres at its nearest point. The wellsite is situated on the surface of the Weald Clay

Formation and at a greater depth, is underlain by the Tunbridge Wells Sands and the Ashdown Beds.

284. SMP CS DPD Policy MC14 states that mineral development will be permitted only where a need has been demonstrated and sufficient information has been provided for the mineral planning authority to be satisfied that there would be no significant impacts arising from the development, including potential impacts in relation to flood risk, water quality and land drainage.
285. MVCS Policy CS20 states that applications or allocations within Flood Zone 2 will only be considered if it can be demonstrated that there are no suitable alternatives in areas of lower risk and that a Flood Risk Assessment will be required for sites within or adjacent to areas at risk of surface water flooding as identified in the Strategic Flood Risk Assessment. To further reduce the risk from surface water flooding all development should work towards mimicking greenfield run-off situations. MVLP 'saved' Policy ENV67 states that development will not be permitted which in the opinion of the Council, after consultation with the Environment Agency, may have an adverse impact on the quality of groundwater.

Surface Water Management

286. The application site lies primarily within Flood Zone 1, having less than a 1 in 1,000 annual probability of river or sea flooding. This includes the wellsite compound where all operational activity will take place. The eastern end of the access track is within Flood Zones 2 and 3 in the vicinity of Tanner's Brook. The application site does not lie within a Groundwater South Protection Zone.
287. As set out in the NPPF, the main principle with regard to flood protection is that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at high risk. The NPPF also states at paragraph 163 that development proposals should not increase flood risk elsewhere. Paragraph 163 requires consideration to ensure development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable urban drainage systems (SuDS).
288. In relation to drainage, the Planning Statement explains that the site is underlain by an impermeable membrane with localised areas of concrete hardstanding around the wells. In addition to this the main process area includes a reinforced concrete bunded area within which all process equipment is located and all liquids (hydrocarbons, produced waters and any fuels/chemicals) are stored. The operational area drains to an interceptor ditch to the west and south, which collects all surface drainage and rainfall from the lined wellsite footprint. During normal production operations, all water (separated produced water fluids, water from bunds and cellars) is reinjected into well BRX3 with the exception of excessive uncontaminated rainwater which is discharged via an interceptor to a ditch to the south of the site. This discharge is controlled by a valve which remains closed unless there is high rainfall and the water is clean in which case it is opened to allow discharge from the site.
289. The applicant states that the site is remote from any significant surface watercourse and lies in any area of low flood risk. Whether or not a development is deemed appropriate in respect of flood risk is assessed on two principles: 1) what is preferred and 2) what is permitted. These are applied through the use of the Sequential and Exception Tests. The applicant goes on to explain that the nPPG defines appropriate development for differing levels of flood risk through the application of the Flood Risk Vulnerability Classification. Table 2 'Flood Risk Vulnerability Classification', contained in paragraph 66 of the Flood Risk and Coastal Change section of the nPPG classifies minerals sites to be 'Less

Vulnerable' to flooding, whilst Table 3 'Flood risk vulnerability and flood zone 'compatibility' confirms that 'Less Vulnerable' uses are appropriate within Flood Zones 1, 2 and 3a.

290. Given that the site compound lies wholly within Flood Zone 1, the applicant considers that the sequential test has been passed. Notwithstanding this low risk, the applicant points out that consideration should be given to the potential risk of flooding from other, localised sources. In relation to flooding from surface waters, the applicant states that whilst land to the south and west lies at a higher level than the site, slopes are gentle and surface water run-off is minimal, with agricultural drainage ditches intercepting any significant flows. The applicant therefore considers that the site is at negligible risk from surface water flooding.
291. In terms of flooding from groundwater, the applicant sets out that given the negligibly permeable nature of the underlying geology, the site is not at risk from groundwater flooding. With regard to flooding from sewers and artificial sources, the applicant suggests that the site is not served by any sewerage infrastructure and is remote from any such system or any artificial sources of potential flooding. In relation to potential risk to third party properties, the applicant outlines that as the development does not involve the extension of any impermeable hard standing, run-off rates will remain minimal. Accordingly the development will not create any increased risk of flooding to any third party property according to the applicant.
292. The Environment Agency (EA) have raised no objection to the application in principle. In relation to flood risk and drainage, they have commented that the site is mainly within Flood Zone 1 and at low risk of fluvial flooding. Although the eastern end of the access track is within Flood Zones 2 and 3, as the development relates to the main drill site they have no comments in this instance. In terms of the membrane and areas of concrete that underlie the site, the EA have commented that through the re-permitting process, they are requesting information on the specification, quality assurance and integrity to ensure that appropriate levels of containment and environmental protection are being met.
293. The EA also point out that the Lead Local Flood Authority (LLFA) are responsible for considering local flood risk (such as surface runoff, groundwater and from ordinary watercourses). The LLFA have responded to the application stating that as there is no increase to the impermeable area, the surface water regime is unlikely to change. Therefore, they have no further comments to make on the application. The County Geological / Geotechnical Consultant has commented that the drilling compound drainage arrangements have been in place since it was constructed and are remaining unchanged. In addition, the drainage appears to have been satisfactory in the past and there is no change to flood risk as a result of the proposed works under this application. No comments have been received from either Thames Water or Sutton and East Surrey Water.
294. Brockham Oil Watch have objected to the application due to the inadequacy of the assessment of surface water flood risk provided by the applicant, the lack of a formal flood risk assessment (FRA), the local area being prone to flooding and the potential for any discharges from the wellsite to pollute 'controlled waters' including Tanner's Brook and the River Mole. This consultee response has been supported by representations received on the application. Representations have objected to the application due to the increased risk of flooding from further building in an area already prone to flooding, the level of flood risk having been underestimated by the operator, and the lack of a FRA which is claimed to be a legal requirement for every planning application of this type. Officers consider that the application is unlikely to impact on surface water flooding with no increase being proposed in the area of the existing wellsite. It is also noted that existing drainage infrastructure is already in place and has already been considered acceptable under the existing planning permission for the site. Further, technical consultees are satisfied with the assessment of flood risk undertaken by the applicant and have raised no objection to the application.

Groundwater

295. As set out in paragraph 170 of the NPPF the planning system should contribute to and enhance the natural and local environment by preventing both new and existing development from contributing to or being put at unacceptable risk from water pollution. The NPPF also informs that a number of issues exist, of which groundwater pollution control is one, are covered by other regulatory regimes and mineral planning authorities should assume that these regimes will operate effectively.
296. In terms of hydrology and hydrogeology, the Planning Statement explains that the wellsite is immediately underlain by in excess of 200m of unproductive clay strata of the Wealden Clay Formation. Whilst the principal aquifers of the Chalk Group are the Lower and Upper Greensand outcrop to the north and south, owing to the local geological structure, they are not present beneath the site. The only aquifers within 400m of ground level at the site are the Tunbridge Wells Sands and Ashdown Sands. Whilst these aquifers are present beneath the site, they are at a depth of between 229m and 437m below ground level and are overlain by a significant thickness of Weald Clay. This in turn is overlain by an impermeable liner and concrete hardstanding. Any groundwaters within these units are not considered at risk by the applicant from direct infiltration of contaminants. The applicant also points out that although there are other potential aquifers at a greater depth, they are unlikely to contain potable waters and are unlikely to be in hydraulic connection with near surface potable aquifers.
297. In relation to surface operations, the Planning Statement outlines that in order to effectively mitigate the potential for any potential pollutants escaping from the site, the entire site benefits from an impermeable secondary containment bund and drainage system. This includes three principal containment areas:
- The well cellars, which retain any oil spillages from pumping and pump maintenance operations;
 - The tank storage area/process bund, which accommodates all requires storage tanks; and,
 - Road tanker loading area, which directs any spillages during transfer of fluids from storage to the road tankers.
298. The Planning Statement sets out that as part of the Environmental Permitting process governed by the EA, site works are undertaken in line with approved plans and procedures. This ensures that any spillages will be contained and removed, thus minimising the potential for environmental harm. All equipment used on site for the movement of fluids will have spill kits available and be operated by or supervised by staff trained in their use. Further during the appraisal operations, pipework and storage tanks will be inspected daily for leaks and damage. Where leaks or damage are identified the equipment will be immediately repaired or taken out of service. Any spills will be cleaned up and recorded. Details of all spills/accidents will be notified to the EA in accordance with permit requirements.
299. With regard to sub-surface operations, the Planning Statement says that any potential risk to groundwaters from the drilling operations are minimised by the well's construction, which incorporates a series of casings of reducing size, sealed in place with cement grout. The well casing provides extra containment to isolate the fluids within the well from the surrounding country rock. The construction of the well and the procedures adopted during the drilling operations were specifically designed to ensure that none of the fluids discharged to any potable groundwater bearing horizons. The open section of the well, where any discharge may occur, is at a depth of over 500m and does not contain potable aquifers. Furthermore, the stratigraphical sequence immediately above the open section of

the well does not include potable aquifers and the strata present are not hydraulically connected to any potable aquifers. Owing to the number of safeguards that are in place and the highly regulated nature of the operations, the applicant concludes that the drilling and sub-surface operations present minimal risk of contamination to any groundwaters.

300. The Environment Agency are the prime regulator in relation to groundwater and are responsible for water quality and resources including managing the risk of flooding. The EA have raised no objection to the application in principle and have advised that the risks posed to these aquifers by the proposed activities at the site and the mitigation incorporated into the design, specification and working measures on the site, will be assessed as part of the environmental permit review. This is to ensure adequate protection measures are in place.
301. The County Geological / Geotechnical Consultant has responded to the application. They have stated that based on the particulars provided in the application documents, they agree with the applicant's assessment that the drilling and sub-surface operations present minimal risk of contamination to any groundwaters.
302. Mole Valley District Council have commented that the application should be required to provide an up to date risk assessment of the proposed development. Brockham Oil Watch, supported by a number of representations, have objected due to the impact on controlled waters and public water supplies given that the Rive Mole passes over the Hythe Beds, a major aquifer from which Dorking draws much of its public water supply. Friends of the Earth have objected on a number of grounds including the need to assess the hydrogeology of the strata in order to understand the water impacts.
303. Representations have been received raising concerns that the application could increase the likelihood of the proposal having an adverse impact on the watertable, nearby watercourses, soils and aquifers should any chemicals, acid or pollution escape. It has also been suggested that groundwater pollution has not been properly assessed and that an independent hydrology report should be commissioned.
304. Risk Assessments, including a hydrogeological risk assessment, come under the responsibilities of the EA who will require such assessments to be undertaken by the operator. The EA and the County Geological / Geotechnical Consultant have raised no objection to the proposal in relation to groundwater. The EA will be reviewing the risk to groundwater further through the environmental permit variation.

Conclusion

305. The Environment Agency, Lead Local Flood Authority, Thames Water, Sutton and East Surrey Water and the County's Geological/Geotechnical Consultant were all consulted on the application. None of the technical consultees have raised objection to the development. Further, Officers are aware that the development will be subject to pollution controls resulting from the variation to the Environmental Permit.
306. Officers note that the EA will continue to review the impact on groundwater through the process of varying the environmental permit. Taking into account the views of these consultees and the mitigation measures incorporated into the proposed development, Officers do not consider that the development would result in an increased risk of surface water flooding or pose any significant risk of pollution to the surrounding environment. In view of the considerations set out above, the proposals are considered to be in accordance with the requirements of SMP CS DPD Policy MC14, MVCS Policy CS20 and MVLP 'saved' Policy ENV67.

Heritage Assets

307. The application site is situated approximately 700 metres to the south west of the Brockham Conservation area containing a number of listed buildings. The nearest listed building is Grade II listed Felton's Farm Cottage which is situated on Old School Lane around 585 metres east of the wellsite. There are two further Grade II listed buildings situated around 600 metres north west of the wellsite comprising Dairy at Park Farm and Home Farmhouse. The nearest Scheduled Monument is 'Betchworth Castle' which is situated 1.3km to the north and the nearest Registered Park and Garden (the Grade II* 'The Deepdene (including Chart Park)' is situated around 880 metres to the west.
308. Sections 66(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require Local Planning Authorities, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regards to conservation areas, Section 72 of the 1990 Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. More detailed policy is included in paragraph 184 of the NPPF which sets out government policy for conserving and enhancing the historic environment. This explains that these assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
309. NPPF paragraph 189 also states that in determining planning applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, the local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field assessment.
310. SMP CS DPD Policy MC14 states that mineral development will be permitted only where a need has been demonstrated and sufficient information has been provided for the mineral planning authority to be satisfied that there would be no significant impacts arising from the development, including potential impacts in relation to the historic landscape, sites or structure of architectural and historic interest and their settings, and sites of existing or potential archaeological interest or their settings.
311. MVCS Policy CS14 states that areas and sites of historic or architectural importance will be protected and, where appropriate enhanced in accordance with the legislation, national and regional guidance. MVLP 'saved' Policy ENV39 requires development in conservation areas, or adjacent to and affecting their setting, to preserve or enhance the character and appearance of the area and for significant views into and out of Conservation Areas to be safeguarded.
312. The applicant states that the site has been present as a feature in the local landscape since the late 1980s, and is surrounded by agricultural land, with several tree belts and hedges situated between it and the nearest listed building. Given the distance that separates the site from any listed building or Scheduled Monument, the integrity of those heritage designations will not be affected by the development. The development does not involve the physical extension of the site and it will not therefore impact upon any archaeological resource.

313. Friends of the Earth have objected due to the impact on the historic environment. Representations have been received suggesting that the proposal could have a serious negative effect on the nearby Brockham Conservation Area which contains a number of listed buildings, particularly if hydraulic fracturing is undertaken. However, hydraulic fracturing does not form part of this proposal.
314. The wellsite and its associated equipment benefits from planning permission until 31 December 2036 by which date the site is required to be restored to agricultural use. It is accepted that the wellsite is well screened by a combination of topography, existing hedgerows, trees and bunds along its northern and eastern boundaries and that the site does not represent a prominent feature in the local landscape.
315. The retention of the BRX4 well for a further three years is considered to have a negligible impact on archaeology and cultural heritage, particularly given that the wellhead gear has remained in place and in view of its location within an existing operational wellsite. In terms of new development, Officers note that the drilling of the side-track involved a workover rig and associated equipment being brought onto the site. The rig had a maximum mast height of 29 metres and, together with the associated equipment, was retained on site for approximately 3 to 4 weeks. The Planning Statement explains that all items were located so as to minimise their visibility from outside of the site and that the workover rig was only on site for a relatively short period.
316. The proposed future appraisal is also likely to include a workover rig or crane for a short period of time in order to install the tubing inside the existing well casing and to undertake any maintenance (for typically between one and two weeks) if required. Any workover rig would be similar in size to that used in the drilling of the side-track. Indicative details of the crane suggest that this could be extended up to 50 metres in height although an Indicative Section Drawing submitted by the applicant confirms that it would only need to be extended to a similar height as the workover rig at around 29 metres. Further, only the mast / boom would be visible from outside the site and the applicant has stated that any workover operations which may be required will be of both limited scale and duration and will not result in any significant adverse impacts.
317. A 12.2 metres high emergency flare stack is also proposed for the 3 year duration of the proposed development with the flame shroud being visible above the site bunds. Despite the height of the rig/crane and flare stack, the proposals are not considered to have / or have had an unacceptable impact on historic assets including the Brockham Conservation Area and a number of listed buildings or their setting. This is given the extent of the separation distance between the wellsite and historic assets in the locality, the temporary nature of the rig or crane which will be present on site for no more than a few weeks at a time, the proposed flare stack being around 17 metres lower than the rig or crane, and partly screened by the existing 3 metre high bund along the northern and eastern site boundaries, as well as the scattering of trees planted between the security fence and the bund.
318. In terms of lighting, the appraisal of the side-track will have no additional impact as the works do not require any lighting over and above that previously approved. In addition, except for intermittent security or safety lighting, Condition 5 of planning permission ref: MO06/1294 restricts lights within the site from being illuminated except between 07:30 and 18:00 hours Mondays to Fridays, and 08:00 to 13:00 hours on Saturdays.

Conclusion

319. Taking into account the scale, location (relative to the location of heritage assets in the locality) and the temporary nature of the development, Officers do not consider that the proposal would give rise to any significant adverse impact in relation to the historic

landscape, sites or structure of architectural and historic interest and their settings, and sites of existing or potential archaeological interest or their settings.

Accordingly, Officers are of the view that the proposal meets the requirements of the Development Plan policy with regard to SMP CSDPD 2011 Policy MC14 and RBBLP 2005 Policy Pc 8.

Restoration

320. The importance of securing a good quality restoration is central to the consideration of mineral working and associated proposals. The provision of timely restoration and aftercare at mineral sites is sought by paragraph 205 of the NPPF which states that such activities should be carried out at the earliest opportunity to high environmental standards through the application of appropriate conditions.
321. SMP CS DPD Policy 17 states that mineral working will be permitted only where the MPA is satisfied that the site can be restored and managed to a high standard. The restored site should be sympathetic to the character and setting of the wider area and capable of sustaining an appropriate after-use. The policy also requires the restoration of mineral workings to be completed at the earliest opportunity and for a detailed scheme of how the land will be restored and managed to be agreed with the MPA.
322. The application site falls within a relatively rural area within the Green Belt. If the appraisal of the BRX4Z side-track reveals that hydrocarbon reserves are not of sufficient quantity and / or quality to allow progression to commercial production, all appraisal plant and machinery will be removed and BRX4Z plugged in accordance with the relevant guidelines in force at that time. Further, the BRX4 well will be restored as an operational area of the wider site pending restoration back to agriculture in by 2036. Should the appraisal testing reveal that hydrocarbon reserves could be viably extracted in future, an appropriate planning application will be submitted to propose longer term production activities from the side-track BRX4Z and the retention of the BRX4 wellhead. Planning permission ref: MO06/1294 requires the entire site to be restored back to agricultural use by 31 December 2036 in accordance with a scheme to be submitted for the approval of County Planning Authority (CPA).
323. The County Geological / Geotechnical Consultant has recommended the imposition of a planning condition to ensure that there is no legacy of soil or groundwater pollution remaining on site after decommissioning and on restoration of the site. As the proposal is for a period of three years and the restoration of the site is addressed under a separate planning consent (planning permission ref: MO06/1294), the inclusion of such a condition would be inappropriate and incapable of being enforced.
324. Brockham Oil Watch and Friends of the Earth have commented that the BRX4 well should have been returned to its original condition in 2008. A number of representations have also been received making similar comments. Whilst this is correct, and it is acknowledged that this did not occur, the CPA has a duty to determine each planning application on its merits and there is no scope to address this through the determination of this proposal. However, after 3 years, the application includes satisfactory proposals for the plugging of the BRX4Z side-track and the restoration of the BRX4 well, in the event that the proposed appraisal reveals that commercial production is not viable. This is capable of being secured by condition.

Conclusion

325. Officers are satisfied that, in the event that future commercial production is deemed unviable, the application incorporates suitable proposals for the plugging of the BRX4Z side-track and the restoration of the BRX4 well pending the restoration of the entire site

back to agriculture by 31 December 2036. The proposals therefore meet the requirements of SMP CS DPD Policy MC17.

Other Issues

326. A number of other issues have been raised in response to the application with respect to the integrity of the site operator; whether acid or chemicals will be used to extract oil; the use of hydraulic fracturing; recent seismic activity in the area; health and safety including the risk of major accidents and the storage and disposal of radioactive materials; the robustness of the regulatory process; conflicting operator statements; a lack of consultation; the effectiveness of site monitoring; the impact on house prices; the impact on the number of cyclists and tourists visiting Surrey; a lack of information on the type, volume and pressure of fluids to be used in the clean-up process; and, the loss of high quality agricultural land.
327. In terms of the issues raised, although the CPA had advised the applicant that the drilling of the side-track would require planning permission, the applicant had been advised by other parties that the works could be undertaken under existing permissions. The CPA can only assess the information that has been submitted as part of the planning application. The applicant has met with representatives of Brockham Parish Council to explain the nature of their proposals. Monitoring of the site is undertaken by both the CPA and the EA. The application will take place on an existing wellsite which benefits from planning permission until 2036 and will not result in the loss of agricultural land. Other matters come under the regime of other regulators who have raised no objection to the development and are responsible for ensuring that safeguards and permitting requirements are satisfied.
328. Nevertheless, the applicant has submitted further information in relation to the use of acid and emissions from the flare stack in view of the number of questions raised during the consultation process. They have stated that it is the intention of Angus Energy plc to evaluate BRX4Z without recourse to acid treatments. However, should the well not flow immediately then this would be considered. Oil and gas operators have used acid treatment (acidizing) to improve well productivity for almost 120 years and the technique is used frequently for reservoirs in limestone formations that will respond to acid.
329. The use of acid and emissions from the flare stack are matters that will be regulated by the EA under the Environmental Permitting regime. Officers acknowledge that the applicant has made it clear that hydraulic fracturing is not proposed in this application. Further, separate consents would be required by the OGA, the EA and the HSE in the event that hydraulic fracturing was to be used. However, given the level of concern that hydraulic fracturing will be utilised, Officers consider that it is reasonable to impose a planning condition preventing the use of hydraulic fracturing as part of this development.

Green Belt

Surrey Minerals Plan Core Strategy 2011

Policy MC3: Spatial Strategy - Mineral Development in the Green Belt

Mole Valley Core Strategy 2009

Policy CS1: Where Development will be Directed (A Spatial Strategy)

330. Brockham Wellsite is located within the Metropolitan Green Belt where policies of restraint apply. The NPPF states at paragraph 133 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”. Paragraph 80 goes on to state that Green Belt serves five purposes. These are:

- To check unrestricted sprawl of large built-up areas;
- To prevent neighbouring towns merging into one another;
- To assist in safeguarding the countryside from encroachment;
- To preserve the setting and special character of historic towns; and
- To assist in urban regeneration.

The most relevant for this planning application is to assist in safeguarding the countryside from encroachment.

331. Green Belt policy guards against inappropriate development. The NPPF states at paragraph 143 that “inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. The NPPF requires at paragraph 144 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 resulting from the proposal, is clearly outweighed by other considerations.
332. Minerals can only be worked where they are found and a feature of such development is that it is reversible through restoration and a temporary activity. Paragraph 146 of the NPPF sets out certain forms of development that are not considered to be inappropriate development in the Green Belt “provided they preserve its openness and do not conflict with the purposes of including land within it”. One of these forms of development is mineral extraction. For oil and gas extraction there are three stages to the mineral development involving exploration, appraisal and production stages. The proposal involves the exploration and appraisal of oil. This includes oil extraction to ascertain the quantity and/or quality of the reserve in order to ascertain whether commercial production is viable. The proposal therefore constitutes mineral extraction and can be considered appropriate development for the purposes of paragraph 146 of the NPPF. This is subject to the proposal preserving openness and not conflicting with the purposes of including land within the Green Belt.
333. NPPF paragraph 145 states that new buildings should be considered inappropriate development unless they fall within the list of exceptions set out in the paragraph. However, there are no new buildings proposed as part of this development. Existing buildings / on-site facilities comprising hardstanding, site office, site toilet facilities, site security office and mess facility, storage containers, lighting units incorporating CCTV equipment, 2.4 metres high palisade fence and gates, electrical control buildings, portable site generator with two enclosed fuel tanks and parking area for cars was permitted until 31 December 2036 under planning permission ref: MO/2017/0916 dated 15 September 2017.
334. When determining planning applications, paragraph 205 of the NPPF states that local planning authorities should give great weight to the benefits of mineral extraction, and in granting planning permission ensure that there are no unacceptable adverse impacts on the natural or historic environment, human health or aviation safety, and provide for restoration and aftercare of mineral workings at the earliest opportunity, to be carried out to high environmental standards, through the application of conditions, where necessary.
335. The nPPG sets out guidance for the determination of mineral and oil and gas development proposals. Paragraph 95 of the Minerals Section states “The exploratory phase seeks to acquire geological data to establish whether hydrocarbons are present. It may involve seismic surveys, exploratory drilling and, in the case of shale gas, hydraulic fracturing.” Paragraph 96 explains that preliminary data which the operator might obtain to consider the most appropriate locations for exploratory drilling include: existing geological and other relevant data to gather information about rock formations under the earth’s surface; information from earlier drilling for oil, water, coal or other minerals and mining or

quarrying activities; and information on aquifers and groundwater resources; seismic reflection, gravity and magnetic surveys and remote sensing data e.g. satellite photographs, and results of previous seismic surveys. Paragraph 98 explains that for conventional hydrocarbons, exploration drilling onshore is a short-term, but intensive, activity. Typically, site construction, drilling and site clearance will take between 12 to 25 weeks.

336. nPPG paragraph 99 states that the appraisal phase takes place following exploration when the existence of oil or gas has been proved, but the operator needs further information about the extent of the deposit or its production characteristics to establish whether it can be economically exploited. Paragraph 100 explains that the appraisal phase can take several forms including additional seismic work, longer-term flow tests, or the drilling of further wells and that much will depend on the size and complexity of the hydrocarbon reservoir involved. Consequently, the typical duration of the appraisal phase is not specified.
337. The SMP2011 recognises that nearly three quarters of Surrey is designated as Metropolitan Green Belt and that almost all workable mineral deposits in Surrey are within the Green Belt. The Minerals Plan recognises that mineral extraction need not be inappropriate in Green Belts as it is a temporary operation. However proposals for other forms of mineral development in the Green Belt will need to identify very special circumstances. This is reflected in Policy MC3 of the SMP2011 which states that proposals in the Green Belt for mineral development other than extraction and primary treatment will only be permitted where the applicant has demonstrated that very special circumstances exist to outweigh the harm by reason of its inappropriateness and any other harm. As outlined above, the proposal is considered to constitute mineral extraction. Policy MC17 goes on to state that mineral working will only be permitted where the mineral planning authority is satisfied that the site can be restored and managed to a high standard.
338. MVCS Policy CS1, which pre-dates the NPPF, states that in the countryside, development will be considered in the light of other policies within the Core Strategy and the provisions of PPG2 'Green Belts', PPS7 'Sustainable Development in Rural Areas' and Policy C4 'Landscape and Countryside Management' of the South East Plan.
339. Given the site's Green Belt location it is necessary to consider whether the proposed development would maintain high environmental standards during operation and whether the restoration of the site can be achieved to a good standard and will provide an acceptable after-use consistent with Green Belt objectives. Much of the consideration of whether high environmental standards could be maintained and whether an appropriate and acceptable restoration can be achieved has been covered in the above sections of the report. Where there is a need for the mineral and the site can be well-restored and harm otherwise controlled acceptably by design or mitigation, then development can be considered to accord with Green Belt policy.
340. Following an invitation to regularise the planning position at the site, the applicant is applying for part-retrospective planning permission extending over a temporary period of three years. The impact of the retention of the BRX4 well is not considered significant in Green Belt terms given its location within an existing operational wellsite which has been in existence for 21 years and has temporary planning permission until 2036. In this context, it is considered that this element of the proposal would preserve openness and would not conflict with the purposes of including land in the Green Belt.
341. The exploration stage including the drilling of the BRX4Z side-track well is a necessary precursor to appraisal and possible future production, both of which involve mineral extraction. This stage also involved bringing a 29 metre high rig onto the site for a

temporary period of around 4 weeks, together with a range of temporary plant/buildings in order to support the operation. The applicant has confirmed that all items were located so as to minimise their visibility from outside of the site.

342. The applicant has explained that the majority of the plant required for the proposed appraisal works has been previously permitted and will not be visible from outside the site. The exceptions include a workover rig or crane, approximately 29 metres in height and an emergency flare stack which will be around 12.2 metres in height. The workover rig or crane will only be required for a relatively short periods of up to around two or three weeks at a time. This will be used to enable the installation of the tubing inside the well and the perforation of the casing, or in the event that any maintenance is required. The emergency flare stack is proposed to be sited close to the eastern boundary of the site for the duration of the appraisal process. This will consist of a 3.1 metre high ground mounted burner with an 8.5 meter long x 2 metres diameter wide flame shroud. The flare will only be used in an emergency situation, and used for approximately 1-2 minutes to burn off any excess gas before the well is shut in and the flow of gas stopped.
343. The applicant has stated that during any maintenance operations, the main body of the workover rig or crane would be well-screened, with only the mast / boom being visible from outside the site. Further, the Planning Statement sets out that any workover operations which may be required will be of both limited scale and duration and will not result in any significant adverse impacts. Given the scale and duration of the siting of the rig/crane and the emergency flare stack, Officers recognise that the development will have an impact on openness, however this would be temporary and reversible.
344. Other development proposed as part of the appraisal include a replacement generator (6.06 metres long by 2.44 metres wide by 2.59 metres high), a temporary tank (measuring approximately 3 metres by 3 metres), a single process heater (6 metres long by 2.4 metres wide by 2.9 metres high), a pump to help raise fluids should the flow to the surface reduce over time, a small transformer (washing machine size) associated with the connection to the national grid and above ground pipework. It is acknowledged that these should be considered in the context of their location for a 3 year period within an existing wellsite which is well screened by a combination of earth mounds and existing vegetation and has planning permission for oil production until 2036. There will also be increased use of the private access by HGVs but the additional number of lorry movements is not considered significant. As a consequence, the impact of this other additional plant and equipment and increase in HGV movements on Green Belt openness and the purposes of including land in Green Belt is also short term and reversible.
345. While the applicant has estimated that the main appraisal activities would take place over a period of up to 18 months overall, the applicant has applied for planning permission for a three year period. The proposed length of the appraisal process has been challenged by Mole Valley District Council, Brockham Oil Watch and a number of representations received on the proposal who consider this to be excessive. However, this provides for some flexibility and mirrors the time period sought for similar activities elsewhere, including most recently the appraisal activities granted planning permission at Horse Hill, Horley in November 2017. Officers also consider that it is likely that the time period would need to factor in time for the analysis of the appraisal testing results.
346. Friends of the Earth have objected to the impact on Green Belt openness and representations have been received raising concern that the proposal will add to the industrialisation of the Green Belt. The intensification of activities taking place on site for a temporary period of 3 years would have a temporary impact on openness but should be seen in the context of existing activity taking place, in the form of oil production, under planning permission ref: MO06/ 1294. Provided there is adequate provision for clearance

of the site and restoration, the proposal constitutes a temporary use of land and therefore preserve the openness of the Green Belt.

347. There will be some views of the 29 metre high drilling rig and the 12.2 metre high flare stack because of their height, although the lower parts of the rig and the site itself will be mostly screened from view by earth mounds and existing vegetation. There will be some impact on the nearby right of way to the east of the wellsite compound where glimpses of the wellsite and moving vehicles are likely to be available. While the proposal including its associated plant and equipment with their industrial characteristics would be located in a largely rural area, and would have some impact on the visual amenities of the Green Belt, it is considered that the scale and very temporary nature of the development would not give rise to any long term impact. Further, all the plant and equipment proposed would be used in association with the mineral working.
348. Officers recognise that mineral working is a temporary activity. The proposal includes proposals to restore the BRX4 wellhead and plug the BRX4Z side-track and remove all associated plant and equipment in the event that the results of the appraisal process indicate that commercial production would not be viable. Planning permission ref: MO06/1294 provides for the restoration of the site back to agriculture by 31 December 2036 once existing permitted oil production activities taking place on the site have ceased. The site would then return to fulfilling the objectives of land within the Green Belt.
349. Officers are mindful that the application includes proposals for the restoration of the BRX4 wellhead and the plugging of the BRX4Z side-track well and the removal of all associated plant and equipment in the event that the appraisal results demonstrate that future oil production would not be commercially viable. With existing requirements already in place to restore the site by the end of 2036, there is no reason to believe that the site could not be well restored to agriculture, consistent with Green Belt objectives. Planning conditions will be required to ensure that high standards are maintained. Technical consultees have considered the proposal and their views are set out in detail in earlier sections of the report. A number of planning conditions are proposed to ensure that the high standards are maintained.
350. Given the temporary and reversible nature of the development and the absence of any other impacts, Officers consider that the proposal preserves the openness of the Green Belt, would not conflict with the purposes of including land in the Green Belt, and that the proposed development is therefore not inappropriate development and does not conflict with the Development Plan or national Green Belt policy and guidance set out in the NPPF and the nPPG. As a consequence, the proposal therefore meets the requirements of SMP CS DPD Policy MC3 and MVCS Policy CS1.

HUMAN RIGHTS IMPLICATIONS

351. The Human Rights Act Guidance for Interpretation, contained in the Preamble to the Agenda is expressly incorporated into this report and must be read in conjunction with the following paragraph.
352. It is recognised there would have been / would be some slight temporary adverse impacts in terms of amenity from visual, noise and lighting disturbance from the drilling of the BRX4Z side-track, the appraisal of the BRX4Z well and any required future maintenance during the temporary 3 year appraisal process. Nevertheless, it is the view of Officers that the scale of any potential impacts are not considered sufficient to engage Article 8 or Article 1 of the Convention and that potential impacts can be mitigated by planning conditions. As a consequence, this proposal is not considered to interfere with any Convention right.

CONCLUSION

- 3.53. This part retrospective planning application is seeking planning permission for the retention of the BRX4 well, the regularisation of the BRX4Z side-track which was drilled at the start of 2017, and the future appraisal of BRX4Z using production plant and equipment within the existing site for a temporary period of three years. The sole target reservoir consists of various horizons within the Kimmeridge Clay Formation. The intention is to ascertain whether the oil accumulations found in the Kimmeridge Clay are capable of being economically exploited in the longer term. This application is concerned with the exploration and appraisal stages of on-shore hydrocarbon development using conventional methods.
- 3.54. The BRX4 well was drilled in 2007 to a TVD of 689 metres to enable hydrocarbon production from the Portland Sandstone Formation until 31 December 2008. However the well and wellhead gear have remained in place and consent is sought for its retention for a further 3 years.
- 3.55. A 29 metre high workover rig and associated equipment were mobilised to the site for approximately one month to facilitate the drilling of the side-track well for which retrospective planning permission is now being sought. The proposed future appraisal of the side-track well will involve a number of distinct elements including the initial well clean-up, the on-going appraisal of the side-track well, fluid storage and export, gas utilisation, gas management and potential maintenance works supported by rig or crane approximately 29 metres in height.
- 3.56. The appraisal works will require only limited additional plant over and above the existing permitted plant and facilities at the site. This will include a workover rig or crane of around 29 metres in height for a limited duration, a 12.2 metre high emergency flare stack for the duration of the appraisal works, together with a new gas generator, temporary tank, single process heater, pump and small transformer. The majority of new plant and equipment will not be visible from public vantage points outside the site with the exception of the flare and the rig or crane.
- 3.57. The proposed site falls within the Metropolitan Green Belt and minerals can only be worked where they are found. The application site comprises an existing wellsite which has been present for 21 years and has planning permission for oil production until 2036. The Green Belt site lies around 1km south west of Brockham village which has been designated as a conservation area and contains a number of listed buildings. The wellsite is secured by 2.4 metre high palisade fencing and is well screened by grassed bunds of around 3 metres in height along its northern and eastern boundaries together with existing hedgerows and trees. The wellsite compound is served by an existing private access track which connects the wellsite to Old School Lane some 570 metres to the east. The wellsite is located around 900 metres to the east of the AONB and the AGLV and contains no environmental designations. It is not located within an AQMA and is primarily situated within Flood Zone 1.
- 3.58. Mole Valley District Council have objected to the application as they consider that the 3 year time period for appraisal is unacceptable. Brockham Parish Council have raised a number of concerns including in relation to health and safety, access, highway safety and the poor state of highway verges, noise, landscape and visual impact and the lack of an EIA. Brockham Oil Watch have raised objection on a wide range of environmental grounds including flood risk, traffic, pollution, health and safety, need, air quality and the lack of an EIA. Friends of the Earth have objected on a number of similar grounds as well as the impact on the historic environment and Green Belt openness. Frack Free Balcombe Residents Associated have called for the application to be supported by an air quality

assessment and for proper mitigation measures to be employed. 99 letters of representation have been received to date, 11 in support of the proposals and 88 objecting to the application.

- 3.59. A number of other concerns have been raised in relation to matters that come under the regime of other regulators who have raised no objection to the development and are responsible for ensuring that safeguards and permitting requirements are satisfied. The County Council has adopted a Screening Opinion which concludes that an EIA is not required. The Secretary of State has issued a Screening Direction in response to a third party request which considers that the proposal is not 'EIA development'. No objections have been received on the application from technical consultees.
- 3.60. Government policy makes it clear that oil and gas remains an important part of the UK's energy mix. Policies recognise the continuing importance of fossil fuels but aim to manage reliance on them, their potential environmental effects and the risks associated with security of supply. While the Government manages the transition to a low carbon energy mix this will mean that oil and gas remain key elements of the energy system for years to come (especially for transport and heating). Officers consider that there is a demonstrable need for the proposal on the basis of Government policy and guidance.
- 3.61. Having assessed the merits of the application, the proposal is considered acceptable in transportation terms subject to the imposition of conditions. The environmental and amenity impacts of the proposal have been assessed including in relation to landscape and visual impact, ecology, noise, air quality (including dust and odour), lighting, surface water, groundwater, heritage assets and restoration. Taking into account the advice of technical consultees, Officers conclude that any adverse impacts are capable of being mitigated to an acceptable degree or controlled through the imposition of conditions.
- 3.62. Officers are satisfied that the proposed development constitutes mineral extraction and acknowledge that government policy sets out certain forms of development that are not considered to be inappropriate development in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt. It has been demonstrated that there is a need for the evaluation and appraisal of the hydrocarbon resource, high environmental standards will be achieved, and the site will be well restored. A number of planning conditions are proposed to ensure that the high standards are maintained. Officers acknowledge that the presence of the rig and the emergency flare stack will have an impact on the Green Belt. However, given the temporary and reversible nature of the development and the absence of any other impacts, Officers consider that the proposal preserves the openness of the Green Belt, would not conflict with the purposes of including land in the Green Belt, and is therefore not inappropriate in the Green Belt.
- 3.63. The proposed development would give rise to some temporary impact on amenity. However, mineral working is a temporary activity and the hydrocarbon evaluation and appraisal operations would be short and completed within a 3 year period. The concerns of local residents are acknowledged, but on the basis of the responses received from technical consultees, assessing national policy and development plan policy matters and taking into account need, Officers consider that with the imposition of appropriate conditions where necessary the proposed development would not give rise to significant adverse environmental or amenity impacts and may therefore be permitted.

RECOMMENDATION

The recommendation is to PERMIT subject to the following conditions.

Conditions:

Approved Documents

1. The development hereby permitted shall be carried out in accordance with the following Plans / drawings:
 - Site Location and Sub-Surface Extent, Drawing No. 0745-1-1, Dated 04/12/2017
 - Site Location Plan, Drawing No. 0745-1-2, Dated 04/12/2017
 - Site Boundary Plan, Drawing No. 0745-1-3, Dated 04/12/2017
 - Indicative Site Layout Plan, Drawing No. 0745-1-4 Revision B, Dated 19/02/2018
 - Indicative Section, Drawing No. 0745-1-5 Revision A, Dated 19/02/2018
 - Flare Stack 2.5MMscf/d, Drawing No. PW-FLARE-GA-01 Revision 2, Dated 18 March 2016
 - Well Specific - Well Schematic Diagram for BRX4Z, Drawing No. AEP-04-BRO-022 Revision 2, Dated 24/03/2017
 - IDECO BIR H35 (illustrative drawing of 95 foot workover rig), Planning Statement Appendix 3, Received 19/02/2018;
 - TEREX DEMAG (illustrative drawing of a 50 metre crane), Planning Statement Appendix 3, Received 19/02/2018.

For the avoidance of doubt, hydraulic fracturing shall not be undertaken as part of this development as stated in paragraph 1.2 in the 'Planning Statement' dated February 2018.

Commencement

2. The appraisal of the BRX4Z side-track hereby permitted shall be begun before the expiration of three years from the date of this permission.

Time Limits

3. The development hereby permitted shall be for a period of three years from the date of this permission, at which date the use shall be discontinued and all plant, machinery and associated equipment shall be removed from the application site and the BRX4Z side-track shall be plugged and made safe.
4. Prior written notification of: (i) the date of commencement of the appraisal of the BRX4Z side-track hereby approved and, (ii) the removal of all appraisal plant and machinery and the plugging of the BRX4Z side-track, shall be sent in writing to the County Planning Authority not less than seven days before such commencement.

Displaying Application Documents

5. From the commencement of the appraisal development to the cessation of operations hereby permitted, a copy of this planning permission including all approved documents and plans and any documents subsequently approved in accordance with this permission shall be displayed on the site during working hours in a location which is readily accessible to any person undertaking the development and officers of the County Planning Authority.

Hours of Operation

6. With the exception of flowing of hydrocarbons, the use of gas in on-site processes and essential site monitoring or maintenance, no lights shall be illuminated, except that essential for security or health and safety, and no operations or activities authorised or required by this permission shall take place except between the hours of :

07:30 and 18:00 hours on Mondays to Fridays; and

08:00 to 13:00 hours on Saturdays.

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

General Permitted Development Order

7. Notwithstanding any provision to the contrary under Part 17 (Class A,B, C) of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any subsequent Order:
 - (a) no plant, building or machinery whether fixed or moveable, other than those permitted by this application, shall be erected on the application site without the prior written approval of the County Planning Authority in respect of the location, design, specification and appearance of the installation, such details to include predicted levels of air quality and noise emissions and their tonal characteristics;
 - (b) no lights or fences other than those already permitted shall be installed or erected at the application site.

Workover Rig

8. No workover rig shall be brought onto the site without prior written approval by the County Planning Authority of a 'scheme of work' detailing the operations involved. Such a scheme shall make provision for notifying the County Planning Authority and neighbouring residents seven (7) days in advance of the operations, which shall include:
 - (a) details of all lighting to be used both on the workover rig and at the wellsite and mitigation measures to ensure no light spill or sky glow;
 - (b) details of the number of Heavy Goods Vehicle (HGV) movements per day over the workover programme;
 - (c) a programme of noise monitoring including details of noise measurement locations, the method of noise measurement and the levels of noise at each location alongside mitigation measures.

The 'scheme of work' shall be implemented as approved.

Highways & Access

9. The means of access to the development hereby approved shall be via the previously approved HGV route to the site as detailed in Appendix 6 of the submitted Planning Statement dated 19 February 2018.
10. Except for the case of emergency, no HGV movements to or from the site shall take place except between the hours of 07:00 - 08:00, 09:00 - 15:30, and 18:00 - 19:00 on Monday to Friday and 08:00 - 13:00 on Saturday, nor shall the contractor permit any HGVs associated with the development or associated operations at the site to be laid up, waiting, in Old School Lane or Bushbury Lane during these times.
11. In the event of any damage to the public highway between the site and Red Lane caused by the development hereby permitted the applicant or operator shall repair such damage in liaison with the County Highway Authority.

Noise

12. The applicant will ensure that appropriate measures are taken to minimise noise disturbance from operations by including appropriate acoustic enclosures on all suitable

equipment so as to protect nearby residents and users of the local network of public rights of way.

13. During daytime hours (Mondays to Fridays 07:30 to 18:00 hours and Saturdays 08:00 to 13:00 hours), noise levels at specified noise sensitive receptors (NSRs) shall not exceed the existing/pre-works representative background sound level (LA90,1h, free field) by more than 10 dB(A), or as near this level as practicable, up to a maximum noise limit of 55 dB LAeq,1h (free field).
14. The noise arising from the operations or the use of any plant or equipment associated with such operations on the site of the development hereby permitted, may not exceed the 1/3 octave values (criterion value) in the table, attached at ANNEXE 1, when measured in free field conditions or recalculated as at, any noise sensitive location.
15. Notwithstanding the provisions of Condition 14 (above) during the night time hours between 22.00 and 07.00 noise arising from the site will not exceed 35dBA Leq (1 hour) and so to ensure these levels are not exceeded the following measures shall be undertaken:
 - (a) the generators on this site shall be housed and equipped with silencers designed to ensure specified noise levels are not exceeded and thereafter maintained in good condition;
 - (b) water injection pumps shall be enclosed.

Dust

16. The development hereby approved shall be undertaken in accordance with the good operator practices and measures for mitigating the impact of dust outlined in Section 5.7 of the submitted Planning Statement dated February 2018.

Odour

17. The development hereby approved shall be undertaken in accordance with the odour abatement proposals and the Waste Management Plan referred to in Sections 5.7 and 3.3 of the Planning Statement dated February 2018.

Restoration

18. Should the results of the appraisal process reveal that future commercial production of hydrocarbons from the BRX4Z side-track is not commercially viable, within 6 months of the expiry of this permission, all associated equipment should be removed, and the BRX4 well restored to an operational area of the wider site, pending the restoration of the entire site back to agriculture in accordance with Condition 16 of planning permission ref: MO06/1294 dated 10 May 2007.

Reasons:

- 1 To ensure the permission is implemented in accordance with the terms of the application and to enable the County Planning Authority to exercise planning control over the development pursuant to Surrey Minerals Plan 2011 Policy MC14.
- 2 To comply with Section 91 of the Town and Country Planning Act 1990

- 3 To enable the County Planning Authority to exercise planning control over the operation so as to minimise the impact on local amenity and to ensure the prompt and effective restoration to comply with Schedule 5 paragraph 1 of the Town and Country Planning Act 1990 and Policy MC17 of the Surrey Minerals Plan 2011.
- 4 To enable the County Planning Authority to exercise planning control over the operation so as to minimise the impact on local amenity and to ensure the prompt and effective restoration to comply with Schedule 5 paragraph 1 of the Town and Country Planning Act 1990 and Policy MC17 of the Surrey Minerals Plan 2011.
- 5 To ensure that site operatives are conversant with the terms of the planning permission in the interests of the local environment and amenity to accord with Policy MC14 of the Surrey Minerals Plan 2011.
- 6 To safeguard the environment and protect the amenities of the locality in accordance with the terms of Policy MC14 of the Surrey Minerals Plan 2011.
- 7 To safeguard the environment and protect the amenities of the locality in accordance with the terms of Policy MC14 of the Surrey Minerals Plan 2011.
- 8 To safeguard the environment and protect the amenities of the locality in accordance with the terms of Policy MC14 of the Surrey Minerals Plan 2011.
- 9 In order to ensure that the development should not prejudice the free flow and condition of safety on the highway, nor cause inconvenience to other highway users and to comply with the terms of Policy MC15 of the Surrey Minerals Plan 2011.
- 10 In order to ensure that the development should not prejudice the free flow and condition of safety on the highway, nor cause inconvenience to other highway users and to comply with the terms of Policy MC15 of the Surrey Minerals Plan 2011.
- 11 In order to ensure that the development should not prejudice the free flow and condition of safety on the highway, nor cause inconvenience to other highway users and to comply with the terms of Policy MC15 of the Surrey Minerals Plan 2011.
- 12 To ensure minimum disturbance from operations and avoidance of nuisance to the local community and local environment from noise in accordance with Policy MC14 of the Surrey Minerals Plan 2011.
- 13 To ensure minimum disturbance from operations and avoidance of nuisance to the local community and local environment from noise in accordance with Policy MC14 of the Surrey Minerals Plan 2011.
- 14 To ensure minimum disturbance from operations and avoidance of nuisance to the local community and local environment from noise in accordance with Policy MC14 of the Surrey Minerals Plan 2011.
- 15 To ensure minimum disturbance from operations and avoidance of nuisance to the local community and local environment from noise in accordance with Policy MC14 of the Surrey Minerals Plan 2011.
- 16 To ensure minimum disturbance from operations and avoidance of nuisance to the local community and local environment from dust in accordance with Policy MC14 of the Surrey Minerals Plan 2011.

- 17 To ensure minimum disturbance from operations and avoidance of nuisance to the local community and local environment from odour in accordance with Policy MC14 of the Surrey Minerals Plan 2011.
- 18 To enable the County Planning Authority to exercise planning control over the operation so as to minimise the impact on local amenity and to ensure the prompt and effective restoration to comply with Schedule 5 paragraph 1 of the Town and Country Planning Act 1990 and Policy MC17 of the Surrey Minerals Plan 2011.

INFORMATIVES

- 1 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 Local Highways Service.
- 2 The developer is reminded that it is an offence to allow materials to be carried from the site and deposited on or damage 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).
- 3 The developer is advised that Public Footpath Number 86 crosses the access route to 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. The applicant shall ensure that the safety of the public is ensured by placing warning notices at the crossing point.
- 4 In determining this application the Minerals Planning Authority has worked positively and proactively with the applicant by: 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 Mineral 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. Issues of concern have been raised with the applicant including impacts of air quality and addressed through negotiation and acceptable amendments to the proposals. The applicant has also been given advance sight of the draft planning conditions. This approach has been in accordance with the requirements of paragraph 38 of the National Planning Policy Framework 2018.

NB: Planning permission ref: MO/06/1294 dated 10 May 2007 was subject to a Legal Agreement under Section 106 of the Town and Country Planning Act 1990 which affects this site.

CONTACT

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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

National Planning Framework 2018
Planning Practice Guidance

The Development Plan

Surrey Minerals Plan Core Strategy Development Plan Document (DPD) 2011
Mole Valley Core Strategy 2009
Mole Valley Local Plan 2000

Other Documents

Landscape Supplementary Planning Document 2013
 Surrey Landscape Character Assessment (2015)
 Surrey County Council Guidelines for Noise control - minerals and waste development (1994)
 UK National Air Quality Strategy (Defra, 2007)
 EPUK/IAQM Land Use Planning and Development Control: Planning for Air Quality 2017
 - Institute of Air Quality Management (IAQM): Guidance on the assessment of dust from
 demolition and construction 2014
 Annual Energy Statement Department for Energy and Climate Change (DECC) 2010
 Annual Energy Statement DECC 2013
 Annual Energy Statement DECC 2014
 Energy White Paper 'Meeting the Energy Challenge' 2007 Department of Trade and Industry
 (DfT) (2007 Energy White Paper)
 Energy Security Strategy the White Paper 2012
 UK Government The Carbon Plan: Delivering our low carbon future' December 2011
 Low Carbon Transition Plan: the national strategy for climate and energy 2009 DECC
 UK Renewable Energy Roadmap DECC July 2011
 Energy Security Strategy 2012 Department for Energy and Climate Change (DECC) November
 2012
 Department for Business, Energy and Industrial Strategy (BEIS) Digest of UK Energy Statistics
 July 2017 (Digest 2017)
 Department for Business, Energy and Industrial Strategy (BEIS) Digest of UK Energy Statistics
 Digest 2013
 UK Energy in Brief 2017
 Mineral Planning Factsheet 2011 (Onshore Oil and Gas) Department for Communities and
 Local Government (DCLG) and British Geological Society (BGS)

16Hz	20Hz	25Hz	31.5Hz	40Hz	50Hz	63Hz	80Hz	100Hz	125Hz	160Hz	200Hz	250Hz	315Hz	400Hz
lowest 25% of night values														
36.6	35.3	35.3	33.9	34.8	34.0	34.8	33.1	30.8	27.4	25.7	24.9	24.7	25.5	24.0
criterion value, dB														
34	32	32	31	32	31	32	30	28	24	23	22	22	22	21

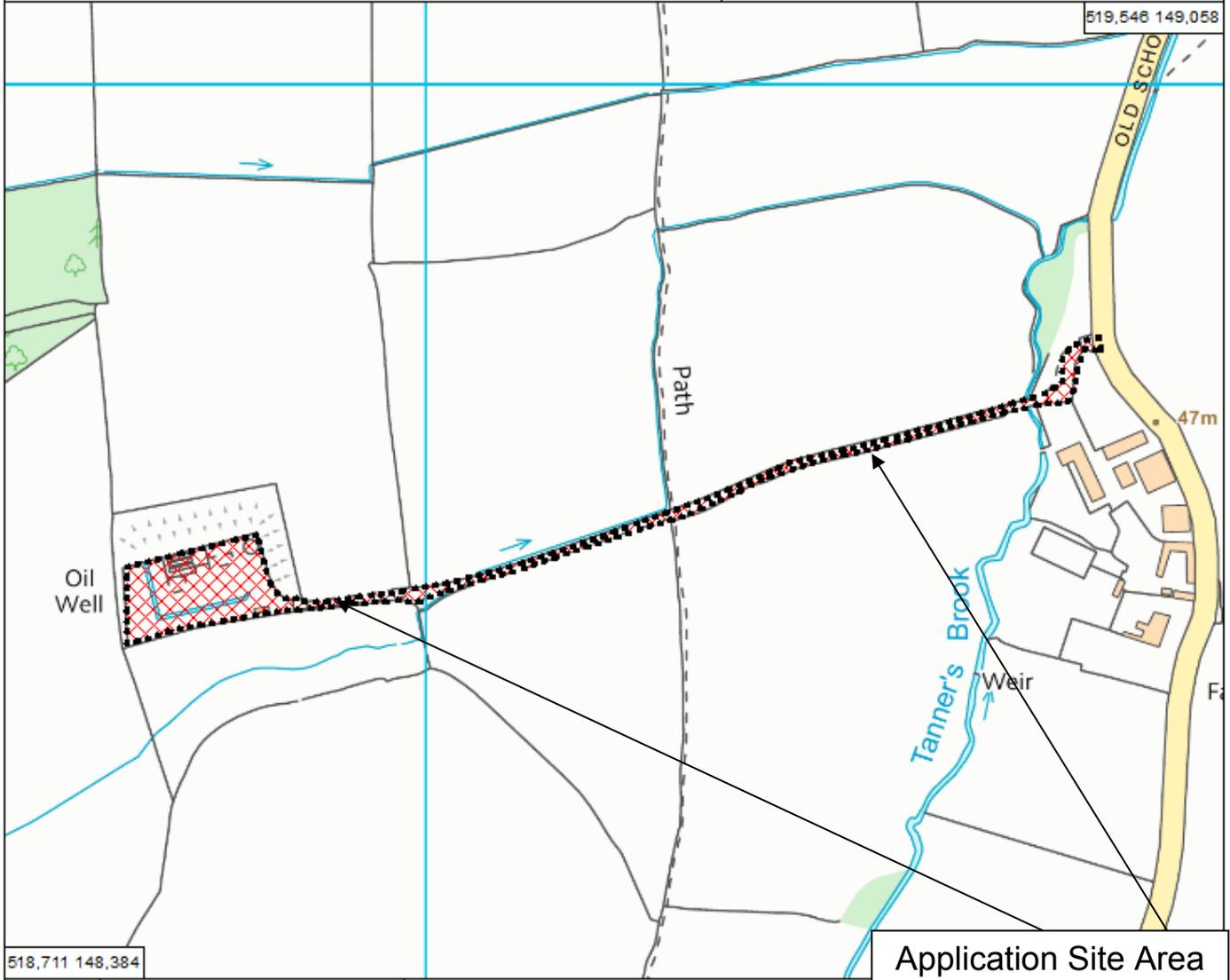
500Hz	630Hz	800Hz	1kHz	1.25kHz	1.6kHz	2kHz	2.5kHz	3.15kHz	4kHz	5kHz	6.3kHz	8kHz	10kHz	12.5kHz
lowest 25% of night values														
24.1	24.2	23.2	22.6	23.7	23.7	24.7	23.0	24.2	25.5	24.3	25.0	25.3	24.2	24.1
criterion value, dB														
21	21	20	20	21	21	22	20	21	22	21	22	22	21	21

Table of night time criterion noise limit for Brockham Wellsite production

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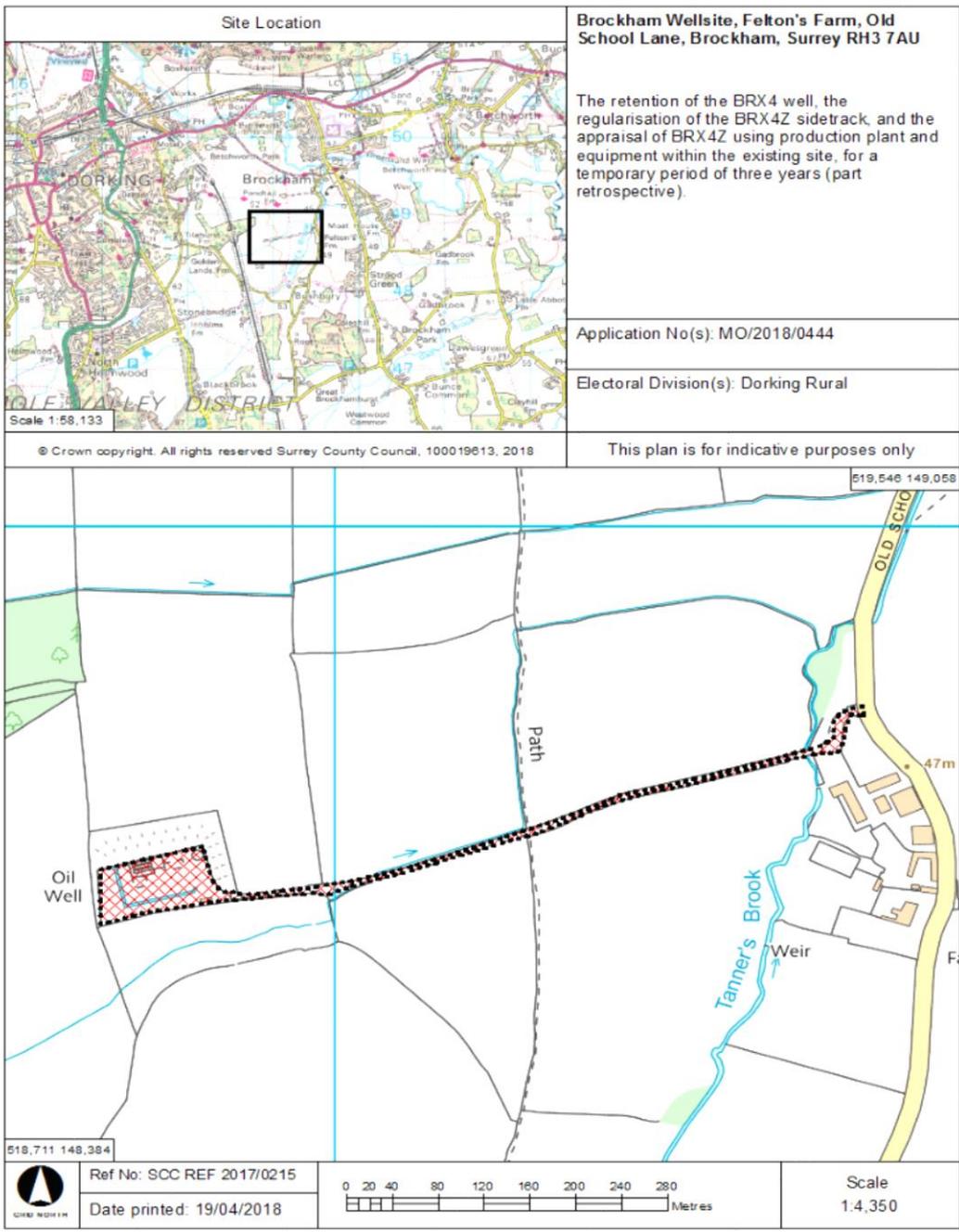
<p style="text-align: center;">Site Location</p> <p>Scale 1:58,133</p>	<p>Brockham Wellsite, Felton's Farm, Old School Lane, Brockham, Surrey RH3 7AU</p> <p>The retention of the BRX4 well, the regularisation of the BRX4Z sidetrack, and the appraisal of BRX4Z using production plant and equipment within the existing site, for a temporary period of three years (part retrospective).</p> <p>Application No(s): MO/2018/0444</p> <p>Electoral Division(s): Dorking Rural</p>
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	<p>Ref No: SCC REF 2017/0215</p>		<p>Scale 1:4,350</p>
<p>Date printed: 19/04/2018</p>			

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2012-13 Aerial Photos

Aerial 1 : Brockham Wellsite, Felton's Farm



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All boundaries are approximate

2012-13 Aerial Photos

Aerial 2 : Brockham Wellsite, Felton's Farm



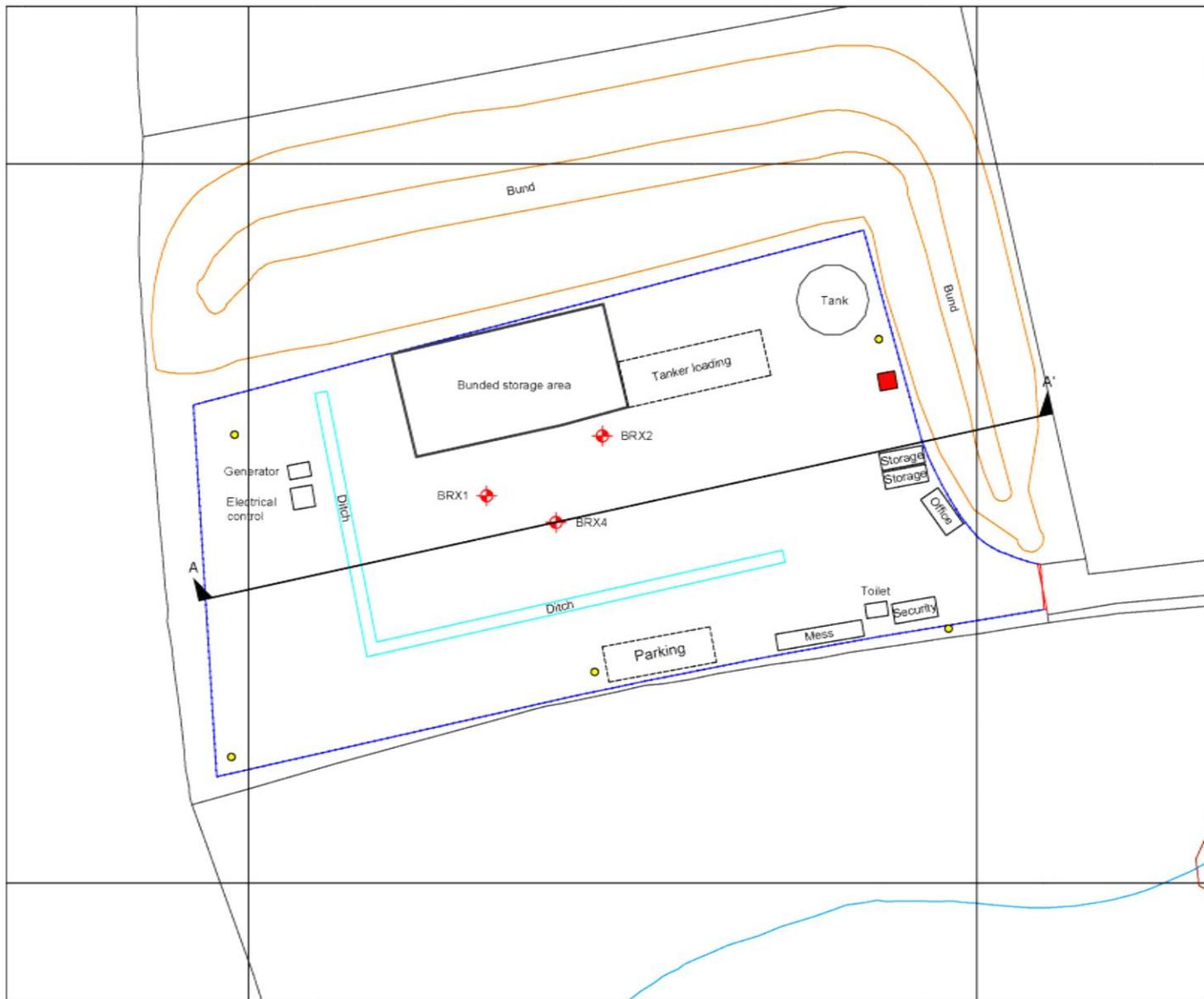
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All boundaries are approximate



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- KEY:**
- SECURITY FENCE
 - MAIN ACCESS GATES
 - PRINCIPAL STRUCTURE (use as shown)
 - ◆ WELLHEAD LOCATION
 - LIGHTING/CCTV
 - DRAINAGE DITCH
 - INDICATIVE EMERGENCY FLARE LOCATION
- NOTES:**
1. For Indicative section see drawing 0745-1-5.
 2. Emergency flare location may be subject to variation owing to technical requirements.
 3. All boundaries, heights and locations are indicative only and should not be scaled.
 4. For clarity not all permitted production plant and storage tanks are shown.

SITE BROCKHAM WELL SITE, FELTON'S FARM, BROCKHAM, SURREY			
TITLE INDICATIVE SITE LAYOUT PLAN			
DATE	19/02/2018	STATUS	FINAL
SCALE	1:500	SHEET	A3
DRAWING NO.	0745-1-4	REV	B
Crown Copyright reserved. License No. 10002049.			

Figure 1: Site Access from Old School Lane Looking North



Figure 2: Entrance to Wellsite Compound Looking West

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Figure 3: Existing Wellsite Compound Looking North West



Figure 4: Existing Wellsite Compound Looking East



Figure 5: BRX4 Well and Bunded Storage Area



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TO: PLANNING & REGULATORY COMMITTEE

DATE: 8 August 2018

BY: PLANNING DEVELOPMENT MANAGER

DISTRICT(S) SPELTHORNE BOROUGH COUNCIL

ELECTORAL DIVISION(S):
Stanwell & Stanwell Moor
Mr Evans

PURPOSE: FOR DECISION

GRID REF: 504453 174372

TITLE: MINERALS/WASTE SP18/00282/SCC

SUMMARY REPORT

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.

This Section 73 planning application was presented to the Planning and Regulatory Committee at the 20 June 2018 committee. A wide-ranging discussion took place and following this a recommendation was tabled and carried to defer the planning application subject to the submission of further information from the applicant with regards to the following matters:

- a) to receive additional information on the overall level of movements generated by the site during the day in order to devise a mechanism to control movements during the day to take into account the increased movements at night;
- b) the need to update the noise management plan prior to commencement;
- c) to review waste on the highway as a result of the site;
- d) to review the sheeting used by vehicles to and from the site;
- e) to check the need for an Air Quality Assessment if there was to be a net increase in total vehicle movements.

The applicant has submitted additional information to cover these points. The applicant reconfirms that this application is to maximise the efficiency of the operation of all its permitted vehicles, by redistributing daytime movements to the evening. The applicant also points out that an Air Quality Assessment was carried out when the original planning permission ref: SP08/0992 was granted. The Air Quality Assessment has already assessed the potential impact of 180 vehicle movements per day over a 5.5 day a week and found that there would be no significant impact. As such, no further Air Quality Assessment is required. The applicant also states that 90% of their fleet comprises enclosed 'dustcart', 'Skip' and 'Roro' vehicles which are fitted with self-sheeting systems. A road sweeper was used to ensure that the access road is kept clean.

In addition to this the applicant has submitted an amended night-time Noise Management Plan which includes information on the proposed mitigation measures, management, site-audit and complaints procedures.

Stanwell Moor Residents' Association has raised concerns regarding the smell of food waste from the overnight on-site vehicles, increase in light pollution because of the 24-hour vehicle movements and that the 24-hour operation should not be allowed in a residential area.

Officers consider that, following advice from technical consultees, and subject to the imposition of planning conditions, the additional information provided by the applicant is sufficient to address Members' concerns and that the proposal would not give rise to any adverse impact on amenity and the environment. Therefore, Officers consider that planning permission should be granted subject to conditions.

The recommendation is to PERMIT subject to conditions.

APPLICATION DETAILS

Applicant

CAMO LTD T/A Simply Waste Solutions

Date application valid

19 February 2018

Period for Determination

17 August 2018

Amending Documents

- Email dated 08 July 2018 comprising (I) Letter dated 08 July 2018 covering night-time noise management plan, redistribution of vehicle movements, air quality assessment and odour control, litter and other matters, (II) Revised Night-time Noise Management Plan and (III) Tables regarding the redistribution of trips

SUMMARY OF PLANNING ISSUES

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

	Is this aspect of the proposal in accordance with the development plan?	Paragraphs in the report where this has been discussed
Environment and Amenity	Yes	20 – 34

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
-

BACKGROUND

1. At their meeting on 20 June 2018, the Planning and Regulatory Committee considered the Officers report on the above planning application, and resolved that the planning application be referred back to the applicant requiring the submission of further information and consideration of the following:
 - a) to receive additional information on the overall level of movements generated by the site during the day in order to devise a mechanism to control movements during the day to take into account the increased movements at night;
 - b) the need to update the noise management plan prior to commencement;
 - c) to review waste on the highway as a result of the site;
 - d) to review the sheeting used by vehicles to and from the site;
 - e) to check the need for an Air Quality Assessment if there was to be a net increase in total vehicle movements.
 2. This report provides additional information with regards to the matters outlined above, and should be read in conjunction with the original Officers' report and the committee update sheet which are appended to this report.
-

THE ADDITIONAL INFORMATION

3. The applicant has submitted a letter dated 08 July 2018 to address the concerns raised by Members at the 20 June 2018 Planning and Regulatory Committee meeting. The applicant reconfirms that this application is to maximise the efficiency of the operation of all its permitted vehicles, by redistributing daytime movements to the evening. The applicant has also submitted two tables to demonstrate how the redistribution of vehicle movements works on a daily basis.
4. The applicant points out that an Air Quality Assessment was carried out when the original planning permission ref: SP08/0992 was granted. The Air Quality Assessment has already assessed the potential impact of 180 vehicle movements per day over a 5.5 day a week and found that there would be no significant impact. As such, no further Air Quality Assessment is required.
5. The applicant also states that a management plan includes measures for the prevention of odour, including:
 - Daily deodorising of the rear of each truck between May to September inclusive;
 - Deodorising of the rear of trucks as and when required between October to April inclusive;
 - Weekly steam clean of rear of trucks;
 - Fortnightly 'dig out' behind the compactor wall;
 - Drivers to ensure that vehicle hoppers are clear of all waste before parking up.
 - Spillages in the depot or on the access road to be swept up by road sweeper using deodoriser;
 - Odour issues and complaints will be on the agenda of the monthly compliance meeting, chaired by the CEO;

- Weekly walk around the site check to be completed by Depot Manager – compliance issues noted and raised in monthly meeting.
6. The applicant also states that 90% of their fleet comprises enclosed 'dustcart', 'Skip' and 'Roro' vehicles which are fitted with self-sheeting systems. A road sweeper was used to ensure that the access road is kept clean.
 7. In addition to this the applicant has submitted an amended night-time Noise Management Plan which includes information on the proposed mitigation measures, management, site-audit and complaints procedures.

CONSULTATIONS AND PUBLICITY

District Council

8. Spelthorne Borough Council
No further comments to make.
9. Spelthorne Borough Council Environmental Health Officer
No further comments received.

Consultees (Statutory and Non-Statutory)

10. County Noise Consultant
No objection subject to conditions.
11. County Air Quality Consultant
The proposed development will not significantly affect air quality and an air quality assessment is not required.
12. County Highways Authority
No objection subject to conditions.

Parish/Town Council and Amenity Groups

13. Stanwell Moor Residents' Association
A list of the residents of Stanwell Moor and additional comments have been received. The comments are summarised as the following:
 - Concerns about the smell of food waste from the overnight on-site lorries;
 - 24-hour vehicle movements will increase in light pollution;
 - 24-hour operation should not be allowed in a residential area.

Officers' comments

14. Officers received concerns regarding the site operation. However, this Section 73 planning application is to redistribute the HGV (Heavy Goods Vehicle) movements only and there is no intention to change the site operation.
15. Officers consider that planning conditions are already imposed to restrict the hours of operation which include lighting (Condition 2) and the loading activities (Condition 4). Officers acknowledge the concerns made by the public and consider that these can be addressed by attaching suitable conditions to any planning permission granted.
16. Officers also acknowledge that there are various concerns regarding the noise however Officers have already addressed this issue in the original Officers' report (attached).

PLANNING CONSIDERATIONS

Introduction

17. 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.
18. 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.
19. 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.

ENVIRONMENT AND AMENITY

Redistribution of the HGV movements

20. At the 20 June Planning and Regulatory Committee, Members questioned whether the HGV traffic was effectively redistributed from daytime to night-time without having any increase in the overall HGV movements per day, given that there is no limitation on the HGV movements during daytime. Members would also like to have further information to clarify this point by providing details of waste collection practice and traffic movements to demonstrate the proposed increase in night-time traffic can effectively reduce the daytime traffic.
21. Further to the concerns from Members, the applicant submitted additional information regarding the redistribution of vehicle movements. The applicant reconfirms that this application is to maximise the efficiency of the operation of all its permitted vehicles, by redistributing daytime movements to the evening. The applicant has also submitted two tables to demonstrate how the redistribution of vehicle movements works on a daily basis.

Monday to Friday (Daily Movements)				
	Current		Proposed	
	Departure	Arrival	Departure	Arrival
Normal Operating Hours	55	67	11	51
Out of Hours	30	18	74	34
Sub-total Movements	85	85	85	85
Overall Movements (Departure + Arrival)	170		170	

Saturday and Sunday (Daily Movements)				
	Current		Proposed	
	Departure	Arrival	Departure	Arrival
Normal Operating Hours	20	20	5	5
Out of Hours	24	24	39	39
Total Movements	44	44	44	44
Overall Movements (Departure + Arrival)	88		88	

22. According to the Section 73(2) of the Town and County Planning Act 1990¹, it clearly states that on such an application the local planning authority shall consider **only** the question of the conditions subject to which planning permission should be granted, and
- if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
 - if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.
23. Officers consider that this Section 73 planning application is only to vary Condition 3 in order to redistribute the HGV movements from daytime to night-time for a more flexible waste collection practice. Officers have already pointed out that the existing planning permission did not have any limitations on daytime vehicle movements at the 20 June Planning and Regulatory Committee. Nevertheless, the existing planning permission restricts the overnight HGV movements and the information provided by the applicant is sufficient to demonstrate that the proposed increase in night-time traffic is to redistribute the existing vehicle movements and not an increase in total HGV movements.
24. The County Highways Authority has raised no objection to the proposed development subject to conditions. Officers acknowledge that the redistribution of the HGV movements can help meet the operational needs due to the change of waste collection patterns and also help reduce traffic congestion during the daytime peak hours, thereby reducing its impact on local air quality.

Noise Control

25. Paragraphs 53 to 56 of the Officers' Report dated 20 June 2018 for the planning application ref: SP18/00282/SCC outline the consultation discussion between the County Noise Consultant and the applicant's noise consultant. Paragraph 57 is the **final** outcome of the discussion and the County Noise Consultant is satisfied with the revised technical note regarding noise and has raised no objection to the proposal subject to a condition requiring the submission of an amended night-time Noise Management Plan, which has been submitted.
26. At the 20 June Planning and Regulatory Committee, Members raised concern regarding the potential noise impacts of the increase in the HGV movements on the local amenity. They considered that an amended night-time Noise Management Plan was important to

¹ <http://www.legislation.gov.uk/ukpga/1990/8/section/73>

demonstrate the appropriate noise mitigation practices and measures for the proposed night-time HGV movements and that the Noise Management Plan should be submitted prior to the implementation of the proposal.

27. Further to the concerns from Members, the applicant submitted an amended night-time Noise Management Plan. The Noise Management Plan includes information on the proposed mitigation measures, management, site-audit and complaints procedures. The County Noise Consultation is satisfied with the submitted night-time Noise Management Plan and raised no objection to the proposed development subject to conditions.

Air Quality

28. At the 20 June Planning and Regulatory Committee, Members raised concerns regarding the requirement of an Air Quality Assessment, litter and odour control.

The Requirement of an Air Quality Assessment

29. The applicant submitted additional information regarding the Air Quality Assessment in response to Members' concerns. The applicant states that an Air Quality Assessment was already carried out when the original planning permission ref: SP08/0992 was granted. The Air Quality Assessment has already assessed the potential impact of 180 vehicle movements per day over a 5.5 day a week and found that there would be no significant impact². As such, no further Air Quality Assessment is required as the proposed total vehicle numbers are not exceeding this level.
30. As there is no overall increase in vehicle numbers, the County Air Quality Consultant has raised no objection to the proposal as it will not significantly affect air quality and therefore a further Air Quality Assessment is not required in this case.

Litter and Odour Control

31. Stanwell Moor Residents' Association has raised an objection to the proposal as they are concerned about the dust and the odour issue, as complaints have been received from the residents that there was a smell of food waste.
32. Further to the concerns from Members, the applicant submitted additional information regarding litter and odour control. The applicant sets out a management plan providing mitigation measures for the odour, which includes:
- Daily deodorising of the rear of each truck between May to September inclusive;
 - Deodorising of the rear of trucks as and when required between October to April inclusive;
 - Weekly steam clean of rear of trucks;
 - Fortnightly 'dig out' behind the compactor wall;
 - Drivers to ensure that vehicle hoppers are clear of all waste before parking up;
 - Spillages in the depot or on the access road to be swept up by road sweeper using deodoriser;
 - Odour issues and complaints will be on the agenda of the monthly compliance meeting, chaired by the CEO;
 - Weekly walk around the site check to be completed by Depot Manager – compliance issues noted and raised in monthly meeting.
33. The applicant also states that 90% of their fleet comprises enclosed 'dustcart', 'Skip' and 'Roro' vehicles which are fitted with self-sheeting systems. A road sweeper was used to ensure that the access are kept clean. Severe penalties will be given to the drivers if they are to be caught with unsecured loads.

² Refer to paragraph 5.3.3 of the Air Quality Assessment dated October 2008

34. Officers consider that the applicant has provided sufficient information and the proposal would not give rise to any adverse impacts on the surrounding environment subject to conditions.

HUMAN RIGHTS IMPLICATIONS

35. The Human Rights Act Guidance for Interpretation, contained in the Preamble to the Agenda is expressly incorporated into this report and must be read in conjunction with the following paragraph.
36. It is the Officers' view that the scale and duration of any potential impacts are not considered sufficient to engage Article 8 or Article 1 and that potential impact can be mitigated by the imposition of planning conditions. As such, this proposal is not considered to interfere with any Convention right.

CONCLUSION

37. Officers reported planning application SP18/00282/SCC to the 20 June Planning and Regulatory Committee meeting. At that meeting it was resolved that the application be deferred and referred back to the applicant for the consideration of issues in respect of redistribution of the HGV movements, noise control and air quality.
38. Officers are satisfied that the applicant has provided additional information that addresses the concerns raised by Members at the 20 June Planning and Regulatory Committee meeting. Officers consider that the proposed redistribution of the HGV movements can help meet the operational needs due to the change of waste collection patterns and also help reduce traffic congestion during the peak hours thereby reducing its impact on local air quality.
39. 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. 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) dated 7 June 2018 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 each of 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 of any vehicles except between the following times:

0700-1800 Mondays to Fridays
0700-1300 Saturdays

There shall be no loading and 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 facility.
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 Drawing No.1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009) 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) dated 7 June 2018 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.

Right 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 runoff from the bund and prevent water flowing on to Public Right of Way 3 (Staines).
18. The Public Right of Way 3 (Staines) (bridleway and footpath) along the southern boundary of the site shall be maintained free of vegetation to provide a minimum width of 4 metres.

Noise and Vibration

19. The Revised Night-Time Noise Management Plan (JA/08/07/2018) shall be implemented strictly in accordance with the approved details contained therein.
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.

Air Quality

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 and mitigation measures for the control of odour provided within the Letter dated 08 July 2018. The measures shall be implemented in accordance with the above documents 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 2018.
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 2018.
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 which could endanger the safe movement of aircraft in accordance with Surrey Waste Plan 2008 Policy DC3.
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, the spread of which 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 in accordance with Surrey Waste Plan 2008 Policy DC3.
28. To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site in accordance with Surrey Waste Plan 2008 Policy DC3.

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 Applicant should note that the granting of planning permission does not permit the Applicant to manage and implement the approved Landscape and Ecology Management Plan (7th 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 of the valid Vehicle Operator Licence granted by the Traffic Commissioners for Great Britain.
5. It is the responsibility of the Applicant to make proper provision for drainage to ground, water courses or a 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 Applicant 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 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 County Highway Authority (Transportation Development Management Planning).
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 be sought from the County Highway Authority (Transportation Development Management Planning).
12. The permission hereby granted shall not be construed as authority to carry out works on the highway. The Applicant is advised that permission must be obtained from the County Highway Authority (Transportation Development Management Planning) 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 County Highway Authority (Transportation Development Management Planning) 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 Applicants' expense. (Note: It is preferable where possible to arrange for the adjacent highway to be included may be suitable to control this).
14. The Applicant 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 County Highway Authority (Transportation Development Management Planning) will seek, wherever possible, to recover any expenses incurred in clearing, cleaning or repairing highway surfaces and will prosecute persistent offenders. (Highways Act 1980 Sections 131, 148, 149).
15. The Applicant is advised that Public Footpath 3 and Public Bridleway 3 run 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 (Transportation Development Management Planning) 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 Gas Ltd. On 0800 688 588 or National Grid for 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 38 of the National Planning Policy Framework 2018.

CONTACT

Jeffrey Ng, Planning Officer

TEL. NO.

020 8541 8095

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 2018

The Development Plan

Surrey Waste Plan 2008

Spelthorne Borough Core Strategy and Policies

Development Plan Document February 2009

Spelthorne Borough Local Plan 2001

Other Documents

Surrey Hills AONB Management Plan 2014-2019

EPUK/IAQM Planning For Air Quality Guidance January 2017

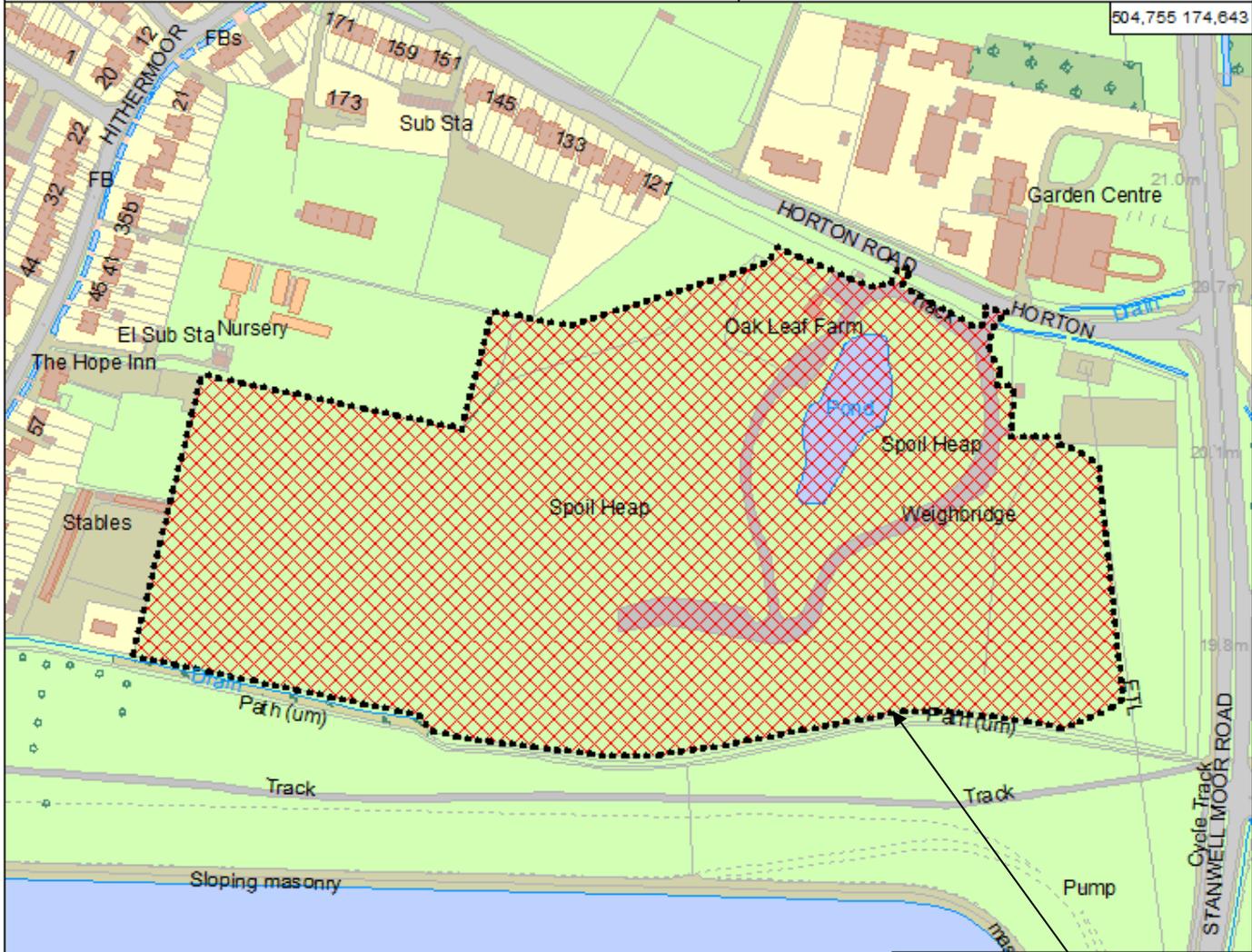
Air Quality Assessment dated October 2008 under the planning permission ref: SP08/0992

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<p style="text-align: center;">Site Location</p> <p>Scale 1:44,101</p>	<p>Oakleaf Farm, Horton Road, Stanwell Moor, Surrey TW19 6AP</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 & Stanwell Moor</p>
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This plan is for indicative purposes only



<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 Metres</p>	<p style="text-align: center;">Application Site Area</p> <p>Scale 1:3,300</p>
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2012-13 Aerial Photos

Aerial 1 : Oakleaf Farm, Stanwell Moor



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All boundaries are approximate



2012-13 Aerial Photos

Aerial 2 : Oakleaf Farm, Stanwell Moor



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 **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

TITLE: MINERALS/WASTE SP18/00282/SCC

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.

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)

SUMMARY OF PLANNING ISSUES

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

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

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

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 ¹

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

¹ 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.

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 m² 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 East². 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

² 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 assessed³. 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;⁴ 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

³ 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.

⁴ 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:

Location	Range of Measured Ambient Noise Level dB L_{Aeq}, 15 min free field	Range of Measured Background Noise Level dB L_{A90}, 15 min free field	Range of Measured Maximum Noise Levels due to Site HGV Movement (within the site or on the access road) dB L_{Amax, f}	Range of Measured Maximum Noise Levels (all sources) dB L_{Amax, f}
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 23⁵ 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 21⁶ and 22⁷ of the existing planning

⁵ 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_{Amax, f} as a facade level or 57dB L_{Amax, f} 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.

⁶ Condition 21 requires the noise levels arising from the development shall not exceed the level of 55 L_{Aeq} (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_{Aeq} (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.

⁷ 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_{Aeq}.

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 20⁸ 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

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.

⁸ 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 m² 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 18⁹ of the existing planning

⁹ 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;

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 facility¹⁰. It is also noted that Oakleaf Farm is one of the allocated sites in the SWP2008. Given that

¹⁰ 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 permission¹¹, 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.

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.

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

¹¹ 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 (7th 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.

CONTACT

Jeffrey Ng, Planning Officer

TEL. NO.

020 8541 8095

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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UPDATE SHEET

MINERALS/WASTE SP18/00282/SCC

DISTRICT(S) SPELTHORNE BOROUGH COUNCIL

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 .

RECOMMENDATION

1. Conditions 3, 4, 6, 10, 13 and 18 are amended as follows: (changes in bold and underlined)

Conditions:

Condition 3 Hours of Working

Current Wording:	Revised Wording:
<p>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:</p> <p>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</p> <p>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.</p>	<p>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) <u>dated 7 June 2018</u> 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 <u>each of</u> the following times:</p> <p>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</p> <p>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.</p>

Condition 4 Hours of Working

Current Wording:	Revised Wording:
<p>There shall be no loading and unloading by any vehicles except between the following times:</p> <p>0700-1800 Mondays to Fridays 0700-1300 Saturdays</p> <p>There shall be no loading & unloading on a Sunday or any public holiday.</p>	<p>There shall be no loading and unloading of any vehicles except between the following times:</p> <p>0700-1800 Mondays to Fridays 0700-1300 Saturdays</p> <p>There shall be no loading and unloading on a Sunday or any public holiday.</p>

Condition 6 Operation

Current Wording:	Revised Wording:
<p>Only commercial and industrial and construction and demolition waste shall be imported onto the application site as outlined within the application documents 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.</p>	<p>Only commercial and industrial and construction and demolition waste shall be imported onto the application site as outlined within the application documents 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 facility.</p>

Condition 10 Operation

Current Wording:	Revised Wording:
<p>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.</p>	<p>The two profile height posts erected within the stockpiling area as delineated on <u>Drawing No.1163/6N Site Layout Plan dated January 2008 (Revision N dated March 2009)</u> to display the profile heights and maintained for the duration of the use hereby authorised.</p>

Condition 13 Traffic and Highways

Current Wording:	Revised Wording:
<p>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.</p>	<p>The parking/turning area as shown on Drawing No.2056/13 (Location of Dedicated Lorry Parking Area) <u>dated 7 June 2018</u> shall be used and retained exclusively for its designated purpose.</p>

Condition 18 Rights of Way

Current Wording:	Revised Wording:
<p>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.</p>	<p>The Public Rights of Way 3 (<u>Staines</u>) (bridleway and footpath) along the southern boundary of the site shall be maintained free of vegetation to provide a minimum width of 4m.</p>

2. Reasons for Conditions 24, 27 and 28 are amended as follows:

Reason for Condition 24

Current Wording:	Revised Wording:
To minimise the attractiveness of flat roofs and soil stockpiles to birds which could engaged the safe movement of aircraft.	To minimise the attractiveness of flat roofs and soil stockpiles to birds <u>which</u> could endanger the safe movement of aircraft <u>in accordance with Surrey Waste Plan Policy 2008 DC3.</u>

Reason for Condition 27

Current Wording:	Revised Wording:
To prevent the encroachment of the development on watercourses which has a potentially severe impact on their ecological value.	To prevent the encroachment of the development on watercourses which has a potentially severe impact on their ecological value <u>in accordance with Surrey Waste Plan Policy 2008 DC3.</u>

Reason for Condition 28

Current Wording:	Revised Wording:
To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.	To prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site <u>in accordance with Surrey Waste Plan 2008 Policy DC3.</u>

3. Informatives 5, 6, 10, 11, 13 and 18 are amended as follows:

Informative 5

Current Wording:	Revised Wording:
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.	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 ₁ 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.

Informative 6

Current Wording:	Revised Wording:
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 0845 850 2777 for further information.	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 Thames Water Developer Services, Contact Centre on 0845 850 2777 for further information.

Informative 10

Current Wording:	Revised Wording:
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.	Details of the highway requirements necessary for inclusion in any application seeking approval of reserved matters may be obtained from the <u>County Highway Authority (Transportation Development Planning)</u> .

Informative 11

Current Wording:	Revised Wording:
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.	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 <u>County</u> Highway Authority.

Informative 13

Current Wording:	Revised Wording:
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).	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 <u>Appendix A of</u> Circular 11/95 provides that conditions may be suitable to control this).

Informative 18

Current Wording:	Revised Wording:
The applicant is reminded that they may wish to contact with Cadent if they have any	The applicant is reminded that they may wish to contact <u>Cadent Gas Ltd. on 0800 688 588</u>

enquires regarding the National Grid apparatus.

for enquires regarding the National Grid apparatus.

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Site photographs

Figure 1	Main northern part of the Land
Figure 2	Main northern part of the Land
Figure 3	Garages near to south-eastern corner
Figure 4	South-west corner of southern strip of the Land
Figure 5	South-east corner of southern strip of the Land

BACKGROUND

1. On 10 September 2015 Surrey County Council received an application for a new village green for the Land to the north of Woodside Road in Chiddingfold (the Land). The application was made on the basis that *a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years*. The application was accompanied by 54 witness statements and letters in support of the application.
2. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 sets out the process to be followed by any applicant seeking to register a new town or village green and the process to be followed by the Commons Registration Authority. Following changes to the law, under the Growth and Infrastructure Act 2013, the Registration Authority has to establish whether an application is valid under section 15C of the Commons Act 2006 before the application can be considered.
3. A public notice was placed in the local press on 17 June 2016 with an objection period running from 17 June 2016 until 29 July 2016. The application was placed on public deposit at Waverley Borough Council offices and Haslemere Library.
4. An objection to the application was received from the McLaren Clark Group on behalf of the owners of the application Land (the Objectors). It was not clear from the evidence provided with the application whether the Land met the criteria for registration. Legal opinion was sought and a view was taken that an independent investigation be conducted in the form of a non-statutory public inquiry. This was to enable the County Council, as Commons Registration Authority, to discharge its statutory duty.
5. A non-statutory public inquiry was held on 7 to 10 November 2017. The Inspector submitted his report to the Commons Registration Officer on 7 March 2018. (Annexe C).
6. The Commons Registration Officer is therefore now placing this matter before members for consideration.

CONSULTATIONS AND PUBLICITY

Borough/District Council

Waverley Borough Council

No views received

Consultees (Statutory and Non Statutory)

The Open Spaces Society:	No views received
Local Residents – adjoining properties:	No views received
Chiddingfold Parish Council:	Email in support of application
Rights of Way	No objection
Estates Planning & Management	No views received
County Highways Authority – Highways Information Team	No views received

Summary of publicity undertaken

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

FINANCIAL IMPLICATIONS

- The cost of advertising has already been incurred.
-

ENVIRONMENTAL IMPLICATIONS

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

HUMAN RIGHTS IMPLICATIONS

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

ANALYSIS AND COMMENTARY

- Surrey County Council is the Commons Registration Authority under the Commons Registration Act 1965 and the Commons Act 2006 which administers the Registers of Common Land and Town or Village Greens. Before the Commons Registration Authority is an application (№ 1875) made by Mrs Cowley and Mr de Watteville, under the Commons Act 2006, to have Land at The Meadow, Woodside Road, Chiddingfold, registered as a town or village green (TVG). The Land is identified on the plan appended to the application (Annexe A).
- The McLaren Clark Group, on behalf of the freehold owners, oppose the application.

13. To succeed, the Applicant has to prove on the balance of probabilities (*i.e.*, more than a 50% probability) that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes (LSP) on the Land for a period of at least 20 years.
14. The facts were thoroughly tested with evidence at a public inquiry. At the inquiry the Applicants applied to amend the application to remove a small area from the Land occupied by a group of garages, near to its south-eastern corner. The Objectors raised no objection to the amendment and the Inspector recommended that the Applicants be permitted to amend the application. (Annexe B).

CONCLUSIONS AND RECOMMENDATION

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

- I. *'Locality' or 'any neighbourhood within a locality'*

The Applicants put forward a neighbourhood consisting of the built up area of the actual village of Chiddingfold, within the locality consisting of the Parish of the same name. The Inspector is of the view that the village of Chiddingfold is entirely capable of being reasonably regarded as a 'neighbourhood' in the context of section 15(1) of the 2006 Act.

- II. *'On the land'*

The evidence of use was significantly different in relation to some parts of the application Land. There was a relatively narrow strip of land, running along the southern edge of the site, to the north of the back gardens of the Woodside Road properties, which was of a substantially different character to the rest of the Land.

The southern strip contained considerable areas of regularly mown grass, some areas of garden-type cultivation, an area given over to domestic fowl and quantities of children's play equipment.

The remainder of the Land was much rougher, consisting of rough areas of long grass, interspersed with areas of brambles, bushes and small trees. This area contained a main pathway extending north-eastwards from approximately the middle of the southern strip, to a point approximately central of the north-east boundary of the Land. The northern tip of the site contained a more densely treed area.

Evidence presented at the inquiry suggested that the main, northern part of the Land had been at some stage separated off from the narrow, southern strip by some kind of fencing or other visible boundary treatment. Some other fence or hedge lines were shown as having existed within the area further north.

The Inspector concluded, from evidence presented to the inquiry, that there was a long-term history, extending through the relevant period, of permissive use of the southern strip, at least as a route to pass through, for the benefit of a number of families residing on the north side of Woodside Road. He found that there was a long history of some permissive 'domestic gardening' by individual neighbouring residents, within the southern strip outside the back gardens of Woodside Road properties.

The Inspector is inclined to accept that, on the balance of probabilities, the stock-proof fencing which was clearly on the Land in mid-1993, was more likely than not still there in September 1995, which is the beginning of the relevant 20 year period.

III. 'A significant number of the inhabitants' and 'lawful sports and pastimes'

The evidence presented at the inquiry demonstrated that a mixture of activities, some of which would undoubtedly be 'lawful sports and pastimes', were indulged in by neighbouring residents of Woodside Road and, to a lesser extent, their visitors on significant parts of the southern strip. However, any 'collective' use of parts of the southern strip was physically interspersed with patches of that land being used by individual neighbours for their own garden extensions or gardening purposes, some of which was permitted by licence from the owners.

The Inspector found that the evidence of any use for most of the relevant period by the inhabitants of Chiddingfold, more widely than the immediate Woodside Road neighbours (with back garden gates) and their occasional guests, seemed to be extremely thin and unconvincing.

The evidence taken as a whole has not shown, on the balance of probabilities, that any significant 'lawful sports and pastimes' by a significant number of the inhabitants has taken place on the bulk of the application Land for the full 20 year period and certainly not use at a level which would suggest general use by the local community 'as of right', as opposed to sporadic, occasional trespass.

Although it would be open to the Registration Authority to register a lesser part of the Land, where the evidence justifies such a course, no party sought to suggest this at inquiry and the Inspector saw no real basis for doing so in this case. The Inspector concluded that it was arguable that the activities that took place on the southern strip were in reality akin to a multiple trespass by a number of individuals residing in neighbouring properties via their individual back gardens rather than an 'as of right' use on behalf of the inhabitants of a wider 'neighbourhood' collectively.

IV. 'As of right' and 'for a period of at least 20 years'

For the use of the Land to be 'as of right' it must have been undertaken without force, without secrecy and without permission.

On the evidence presented at the inquiry, the Inspector was inclined to accept that, on the balance of probabilities, there had been at least some noticeable open (i.e. unconcealed) use of a significant proportion of the southern strip of the Land for purposes including 'lawful sports and pastimes' for the full requisite period of 20 years, by people living in the immediately neighbouring properties on Woodside Road. However, any such use by neighbours (and their visitors from time to time) was mixed up with the permissive right for some neighbours to traverse along the strip to access garages, the permissive rights that some neighbours had individually to cultivate a particular patch and other neighbours carrying out the like without permission.

As far as the remainder of the Land further north is concerned, the evidence in the Inspector's opinion, does not come close to establishing that lawful sports and pastimes had been indulged in 'as of right' by a significant number of the inhabitants of Chiddingfold, over the whole relevant period.

V. *Conclusion*

The onus is on the Applicants to show, by their submissions and supporting evidence that, on the balance of probabilities, all of the statutory criteria under Section 15 of the Commons Act 2006 have been met in this case.

The evidence presented to the inquiry showed that the Land was predominately used by neighbouring residents of Woodside Road rather than the wider inhabitants of the neighbourhood of Chiddingfold. Further, evidence in respect of the use of the Land, in particular the southern strip clearly showed that use was by way of permission from the owners as opposed to 'as of right'. The Inspector's conclusion, in light of the entirety of the evidence presented, is that the Applicants have failed to establish that the statutory criteria has been met even in respect of the undoubtedly more heavily used 'southern strip' of the application Land.

The Inspector's recommendation to the Registration Authority is that no part of the Land to which this application relates should be added to the statutory Register of Town or Village Greens, because on the evidence it does not meet the criteria required for such registration, for the reasons explained in detail in the Inspector's report dated 7 March 2018.

16. Therefore, Officers recommend that:

- a) the Applicants be permitted to amend the application to remove a small area from the Land occupied by a group of garages, near to its south-eastern corner;
- b) the application to register the Land be rejected.

CONTACT

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TEL. NO.

020 8541 8935

BACKGROUND PAPERS

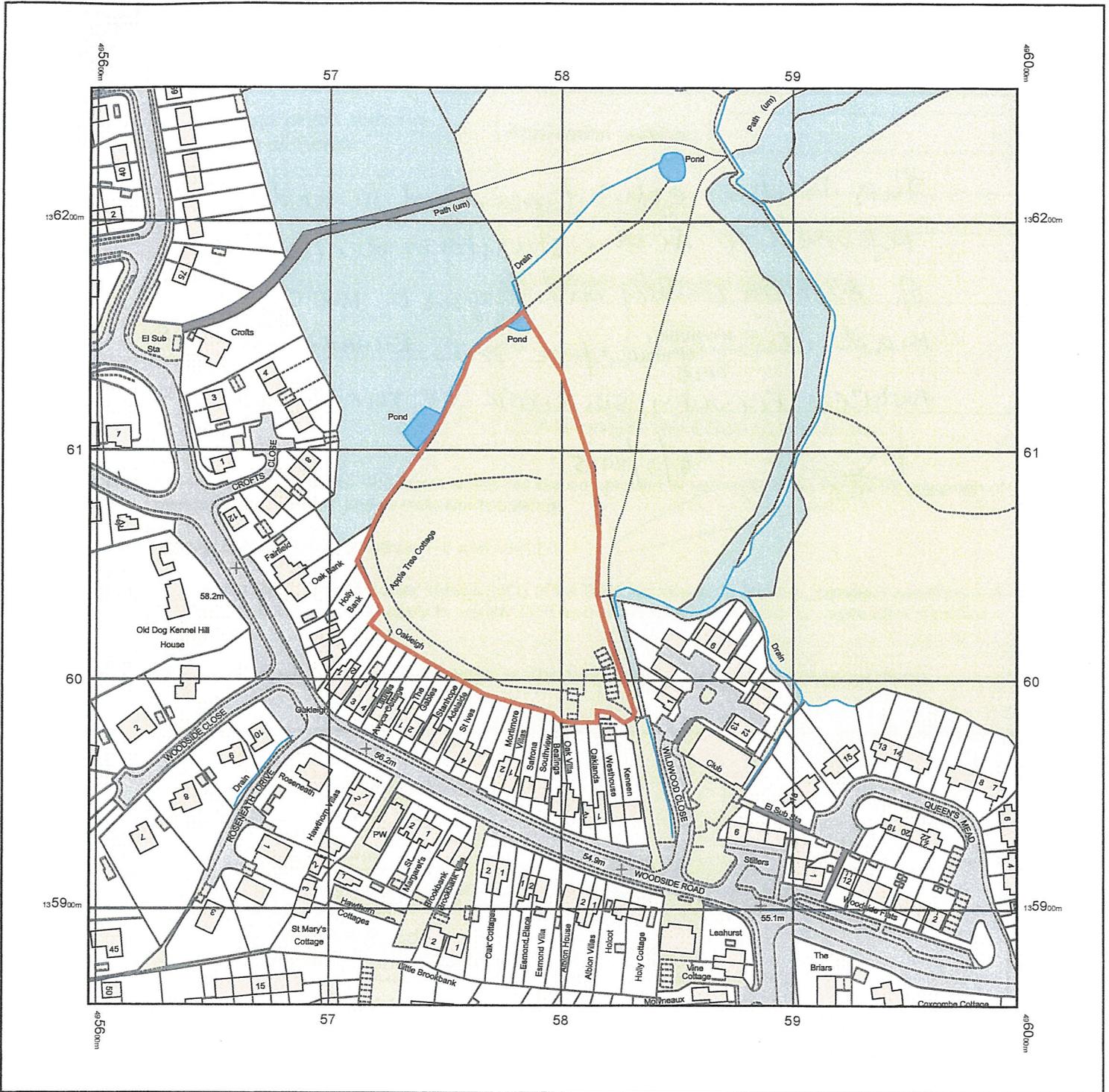
All documents quoted in the report.



North
100m

Scale 1:2500

Map A



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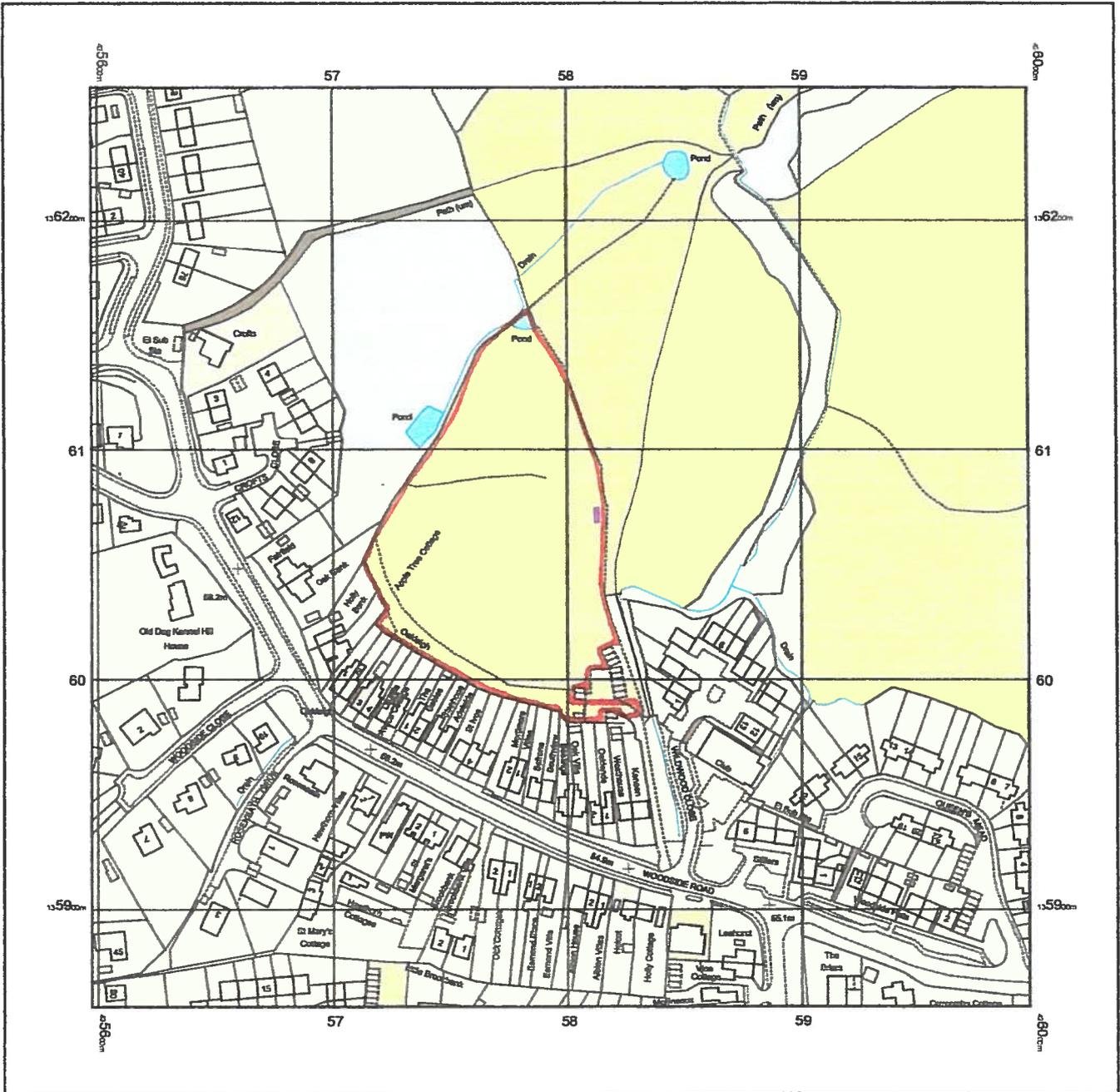
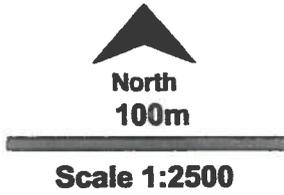
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Map A - 'claimed land' (Woodside Meadow)

woodside road

ECAP
9/9/2015

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Map A(2) - 'claimed land' (Woodside Meadow)

Approximate position of land affected by planning permission WA/1991/0068 to be excluded from claim

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COMMONS ACT 2006, Section 15

**SURREY COUNTY COUNCIL
(Registration Authority)**

**RE: LAND KNOWN AS ‘THE FIELD’ OR ‘THE MEADOW’,
TO THE NORTH OF WOODSIDE ROAD, CHIDDINGFOLD**

**REPORT OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law**

into

**AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND**

as

TOWN OR VILLAGE GREEN

CONTENTS:

1. Introduction
2. The Applicants and Application
3. The Objectors
4. Directions
5. Site Visits
6. The Inquiry
7. THE CASE FOR THE APPLICANTS – Evidence
8. The Submissions for the Applicants
9. THE CASE FOR THE OBJECTORS – Evidence
10. The Submissions for the Objectors
11. DISCUSSION AND RECOMMENDATION

Appendix I Appearances at the Inquiry

Appendix II List of new Documents produced in evidence at the Inquiry

Appendix III List of Documents admitted after the Inquiry

1. INTRODUCTION

- 1.1. I have been appointed by Surrey County Council (“the Council”), in its capacity as Registration Authority, to consider and report on an application officially noted and stamped as received by the Council on 10th September 2015, for the registration of an area of largely open land situated to the north of Woodside Road, Chiddingfold, as a Town or Village Green under *Section 15* of the *Commons Act 2006*. The site, and the whole of Chiddingfold, are within the administrative area for which the Council is responsible.
- 1.2. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of those who had objected to the application (“the Objectors”). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections duly made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANTS AND APPLICATION

- 2.1. The Application, accompanied by various documents, including letters, statements and completed evidence questionnaires in support, etc. was, as already noted, formally received by the Council as valid on 10th September 2015; it was made by Mr Angus de Watteville, of Avoca Cottage, Woodside Road, Chiddingfold, and Mrs Antonia Cowley, of 2 Oakleigh Cottages, Woodside Road, Chiddingfold. Mr de Watteville and Mrs Cowley are therefore “the Applicants” for the purposes of this Report. The application form indicated that the application was based on *subsection (2)* of *Section 15* of the *Commons Act 2006*.
- 2.2. The application form put forward the area of the (civil) Parish of Chiddingfold as the ‘locality’ relevant to the application, and a map accompanying the application put forward a smaller area (subsequently explained to represent the built-up area of the village of Chiddingfold) as the relevant ‘neighbourhood’ within that locality. The Civil Parish of Chiddingfold was accepted on all sides as an area meeting the relevant legal tests to constitute a valid ‘locality’. I shall consider the matter of the claimed ‘neighbourhood’ further, later in this Report.
- 2.3. As for the application site, its originally proposed boundaries were shown (as is required) on a plan which accompanied the application, on a 1:2500 Ordnance Survey base. However the site as thus shown included within its boundaries a group of somewhat dilapidated garage buildings, near to its south-eastern corner (and one other small building a little further north along the eastern boundary). At the Inquiry application was made on behalf of the Applicants to amend the

application site by the removal from it of the relatively small areas principally occupied by those buildings, and an amended application site plan Map A(2) [Inquiry doc. ref. App.3] was produced.

- 2.4. It seemed to me that this amendment to the application was a reasonable and sensible one, and could not conceivably prejudice any party who might be affected by it. Furthermore, no objection to the amendment was taken on behalf of the Objectors/landowners, who were represented by Counsel at the Inquiry. Accordingly I shall take the amended and slightly reduced application site as being the site that is under consideration, and clearly my advice and recommendation to the Registration Authority is that it should do likewise. Thus from now on, when I refer to 'the site', or 'the application site' that will be a reference to the original site as thus amended and shown on the Applicants' Map A(2), unless the context otherwise requires.
- 2.5. As for the physical nature and appearance of the site, it is a roughly triangular shaped piece of generally open land. Its approximately southern side backs onto the northern end of the back gardens of a row of houses which are themselves on the north side of Woodside Road, on the northern edge of Chiddingfold village. A considerable number of those back gardens have gates through their back fences, on to the application site.
- 2.6. In a small number of instances there appeared (when I saw the site) to have been some 'encroachment' onto the application site, by the incorporation within back garden fencing of small areas which seem to lie within the site as shown on the application plan. I was given to understand (and it was not in dispute at the Inquiry) that the southern boundary of the application site as shown, on both the amended and original application plans, is the same as that of the relevant land registered by the Land Registry as being in the ownership of the Objectors in the present proceedings.
- 2.7. It is of course no part of my role, nor that of the Council as Registration Authority, to consider or address such matters as 'adverse possession', so I merely note these circumstances as part the background of what I observed on the site during my visits to it in November 2017.
- 2.8. The (roughly) north-western and eastern boundaries of the triangular site are generally fairly typical, heavily overgrown field boundaries, with numerous large trees, and a large amount of undergrowth (with some remnants of fencing visible in places), which may well result at least in part from earlier, perhaps more maintained, field boundaries having been neglected and allowed to overgrow, over a prolonged period. At the time of my principal site visit there were two quite obvious ways, convenient for an adult pedestrian to use, through the eastern site boundary and into the adjoining field to that side, and it was apparent that there were other places where a child or a particularly keen adult could have pushed a way through that boundary.

- 2.9. Perhaps more significantly, at the extreme south-eastern corner of the application site, there is an unmade-up track, apparently capable of carrying vehicles or pedestrians (and without any intervening gate or fence), going from the site southwards (approximately), alongside the eastern boundary of the property called 'Keneen', to join the carriageway and public highway of Woodside Road, at the point where that road is joined by another road called Wildwood Close.
- 2.10. I note, in passing at this stage, that I was told that (entirely separately from these proceedings under the *Commons Act*) an application has been made to the County Council under the relevant legislation for the recording of a Public Footpath, based on evidence of long user, over the track just mentioned, and then (from close to the point where the track meets the application site) continuing through the plot of land to the east of the site, which is mainly a field, to join other footpaths further to the north.
- 2.11. In physical terms the track just mentioned provided (at the time of my visits) easy and unobstructed pedestrian access from the public highway to the application site, and also access to the group of dilapidated garages now excluded from the site, although there were no obvious signs suggesting significant vehicular use in recent times.
- 2.12. At the time(s) when I saw the site, a southern 'strip' of it, running along next to the boundaries of the Woodside Road properties, showed very considerable signs of domestic-related activity, such as children's toys or play equipment, gardening equipment, vegetable or fruit patches, some hens and ducks in small and fairly basic enclosure, and significant areas of relatively closely mown grass.
- 2.13. The remainder of the site, to the north, was considerably more heavily covered with vegetation. Much of this had the appearance of very overgrown and neglected grassland and weeds, but interspersed with a significant number of established (but mostly fairly small to medium-sized) trees and bushes, brambles, and other assorted but generally low vegetation, typical of an area which has undergone a period without much maintenance or management having taken place.
- 2.14. The northern apex of the site, where a 'pond' is marked on the Ordnance Survey map, did not at the time of my visit contain a pond, but rather a low-lying and damp area surrounded by denser and less easily penetrable vegetation than most of the rest of the site. A large tree within the site, but along its eastern boundary, contained a noticeable 'tree house'.
- 2.15. The more roughly vegetated northern part of the site generally contained a small number of apparent paths, including one quite prominent one running approximately north-easterly through the site from the area behind the houses to the most obvious exit point through to the field to the east, about half way along the eastern boundary of the site.

- 2.16. On the formal site visit on 9th November 2017, a short length of rather overgrown barbed wire fencing was observed, near to the eastern boundary of the site, but running in a direction laterally (i.e. approximately east-west) across the site, in the area just to the north of the dilapidated garages which have been referred to.

3. **THE OBJECTORS**

- 3.1. When the Council publicised the application, a substantial, reasoned objection was received from the McLaren Clark Group, on behalf of the landowners, understood to be Mr A.P. and Mr C.S. Matthews, Mr D.J. Faux, and Ms. J.A. Turner. These named landowners are therefore “the Objectors”, and they were all represented jointly at the Inquiry which I held.

4. **DIRECTIONS**

- 4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it issued to the parties Directions as to procedural matters, drafted by me, in August 2017. Matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. Since the spirit of these Directions was in general observed by the parties, it is not necessary for me to comment further on them at this stage.

5. **SITE VISITS**

- 5.1. As I informed the parties at the Inquiry, I had the opportunity shortly before the Inquiry commenced to see the application site, unaccompanied, from its south-eastern corner. I also observed the surrounding area generally.
- 5.2. After the conclusion of the evidence to the Inquiry, on 9th November 2017, I made a formal site visit to the site, accompanied by representatives of both the Applicants and the Objectors. In the course of doing so, I was able to observe the site much more fully than I had previously been able to, to see the other land to the east and north-east which had been referred to during the Inquiry, and also once again to note parts of the surrounding area more generally.
- 5.3. I have made reference to what I was able to see on this site visit, in my description and discussion of the application site in paragraphs 2.5 to 2.16, above.

6. **THE INQUIRY**

- 6.1. The Inquiry was held at Hambledon Village Hall (Hambledon being the next village to the north of Chiddingfold), on 7th, 8th, 9th and 10th November 2017.

- 6.2. At the Inquiry submissions were made on behalf of both the Applicants and the Objectors; oral evidence was heard from several witnesses on behalf of the Applicants, one ‘third party’ (but supporting the application) witness on her own behalf, and one witness on behalf of the Objectors. All of this witness evidence was subjected to cross-examination, and questions from me, as appropriate.

Post-Inquiry evidence and submissions

- 6.3. The normal expectation, after a public local Inquiry such as the one I held in this case, would be that once the Inquiry has finished, I as Inspector would receive no further evidence or submissions from the parties, other than in exceptional or unusual circumstances; and indeed that normal expectation was reflected in the Directions which I had issued in this case.
- 6.4. However, quite shortly after the end of the Inquiry here, the Registration Authority’s proper officer received a letter dated 17th November 2017 from the McLaren Clark Consultancy, acting as agents for the Objectors, drawing attention to a circumstance which had arisen since the close of the Inquiry. This was that one of the co-owners of the application land (and therefore one of the Objectors), Dr. A.P. Matthews, who lives in South Africa, on being sent copies of the closing submissions to the Inquiry, had realised that he was in possession of some knowledge, and photographs, relating to a visit he had made to the land in 2005 – things which he had not previously realised might be relevant to the dispute which the Inquiry was dealing with – all of which had been communicated in a letter (presumably emailed) from Dr Matthews, also dated 17th November 2017, with the relevant photographs attached.
- 6.5. Application was made that I and the Registration Authority should in these circumstances accept and consider this material, in spite of its late submission, on the basis (it was argued) that it is highly pertinent to the Registration Authority’s decision in this case.
- 6.6. These circumstances were brought to the attention of the Applicants, who were given the opportunity to comment and make representations, both on the question of the admission of Dr Matthews’s letter and photographs, and on the substance of them. In a letter of 8th January 2018, Mrs Antonia Cowley (the one of the Applicants who had acted as principal spokesperson at the Inquiry) objected to the late admission of the new material from Dr. Matthews, but also put forward some submissions, including a photograph, by way of response to that material, should I take the view that it ought to be accepted for consideration.
- 6.7. Clearly the late submission of material, especially after an Inquiry has ended, is in principle undesirable, and to be avoided. However in this instance it came at a time before I had been able to embark on any of the production of my Report, in relation to any of the substantive issues in dispute. It is also, at least potentially, relevant to the matters in issue.

- 6.8. The fact that Dr Matthews lives overseas, in a jurisdiction where (it seems to me) it is most unlikely that a piece of legislation which closely parallels *Section 15* of the *Commons Act 2006* is in force, makes it more credible and understandable that he should not have realised in advance that his photographs and recollections were of potential significance. I therefore conclude that the circumstances here are sufficiently unusual for me to decide that on balance the more reasonable course is to admit the late material.
- 6.9. Clearly of vital significance in reaching this view is the point that the Applicant(s) have been given a full opportunity to respond to the material from Dr. Matthews, as both fairness and justice demand, and they (through Mrs Cowley) have taken up that opportunity. Therefore, it seems to me, no issue of unfairness in reality arises here, and the balance is clearly in favour of consideration being given, both to the new material, and to the Applicants' response to it, rather than the Objectors being prevented from making any reference to it.
- 6.10. The evidential matters raised in these exchanges are therefore among those which I shall bear in mind as part of my overall consideration of the evidence from all sides, later in this Report.

Overview in relation to matters considered

- 6.11. As well as the oral evidence, the submissions made to me, and other matters specifically raised at the Inquiry (and the Post-Inquiry material to which I have just referred), I have also read and had regard in producing my Report to all of the written and documentary material submitted by the parties. I report on the evidence, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANTS – EVIDENCE

Approach to the Evidence

- 7.1. As I have already noted above, the original Application in this case was supported and supplemented by a number of documents; these included plans, statements, a considerable number of completed evidence questionnaires, and some other supporting material, including photographs.
- 7.2. More written or documentary material was submitted on behalf of the Applicants [and also the Objectors], both in the early stages of the process, and in the run-up to the Inquiry. I have read all of the written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

- 7.3. However, as is to be expected, and as indeed was mentioned in the pre- Inquiry Directions, on some aspects of a case of this kind, more weight is likely to be accorded (where matters are in dispute) to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will necessarily be the case for mere written statements, completed questionnaires, etc., where there is no opportunity for challenge or questioning of the author.
- 7.4. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such personal evidence as was contained in the statements, letters, completed evidence questionnaires, etc., provided by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses. Thus, other than in those instances where I make specific reference to the untested written material later within this Report, nothing (in my view) stands out as particularly needing to have special, individual attention drawn to it by me.
- 7.5. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The oral evidence for the Applicant

- 7.6. *Mrs Debbie Wallbank* lives at 5 Pathfield, Ridgley Road, Chiddingfold. She is the manager of the Chiddingfold Village Nursery. That is held in Chiddingfold Village Hall in Coxcombe Lane. She said that she has used Woodside Meadow, which is the local name for the application site, as of right for the last two years, as a place to visit with the children from their nursery for outings. Those outings have been part of their ‘Empty Classroom’ days, and have included up to 23 children and 6 members of staff. They have used the meadow for bike riding, bug and fairy hunting, den building, ball games, races, role play, circle games, and the simple enjoyment of a wide open space. They have enjoyed musical activities, animal, plant and wildlife interactions, and picnics.
- 7.7. Those visits prove very popular with the children, and the feedback from parents has been brilliant. They wish to use the meadow for future trips and adventures, and to make it a regular and lasting part of the experience they offer their children and families.
- 7.8. The benefits of having access to a space such as Woodside Meadow to a developing child are huge. It allows children to develop not only their physical skills through freedom of movement etc., but also their imaginations and explorative skills. There are also social and emotional learning opportunities for children when they can gather in mixed age groups, and when parents, carers and the wider community can be included in their learning and play experiences.

- 7.9. The limits and benefits of a space such as this are endless. Woodside Meadow is a safe, well-positioned, unique and valuable resource. They have never been barred from accessing the land in any way, nor have they been given permission. They access the land from the footpaths and the side track next to Wildwood Close, as other members of the community do. They do not use the land in secrecy, as they are aware that the community have been accessing the land for many years, and still do.
- 7.10. They have also used Woodside Meadow for team meetings and drinks parties to celebrate the end of terms. It has offered the perfect space over the years for professional gatherings as well as relaxation and recreation.
- 7.11. As the manager of a long established early years setting in the heart of Chiddingfold, and as a Chiddingfold resident, she hopes that Woodside Meadow will be registered as a village green.
- 7.12. She confirmed that some of the other people who had produced evidence statements are also members of her staff.
- 7.13. The nursery had undertaken two trips to this land with the children. She personally was aware that the track next to the site (to the east) had been in very long use, and she had always used it since 1999.
- 7.14. *In cross-examination* Mrs Wallbank said that the first visit to the land of the nursery group was on the 19th June 2015. On that visit there were 19 children, 5 staff and some helpers. They walked to the site in a “walking bus” type of arrangement. That was the only outing in 2015 to the site.
- 7.15. The nursery is registered with Ofsted. They (the nursery) do carry out risk assessments for their activities.
- 7.16. There had been other outings there subsequently. In 2016 they did not visit Woodside Meadow. However on the 18th May 2017 they did have an Empty Classroom day visiting that site, as well as others. They passed through the site. That day was not a sponsored walk day.
- 7.17. On the 19th June 2015 they had undertaken a number of activities on the site. These included ball games and looking for fairies in the long grass. Also there was looking at ducks, chicken and eggs. There were running games, and the children played in the long grass without their shoes or socks on.
- 7.18. Access to the site for those occasions would have been from the access track by Wildwood Close.

- 7.19. On the visit in June 2015 they went through this site to a wider area beyond, as they had done on the more recent occasion. They went through to an area known as "*the Laggs*", on the path towards the Winterton Arms.
- 7.20. On their visit in 2017 they also wanted to go through to The Laggs. They went across a field to the east of the application site (known in the context of some planning proposals as "*Site 6*"), via the path which is there. There are streams and muddy ground over at the Laggs, and a small bridge. This is a good development challenge for the children. However they did get as far as the Laggs on that occasion. On their return though they did not come back the same way, but went into Woodside Meadow.
- 7.21. The Laggs is a wet area lying to the north-east of the norther corner of the application site. They followed an unmarked way from there in order to return to the site. They then walked down a path just within the east part of the site.
- 7.22. On their 2015 visit they had gone slightly beyond the footbridge. They had gone across "*Site 6*" to the footbridge. They started to walk back across Site 6, but then went into Woodside Meadow. She was not sure at precisely what point they entered Woodside Meadow. It was on that 2015 visit to the land that they did the activities there which she had mentioned. Those activities had taken place at the side of Woodside Meadow closest to the houses and gardens. However the fairy hunting in the long grass was further to the north. In her view the mown areas of the site at the time of the Inquiry were similar in extent to what they had been in 2015.
- 7.23. She personally has lived in the village since 1999. As to the suggestion that there might have been a gate across the access to the site in the period around 2005, she said she could vaguely recall going for a walk in that area around that time, but could not remember if there was a gate there or not. She did not recall seeing any barbed wire barriers on the site. Nor did she remove any such barriers.
- 7.24. She had a friend who used to live in Woodside Road, in the second house in from the access track. They were Mr and Mrs Robertson; their boys had been friends. Her own boys and their boys used to go out and play, from the friends' house. Her own boys were then aged 10, 9, 7 and 4 or 5. They would go out onto the meadow on their own. It was a safe space. That happened for about one year. Then that family moved elsewhere in the village.
- 7.25. Mrs Wallbank confirmed that Mrs Cowley, one of the Applicants, works with her. As for the team meetings and drinks parties which have taken place on the site, at the end of term the staff tend to gather in various places, and on a couple of occasions they had gathered at Woodside Meadow. This was on the mown area. The first of these occasions was in 2015, and was after the walk had taken place. This was a gathering for the employees, so therefore for 5 or 6 people. Term typically ends at the end of the third week in July.

- 7.26. What she had said in evidence was the totality of the personal involvement she had had with the site.
- 7.27. On reflection she said that she thought that the Robertsons had lived next to the site for about 3 years, so that her boys would have gone there to play with the Robertson boys in approximately 2001 to 2003.
- 7.28. She had never seen fencing on the site, nor people going to or from the garages next to the site. She personally did not usually go to this part of the village.
- 7.29. *In re-examination* Mrs Wallbank said that she had used two different accesses to the site. One was by the garages, and the second (which she had used with the children on the occasions she had mentioned) was along a natural footpath through from Site 6.
- 7.30. *Miss Karen Brewster*, had lived in Godalming for the last two years prior to the Inquiry. However, she had lived at 3 Stephensfield, Ridgley Road, Chiddingfold, between 1994 and two years ago. She had lived in Chiddingfold for her whole life before that as well.
- 7.31. She said that she has been using Woodside Meadow as of right since 1965, up until the present day. When she was a child she used to live in Queensmead, and came to visit her Aunt and Uncle and cousins who lived at 4 Oakleigh, on Woodside Road, and her grandparents who lived in Mortimore Villas, also on Woodside Road. Both of those properties backed onto Woodside Meadow. They always used Woodside Meadow as of right, and she used to run around and play games out there most weekends. Woodside Meadow was always open and free to access from several points, e.g. straight out of her family's gardens, and from the end of the field. All of the children from the houses and surrounding area used to play out there. She did not recall ever being challenged or asked to get off.
- 7.32. She still uses Woodside Meadow as of right today, nowadays with her grown up daughter and grandchildren, who now reside at 4 Oakleigh. They go for walks across the meadow, and play games and picnic there.
- 7.33. *In cross-examination* Miss Brewster said she had used the land since 1965 when she was aged 6. She could not say about anything that happened before she was that age.
- 7.34. As a child she would go to her grandparents nearly every day after school. Her mother worked part-time. Her grandmother had lots of vegetables growing in their garden, and they also had a garden table out in the Meadow. Her cousins are the

same age as her, and her brother and they used to go out onto the Meadow a great deal when they were there.

- 7.35. She carried on playing out there for some considerable time; she could not say when she stopped playing there as a child. Her understanding was that even her father had gone out there to play as a child. She herself has now moved to Godalming but she still comes to Chiddingfold, as her daughter had bought the house where her Aunt used to live. Her daughter is called Natalie Sparks. She, the daughter, had moved into that house in August 2012.
- 7.36. As a child the games which she and her cousins had played were football, rounders, other children's games such as hide and seek, head-over-heels, running etc. She did not recall seeing any fence or gate on the land, ever. Nor was there any barbed wire fencing. She had never seen any of that. The land was never cultivated or cut back, just left to its own devices.
- 7.37. She has never seen horses on the field, ever. As for the garages, she knew no-one who was renting them. She has seen them, but she does not know anything about them. She knew about the trackway through next to Wildwood Close, but she had definitely never seen any fencing or gates in the vicinity of that trackway, and certainly never seen any gates which were locked up. The track always had been completely open. She had never seen anyone come to do anything to the track, it was just always open. She had always been told that the track is "no-man's land", with no known owner.
- 7.38. The areas on the site which are tidy had been cleared by adjacent residents. Those represent the area where as children they could play ball games. However when she was young the whole area could be played on, and she and other children trod it down themselves. Picnics with her grandchildren on the site these days would be out at the back of their actual house, or with neighbouring friends. She personally has never been a dog walker, so has never used the site for that.
- 7.39. As for walking across the Meadow, one can walk over this site and onto the next field, and then onto the Laggs. That is a local Chiddingfold name for a muddy area of ground. There are quite a lot of walks down there. There is a small bridge there where the game of pooh-sticks can be played. When people including herself referred to the field 'behind the Club', they were referring to the same site as other people refer to as Site 6.
- 7.40. There used to be a flowery bank of primroses stretching from the bridge she had referred to, through to the Laggs. The primroses grow in spring, but they used to walk through there at other times of the year as well. There are very many walks one can go on.

- 7.41. She had never talked with any residents who were saying that they were interested in buying a part of the field. She had not known that her daughter would choose the same house to live in as her Aunt used to live in. She personally had got involved in this current application because her daughter lives next to the site. Her daughter had some of the forms relating to the application, and had asked her if she would like to fill one in, so Miss Brewster had said yes because she had lived in Chiddingfold for such a long time and knew the site.
- 7.42. *In re-examination* Miss Brewster said they had used quite a large proportion of the site as children, even though there were parts of it which were long grass. One did use to see other children out there playing. In fact she had seen lots of people using it. She did not always know them, but her daughter knows those who use the land these days.
- 7.43. **Mr Ian Spicer** lives at 1 Jubilee Villas, Coxcombe Lane, Chiddingfold. He has lived there for 50 years.
- 7.44. He said he has lived in Chiddingfold since he was a child, and has accessed Woodside Meadow as of right since 1975. As a child he would visit Woodside Meadow regularly, to play football with other children from the village.
- 7.45. He used to access the land through his friend's garden at 3 Oakleigh, Woodside Road, and also via the track in front of the garages at the side of the site. Other local children and adults would access the field from that track as well.
- 7.46. He had never been barred from entering or using the field, had never sought permission, and there were never any signs or gates preventing their entry. It was common knowledge that the land was regularly in use by the local community, and therefore they felt able to access the land freely. The land continued to be used by the local community after his own football playing days were over, and the local community still use it to this day.
- 7.47. *In cross-examination* Mr Spicer confirmed that he had produced one of the evidence statements lodged with the original application. In that statement he had said he visited Woodside Meadow between 1975 and 1981. That had been in order to play games of football, and he would have accessed the land either through 3 Oakleigh, or by the side access. The marking of the area where football was played was very informal. They played directly outside his friend's house there.
- 7.48. There would also sometimes be bonfires there. These were not organised but impromptu events. Those would have been in the same general area, behind the properties.

- 7.49. In 1975 he was aged 8, and he played there from the ages of about 8 to 14 approximately. Those were his football years.
- 7.50. He has lived in Jubilee Villa all his life, indeed he was born there. He had been away for only a couple of summers, and other than that he had always lived around Chiddingfold. As for the garages adjacent to the site, he had never used them, and had only cycled past them. He had never spoken to anyone who had rented them.
- 7.51. He had a vague recollection of seeing one horse on the land, but he could not say when. That would have been during the time that they played football. They would tend to kick the ball over that way towards the horse all of the time.
- 7.52. His recollection was that there had been some sort of fence across the field, further from the houses. This was only some wooden posts and wire, which he thought was not barbed wire. He thought that had been in order to contain the horse.
- 7.53. As for the garage area, he never remembered any gate being near there. They would whizz down the track and cycle past the garages, with nothing stopping them.
- 7.54. After his football period he had not been back there to the site a great deal. His return to the site had been mainly when he was a bit older. He had not been there in the period around 2009 for example.
- 7.55. *In re-examination* Mr Spicer said he had not seen a horse in the field since he was a child playing football there. He had not seen a fence in the field since about 1995.
- 7.56. **Mr Graham de St Croix** said he had lived at 3 Oakleigh Cottages, Woodside Road, Chiddingfold since 1976. He and his family had used the field behind their house (the application site) as of right since that date, and continue to do so every day until the present day. Other users of the field include friends and extended family, as well as people from the local area. The field can be accessed by himself, his friends and family through his back gate, and also via the side track by others from the neighbourhood.
- 7.57. He has never been given permission to use the land, and he has never sought permission. He was never prevented from using the land, and used it without secrecy. He and the neighbourhood community have also never been barred from the land by gates, notices or fences. They have always accessed the field as a whole, regardless of a single horse being there in 1976 when they moved in.
- 7.58. The use of the land by himself, his family and the wider neighbourhood community ranges from dog walking, picking blackberries and sloes, children playing, sports, snowman building, to bird watching and bonfire parties. His

family have most frequently used the land for football games, cricket and bike riding. There have also been gatherings to celebrate Guy Fawkes night by the community, and these have taken place every year since his arrival at the address.

- 7.59. Mr Guy Edgerton, previously of 4 Oakleigh Cottages, took it upon himself to maintain the land using a scythe to cut the grass, and planting the daffodils and the cherry tree which are still there today. He planted the tree after Mr de St Croix's children had grown up and stopped using the space for football. In the early 1990s Mr Edgerton had removed some of the remaining barbed wire, as it was dangerous for the children as they used the land.
- 7.60. *In cross-examination* Mr de St Croix said that when they moved in in 1976 he was aged 35. He had been born in 1941.
- 7.61. The side track which people refer to is the track which leads to the garages. He himself had previously rented one of the garages, for only a short period. The back wall of it had fallen in onto the bonnet of his car.
- 7.62. His own activities on the site had included attending bonfire parties, possibly three or four times a year on this site from the time he moved in. The fires are not quite so frequent nowadays. They mostly involved the burning of garden rubbish.
- 7.63. The blackberries and sloes on the site are in the boundary hedges. It is easy to cross the site or to climb over a one-strand barbed wire fence that is on the site.
- 7.64. He had engaged in dog walking on the site for about 15 years, from 1976 when they moved in. His walks would be down to the area known as the Laggs, and then back up the main road. It was a long way round. To get to the Laggs he would typically go across the application site.
- 7.65. The bonfire after-party, after the main village bonfire on a different site, has been going on on this site virtually since he moved in. Football and cricket games on the application site were on the part of it behind peoples' houses. It was informal football, with coats for goal posts and the like. Children would also ride their bicycles on the site, and out into the next field or out via the gate onto the track. When he referred to the next field, that was the site that is sometimes called Site 6, or the field behind the club. All of that took place virtually from the time that he had moved in, until his children got motorbikes. His older boy had had a scrambler type bike from about the age of 15. He was not allowed to use it on the road then. That child had been born in 1963.
- 7.66. When he had referred to the building of snowmen on the site, that again was on the part of the site out at the back of the houses. However nowadays one does not tend to get the snow that there used to be.

- 7.67. As for his references to the one strand barbed wire fence on the field, when he and his family had moved in, he thought there was a post and barbed wire fence which started, at his estimation, somewhat more than 20 feet into the field, and then going across it. Mr Edgerton had to remove some barbed wire because it had snapped at the top end, and it would trap you if you ran through it. Mr de St Croix initially thought that that had happened in the early 1990s, after a black horse that had been on the site had been put down. On reflection although he was sure it had happened in the 1990s, he was not sure if it had been in the *early* 1990s. The horse had been put down on the site, near the garages. His wife had seen it; he had not because he was at work. That had happened before the barbed wire was taken away. There had been a gate there down by the garages. He could not remember any second gate further into the field. His recollection was that the black horse he had referred to had been there when they first moved into their house. He could not recollect a time when there were a lot of horses in the field. For example, the suggestion that there had been six horses in the field did not seem right to him. He thought there had been two other horses in the field, during the period since the black horse went from the site. There had been a very rudimentary field shelter in the field but it did not give much shelter. Two horses in the field was not a situation which had lasted for very long.
- 7.68. As for the reference he had made to a gate near the garages, that was the same one as is there now. He did not remember any new gates or fences being put in in the 1990s.
- 7.69. The access track to the field had been somewhat overgrown about 9 or 10 years ago. He personally had never really noticed it much, because he and his family came out of their own back gate, and many other people did the same. He did not think that very many people came down the path into the field.
- 7.70. He personally had never tried to buy any of this land, or spoken to anyone else who had done so. As for the garages, he did not know anyone else who had ever rented one of them.
- 7.71. *In re-examination* Mr de St Croix said he did not sign a formal lease on the garage he had rented. On the question of there being any horse or horses on the land between 1995 and 2015, he would not swear to it one way or another. As to the question of gates, there had not been any adequate kind of gate on the site in the period since 1995.
- 7.72. As for his reference to a fence on the site, it was never anything very high, and it did not stop access to any part of the land. There have always been lots of other people, as well as himself, using the land. Other people would come onto the land out of their own gates, and made their own paths through the land.

- 7.73. **Mr David Rauch** lives at 2 Martindale Place, Woodside Road, Chiddingfold. He has been the Treasurer of the Chiddingfold Bonfire Association since April 2000, and said that he was presenting their witness statement on behalf of that association, in support of the application.
- 7.74. After the main annual bonfire event in Chiddingfold, he and other members of the Bonfire Association who organise and run the event, together with other volunteers, families and friends, have their own celebration on Woodside Meadow. This post-event celebration has been happening for in excess of 10 years, during which time they have used the land as of right. At no stage had they faced any restrictions on access to or use of the land. They have had free, ungated and unfenced access. All of those who have attended this annual celebration over the years are residents of or have a close connection with Chiddingfold Parish and the local neighbourhood.
- 7.75. The bonfire party on the site would typically be attended by some 10 to 12 people. The main event in Chiddingfold has thousands of people attending it. Some of those at the after-bonfire party would be from Woodside Road, or from Skinners Lane or High Street Green. They would all be local people.
- 7.76. Access to the land could be via the track leading to the garages, or through a member's garden if it backs onto the site. This event is always in the evening, so one does not see other people there.
- 7.77. He himself had been in Chiddingfold since December 1999. He is aware of local residents walking their dogs on this land. He himself does not walk dogs there, but his dogs sometimes go onto the land. He goes through the track to the path in the field to the east. He would occasionally go onto the application land after his dogs though.
- 7.78. *In cross-examination* Mr Rauch confirmed his position as Treasurer of the Bonfire Association since April 2000. The after party on the application site is an annual event. They build another fire there, and take beer, wine and food and sit down and chill out. The people involved in that after party are from what he regards as the neighbourhood. The access used to get onto the land depends on who is there, and the numbers there depend on the weather as well. 10 to 15 is the true number of people there for most of the times he has been involved. It is those people who help out with the main event.
- 7.79. The application land is ungated and unfenced. He could not remember seeing a gate at any time on the application site.
- 7.80. He had not seen any barbed wire fencing on the land near the entrance. However it is always pitch dark when he goes onto the site. Sometimes they go onto the edge part of the site (near the houses) for the after parties; that depended on where they

- built their bonfire. They usually sit down around the bonfire because it is dark and often cold.
- 7.81. ‘Site 6’, not the application site, is the prime area where he walks his dogs on other occasions.
- 7.82. He did not recall seeing any horses in the application site field. As for the access track, it has always been possible to drive cars down there, so he would not say he had ever seen it particularly overgrown. Cars can be driven down there, and there is a house which is accessed via that track, he believed. He has been aware of those garages being there, during the whole time he has been in the village.
- 7.83. *In re-examination* he said that of the 12 to 15 people attending the bonfire after party, some of them would be the same people every year, and others less regular because of other commitments. They always tend to be people from Chiddingfold, many of them from parts of Chiddingfold quite close to the site.
- 7.84. **Mr William Creswell** used to live at 2 Oakleigh Cottages, Woodside Road, Chiddingfold, between 1997 and May 2010. He had lived there with his wife and two young daughters. Since May 2010 he had lived in High Street Green, a hamlet within the Parish of Chiddingfold about one mile to the east-south-east of the village.
- 7.85. His previous property in Oakleigh Cottages had a gate at the end of the garden that gave access to the meadow beyond (the application site). When they moved in it appeared that the meadow was not in agricultural use. It was rough grass, with many tussocks and clumps of brambles. Following discussion with his neighbours it became clear that there had been free access to the land for many years previously. The land was obviously being used by the majority of the occupants of the adjoining cottages, as a recreational space and an open extension to their gardens. Several of his neighbours had created small vegetable plots adjacent to their properties. There was also a well-worn path that passed behind all of the cottages to a series of dilapidated garages in the corner of the meadow, and a stone-surfaced track that ran around the end of the cottages to Woodside Road.
- 7.86. When they moved into 2 Oakleigh Cottages, the area immediately to the rear of their property was very overgrown with brambles, nettles and wild raspberries. He cleared the land of the undergrowth using a mechanical cultivator, and sowed grass seed to make a lawn area for his daughters to play on, as an extension of their garden, but retained their original boundary fence. He mowed that grass every week during the summer months. In subsequent years he had erected a children’s swing, a climbing frame and a trampoline on that area, on which his daughters and their friends and neighbours children played almost every day. At some point he also dug a small vegetable plot and successfully grew potatoes, courgettes, butternut squash and French beans there.

- 7.87. During the summer months they often played with their children in the meadow, went blackberry picking, and had picnics and parties there with friends and neighbours. The meadow was used as a communal meeting point for neighbours to meet, chat and exchange the usual gossip of village life. In the winter he would cut firewood there, and had snowball fights with his children and neighbours.
- 7.88. He had been unaware who owned the land, but shortly after they moved in a neighbour told him that he had managed to discover who owned the garages at the corner of the meadow, and had negotiated the rental of one of them. He, Mr Creswell, had followed suit and rented a small and very dilapidated garage, to which he had to do some repairs to make it secure. Having done that he used it to store gardening and camping equipment, bicycles etc., and made regular use of the path behind the cottages and the access track to Woodside Road. Many of his neighbours also made regular use of that route to gain access to the meadow and the rear of their properties.
- 7.89. He had been involved for many years as a marshal for the historic Chiddingfold bonfire in November. It has become common practice over the last 15 years or so for the bonfire committee and marshals to gather in the Woodside Road meadow after finishing their duties at the main event. A small bonfire was lit in the meadow, and people gather around this. Food is served, and they reflect on the evening's successes. Although he moved away from Woodside Road in 2010, he still attends the marshals' gathering in the meadow every November.
- 7.90. While they lived at 2 Oakleigh Cottages, the meadow was used by many people for recreation and leisure activities, particularly young children who had unrestricted freedom within a safe boundary to enable them to explore the countryside, build camps, fly kites, ride bicycles, play other games etc. That had enhanced his own children's development, and the same must be true for many others. Throughout the time they lived on Woodside Road they were never prevented from having free access to the main meadow, and there was never any question in his mind that such access was a longstanding and common practice by neighbours, previous residents and the local community. They were never given permission to use the land, and they never sought it either.
- 7.91. Access to the land for residents of Woodside Road would be from their rear gardens; practically every house had a way of accessing the land like this. Or the land could be accessed down the track by the side of the cottages, or from the fields at the back.
- 7.92. Dog walkers used to roam freely over the land. Children including his own and their friends used the entirety of the field on a daily basis. They would roam freely, and it was a very valuable resource for them. They would build camps around the edges of the land, and there was a tree house at the far end. Blackberry picking would be in the margins of the field. His own access point during the period when he lived there was mainly through his own property. Since then he

had driven to the land by car and parked adjacent to where the garages are. He could not remember any gate onto the site, nor any fence on the land.

- 7.93. *In cross-examination* Mr Creswell said that when he moved into his adjacent property in July 1997, he had cleared overgrown vegetation from the area at the back of his house. He had effectively created an extension of his garden, very similar to what others had done near to him. On that area he had placed a swing, a trampoline etc., and had dug his vegetable plot.
- 7.94. He had rented one of the garages, towards the end of the time he lived there. It was for a number of years, perhaps three or four years, before he moved away. When he had the garage he quite often drove to it, because he used it for domestic storage. He did not keep his car there however. He was not able to say how many other people rented those garages.
- 7.95. The tree house he had referred to was in the north-eastern part of the site, and was indeed up in a tree.
- 7.96. He had seen dogs which were off their leads running around in the field. These were not stray dogs; there were people in the field walking with their dogs. The whole general area is walked regularly and extensively by the public. Individual people do not tend to stay on the paths, but roam freely.
- 7.97. No horses had been kept in the field while he lived in Woodside Road, and nor was he ever aware of any barbed wire fence on the land. He did not recall a gate of any sort into the field. There was free access for his car to get to the garages. In the period between 1997 and 2010 he had worked in London, and commuted by train from Witley station. He worked Mondays to Fridays, and would typically catch a train at about 7.45am and get back home at about 6.30 or 7.00pm or later. However sometimes he worked from home.
- 7.98. The bonfire after-party was not something that was put on just for Woodside Road residents alone. The people who came to that were from across the locality of Chiddingfold.
- 7.99. He thought he may have found out about the existence of the garages shortly after moving in, but he did not recall how long it was after that before he started renting a garage. It was in the last few years of his residence that he had had use of one of the garages.
- 7.100. He himself is not a dog walker, but he regularly walked around the village with his children, as a family activity.

- 7.101. *In re-examination* Mr Creswell said that he did not recall ever having signed a formal lease for one of the garages.
- 7.102. **Mr Ben Fielden** has lived at Keneen, Woodside Road since 1975. He lives adjacent to the un-made-up road which leads from Woodside Road to the meadow (the application site), and also to the field behind Wildwood Close.
- 7.103. He gains access to the meadow via that un-made-up road leading to the garages, and also through the gap and paths through the trees bordering the meadow. He has always felt free, and nowadays feels he has a right, to be on the meadow, as there have never appeared to be any rights of way involved. He has always presumed that the field must be owned by someone, but he has never been prevented from entering the field by fencing, gates or notices prohibiting entry. Nor has he been refused or given permission to be on the field.
- 7.104. When his children were young they would quite often be out ‘mucking about’ on the field with other local children. Since the time of his own children, there has been a steady stream of children using the meadow for playing. Where parts of the meadow have been tamed into mown grass, children and parents are often seen using the area for ball games and other various activities ranging across the whole area. This happened regularly in summer, less so in winter. Some parts of the meadow have also been used for cultivation, and some small areas have previously been used for livestock. The meadow had been used by him himself for bonfires and blackberrying for many years.
- 7.105. With all those activities going on over such a long period of time without anyone objecting, it would be a pity and a considerable loss if this local amenity were no longer to be usable.
- 7.106. Children need land to play on. On the whole, it was the part nearest to where he and his family lived that the children used to play on, until they were aged about 5 or 6. After that they used to roam further into the wilder parts, for example to play hide and seek. A lot of children used the land from the houses bordering the field, and their friends would come from other parts of the village as well. He personally does not have a view of the field from his own house. However one does see people wandering in the field generally. They are often people from the houses backing onto the land. But in the case of a lot of the people he does not know who they are. They would access down the side of where he lives.
- 7.107. He does not recollect any fencing on the land at all, apart from one tiny bit of fending near the garages. Nor has there ever been a gate. There were horses on the land, he thought, about 35 years ago. They were there for about one year or so. More recently there might have been the odd occasion of a horse being on the land.

- 7.108. *In cross-examination* Mr Fielden said that he had filled in one of the original evidence forms lodged with the Application. He moved to his house Keneen in 1973, he thought, not 1975 as he had said previously. He had had to ring his ex-wife to find that out. He has his own garage at the very end of his garden, which is accessed by the track alongside his house. As well as the activities on the application site which he had mentioned in his questionnaire (blackberrying, lighting a rubbish bonfire, and talking to his neighbours) he also used to walk his own dog, and his children walked the dog too. Back in 1973 his children had been aged 5 and 7. Those children stayed at home until they were aged 18 or so.
- 7.109. When in his questionnaire he had said that there were chicken runs on the land, they were on the part near the backs of the houses. His reference to gardening taking place on the land referred to people who had raised beds on the application site, and the like. The horse riding which he had said he had seen was a long time ago. He thought that two cart horses had been kept on the land. Those horses were used for dressage, and on this site they were used for practice for that. That must have been about 30 years ago, and it did not take place over a long period. It occurred for about two years, i.e. over two summers. The land on the site is actually quite boggy, and those cart horses churned it up at the time when they were using it. There was a field shelter in the meadow, which he thought was still there although it was in poor condition. He was not sure if that had been there before the cart horses; indeed it was possible that it was originally for them. He himself had no memory of the apparent incident of a horse being put down on the land. There had been no other horses on the field to his knowledge, other than the ones he had mentioned.
- 7.110. He does not have much of a view of the meadow from his house, even from his upstairs windows. The site drops away a bit, and can get quite boggy. He could not remember a time when there were about 6 horses on the site. The people who he had seen riding the cart horses were adults, not children.
- 7.111. The blackberrying on the site which he had referred to was around the edges of the field. For him, the best part for blackberrying was just round by the garages. If they were poor there then he would move on further, but he did not usually need to.
- 7.112. He had never seen a barbed wire fence in the field, properly in position. He did remember seeing some barbed wire on the ground, years and years ago. However he has not tripped over it for years. 35 years or so ago he did recall tripping over some barbed wire on the ground. He thought it had rotted away from old age about 30 or so years ago.
- 7.113. As far as he was aware, that fence had had no relation to the presence of the horses on the field which he had referred to. He had no recollection of ever seeing a gate to the field at all. He had no recollection of ever being stopped by a gate or a fence. Likewise he had no recollection of a gate or fence ever being repaired. There was certainly no gate or fence there now.

- 7.114. His next-door-neighbour has his own garage as well, and there is another garage which goes with the third house up from him.
- 7.115. He acknowledged that there seems to be one garage or shed actually within the application site, behind one of the houses in Oak Villas. It is made of wood, he thinks.
- 7.116. As for his dog walking on the land, he knows the area which has been referred to as the Laggs, and also is familiar with the field behind the Club. There is a popular path through that latter field. In his days of dog walking, he went across the field by the Club and then would turn right through to the Winterton Arms, then cross the main road and carry on further. There is an almost infinite variety of walks available in the locality. Dog walking stopped for him about 20 years ago. In order to go dog walking, they would go out either from the front or the back of his property, according to the destination. Where they would go would depend on the time available.
- 7.117. The horse riding in the field was so long ago that he did not mention it in his new statement. Mrs Cowley had given him the impression that he should place more emphasis in his statement on what had happened from about 1990 onwards. His bonfires for burning garden rubbish had only been about once or twice a year at most. He would do that very close to the garages at his end of the meadow. It would be within the red line of the application site, but close to the garages.
- 7.118. His own full time work stopped about 8 or 9 years ago. Prior to that he had worked in Godalming, to which he normally went on his bicycle. Nowadays he does still work part-time but on a casual basis. His full time work had been from a Tuesday to a Saturday in a typical week.
- 7.119. *In re-examination* Mr Fielden said that in the period from 1995 onwards there had been no fences on the land, nor gates nor horses, as far as he could recall. His dog walking, when he had done it, had included walking on the field in question.
- 7.120. **Mrs Sarb Dhaliwal** lives at 3 Mortimore Villas, Woodside Road, Chiddingfold. She and her husband moved into their property in Woodside Road with their young daughter in January 1996, and they have continued to live there for 21 years, along with their second child.
- 7.121. When they first moved in they noticed many of the neighbours' children playing in Woodside Meadow, and her daughter asked if she could play there too. She was aged 3 at the time. On speaking to some of the neighbours, she had understood that they had made use of Woodside Meadow for many years, without any permission or restriction. One neighbour said she had been using it for 30 years without any problems or complaints. Mrs Dhaliwal therefore allowed her daughter also to play in the fields, along with her friends and neighbours.

- 7.122. Her daughter would take her bike into Woodside Meadow, along with her two friends from next door and other friends, and they would spend hours playing in the fields. Her younger daughter (who is now 14) had also spent many years playing in Woodside Meadow (and continues to do so), doing things like climbing trees along with her cousins during most school holidays. In fact when Mrs Dhaliwal's young niece from London was asked a few years ago why she loved coming to Chiddingfold, she answered that she loved playing in the fields at the back of their garden, which reminded her of the story '*The Secret Garden*'.
- 7.123. Mrs Dhaliwal has never seen any fencing or locked gates which prevent people from entering Woodside Meadow, or any signage prohibiting trespassers. A garden gate at the end of their garden gave them direct access to the meadow, so she allowed her children to play there over the 20 years in question, along with neighbourhood children and the cousins who visit regularly. Over the years she has seen this use of Woodside Meadow increase, both in terms of the number of users and the variety of usage. Neighbours mow the grass outside their gardens, people walk dogs, children play on swings and slides and even a trampoline, or with an archery set, or table tennis equipment being set up. She has seen tree houses being built, and children including her own climbing trees, people growing vegetables and extending their gardens with fencing, a chicken hutch being built, with chickens living there, and many more things. She has also seen people walking their dogs.
- 7.124. Thus she and her family have been using Woodside Meadow as of right for over 20 years, and at no time has she been prohibited or barred from using it. Nor has she been given permission by the landowners or any of their agents. She has never been challenged at any time. There have been no signs, locked gates or fences preventing access.
- 7.125. When he daughter went onto the field on her bike, when she was little she stayed close to the house but when she was older she was allowed to go right to the back of the field. The tree house she had referred to was towards the back of the site, and her daughter played in the trees towards the northern corner of the field. Other children from the village came and played with her and her friends there as well. She had also seen people come into the field through the gaps in the hedge.
- 7.126. *In cross-examination* Mrs Dhaliwal said that she had moved in in 1996. Part of the property they moved into had been divided off and sold off. They accessed the field from the gate at the back. The access went straight out into the field. There is a strip at the back of people's gardens which is used by people and mowed etc. That is the area which people mainly use for their activities.
- 7.127. The dens that children built, however, were in the tree and hedge line around the edge of the field. Her daughter's friend (who was one of the neighbours) had a dog; her daughter would go with them for walks with the dog. Mrs Dhaliwal did

not personally know the name “*The Laggs*”. She has not been to any meetings about the Neighbourhood Plan.

- 7.128. She does know what is known as the ‘field behind the Club’. She herself has been up there. That is the route that her daughter would go with her friends on their bikes. The friends would come and fetch her daughter, and off they would go. She did not need to watch exactly where he daughter went, because she was in a group.
- 7.129. She sometimes gets home from work at about 8pm, and leaves at 8 in the morning, Mondays to Fridays. She has to drive to her work, just this side of Guildford. Originally the property where they lived was a shop; then it stopped being a shop. She has been in her present job since 2009; prior to that she worked in Farnham on a 9am to 5pm basis, from about 2001.
- 7.130. She did not recall seeing any horses on the site. She had never seen any fences or barbed wire there. She and her family have never rented a garage, although she does know someone who has rented one. That was a local resident. She has never seen gates on the site. When she had referred to sitting out with drinks or nibbles on the land, that would be in the area right at the back of the properties. She herself does not use the access track to get onto the land. She had never spoken with anyone about buying parcels of land here. She and her family have had bonfires out on what could be called the ‘back garden’ part of this land, burning garden rubbish. This would have been about once or twice a year.
- 7.131. *In re-examination* Mrs Dhaliwal said that the dog walking she had described did take place on the site as well as other land; the same also applied to the bicycle riding which she had described.
- 7.132. ***Councillor Miss Christine Tebbot*** also gave oral evidence in support of the application, although she was not called by the Applicant Mrs Cowley.
- 7.133. Miss Tebbot has lived at Okelands Cottage, Pickhurst Road, Chiddingfold since moving here in October 1993 at the age of 39. She has served as a Parish Councillor since 1999, was Chairman of the Council for a period of four years, and is at present Chair of the Neighbourhood Plan Steering Group.
- 7.134. Chiddingfold Parish Council supports the application for Woodside Meadow to be registered as a village green. For many years the Parish Council has recognised the need for additional outdoor recreational space in the village to serve the needs of the residents. The public recreational space in the village falls far short of the nationally recognised National Playing Fields Association standard of 2.4 hectares per 1,000 population, and the Council has long looked for ways in which that might be increased. That is especially important as the 2011 census showed that the proportion of children aged under 18 in Chiddingfold is higher than in the Borough of Waverley or in the South East Region as a whole.

- 7.135. The area known as the main village green of Chiddingfold, while it is a public open space, is neither safely accessible nor of a suitable size and nature to use for sport, active recreation or children's play. It is bisected by the busy A283 road, which makes it totally unsuitable. The annual village bonfire, which has been taking place on that green for 169 years, is only possible because the road is closed for the time the event takes place.
- 7.136. The historic centre of Chiddingfold around the green, with many historic buildings, is what most outsiders see when they pass through the village. However the vast majority of the housing stock has been built west of the A283, along Woodside and Ridgley Roads, and in the estates which lie off those roads. Many young families live in these roads, and can safely access the land at Woodside Meadow for informal recreation. They have done that over several generations, and continue to do so.
- 7.137. Chiddingfold is fortunate to have a strong and stable community. Many residents were born and have lived their whole lives here, and from Parish surveys it is known that one third of residents have lived in the village for over 20 years. The use of Woodside Meadow as an informal recreation space by local families is well known throughout the village, and many residents regularly walk through the land and the adjoining field behind Wildwood Close.
- 7.138. Paths across these two fields connect to the wider public footpath network, which is one of the most extensive of any parish in Surrey. Miss Tebbot herself is an active walker, and often walks along footpath 211 from the Winterton Arms past the Laggs, cutting back to Woodside Road through the Club land or Woodside Meadow itself. She frequently meets other walkers, and sees children playing in Woodside Meadow. Access to the meadow throughout the time she has lived in the village has been open and unrestricted, without fencing or gates, either from the track by Wildwood Close, or from the path at the northern end of the field. The land has been neglected for many years, except for the areas closest to the houses in Woodside Road, where local residents have undertaken maintenance.
- 7.139. As part of the Neighbourhood Planning process, several public consultations have been undertaken when residents have been asked for their views on a number of topics including sport and recreation. 77% of respondents supported an application for village green status at Woodside Meadow.
- 7.140. *In cross-examination* Miss Tebbot said that the Parish Council itself has submitted written evidence. She herself had spoken in her personal capacity, and as Chair of the Neighbourhood Plan Steering Group. The steering group resolved in May 2017 to ask the question referred to at the end of her proof (about being in support of the village green application). She herself is involved in planning matters for the Parish Council.

- 7.141. She accepted that the National Playing Fields Association had ceased to exist in 2008. Since then its name had been changed.
- 7.142. In the context of the proposed Neighbourhood Plan, a number of sites are being consulted on for potential residential development. Site 5 is the present application site. Site 6 is the land just to the east which is also known as the land behind the Club. Site 7 is another site further to the east. At present the Neighbourhood Plan is in draft, which is due to go out to consultation in early 2018. The questionnaire which had been sent out in connection with the Neighbourhood Plan is available on the Parish Council's website. The consultation which she had referred to had taken place in the village hall. Notification of it went to every house in the Parish. The responses she had referred to had been from those attending the meeting, or those who had completed an on-line response that was also possible.
- 7.143. Walking is extremely popular in Chiddingfold. This includes people who come in from outside to walk around the village. She in fact came to this village because she is a very keen walker. One of the very first things she did on arrival was to walk all the public paths in the Parish, which she found very enjoyable. She does not own a dog.
- 7.144. Access to the field has been unrestricted, with no fences and no gates. She has never seen horses on the site in the period since 1993. She did not think that would have been either likely or possible, because there has been no stock-proof fencing. She had never seen any barbed wire fence on the land at all. She had never heard of the apparent incident where a horse was put down on the land. She had never seen a gate on the site.
- 7.145. She understood that Chiddingfold Parish Council had resolved to support the village green application. She however was not speaking at the Inquiry on behalf of Chiddingfold Parish Council. The Parish Council had made its own written submissions in July 2016.
- 7.146. The Applicant Mrs Cowley had not asked her to make a witness statement, although she had offered to do so. She had wished to speak at the Inquiry because some reference had been made to the Neighbourhood Plan, a matter which she is particularly concerned about.
- 7.147. For reasons which I have discussed earlier, I am not generally summarising here in my Report the detail of written statements, completed questionnaires and the like, lodged in writing in support of the application, provided by witnesses who have not come to give oral evidence. However it is appropriate that I should note specifically that a comment on the application was received by the Registration Authority from *Chiddingfold Parish Council*. In an email on behalf of the Parish Council dated 26th July 2016 the information was given that at its meeting on 14th July 2016 the Parish Council had resolved to support the current application. It was stated (without further detail) that the Parish Council is aware that this land

has been widely used by the community as a walking and recreation area for at least the last 20 years.

8. THE SUBMISSIONS FOR THE APPLICANTS

- 8.1. I shall not repeat here the justification originally given for the application at the time of its submission, as the points referred to in it have in general terms been dealt with more fully in the context of the subsequent Inquiry.
- 8.2. However a very full response was provided by the Applicants to the initial objection made on behalf of the landowners, and it is appropriate that I should summarise its main points here. It was clarified that the relevant locality for the purpose of the application was intended to be the Parish of Chiddingfold, but the neighbourhood was intended to be a smaller area which is proportionate to the size and scale of the claimed land. Considerable detail was provided as to the jurisprudence to be found in the various judicial decisions that there have been on the questions of localities and neighbourhoods.
- 8.3. As to the suggestion that users of the claimed land have been overwhelmingly present and past residents of Woodside Road in particular, it is natural that those people should be giving evidence, because they have key information regarding the historical use of the claimed land, stretching back in some cases over 50 years. Their evidence therefore is crucial to proving continual use of the claimed land as of right for more than 20 years. In fact the results of an email survey which was carried out show that people using the land come from a good selection of locations within the neighbourhood and locality.
- 8.4. It is true that some people have stated that they have accessed the land in question directly from the rear of their own properties. However there is an access way on the eastern border of the claim land, leading to a footpath which gives the wider public access to the land, and has done throughout the whole of the relevant period. All of these users have accessed the land without force, secrecy or permission.
- 8.5. As for the point that use by a significant number of the inhabitants must be shown, it is clear from judicial decisions that this does not mean any particular proportion of the inhabitants, or in particular any very high proportion of the inhabitants. What matters is that the number of people using the land has to be sufficient to indicate that there is general use by the local community, rather than occasional use by individuals as trespassers. That test is passed by the evidence in this case. There had been objection on the basis that there was no available route for public access to the land in question. Yet the evidence shows that access points and routes to the land have been in use for as long as the claim land has been used by the local community. In those circumstances the lack of access directly from an already recorded public right of way does not prejudice the potential success of a town or village green application. The Parish Council also agrees with and

- acknowledges the historical use of the access track leading to the application site. That track has never been gated at its entrance point. Nor have there been any signs prohibiting access.
- 8.6. Such evidence as there may be of permissions given to particular individuals to use parts of the land does not indicate that permission was ever given to the local community generally to use this land. Any such permission needs to be communicated down to all the users of a piece of land, and in this case there was no such communication at all. There is no kind of underlying permissive relationship between the landowners and local people generally in this case. Even if there may have been permissions given by the landowners to some people, for matters like grazing horses, and if some of that may have taken place during the relevant 20 year period, that is irrelevant to the present application.
- 8.7. Suggestions that the whole of the land was not used for lawful sports and pastimes are wrong, and do not show understanding of the position as a matter of law. The law does not expect every single person to have used every square inch of land during the 20 year period relevant to an application.
- 8.8. The question of encroachment onto the southern part of the application land by the owners of the adjacent properties to the south is not relevant to the town or village green application. The evidence provided in support of the application proves that the claim land has been used for lawful sports and pastimes as of right by the local inhabitants for at least the last 20 years and beyond.
- 8.9. In opening the case for the application to the Inquiry, it was mentioned that 43 individual witness statements had been lodged in support of the application, together with 3 statements from local community groups, 17 selected email survey statements, and a letter of support and evidence of use from the Chiddingfold Parish Council, together with maps and photographs. All of that evidence was in accordance with the criteria of *Section 15* of the *Commons Act 2006*. The evidence proves that the statutory criteria are met in this case.
- 8.10. The evidence supporting the application proves a pattern of use of the land over more than 50 years, which has created an established place for recreation by and for the inhabitants of the community. This is a well-used piece of land.
- 8.11. As for the identification of the locality and neighbourhood relevant to this application, the locality or administrative area which is relevant is Chiddingfold Parish. The neighbourhood within that locality is the area which had been marked on the relevant plan. Within that neighbourhood there reside the majority of the users of the land, who constitute the local community. A map had been produced showing where selected known users, who had given evidence accompanying the application, came from. It is clear that those users are people and families from the claimed neighbourhood.

- 8.12. The boundaries of the application land had been very slightly altered to reflect the fact that a shed had been erected on a very small part of it. That was the only instance of structures on the land which would inhibit the use of the land in full. Other than that the land had always been fully usable.
- 8.13. There is no evidence of grazing livestock or effective fences or gates from within the relevant 20 year period. The evidence supports the view that the local community have used the land for lawful sports and pastimes for the whole relevant period. Indeed community members have taken it upon themselves for more than the required 20 year period to maintain the land, keeping areas mown for games, and desire lines kept open and mown. That has maintained access to popular sites around the land, such as children's dens, fruiting trees and bushes, areas of wild flowers and diversity. Groups such as the local Scouts and village nursery have used the land for recreational purposes, and organisations such as the bonfire committee have gathered to socialise and celebrate.
- 8.14. Those sports and pastimes have always been community-focused and lawful. No-one had been excluded from access. This is a piece of land which allows the community to come together in ways they otherwise could not.
- 8.15. Access to the land has been by a variety of routes. There are multiple gaps in hedges, and along bordering paths and the access track, as well as through the gardens of the Woodside Road houses. Witness statements prove that this has been so for well in excess of the relevant 20 year period. An application for the registering of a public footpath leading to the site has in fact been submitted to Surrey County Council, with supporting evidence. That relates to the track running from Woodside Road, next to Wildwood Close, then across the adjoining field and on towards Footpath 211.
- 8.16. In relation to the question of the identification of the relevant neighbourhood, and whether it can be shown that a significant number of the relevant inhabitants have used the land, it was argued that use by people from the claimed neighbourhood could logically be subdivided into three different categories, who have all used the land in somewhat different ways. Firstly there are the inhabitants who use the land on a daily and regular basis, who in general are the people who are concentrated around the Woodside Road area, and in particular those whose properties back onto the land. The availability of this land is part of what gives the area a great sense of community. The second category of user would be those from the neighbourhood who use it occasionally. Evidence in relation to them can be found in the material which had been lodged. These are people who know the land of the application site is available to them, and use it from time to time, being aware that they can do so. Then there is a third category of groups and organisations representing the wider community within the village. These people also know about the availability of the land, and use it. They might be from families spread out to all the boundaries of the neighbourhood (which is the built up area of the village of Chiddingfold). The evidence in relation to these three categories of users amply

justifies the view that there is general use by the local community for informal recreation, as was stipulated in the well-known *McAlpine* case.

- 8.17. It was noted that the Objectors had made reference to some aerial photographs of the land. However these aerial photographs could in reality only distinguish between the area of mown grass and other areas. They could not really show what areas of land were used by local people, in the way that one can understand when one is actually on the ground. Reference was made to the well-known *Trap Grounds* case, *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25. That case clearly established that it is not necessary to show that every inch of the surface of a piece of rough and scrubby ground has specifically been used by local inhabitants.
- 8.18. It is cynical and misleading on the part of the Objectors to claim that because the local community has recently acquired a more powerful and more efficient mower, this is an attempt to make the land look more used, for the purpose of the application. That misunderstands the reality of what happened on the ground and what happens in real life. The truth was that a local resident had provided the meadow with a more powerful and efficient mower, which could traverse terrain which the original communal mower could not. It clears more efficiently, and creates better defined pathways.
- 8.19. It was noted that the Objectors had made considerable reference to permissions and licences being granted in respect of the land in the past. However the majority of the apparent evidence from the Objectors about this dated from well outside the qualifying period, i.e. in a period much earlier than 1995. Similarly the planning history presented by the Objectors is irrelevant. The landowners had in fact attempted to put some fencing up in 2015, but stopped when opposition was raised. That rather suggested that the landowners accepted the Applicant's position about this land, i.e. that local people had established a right to use it. The landowners have for many years neglected to secure the site sufficiently to deter use by the community. Widely established use has embedded itself on the land. This is not an adverse possession claim on behalf of individual neighbours to the land, but a claim in respect of the whole land on behalf of the local community as a whole.
- 8.20. No evidence had been provided suggesting the closing or securing of any part of the land by gates more recently than 1993. That is outside the relevant time period. The witness evidence is clear that there has been no relevant fencing or gates preventing access on the land within the relevant 20 year period.
- 8.21. In *closing submissions* it was argued that the Appellants' evidence had clearly shown that the criteria in *Section 15* of the *Commons Act 2006* had been met. The use by local people has been continuous, regardless of any purported permissions, whether those were accepted or denied. The oral witnesses had supplied overwhelming and unchallenged evidence of use by themselves and the local community. Their observations were wide ranging in the periods of time they covered, the type of user they represented, and the variety of uses that were made

of the land, not only by themselves and their families but also by others. They had proved that the land was freely accessible without hindrance and without force or secrecy. Even when a fence had existed prior to the relevant period, it was an irrelevance to their use of the land. Even the Objectors' witness Mr Faux had explained the ways in which he had walked around the site, using routes that others did, and had no need for a key.

- 8.22. The evidence of the Objectors' witness had done nothing to dispute the evidence of the Applicants' witnesses. Mr Faux had acknowledged the continued use of the land in the qualifying period by the local community, despite suggesting that it was a trespass which had upset him. His own level of attendance, and his own experience of the site, had been extremely limited. His short, inadequate visits were not a fair sample of the use of the land, when placed against a collection of individuals who live locally, and in some cases had done so for their whole lives, and visit the site frequently if not daily.
- 8.23. That unfamiliarity with what was happening on site meant that Mr Faux knew very little about the state and layout of the site, or the impact the community had on it over the relevant time period. His details about the physical state of the land were inconsistent and incomplete. He had been aware of uses on the land such as mowing, keeping ducks, and the paths, but he did nothing to prevent the land's continued use, such as displaying signage or erecting fencing or gates. His lack of attention to the site during his time as part owner, and lack of any action to prevent the established use of the land by the community, show an ambivalence towards the use and state of the land. This continued until a window of opportunity for potential development on the land triggered him into taking some action.
- 8.24. Mr Faux himself had acknowledged that he had had experience of a village green application elsewhere, so he should have been aware of how issues could arise in relation to the present application site.
- 8.25. None of those who had given evidence about using the land had ever sought or been given permission to use it. People were drawn there to use it as a community asset because of its availability.
- 8.26. The line shown running east-west across part of the site on large scale Ordnance Survey maps was an anomaly which represents the previous existence of a path along that line. It was not the Applicants' view that the line thus shown represented some kind of fence line.
- 8.27. The fact that the Objectors might lose financially, should the current application be successful, is not relevant. Retention of this site as a town or village green would be to the great advantage and benefit of the community of Chiddingfold.

- 8.28. The neighbourhood of Chiddingfold village, or the built-up area of the village, is clearly cohesive enough to represent the kind of neighbourhood that could be recognised in law for the purpose of the *Commons Act*. The visits to the site by the local nursery school, and in connection with the after-bonfire party, were at least in part within the relevant period for the purposes of the application.
- 8.29. Even if there had been a fence partly across the site, when it existed it was not sufficient to inhibit use of the land by local people. There was no evidence which told us what the state of that fence had been at the beginning of the period.
- 8.30. The Appellants dispute the argument that virtually all activities had taken place on the mown area near to the back of the houses in Woodside Road.
- 8.31. Individual witnesses are not each required to have had a knowledge of the whole of the site, or knowledge of the site over the whole 20 year period. It is sufficient to rely on the collective effect of the totality of the evidence.
- 8.32. As to the Objectors' argument that in reality the use of most of this site had just been 'point to point' use of paths across the land, this is not accepted. Undoubtedly there are paths on the land which serve as access for the community to the land itself, and to other land, but this does not mean that there was not extensive use of the land of the kind that is relevant for a claim under *Section 15* of the *Commons Act*.
- 8.33. The evidence about horses on the land had been somewhat confusing. Mr Fielden had referred to tethered horses on the land some time ago. That rather tallied with something which had been said by Mrs Peacock (in a written statement) about horses being dumped on the land by travellers at one time. The Applicants were surprised to hear the Objectors suggest that people who had working lives, during normal working hours, could not provide persuasive evidence in relation to use of the land. Even people who work have free time, and weekends, and many of them have flexi-hours; many of them also have friends and family who use the land while particular individuals are working.
- 8.34. The Objectors had concentrated much of their argument on what had gone on on the mown area of the land, suggesting that that was the only area which had been used. However the evidence had proved otherwise. The fact that no-one (other than the site visit party itself) had been on the site during the official site visit was not relevant to the case to be considered here.
- 8.35. In answer to the late submission of evidence (after the Inquiry) by the Objectors (consisting of a short statement and some photographs provided by one of the owners of the land, Dr A P Matthews, who lives in South Africa), the Applicants made the following points (in summary): the Objectors' excuse for not having provided this evidence earlier was unsatisfactory. How could a landowner say that

he did not realise that the 1995 – 2015 period was relevant, when the Inspector's Directions circulated to the parties had clearly indicated that evidence of use during that period was exactly what needed to be examined? It was therefore argued that this late evidence and the accompanying submission should be rejected. [I have already indicated earlier in this report that I did not accept this submission, and allowed the material provided by Dr Matthews to be considered].

- 8.36. On the basis that the material from Dr Matthews was being considered, it was suggested that the photographs he had provided show nothing more than incomplete lines of a few poles, and there was no indication of any wire between them. There are clearly poles missing, leaving gaps in the line of the supposed fence, so the poles would not have been capable of supporting a wire in so derelict a state. It is clear that they had been derelict and had no maintenance for many many years. It is disingenuous to suggest that the photos clearly demonstrate a post and wire fence. They do not.
- 8.37. The broken line of poles simply terminates mid-way across the meadow, and even without the gaps would not constitute a barrier to entry of any sort. It does not form a continuous boundary around any area.
- 8.38. There is no supporting evidence for the date of these photographs, and no details are provided of the unnamed friend of Dr Matthews who was said to have taken them. Dr Matthews had claimed that from the garages the field was too overgrown to go anywhere. The Applicants would say that this was certainly inaccurate, as at all times there has been free and clear access from the back of the houses to the garages.
- 8.39. A photograph was provided by Mrs Cowley for the Applicants, taken on 23rd July 2004, which clearly showed the pathway from the mown area leading across the back of the gardens down to the garages. The mower used to mow this area was stored in one of the garages rented from Mr Faux from 2002, so continuous access was a necessity from then on, but was in fact the case from as far back as any local residents can remember.
- 8.40. Dr Matthews had commented that there were brambles or bushes near to the garages. The photographs he produced were taken to the north of the only garage that stands on its own, and the presence of brambles there, as is still the case today, does not preclude free access to or through the meadow.
- 8.41. Nothing in Dr Matthews's photographs is inconsistent with any of the information or evidence provided by the Applicants, and the condition of the meadow in those photographs is not inconsistent with the condition of countless other areas of land with common or village green status. It is important to remember that this is not an adverse possession case, and there is no dispute that the land is owned by the Objectors. Rather the situation is simply that the land has been continuously used as of right for the statutory purposes for the prescribed period, and no prevention

notice was registered by the owners. Therefore nothing included within the late submission of material by Dr Matthews had altered the evidence of use put forward on behalf of the Applicants.

9. THE CASE FOR THE OBJECTORS – EVIDENCE

- 9.1. The original objection, made on behalf of the joint landowners of the site, was accompanied by a considerable volume of evidential material. Much of this consisted of past correspondence and accompanying documentation in relation to the history of the site. The most relevant parts of this correspondence and documentation were brought up and referred to quite extensively during the course of the Inquiry. Indeed part of the purpose of holding an Inquiry in the first place was in order for the most relevant pieces of evidence to be identified by the parties and concentrated upon. Accordingly it is not necessary or appropriate for me at this point to seek to summarise that initial collection of correspondence and documentation, although of course reference will be made to the most significant parts of it as I consider the evidence which was given at the Inquiry itself.
- 9.2. It is however worth noting at this stage that one of the documents which accompanied the original objection was what was stated to be a brief account of the chronological order of events which had happened in relation to the use of the land. In that document it was said that from 1979 to the present day the garages in the south-eastern corner of the application site had been rented primarily to those residing on Woodside Road. In April 1979 permission had been given to one local resident for use of a plot directly outside that person's property. From 1988 to 1994 there had been a grazing use of the land, which was fenced and had a gate. In April 2000 a letter had been issued to residents of Woodside Road notifying them that unauthorised uses on the land needed to cease. In February 2002 Mr Angus de Watteville, one of the Applicants, had written to the landowner seeking to purchase part of the land. In 2002 some local residents (Mr and Mrs Nobes) had written in relation to continuing the permitted use (by them) of an area within the site. In June 2005 the landowners were contacted by the owner of Oak Villa, Woodside Road, requesting to purchase a plot on the application site. The landowner did not agree to sell.
- 9.3. In October 2014 the site was put forward by agents on behalf of the owners for potential removal from the Green Belt and allocation as a housing site. In February 2015 a letter was sent to the Clerk of Chiddingfold Parish Council, outlining the suitability of the site for housing, and requesting for it to be considered through the Neighbourhood Plan process.
- 9.4. In July 2015 letters in relation to the garages and encroachment were issued to some of the local residents, with the opportunity to purchase land which had been inappropriately fenced in being raised. In August 2015 Mr B Moir, a Woodside Road resident, wrote a letter apologising for having placed raised beds on the land without permission, and requested to purchase some land. In September 2015 a letter had been sent out on behalf of the landowners, stating that objects would be

removed from the land and a fence would be erected. The process of considering the site in the context of a possible planning allocation continued into 2016.

- 9.5. I should perhaps also mention that another evidential item which accompanied the initial Objection was an undated draft statutory declaration by Mr David Faux, in relation to the access track which leads from Woodside Road to the south-eastern corner of the application site, close to where the group of garages are situated. It is unnecessary for me to say any more about this, not only because this was a mere uncompleted draft document, but also, more relevantly, it was agreed at the Inquiry that there was no disputed issue between the parties on the question of the rights of local people or others to reach the boundary of the application site from the acknowledged public highway of Woodside Road itself.
- 9.6. At the Inquiry, the oral evidence on behalf of the Objectors was given by *Mr David Faux*, who is one of the joint proprietors of the land in question, and therefore one of the four Objectors to the application. Mr Faux did not claim to live in Chiddingfold, or in close vicinity to the site; he explained during his evidence that he currently lives in Dorking, and had at an earlier stage lived in Great Bookham. Neither of those places, although they are within the County of Surrey, is particularly close to Chiddingfold. Mr Faux explained that his step-mother's family had had an interest in the application land for over 60 years. He inherited his rights in it in 1992, and has since then been the main point of contact in respect of the management of the land, and the garaging arrangements in one corner of it. He had also assisted his father in the management of the land and the leasing of the garages prior to that date. Written records survived in relation to those early periods. The other three co-owners of the land are Mr Faux's sister, and the two sons of his late step-mother's brother. Mr Faux explained that his step-mother had in fact asked him to get involved in the management of this land while his father was still alive; his father had died in 1992.
- 9.7. Mr Faux explained that his step-mother's parents had lived at a house called Crofts to the north-west of the application land in Chiddingfold. When Mr Faux first got to know this land the garages in the south-eastern corner already existed. It had been thought that they would be of a benefit to the neighbours, although Mr Faux was not sure who had originally built them. They had been let to local people on Woodside Road, on the basis that people could walk to them out of their back gardens, through the southern part of the application site.
- 9.8. The property (relevant to these proceedings) owned by Mr Faux and his relations consists of the garages in the south-east corner of the application site (now excluded from the site by agreement of the parties) and the remainder of the land, which Mr Faux described as grazing land. He said there is a surviving broken barbed wire fence dividing the property into two areas. The northern area is marshy and less suited to grazing at some times of the year. The western edge of the site is overgrown with brambles and self-seeding trees. Over the 20 year period in question, a small strip at the rear of the properties on Woodside Road has been mown, with areas within that strip being used for vegetable growing, keeping of

chickens and children's play equipment. He produced some pictures which had been taken in 2014, prior to the submission of the application under consideration.

- 9.9. Right at the beginning of his personal period of involvement, the land had been let for horses to be kept on. The whole area was overgrown, and not very smooth. There were various bushes growing out of it; it was uneven land.
- 9.10. The purpose of visits he made in June and November 2014 (when photographs were taken) was because McLaren Clark had approached the owners with a view to seeing the land. Mr Faux introduced them to the land, and they walked around it and noticed various encroachments and the like which appeared to have taken place on the land. The approach to the owners (by McLaren Clark) had been on the basis of seeing the land as possible development land.
- 9.11. There currently appears to be a footpath across the application land, leading through to the field to the north-east, which is often referred to as 'Site 6'. There was currently a short strip of barbed wire across the land, a little to the north of the start of that path. Mr Faux thought that this particular barbed wire fence might have fallen in part, even at the time he first became aware of it. There had been wooden posts associated with it, but he had never thought previously that this decayed fence might have any future significance.
- 9.12. He was aware of a number of permitted uses on the land that had taken place prior to his inheritance in 1992. While his father was still alive, Mr Faux assisted him with the management of the garages and upkeep of the property from time to time. He also had relevant pieces of correspondence in relation to this.
- 9.13. For example, in 1979 a Mr Moss who lived in Woodside Road had been notified that he had encroached on the land without permission. Mr Moss then requested and was granted permission to cultivate a small plot of land at the rear of his property, provided he did not construct a perimeter fence. In 1986 the owners of another property in Woodside Road were also granted permission to cultivate a small area of land to the rear of their property.
- 9.14. The correspondence which Mr Faux had produced had been given to him either by his step-mother or by his father. His step-mother had been a former secretary, and liked to file everything. That explains how Mr Faux comes to possess such a considerable volume of correspondence.
- 9.15. Correspondence dating from 1986 was produced with a Mr Knight, who lived in Woodside Road, giving permission for cultivation of a small patch of the southern part of the site. Mr Faux had not seen any correspondence which purported to revoke that permission. Correspondence with Mr Nobes, another Woodside Road resident, dating from 2002, was also produced, which made reference to a permission which had been granted for the cultivation of a small area of the

application field situated beyond the writer's back garden. Mr Faux understood that Mrs Nobes had been Mr Knight's daughter. Mr Faux believed that the relevant permission had been given. He believed that a lot of this granting of informal permissions had been done by telephone.

- 9.16. Mr Faux also produced a letter dated 26th April 2000 from a gentleman called Mr Daniels, living in Crofts Close, Chiddingfold. [Crofts Close is a short road lying a little to the west of the present application site, and the Crofts Close properties do not appear to have direct boundaries with the application site itself]. This letter makes reference to land adjacent to Mr Daniels's property which had previously been rented out for grazing [but it is not clear whether the land referred to is the present application site, or the field or former field to the west of the present application site]. Mr Daniels acknowledged that he had made use of part of the land outside his property for cultivating runner beans during the summers. He made reference to the farmer carrying out the grazing having erected a cattle fence around the field, which left the area he had cultivated outside the area used for the grazing. He stated that he had continued to use that area not only to grow runner beans but also in order to prevent the uncultivated field from encroaching on his garden, "*as it is now full of weeds and fallen trees*". [I re-emphasise that it is not entirely clear which field Mr Daniels was referring to]. Mr Faux had never sought to revoke the permission that had apparently been given to Mr Daniels, or to remove Mr Daniels; nor did he understand that Mr Daniels had ever claimed any rights in respect of the relevant piece of land.
- 9.17. As for grazing, the land of the application site was grazed between 1988 and 1994. In July 1989 a grazing and amenity use agreement was completed with Mrs Watts (who was apparently connected with a local residents association). As part of that agreement the 'grazier' was required to maintain stock-proof fencing along all boundaries of the application land. Later that year Mrs Watts assigned the agreement to a Mr and Mrs Herbert, until June 1990.
- 9.18. Then, from 1990 to 1993 a Mr Turner took a licence to graze the field, and during that period he sought to apply for planning permission for a replacement field shelter. That application was approved in 1991. Another application for stabling and a hay store was refused in 1993. At that time the grazed land was secured with fencing and metal gates, which were chained and locked. The fence line is shown on Site Plans for the permitted shelter and proposed stabling, which were produced back at that time.
- 9.19. Mr Faux produced a considerable volume of old correspondence from the late 1980s and early 1990s relating to the grazing of the land on the application site. All of this was correspondence which he had been given when he took over management of the land. He had not been involved personally at that stage. He also said (and I agree with him) that it was not necessary for me or the Inquiry to consider all of that material in detail. However I note that among other features of the documentation, it records that there was clearly a grazing tenant or licensee called Mr Turner, who grazed or managed the land in a way which the owners and their agents regarded as satisfactory, in the period from 1990. It also appears from

the documentation that at that time (i.e. the early 1990s) there were some fences within and around the grazed field, and some gates controlling access.

- 9.20. Mr Faux said that by 1992 he personally was starting to get involved in the management of the land. Among the various documents, he produced a copy letter from the owners' agents to their solicitors, from August 1992, in relation to an enquiry from Mr Turner, the grazier, as to whether he might be allowed to erect a stable with three stalls and a hay store on a concrete base within the field. Two plans appear to have accompanied that letter. One, on an Ordnance Survey base, appeared to show various lengths of fencing within the field which constitutes the present application site. A larger scale site plan, showing the proposed stables and hay store, also marked what it called an existing gate into the field, in the vicinity of the garages in the south-eastern corner of the site, and an existing field shelter in a position some distance up the eastern boundary of the present application site from the location of the garages.
- 9.21. Mr Faux said that the "*existing field shelter*" referred to on that plan was not something that he recalled having seen. It looked as if it was near a present gap through the hedge which leads through to the field known as Site 6. He thought that a dotted and dashed line shown on that plan, in the vicinity of the field shelter, might represent some of the barbed wire which he recalled had been in that general area. Mr Faux believed that the plans accompanying that 1992 letter did show the fencing existing at that time. He personally could remember seeing fencing on the site, but could not specifically recall seeing the fencing in the vicinity where the sketch plan marked "*existing gate*".
- 9.22. Mr Faux also produced some plans relating to the 1991 planning application for a stable in the field, and the 1993 application (apparently related to the letter of August 1982 just referred to) for proposed further stabling and hay store.
- 9.23. It was apparent from a letter from Mr Turner, dated 1st April 1993, that he (Mr Turner) decided to remove himself from this land when the 1993 planning application for additional stabling was refused. The lease or tenancy was therefore not continued.
- 9.24. Mr Faux said that from the early 1990s, once he had begun managing the land, he would visit it on an 'on demand' basis. He had no regular schedule for this, and nor did he keep a diary of visits. He had been introduced around that time to people who were potentially interested in developing the land, but that then dropped off.
- 9.25. Then from about 1995 through 1996, 1997 and 1998, he would visit the site about once a year, but it could have been less than that sometimes. Nevertheless he thought that the land did not during that period drop significantly in quality. His recollection was that the deterioration in the quality of the land had come rather later than that. However encroachment onto the land by people from various

neighbouring properties did begin to happen during that period of the late 1990s. This was by way of people gardening (i.e. in effect extending their gardens into the land), children playing, and play equipment being placed there, and so forth. By this he meant incursions which went beyond anything that the owners had previously agreed that people could do there. For example, they had previously agreed generally, for many years, that local people could walk across the south of the land to the garages in the south-east corner.

- 9.26. He himself could not remember any horses on the land after Mr Turner's horses. There were some people who showed some interest in the field, after Mr Turner had gone, but they were always concerned about the question of stabling and watering. Water in particular was always the issue on which ideas such as that would fall apart.
- 9.27. Mr Faux had never himself seen any tethered horses on the site. He did not believe that anyone who knew and used horses would tether them in a field in order to keep a horse in a particular area. If that had ever happened, he thought that it must have been in the remote past.
- 9.28. As for the garages in the south-east corner of the application site (excluded from the site as a result of an amendment made at the Inquiry), he believed that the garaging was built on land that was previously pigsties. He had evidence that the garages had been rented out since 1979, through to the present day. They had been let mainly to local residents, on rental arrangements, with the majority of payments made on a monthly basis. The garages can of course be used for the storage of vehicles, and as such the people using the garages have rights to access via the track from Woodside Road.
- 9.29. Mr Faux was able to name some 16 or 17 local people who had rented garages there over the years. Mr de Watteville, one of the Applicants, had paid a monthly rent for two garages from 2002 to May 2015, at which point he took on a third garage. He was still currently paying monthly for the use of three of the garages.
- 9.30. Mr Faux had contacted Mr de Watteville in September 2008, to ask for his guidance and help about an abandoned car which had appeared in one of the garages. Mr Faux had suggested erecting a notice saying something like "*Private Keep Out*". Mr de Watteville's response to Mr Faux on 5th February 2009 said that the area "*has a very low profile, the track is somewhat overgrown and I suspect that very few people even know the garages are there. It may be that a sign would actually attract attention and do more harm than good*".
- 9.31. It turned out that the abandoned car had apparently been owned by someone in the Chiddingfold area. Mr Faux did not want anything like that to happen again. However he did not in fact erect a sign in the vicinity of the garages, because of what Mr de Watteville had said to him.

- 9.32. In July 2015 letters were issued to the current garage users, in order to formalise the leasing arrangements. Some tenants signed the agreements, others did not. Mr de Watteville for example did not return the agreement, as he needed to do work to make the garages useable. Nevertheless he still pays the rental fee for three garages, as agreed. In addition Mr de Watteville had agreed with Mr Faux that they had an ad-hoc arrangement whereby he kept an eye on the garages, mowing around them for suitable access and so forth. Mr de Watteville had acknowledged that he had been doing that for some 15 years.
- 9.33. Mr Faux acknowledged that nothing historically had been recorded in writing about the garages until 2015. Most of the arrangements with local people for the use of the garages had been done over the telephone. A very minimal rent had been charged. The users of the garages had to keep them in good order, and could walk through the field to them from their back gardens. The intention was to give permission to cross the bottom part of the field to the whole family living there with them, or friends helping to carry stuff to or from a car in the garage, for example.
- 9.34. On one occasion Mr Faux remembered that he had been there specifically to look at the garages. A gentleman called Mr Willment had asked him to come and look at the work he had done on one garage to make it useable.
- 9.35. Otherwise Mr Faux occasionally visited the site with people interested in development, and would see the garages and land at that time. Apart from that sort of thing he made no planned visits.
- 9.36. At no time on any of those visits which he made did Mr Faux ever see anyone on the land. He saw no children playing, no people walking dogs, nothing at all. The idea that people were regularly using the land just never was the case. He said that he might go to the land with a specific person by appointment, or otherwise his visits would be as opportunity arose. These visits would be on no particular day of the week nor at any particular time.
- 9.37. The condition of the land during that period was not getting substantially worse, simply because there were no horses on it. However it was certainly not improving either. Nature was gradually taking over. He did not recall ever suddenly having asked himself "*where have those fences gone?*", for example.
- 9.38. Back in 1979, the records showed that the owners' solicitors had issued letters warning about encroachment on the land to all residents whose properties adjoin the application field. Later on, in April 2000, the same solicitors issued letters to adjoining residents to notify them that any use of the property was in fact unauthorised, and that any unauthorised uses needed to cease.

- 9.39. Then in July 2015 a letter and property boundary plan had been issued to the neighbouring residents, to notify them that the strip of land to the rear of their properties, along the southern edge of the application site, that had been encroached upon was unauthorised. That letter also provided local residents with the opportunity to purchase the land that they had fenced as part of their property. That letter was issued to all the adjoining residents. A follow up letter was issued in September 2015, which also said that if belongings had not been removed within 28 days then they would be removed by contractors, and a stock-proof fence would be erected.
- 9.40. Contractors had in fact entered the property on 8th October 2015, to prepare for fencing the land. Those contractors were approached by residents of Woodside Road and told to stop, as a village green application had been lodged earlier in the year. Mr Faux and the landowners had not been aware of that application at the time. Later that day however Mr Faux received a fax from a firm of solicitors notifying him of the village green application. He had not been aware of that application prior to 8th October 2015.
- 9.41. The encroachment onto the land which had taken place by local residents was essentially concentrated in the strip of land behind those residents' back gates. It was a strip measuring about 20 feet or so.
- 9.42. At one time there had been discussions with a group of people, including the Chiddingfold Club and various other local people, who had been very keen to set up a residential home, and possibly a medical centre and the like, on the present application site, possibly in conjunction with some of the site known as Site 6. Because of interest of that kind being shown, Mr Faux carried on coming to visit the site in connection with such matters, about once a year or so. That was during the period from 2002 through to about 2010. Between about 2010 and 2013 his visits were not too frequent, because he was busy with other things. During his visits between 2002 and 2010, he did not recall ever seeing anyone else on the site, during a single one of those visits.
- 9.43. From 2013 or so onwards the McLaren Clark group became involved, and Mr Faux was on site more frequently than previously. He would probably attend the site a couple of times a year. He had also visited the site twice during the period leading up to the Inquiry. For example, he had visited the site over the August Bank Holiday weekend of 2017, when to his astonishment he saw no-one there on the site at all. On a more recent visit he had seen a number of dog walkers, but all they did was walk straight across the site into Area 6, where there is a footpath.
- 9.44. Mr Faux's impression was that the mown part along the southern edge of the site had expanded a little over the years. When he first noticed it in the year 2000, there were just a few people growing vegetables. A great change had been later on, when some ducks and geese, and even some electric fencing, had appeared on that strip. It had been quite a shock to see those features there. He thought that had

been in about 2013, or possibly 2012. In the period from 2015 to date, he thought that the mown area had grown rather bigger than he had seen it before that time. He agreed however that the area near the rear of the houses had been mown for quite some time. Also there was a mown track running from approximately the rear of the property called Avoca Cottage to a gap in the eastern hedge of the site leading through to Site 6.

- 9.45. About the year 2000 was the first time Mr Faux had noticed mown areas. He had (possibly incorrectly) incorrectly believed that, as long as they sent a letter every 14 or 15 years or so, it would keep the risk of adverse possession away, by avoiding 'squatters' rights'.
- 9.46. Clearly, as he had mentioned previously, some local people had actually been given permission to make use of parts of the southern strip of the application land. In February 2002 Mr de Watteville had contacted him seeking to purchase part of the land. As mentioned previously, Mr and Mrs Nobes, of the property known as 'Laurels', Woodside Road, had contacted him in relation to continued permitted use of an area of land to the rear of their property, to grow vegetables.
- 9.47. In June 2005 Dr Baxter-Jones of Oak Villa, Woodside Road contacted him, requesting to purchase a plot of land at the rear of their property. No sale was agreed.
- 9.48. In 2013 and 2014 he had been contacted again by Mr de Watteville, this time on behalf of local residents, saying that they wanted to purchase the land for community use. There was an exchange of correspondence, but later in 2014 Mr Faux had responded that the proprietors were not looking to sell the land. In addition he specifically said at the time that any use of the land was unauthorised, as it was private land, and there were no formal access rights to it, or from back gardens.
- 9.49. In August 2015 a Mr B Moir, the owner of Adelaide Cottage, Woodside Road, responded to a letter to him of July 2015, and apologised for having placed raised beds on the land without permission, and requested to purchase some land. The July 2015 letter had in fact been sent to the adjacent residents generally, not just Mr Moir, and a number of other residents responded, confirming that they had received that letter.
- 9.50. So, in summarising the position in relation to his visits, Mr Faux confirmed that since his inheritance in 1992 he had generally visited the site at least once a year. Although in the latter years a small strip of land to the rear of the Woodside Road properties has been mown, and in some areas cultivated, there had not been signs of any other use of the field as a whole, and he had never seen or met any members of the public on the land. Since the village green application had been submitted, and encroachment correspondence had been issued, residents had taken to mowing larger strips of the land and encroaching further into the property.

- 9.51. While he acknowledged that the grazing of the land formally ceased in 1993, his sister Mrs Turner (unconnected to the former grazier Mr Turner) had made a visit to the property with a Mrs Jean Flemming in 2005. Mrs Turner had reported to him that the property at that time was fenced, with gates for access, and her concern at that time was that the field was becoming very overgrown with long grass and thistles. Mr Faux produced a written note whose contents were said to come from Mrs Turner, but which was signed on her behalf by Mrs Flemming, in relation to this matter. The note referred to the visit to the land in 2005.
- 9.52. Mr Faux also referred to a letter to him from his solicitors, dated 19th April 2000, which referred to the results generated by the circular letter which had been sent to the local residents by those solicitors, about encroachments onto the land. According to that letter there had been an “*explosion of responses*” to the circular letter. Points within those responses were said to have included that the field is a tip and needs to be brought back into good condition. There had also clearly been opposition expressed to the notion that the field should ever be developed; some of the responses appeared to have said that the field should be gated to prevent unauthorised trespassers. Some of the residents had apparently said they would like the field to stay as it is, because it is a wonderful countryside feature etc. Overall, it was stated that the circular letter had been quite well received by the local residents. [It appeared that a copy of the actual circular letter, which plainly pre-dated 19th April 2000, had not been tracked down].
- 9.53. Mr Faux reiterated that he had had a number of discussions with people over the years about possible developments of various kinds on the land. The McLaren Clark Group were instructed as land agents in June 2014. That firm were instructed to find a suitable development partner, and to promote the site through the planning process. Mr Faux gave some description of how that process had been followed since that time.
- 9.54. *In cross-examination* Mr Faux said that as well as the regular yearly visits he made to the site, to which he had referred in his written statements, he did come at other times to visit the site when he happened to be passing. Some of those visits would be at weekends, and sometimes during the week. While he was himself working, which he had until three years previously, his visits would not usually be in the week. However he had worked overseas quite a lot during his working career, so visits could be at any time when he was back in the UK. His visits would generally be to look at the garages, or to go onto the parts of the site where it was easy to go. He would go to the parts of the land where he believed others could get to easily.
- 9.55. He did notice some fencing on the site on his visit there in 2014, he recalled. There was not a lot of fencing, but he noticed some near a gap through the hedge on the eastern side of the site, near to the path across the site.

- 9.56. In 2000 he first noticed a mown area on the site. Before that, probably in about 1998 or 1999, he had realised that some encroachment had taken place onto the site, and that there was a need to say something to people about that. He could not recall having noted any specific further change on the site in relation to his visit in 2005.
- 9.57. Neither could he recall any specific changes around the garages in 2012. He recalled that there had been a garage taken away from that vicinity, but that was somebody else's garage which had been placed there; that was in the part of the land which was now, after the amendment to the application, outside the application site.
- 9.58. In relation to the various letters from local people who had been permitted to cultivate vegetables on parts of the land, nothing suggested that those permissions had ever been revoked. They go back many years. In fact one gentleman, Mr Knight, was both permitted and paid money for use of part of the land.
- 9.59. Mr Faux accepted that grazing of the land had ceased in 1993. Mr Turner, the grazier, had said that he had locked the gate. Mr Faux himself was not personally given a key. On his own visits he just walked where anyone else could walk. It was apparent also that on the visit reported by Mrs Turner and Mrs Flemming in 2005, they had been able to access the land without a key.
- 9.60. Mr Faux agreed that permissions given to individual people to do things (such as cultivate vegetable plots) on the site were not permissions communicated to the wider community. Also, when people were given permissions to use one or more of the garages, that would have no particular bearing on the question of any other use of the land by the wider community. Mr Faux agreed that he had never directly denied anyone permission to go onto the land. He had in fact generally given permission to local people to walk along the land from their homes to the garages. He regarded himself as having given people the right to go, in an A to B sense, from the rear of their houses to the garages, by the most direct route.
- 9.61. He acknowledged that within the period between 1995 and 2015 (the 20 year period under principal consideration) he had been aware that people were trespassing on the land at the back of their houses. He was aware also that there was a track which had appeared, coming from the land to the east known as Area 6, into the application land. He did see such a track or way through; there might have been other ways through that appeared too, but he was not sure. He had never put up a sign to prohibit access, nor put up new fences to keep people out. One reason for not fencing the whole site was that he wanted to allow people to get across the bottom of the land to the garages from their houses. He had never installed any locked gates, largely for the same reason .
- 9.62. It was true to say that for a long period of time he was aware of some trespass, for example by way of vegetable patches, or the placement of children's swings or

fruiting bushes. There were also paths which appeared, and he could accept that people might well walk dogs along those paths.

- 9.63. When it was suggested to him that in reality his visits had been for approximately 15 minutes, once a year, he said that if he had ever visited and seen people on the site then his visits clearly would have been longer.
- 9.64. *In re-examination* Mr Faux said that prior to being involved in this process in Chiddingfold, he had been aware of another village green application in Great Bookham, when he lived there. That site had seemed to him an appropriate one for this sort of application; he himself had walked on it for 15 years, on many paths across it. Nevertheless that village green application had been thrown out, which had led him to assume that it was very difficult for people to get a town or village green registered.
- 9.65. From what he knew of the history of this present site, there was no conceivable justification (he said) for a village green application to be approved here. Essentially he had seen one path appear, crossing the land, and a little bit of mowing and other use by neighbouring residents on the southern strip of it.
- 9.66. In addition to the lengthy evidence of Mr Faux, which I have summarised above, I must note the small piece of late evidence from **Dr A.P. Matthews**, one of the co-owners of the application land, who lives in South Africa. I have referred above to my decision to allow this evidence to be considered, given the circumstances in which it arose.
- 9.67. Dr Matthews explained in a short letter that, having been sent a copy of the closing submissions which had been made at the Inquiry itself, he had realised that the condition of the land between 1995 and 2015 was a relevant matter, a point which he had not appreciated before. In his letter he said that he remembered that he had visited the field in January 2005, when a friend had driven him there, and that the friend and he had taken photos of the field, some of which had included Dr Matthews himself. Dr Matthews, had found the relevant photographs (which appear to be 4 in number); zooming in upon them he had seen that fence poles crossing the field were visible. He said that if he had known that this information might be useful before, he would have sent it a long time previously.
- 9.68. Dr Matthews remembered going to the field and driving up to the garages. He had wanted to walk around the field, but it was too overgrown to go anywhere, he said. His memory was that he wanted to walk across the field to see the orchard [a plot of land further west, I understand], and perhaps get a view of the house known as Crofts, but that it had not been an option to go walking about, because of the vegetation and thorns. Looking at the photographs, he could see that there are brambles and bushes in the vicinity of the garages. The best he could do at the time was that his friend and he took 4 photographs of the field, spanning from the south to the east boundaries, with him himself in two of the photographs. They had

been taken on the afternoon of Saturday 15th January 2005. In addition to Dr Matthews' letter, which was dated 17th November 2017, and clearly sent by email to Mr Faux, Dr Matthews had electronically sent copies of the 4 photographs referred to. As noted above, I have also received and accepted those 4 photographs in evidence, and the Applicants have been able to comment on them.

10. **THE SUBMISSIONS FOR THE OBJECTORS**

- 10.1. In the initial objection made to the application, a number of submissions were made which I shall summarise briefly. It was pointed out that case-law indicates that the number of people using a piece of land in question has to be sufficient to indicate that the use of the land means that it is in general use by the community, rather than occasional use by individuals as trespassers. It was suggested that nearly everyone who had supported the application here gained access via the properties on Woodside Road which back onto the application site. Most of those (who had provided written statements) who did not currently live in Woodside Road had in fact gained such access either because they previously lived there, or because they currently access via the property of friends or family. There was very little evidence of use of the site by persons not living in or visiting properties in Woodside Road.
- 10.2. Woodside Road is a very small component part of Chiddingfold Parish, and not centrally located within the Parish. The user evidence did not show use by people distributed across the Parish.
- 10.3. It was argued [at that stage] that there is no lawful public access point to the site. However there were a number of documents which showed that over a lengthy period various parts of the application site had been accessed and used with the permission of the landowner, or by way of licence. Examples were cited.
- 10.4. None of that was in any way consistent with the claim now being made that access to and use of the land had been exercised as of right by the inhabitants of the locality. There had even (it seemed) been in the past a contractual licence agreement between the Chiddingfold Residents Association and the landowner for amenity use, in return for payment. Even when that formal arrangement ceased, any use of the land which continued would have been by implied permission. The numerous requests by local residents for permission to use parts of the land in various ways were all consistent with an acknowledged need to obtain permission of some sort in relation to the land.
- 10.5. The vast majority of the evidence submitted fell well short of demonstrating 20 years use.

- 10.6. In later outline submissions prepared for the purpose of the Inquiry, it was argued that while the Parish of Chiddingfold satisfies the requirements to be a “locality” for the purpose of an application of this kind, any ‘neighbourhood’ which had been identified by the Applicants was likely to be arbitrary and lack the requisite cohesion to suffice as a neighbourhood for legal purposes.
- 10.7. It was pointed out that a separate application had been made by local people to register the access track leading from Woodside Road to the application site as a public highway. That application was entirely parasitic upon the town and village green application, and did not add weight to the latter application. Therefore it was not a material consideration. The application to register the track as a public highway was understood to remain undetermined at the time of the Inquiry.
- 10.8. In additional opening submissions, it was pointed out that the Inquiry was not concerned with the future of the site, even though the determination following from it might have far reaching consequences for that future. Because success of the application would lead to a substantial removal of the landowners’ rights in respect of the land, the claims made on behalf of the Applicants needed to be properly, critically and thoroughly examined.
- 10.9. The application in this case was, in terms of its timing, an almost classic response to trigger events. There had been letters sent to local people about encroachment on the land. There had been an initial approach to engage with the local community about possible development of the site. That approach about possible development in due course was then reflected by a plain intensification of use of the land by local people. Nevertheless it was accepted that no formal trigger event under the legislation has taken place.
- 10.10. It was accepted that the question of ‘locality’ is a non-issue in the present case. On the question of identifying a relevant ‘neighbourhood’, it was argued that there had not been a proper justification of the neighbourhood which had been proposed.
- 10.11. It was suggested that there was strong evidence that physical barriers had existed on parts of the site at relevant times, and also that there had been permissive access or use of the land. Even the Applicants concede a level of permissive use on the land. The absence of formal written leases in the case of some users, and occupiers of the garages, did not mean that there was not permissive use. Oral licences or permissions to use the land are just as much permissions as written tenancies or leases. There was much evidence of permissions being given over a long period.
- 10.12. The fact that in 2015 the landowners desisted from carrying out a proposal to fence off the land, should not lead to the view that there was any recognition by the owners of the validity of the town or village green claim. The cessation of the erection of the fencing occurred simply because it became known that the *Commons Act* application had been made.

- 10.13. The Objectors accepted the proposed reduction of the size of the application site by the removal from it of the small area including and surrounding the garages in the extreme south-eastern corner of the original site. This amendment to the application site could be viewed as an agreed matter.
- 10.14. It was accepted on behalf of the Objectors that there is not an automatic requirement for access to be from an existing, already recognised public highway. Nevertheless the absence of a clear public right of way leading to the land should inform how the evidence of user in relation to the land itself should be seen. The approach taken to this should have regard to the amount of permissive use of the land, and of routes across the land, which has taken place.
- 10.15. In *closing submissions* the well-known point was made that it is no trivial matter for a landowner to have a town or village green registered on his land. It was also noted that the Registration Authority has no investigative duty which requires it to find evidence or reformulate an applicant's case.
- 10.16. The criteria which are relevant under *Section 15* of the *Commons Act 2006* were noted. It was specifically noted that the application here is not put on the basis of the locality of Chiddingfold Parish, but based on a 'neighbourhood' within that locality. Thus the identification of the neighbourhood is a critical first step. Failure to identify or justify the neighbourhood adequately will result in an application which cannot succeed. Identification of the claimed neighbourhood is critical in enabling objectors to address and respond to the element of the test which requires a significant number of inhabitants to have used the land.
- 10.17. The Applicants in this case had produced a plan showing an area demarcated within the parish of Chiddingfold which was claimed as the neighbourhood. It had initially been suggested that this area was the area within which the majority of the users of Woodside Meadow reside. It was noted that at the Inquiry the Applicants had suggested that there were three categories of user from the claimed neighbourhood, namely those who claimed to use the land on a daily basis, being those residing physically closest; those who use it occasionally, being people who do not live physically close to the land; and groups or organisations which are spread out within the boundaries of the neighbourhood.
- 10.18. The claimed neighbourhood in this case was an arbitrary one, which did not have any sufficient degree of cohesiveness to satisfy the tests suggested in the judgment of Sullivan J (as he then was) in the case of *Cheltenham Builders*. A neighbourhood must have a sufficient degree of pre-existing cohesiveness, and be capable of meaningful description in some way. It cannot be an artificial construct which an applicant has identified merely to show an area within which recreational users predominantly live. The claimed neighbourhood in this case was arbitrary in that sense, having been designed simply to reflect an area which the claimed users predominantly inhabited. The application therefore fails this criterion.

- 10.19. In any event the Applicant has not established that there has been as of right use by a significant number of the inhabitants of the claimed neighbourhood for lawful sports and pastimes over the requisite period of at least 20 years. The Objectors' analysis of the proportion of inhabitants purporting to use the site had not been challenged by the Applicants. At best, some 9.6% of the claimed neighbourhood had provided any evidence claiming any use of the land at any time. That would drop to only 3.7% if the area taken were the locality of the Parish of Chiddingfold. Before consideration of any of the more detailed evidence submitted, it was suggested that this would fall short of anything that could be said to be use by a significant number of inhabitants of either the locality or the neighbourhood.
- 10.20. As for use of the land by various groups, it was pointed out that no oral evidence had been given in relation to a claimed group visit by the local scouts/beavers, which had been said to have occurred in the Autumn of 2015. The date of the visit had not been specified in the relevant written statement. Since the relevant 20 year period itself ended on 9th September 2015, the likelihood was that the scout/beaver visit occurred outside the period, or if it occurred within the period, it must have occurred right at the very end of it.
- 10.21. The evidence in relation to the nursery school group attendance on the site is that this had only occurred twice ever, in June 2015 and in May 2017. An additional visit as an end of term gathering for 5 or so staff was also claimed to have occurred in 2015. However, on closer scrutiny, on their 2015 visit the children appeared to spend much of their time away from the site, on walks across other land to the east and north-east, up towards the area known as The Laggs. They were claimed to have been on the site only for a picnic and to play ball, and for some running games, and to see the ducks and chickens in the mowed area. Also, the area mowed at that time, at the southern edge of the application site, was smaller than it was at the time of the Inquiry.
- 10.22. The only activity which was not described as taking place either off-site or within the mowed area of the land was the children being allowed to take their shoes off and walk in the long grass on the site. However the specific area of long grass on the site being walked in was not addressed in evidence on behalf of the Applicants. The team gathering of the staff had also been described as taking place within the mowed area of the site.
- 10.23. When Mrs Wallbank had been asked in cross-examination about the staff team gathering on the application site, she had confirmed that gatherings of that kind had been held in a number of different locations across the years, but had said that once they had taken the children to the application site they appreciated how beautiful it was, and decided to go there without the children. That answer did not suggest Mrs Wallbank was previously familiar with the site. The team was only taken there after they had taken the children there, and because of that appreciated how beautiful the site is.

- 10.24. The fact that the children were only taken there for the first time in the history of the nursery in June 2015, only a few months before the application was made, also indicates how little known and utilised the site really was. That a nursery group which prides itself on outdoor activity days had only visited this site once, and that in June 2015, tends to undermine the assertion of the Applicants that the site really was as well known, well-loved and well used as they now seek to claim.
- 10.25. The evidence about the annual bonfire committee after-party amounted to a yearly gathering of between 10 and 15 people, around a fire. The location of the fire seemed from the evidence to vary a little, being either in the mowed area, or possibly sometimes a little further into the site. The evidence only spoke of this having happened since the year 2000, which left five years of the relevant period (1995 – 2000) with no evidence of such an after party on the site. The only other evidence relating to bonfires had related to bonfires of garden refuse or rubbish, which had only occurred (on the evidence) in the mowed part of the site.
- 10.26. Taking a broader view of the history leading to the key period of 1995 to 2015, any use of this site can be understood in context as having been a permissive community use. There is no other way to interpret the payment of an annual fee of £250 by Mrs Watts, apparently on behalf of the local residents association, (as documented in both 1988 and 1989) for both grazing and amenity use of land which clearly included the application site, as well as a further area of land. That agreement had both permitted amenity (as well as grazing) use of the land, and required stock-proof fencing to be maintained around its boundaries. It is a reasonable inference that a residents association, having paid for amenity use of land including the site, would have communicated that permitted use to residents of the local community on whose behalf the association acted. It is inherently unlikely that such a permission was not so communicated.
- 10.27. Almost immediately after that agreement concluded, a Mr Turner was making enquiries about the land, and took the land for grazing purposes. It is clear that from 1990 Mr Turner had both taken the grazing on the land, and fenced it and gated it, with two gates as per a specification for such works which had been stipulated.
- 10.28. Then in 1992 Mr Turner had written, identifying various works proposed on the land and explaining, with sketches, some of those proposed works, which had included an additional stable block and hay store. Those plans disclosed that in August 1992 there was an existing fence just to the north of the garages, with an existing gate indicated as running to the rear of the garages, before turning approximately 90 degrees and running roughly parallel to the back of the gardens of the houses along Woodside Road. The plans also showed an existing fence further north in the field, running across it, with a second gate on that fence line. It was suggested that a remnant part of the more northerly of those fences had been visible on the site visit, which took place on the day before closing submissions. That fence, albeit covered with vegetation, was clearly in the location which had been indicated on Mr Turner's sketch plans, in the area just to the north of the

garages. That also accorded with the indication on various Ordnance Survey maps of the presence of boundary treatment of some sort in that area, and continuing along in a line roughly parallel to the back gardens of the dwellings on Woodside Road.

- 10.29. It was clear that the fencing and gate had been present still in April 1993, when Mr Turner wrote to surrender his lease of the land, having failed to obtain planning permission for his proposals. It had been noted that he had chained and locked the gate, and forwarded the key for the lock to a Mr Perry. Thus in April 1993 the site was clearly fenced, gated and secured by lock and chain.
- 10.30. That evidence led to a number of consequences. It was clear evidence of the site having been fenced and secured against intrusion in the period immediately before the relevant period. It was also entirely consistent with the keeping of horses in the area so secured, and indeed with the evidence from some of the Applicants' witnesses that there had been fencing on the site.
- 10.31. All of this evidence undermines the credibility of the other evidence produced for the Applicants, which frequently asserted the absence of any fencing or gates on the site at any point. The evidence of those who acknowledged the past existence of fencing was also consistent with a line which was visible on the 1999 aerial photograph of the site, and later aerial photographs. It was noted also that although Mr de St Croix (one of the Applicants' witnesses) in his written evidence had spoken about some barbed wire having been removed from the land in the early 1990s, in his oral evidence he indicated that he was not in fact sure that the barbed wire removal had occurred in the early 1990s, suggesting that it might have been in the latter part of that decade.
- 10.32. Other evidence also pointed to the barbed wire on the site not having been removed in the early 1990s. First, the site was only vacated by Mr Turner in April 1993, when it was clear that the site was left secured, with a locked gate. Secondly, the modern fencing can only have been installed by Mr Turner after October 1990. In October 1991 the agent Mr Perry had gone onto the site and confirmed that the work had been done. Third, Mr de St Croix gave evidence of two horses having been kept in the field, *after* the horse kept there by Mr Turner up till April 1993.
- 10.33. Fourthly, a gentleman whose real name is understood to be Mr Guy Edgson (but frequently referred to at the Inquiry as Edgerton) himself wrote to Mr Faux on 27th February 1994, offering to rent the field, to keep it tidy and mow an area for toddlers to play on, and to grow some vegetables. Mr Edgson had made no mention of already having undertaken any works of clearance on the site as of February 1994. He was still expressing these things as proposed works, should he rent the field.
- 10.34. Therefore, on the evidence before the Inquiry from both sides, there appeared to have been a longstanding presence of fencing, both within and around the site, in

the form of barbed wire, and the presence of at least one gate, with horses and a field shelter present there over a considerable period of time. Given the date of vacation of the land by Mr Turner, and the condition he left the boundaries in, and the subsequent presence of horses, it is likely that the site remained fenced and secured for some time thereafter.

- 10.35. It is inherently unlikely that the fencing and gates which had been described fell into ruin in the period April 1993 to September 1995. The alternative is that someone had broken down the fencing and/or gate, which would be accessing the site by force. The presence of fencing and a gate in the area to the north of the garages in the late 1990s is consistent with aerial photography from 1999, and some of the oral evidence from the witnesses. The continued presence of a fence and a gate in that area in the late 1990s is not inconsistent with other evidence relating to the use of the mowed area in the southern part of the site. Indeed some witnesses had talked of not having to go through a gate in order to get to the mowed area – and this is not a point which the Objectors disputed.
- 10.36. It was noted that of the small number of witnesses who could speak to the period before 1996, several of them had acknowledged the presence of fences gates and horses, whereas others had not. When all that evidence was considered alongside the written records, correspondence and documentation, it was highly likely that the fence and gates, certainly at the north end of the garages and running around to parallel the backs of the houses, was present into the late 1990s, and therefore for at least the first few years of the relevant period.
- 10.37. The period from 1996 onwards then engaged other witnesses produced on behalf of the Applicants. Although many of the witnesses who had been on the scene from after 1996 did not describe fencing and gates on the site, other witnesses for the Applicants' side clearly had seen fencing, gates and horses. Many of the witnesses who had been called spoke only of use of the land achieved by coming out through gates through their back garden fences. Although some witnesses said that they never had any reason to go along to the area where the garages are located, other witnesses did have that reason, and it was clear that it was practically possible to proceed along a 'corridor' along the back of the dwellings, and out of the site, without passing through a gate of any kind. It was also possible, for example, for children to cycle on their bikes along that corridor from the rear of the houses, and so proceed to the track that turned northwards into the field to the east known as Site 6. Once again, that would not have been a route which was impeded by any fence or gates. Witnesses' evidence of not having to pass through a fence or gate should be seen in that light.
- 10.38. Most of the activities which had been described by many of the witnesses were ones which had occurred within the mowed area of the application site. That included the bike riding. In fact the evidence offered by all of the witnesses who had given evidence tended to suggest that virtually all activities had occurred in the mowed area. The only activities described by any witness with a location other

than that were: walking/dog walking; berry-picking; den-building/tree climbing; and playing hide and seek.

- 10.39. Such evidence as there had been about berry-picking was described by all relevant witnesses as occurring at the perimeter and boundaries of the site. One or two witnesses had fruiting bushes immediately outside their houses. The routes described by those witnesses were of a circuitous nature, following the boundaries of the site. Those witnesses were not accessing anything other than a route around the edge of the site, which is not sufficient to constitute a pastime on the land. Use of such a route could not constitute evidence of effective use of the whole site. It is more akin to a right of way following a path around a certain route.
- 10.40. The few witnesses who had referred to den-building, and identified any location, identified that dens were built in the hedge and tree line, which once again amounts only to the boundary of the site, or the treed area which is not the subject of the present application. That is not sufficient evidence of use of the whole land, or the exercise of a right over the whole of the land.
- 10.41. As for walkers and dog walkers, the site is physically too small to suffice for a walk or a dog walk in itself. It was noted by all of the witnesses that the site has very good connectivity to a wider network of footpaths. The reality of the evidence about walking and dog walking in relation to the site is that it amounted to walking along a path which is visible on the site, in order to cross it, to one of two identifiable gaps on the eastern boundary where clearly defined paths proceed away from the site across Site 6 and towards the Laggs, and the wider footpath network. Evidence of that kind amounted to no more than a point to point A to B use of a route across the site, and out to the wider footpath network.
- 10.42. As for use of the site to play hide and seek or other such games, no witness gave evidence in any detail whatever as to locations within the site which were said to have been used in this way. The only witnesses who had spoken of it were those who had not lived in the area for the entirety of the relevant period. There had been no evidence as to the numbers of children, or the frequency of such occurrences. It is impossible to assert that there had been evidence showing that such rights were exercised over the entirety of the land. Indeed a considerable portion of the northern part of the field is covered with blackthorn bushes, which do not present a hospitable environment for children to play.
- 10.43. The Applicants' evidence also was not sufficient to suggest use by a significant number of the inhabitants of the neighbourhood area. With almost all of the playing concentrated in the mowed area behind the houses, and with all of the social activities in that same area as well (as well as the garden bonfires, social events etc), there was only a very small number of children that even *could* have been engaged in that kind of play.

- 10.44. Although they are now excluded from the application site, the garages in the south-east corner still bear upon the evidence at the Inquiry, particularly in relation to the mowed area of the site. The garages have been there for a long time, and were rented to benefit the residents of the area, particularly Woodside Road. Mr Faux and his father and step-mother before him had plainly rented out those garages to a considerable number of people across the years.
- 10.45. The relationship between Mr Faux's family and the users of the garage was plainly that of a contractual licence arrangement. Mr Faux explained what he called his "*set piece talk*", that he would have with potential occupiers of garage space, including telling them how access was granted to the garages, both by the access track and if relevant from residents' back gardens along the southern part of the site. Mr Faux had been clear in his evidence that that access was not restricted only to the individual with a licence for any particular garage, but extended to all members of that person's household, and visiting friends and family. That makes total sense, and is a normal arrangement.
- 10.46. The result is that any presence on the land by a member of a household renting a garage, for the purpose of going between their house and a rented garage across the mowed area, is by permission under the licence. It is not an activity being undertaken "*as of right*". Mr Faux had produced a plan showing that a very significant proportion of the residents on the north-side of Woodside Road had had agreements to rent one or more of the garages.
- 10.47. Mr de Watteville, one of the Applicants, had chosen not to give evidence to the Inquiry, or to be exposed to cross-examination. However the evidence clearly showed that he had written in February 2002, indicating that he would like to take on rental of a garage which had previously been rented by the previous owner of his house. He also tried to buy that garage and associated land. Mr Faux also gave evidence about his asking Mr de Watteville about the possibility of putting up "*Keep Out*" or "*Private Property*" signs within the vicinity of the garages. Mr de Watteville had replied in February 2009, suggesting that putting up signs would be a doubled-edged sword, and indicating that at that time the area had a very low profile, with the track being somewhat overgrown. He (Mr de Watteville) suspected that very few people even knew the garages were there. He thought that a sign might actually attract attention and do more harm than good. In consequence of those exchanges Mr Faux did not erect any such signage. It is clear that Mr de Watteville had not had a formal written tenancy of the garage, but he had written shortly before the application in this case was made, to indicate that an ad-hoc agreement had worked well for the previous 15 years or so.
- 10.48. Those circumstances are not consistent with the position of Mr de Watteville as joint Applicant, in suggesting that there is no formal agreement between him and Mr Faux for what eventually became the rental of three garages. Moreover the absence of any signs indicating to others that they should keep out, or that this is private property, had been caused by Mr de Watteville's email to Mr Faux, indicating the overgrown, low profile nature of the site, and that the erection of signs would be counterproductive. Had that not happened, it was likely that Mr

Faux would have erected signs, in which case it is most unlikely that this application would have been made. Certainly the presence of such signs would have stood in favour of the landowners in seeking to resist any such registration.

- 10.49. As to the more general issue of the garages, and the effect of the permissions granted in relation to them, it is clear that a significant element of the use of the mowed southern area of the application site needs to be removed from consideration as a qualifying activity, because it falls within the permitted use under the licences which were clearly granted.
- 10.50. As for the mowed area itself, it is clear that it is necessary to exclude from any qualifying use of it those activities such as walking or dog walking, or cycling, into or out of the wider area. Those are simply parts of a point to point use as a route connecting with the wider footpath network, or onto Woodside Road. The photographic evidence also suggested that the mowed area in 2014 was only about half the size of the area which appeared to be mowed at the time of the Inquiry.
- 10.51. It was acknowledged that in its reduced form, consisting of the 20 feet or so at the back of the gardens alongside Woodside Road, where virtually all of the activity had been concentrated, that would be a site which might comprise a better candidate for village green status than the wider site. The evidence plainly showed an escalation and intensification of use of that area in the latter years of the relevant period. In the earlier years the evidence suggested that the activity out there might more accurately be characterised as some children playing in the field out at the back of the houses, rather than the exercise of village green rights by a significant number of inhabitants of the neighbourhood. In addition, a number of the residents had sought permission for various activities on the land (such as vegetable growing), or had sought to buy parcels of land, at various points running into and through the relevant period. If inhabitants were accessing and using this site as of right, then it was questioned why they would be enquiring of the landowner about purchase.
- 10.52. In conclusion, it was argued that the uses that the site had been put to over the years had varied. The site had clearly been let to local residents for amenity in the 1980s. It had then been grazed and used for equestrian purposes, and then left vacant. It had been fenced and gated for various periods, and been used as a cut-through for walkers and dog walkers. Berry-pickers seem to have used the hedges around the site's boundary. A small part of it had been mowed and used for a range of activities, from vegetable growing to children's football games, and latterly other things like playing with trampolines, holding barbecues and picnics etc. It has also been used for accessing garages by various people.
- 10.53. However the land has *not* been used for a period in excess of 20 years for lawful sports and pastimes by a significant number of inhabitants of the claimed neighbourhood. The evidence clearly showed periods when the wider public were excluded by fencing and/or gates, an extent of permissive use, and uses which are

not those of a village green, but more akin to ‘right of way’, point to point access on the way to the wider footpath network.

- 10.54. The evidence underpinning the application is unclear as to the nature or extent of use of the site, and also in relation to the location of uses on the site, and the period of such uses. It did not stand up to scrutiny in cross-examination, with witnesses often conceding that they were not present for substantial parts of the day or week, or conceding the fencing or gating of the site, or accepting the concentration of activities in the mowed area. In spite of the evidence of Mr Faux having been substantially based on the documents produced by him, and being based on a lesser number of visits to the site than might with hindsight have been thought desirable, nevertheless it was not challenged in any substantial way. Mr Faux had on such visits as he did make to the land never seen anything which justified firmer action in terms of fencing, or the erection of prohibitory signs.
- 10.55. As much as the residents of the local area might desire that this site should be preserved as an open field or meadow, the reality is that the criteria under **Section 15** of the **Commons Act** are not met here. The application for registration should therefore be refused.
- 10.56. Shortly after the Inquiry finished, it was argued on behalf of the Objectors that the *late submission* of a short *letter and 4 photographs* from *Dr AP Matthews*, one of the joint owners of the application site (who lives in Durban, South Africa), should be accepted. It was argued that the photographs and statement by Dr Matthews clearly demonstrate that in 2005 there was a wooden post and wire fence on the land, as per the written evidence from Mrs Turner.
- 10.57. It was accepted that this material had come outside the normal timeframe for submission, but it was argued that it should be accepted in the circumstances, and that this material is highly pertinent to the Registration Authority’s decision.

11. DISCUSSION AND RECOMMENDATION

- 11.1. The application in this case was made under **Subsection (2)** of **Section 15** of the **Commons Act 2006**. That subsection applies where:

- "(a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) *they continue to do so at the time of the application.*"

The application was stamped as received by the Registration Authority on 10th September 2015. That is therefore the ‘time of the application’, and the date from which the relevant 20 year period needs to be measured (backwards).

Assessing the Facts

- 11.2. Both main parties in this case correctly noted the point that the law in this field initially puts the onus on an applicant to prove and therefore justify his/her case that the various aspects of the statutory criteria set out in **Section 15(2)** have in reality been met on the land of an application site.
- 11.3. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not.
- 11.4. Where there were material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities, from the totality of the evidence available. In doing this one must also bear in mind the point, canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report), that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements (particularly ‘pro forma’ statements), completed questionnaires and the like, which have not been subjected to any such opportunity of challenge.
- 11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of ‘findings of fact’. Rather, what I propose to do, before setting out my overall conclusion, is to set out in turn the various particular aspects of the statutory test under **Section 15(2)** of the **2006 Act**, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention below under one heading are only relevant to that heading. I have taken into account the totality of the underlying evidence in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

“Locality” and “Neighbourhood within a locality”

- 11.6. There was no dispute at all between the parties that the Parish of Chiddingfold is the appropriate area to be regarded as the ‘locality’ relevant to this application. It meets all the tests which have been laid down by the courts as to what is capable of constituting a ‘locality’.

- 11.7. However, although the original application form itself was not entirely clear on this point, the Applicants made it plain, in the material (including maps) which they lodged with the application, that the claim here was put on the basis of use of the land by inhabitants of a ‘neighbourhood’, being a smaller area within that ‘locality’. This position was maintained by the Applicants at the Inquiry.
- 11.8. What was put forward in a very clear map accompanying the application, and further explained at the Inquiry, is a ‘neighbourhood’ consisting of the built up area of the actual village of Chiddingfold. This is as opposed to the ‘locality’ consisting of the Parish of the same name, which also, as is entirely normal (indeed common), includes outlying hamlets and isolated properties over a considerably wider area.
- 11.9. The Objectors sought to argue that the neighbourhood specified here by the Applicants is an ‘artificial construct’ for the purposes of this application, and lacks the requisite ‘cohesiveness’, and so falls foul of the remarks made in respect of this point by Sullivan J (as he then was) in *R (Cheltenham Builders Ltd) v South Gloucester DC* [2003] EWHC 2803 (Admin) at para 83, and by HHJ Waksman in *R (Oxon & Bucks Mental Health Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin), at paras. 58 and 79.
- 11.10. It seems to me that any judgment on the adequacy of the definition of a claimed ‘neighbourhood’ in this field needs to be prefaced by a clear appreciation of what Lord Hoffmann said on this topic in the House of Lords in *Oxfordshire CC v Oxford City Council* [2006] 2 AC 674, at para 27. There Lord Hoffmann pointed out that the statutory expression “*any neighbourhood within a locality*” was “*obviously drafted with deliberate imprecision*”, in contrast to the rather precise interpretation which the courts had previously given to ‘locality’. Lord Hoffmann also disagreed with some of what Sullivan J had said in *Cheltenham Builders*, although not the remarks about the need for some cohesiveness, and lack of artificiality. What is completely clear is that the expression ‘neighbourhood’ is not to be approached in a ‘technical’ manner, or one designed to ‘trip up’ applicants under *Section 15* of the *Commons Act*.
- 11.11. In my judgment (assisted of course by the case-law), ‘neighbourhood’ is a very ordinary English word, and means any area which a normal, sensible, English-speaking person would recognise as being reasonably and plausibly described by the term. There is nothing precise about its definition, though no doubt elements of cohesiveness and lack of artificiality are likely to form parts of its characteristics.
- 11.12. In this particular instance I do not see any merit in the argument advanced for the Objectors. It is hard to think of a more obviously ‘cohesive’ area than the built-up area of the existing village of Chiddingfold, and that is what the Applicants chose to identify as the relevant ‘neighbourhood’. The law says that this area cannot be a ‘locality’, as that must be the considerably larger (in a geographical sense) Civil Parish of Chiddingfold. The actual built-up village of Chiddingfold is most clearly capable of being seen as a neighbourhood within that locality, in my judgment.

- 11.13. I agree also with the point made on behalf of the Applicants that it is normal (and acceptable) that the majority of very regular users of a claimed village green are likely to live in the part of a neighbourhood nearest to the land concerned, whereas others from further away within the neighbourhood, or neighbourhood-wide community groups, might well use the claimed land less frequently. All of that is normal, and acceptable in my judgment, in terms of the principle of the correct approach to the matter.
- 11.14. I would observe, again purely as a point of principle, that an applicant in a place like Chiddingfold might conceivably have sought to identify a smaller area within the village as being a ‘neighbourhood’ within it. However no party on either side of the argument here sought to put forward any lesser part of Chiddingfold as being the neighbourhood which ought to be considered.
- 11.15. The relevant judicial authorities do allow some scope to Registration Authorities (and Inspectors acting on their behalf) to seek themselves to identify the most appropriate ‘neighbourhood’, on the basis of the evidence actually presented. However there is not (on my understanding) any suggestion of an investigative *obligation* on Registration Authorities to try to seek out and identify a putative ‘neighbourhood’ which it thinks might be even more plausible than one put forward by an Applicant.
- 11.16. I have already noted that no party here put forward or argued for any particular smaller (or indeed larger) ‘neighbourhood’ than that proposed by the Applicants. Likewise (in my view) no obvious lesser area within Chiddingfold sprang out of the evidence as being plainly more appropriate for consideration as the relevant ‘neighbourhood’.
- 11.17. As I have indicated above, in my opinion the area put forward by the Applicants, being essentially the village of Chiddingfold, is entirely capable of being reasonably regarded as a ‘neighbourhood’, in the context of **Section 15(2)** of the **Commons Act 2006**. I do stress however that, in finding that the Applicants have properly identified a plausible and appropriate ‘neighbourhood within a locality’ for the purpose of this application, this does not imply that I am here making a finding that the evidence shows that a ‘significant number’ of its inhabitants have used the application site ‘as of right’, for ‘lawful sports and pastimes’, for the full 20 year period concerned. Those are matters which I shall be considering in the paragraphs which follow.

The remaining criteria

- 11.18. In this particular case, the other elements of the statutory criteria under **Section 15(2)** [apart from identification of the ‘neighbourhood’] are all so closely

intertwined that a degree of artificiality is inevitably introduced in setting out a series of separate headings covering them, and the artificiality would (I believe) be even greater if the headings or criteria were approached in the same order as they appear in *Section 15(2)*. Accordingly I re-state the point that I have considered the whole of the evidence, and the whole of the statutory criteria, together in an integrated way in reaching my conclusions. I only set matters out below under headings relating to the individual criteria, in order to give some structure to the conclusions I am able to draw from all the evidence, and to my discussion of the reasoning which has led me to those conclusions in the light of the evidence.

“On the land”

- 11.19. It is completely clear, and was not in dispute between the parties here, that it is not necessary for an applicant to show that every single square inch of a piece of land was in the right kind of use ‘as of right’ by local people for the entirety of the claimed period. The best known (persuasive) authority on this point is the already cited House of Lords decision in *Oxfordshire CC v Oxford City Council* [2006], commonly known as the ‘*Trap Grounds*’ case. It is plain that the House of Lords supported the view that in areas such as scrubland, where access to every single part of the land is physically impossible, it is nevertheless acceptable lawfully to conclude that use during the requisite period was sufficiently general and widespread to amount to recreational use of the land viewed as a whole, if the evidence supports such a conclusion.
- 11.20. It was also held in that case that a registration authority might in a proper case lawfully register under *Section 15* an area of land *smaller* than that which the Applicant originally applied for, if the evidence so warrants, and if that can be done without unfairness to any party. In this present case, as noted already, an amendment was proposed, and accepted by me, to remove from the original application site a relatively small area occupied mainly by garages, in the site’s extreme south-eastern corner (and one other extremely minor change along the eastern boundary). The amended plan, reflecting those changes, was introduced to the Inquiry as Map A(2), Inquiry Document APP.3, on 8th November 2017. Other than these alterations, which were agreed, no party put forward any arguments tending to lead to the potential registration of only some lesser part of the remaining application site.
- 11.21. One of the reasons why it is important to note these points is that it seemed to me that the evidence, taken as a whole, was significantly different in relation to some parts of the remaining application site from that which applied to other parts of it.
- 11.22. Even as I saw the land in late 2017 (more than 2 years outside the relevant period) it was clear that there was a relatively narrow strip of land, running along the southern edge of the site, to the north of the back gardens of the Woodside Road properties, which was of a substantially different character from the rest of the site. Indeed I noted that in a small number of instances there had been actual encroachment, indicated by fencing which did not appear to be new, where small areas of land shown on plan as being within the application site, had in fact been

enclosed and seemingly added to the back gardens of neighbouring properties. It is not however for me or the Registration Authority to involve ourselves in potential issues of *adverse possession* by individual neighbours, and I do not propose to say any more about those particular pieces of ground.

- 11.23. That aside, the southern strip of the application site contained considerable areas of (apparently) regularly mown grass, some areas of garden-type cultivation, an area given over to domestic fowl, quantities of children's play equipment etc. It was also, because of the mown areas of grass, quite easy to follow an east-west route along the southern strip, in order to get in or out of the site in its south-eastern corner, near the blocks of garages.
- 11.24. The remainder of the site was much rougher, consisting of rough areas of long grass, interspersed with areas of brambles, bushes and small trees (some of them thorny ones). It was not impassable, but not particularly easy or comfortable to walk through, except that there was quite an obvious main pathway extending north-eastwards from approximately the middle of the southern strip, to a point approximately central of the north-east boundary of the site (there were also a small number of other routes within this rougher area which were somewhat easier to follow). The northern tip of the site contained a more densely treed area.
- 11.25. I mention these impressions, gained in late 2017, because the evidence given to me strongly suggested that this approximate physical state of affairs on the land had persisted for quite a considerable period, going well back into the 20 year period most relevant to the application (September 1995 – September 2015). The Objectors pointed out (it seemed to me correctly) that the evidence indicated that the southern, rather domestically managed, strip of the land appeared to have grown somewhat wider by late 2017 than photographic and other evidence suggested it had been during earlier years, within the period. However the essential physical nature of that distinct southern strip, during quite a prolonged period, was not in reality a matter of substantial dispute between the parties.
- 11.26. There was quite considerable inconsistency among the various witnesses for the Applicants, even leaving aside Mr Faux for the Objectors, as to what the state of the application land as a whole had been, and the activities (if any) that took place on it, in the period leading up to the commencement of the 'relevant period' in 1995. I have formed my conclusions about this, on the balance of probabilities, from a combination of the most cogent and reliable-seeming of the personal evidence, combined with the apparent history of large-scale Ordnance Survey mapping of the area, together with the substantial collection of paper records which had been kept by Mr Faux's family, and were produced by the Objectors.
- 11.27. It is clear that Ordnance Survey mapping at 1:2500 scale which was available in the early 1990s [because referred to in documentation from that period, although I do not know the relevant survey date] suggested that the main, northern part of the site had been at some stage separated off from the narrow, southern strip by some

kind of fencing or other visible boundary treatment (and some other fence or hedge lines were shown as having existed within the area further to the north). The same line of division between the southern strip and the larger area to the north, in more or less exactly the same position, has continued to be shown on the more modern 1:2500 O.S. plans of the area, showing copyright and database dates of 2015, which were produced by the Applicants as the base for the application plan, and for other purposes.

- 11.28. This (while not conclusive as to the physical presence of fencing/boundary demarcation at any particular past date – especially in the absence of information about survey dates, etc) tends at least to support the view that there had been a long-term distinction between the southern strip and the rest of the land, which had been picked up by the Ordnance Survey’s cartographers. This is consistent with the evidence given by Mr Faux that he, and other members of his family before him, would regularly give permission (even if only oral) to local people who were renting garages to the south-east of the site to access those garages along the southern strip from their back garden gates, without there being any obstruction to the use of that access route.
- 11.29. I found Mr Faux’s evidence on this to be convincing and credible, as was his evidence that it was mutually understood that these permissions would apply also to family and visitors of the renter. There was clearly, I conclude, a long-term history, extending through the ‘relevant period’, of permissive use of the southern strip, at least as a route to pass through, for the benefit of a number of families residing on the north side of Woodside Road.
- 11.30. It was also clear that there has been a long history of some permissive ‘domestic gardening’ by individual neighbouring residents, within the southern strip outside the back gardens of Woodside Road properties. It seems from the documentary evidence that this went back at least to the 1970s. A notable example of it was a letter of June 2002 from a Mrs Nobes of ‘Laurels’, Woodside Road, asking to be allowed to continue with a permission for a vegetable garden in the southern strip, which the documents suggested had been given in 1986 to a Mr Knight, understood to have been Mrs Nobes’s father.
- 11.31. I have already mentioned that there were still cultivated ‘garden’ patches of land of this kind within the southern strip when I saw it in late 2017, although the extent of any division within those areas between continuation of such permissions, on the one hand, and trespassory incursions on the other hand, was not (it seemed to me) made clear by evidence from either side.
- 11.32. Insofar as a ‘vegetable garden’-type use, by an individual neighbour or family, within the southern strip during the relevant period was *permissive*, clearly that would be inconsistent with establishment of ‘lawful sports and pastimes’ use ‘as of right’ by other local people in respect of that patch of land. There was no suggestion in the evidence that other neighbours would trample at will over such

individual vegetable gardens (or indeed areas fenced around to keep domestic fowl). Insofar as any such uses were ‘trespassory’ (vis-a-vis the landowners), it likewise seems to me that such uses of particular patches of land by individual neighbours would not ‘count’ towards the establishment of ‘lawful sports and pastimes’ use on behalf of the inhabitants of the neighbourhood as a whole, even if the history of such use might (hypothetically) be relevant to a potential adverse possession claim on behalf of the individual cultivator.

- 11.33. I shall have more to say later about other activities on the southern strip, but for the moment I shall turn to what the evidence shows as to the state of affairs on the larger, northern part of the land, in the period leading up to 1995.
- 11.34. As I have noted above (and as is not inherently surprising), there was not consistency in the recollections provided as to what had occurred on this land in earlier times (pre-1995). Clearly this would not in any event necessarily be evidence of the first relevance to consideration of the key period, September 1995 – 2015. It is however potentially relevant to forming a view, on the balance of probabilities, as to what the state of affairs was on the land at the start of the relevant period, in 1995.
- 11.35. The evidence taken as a whole suggested that there had been some keeping/grazing of horses on the main part of the application site, going right back at least to the 1970s. It seems likely (having regard to the Ordnance Survey material, and some of the witness evidence) that there was in those very early years fencing of some kind along the north side of the ‘southern strip’, and also subdividing the main field.
- 11.36. It does not particularly matter what state that fencing was in in the 1970s/80s, because of what subsequently happened. It appears from the written records (produced by Mr Faux – and which I found generally helpful, and likely to be reliable, as far as they went) that in the period around 1988/89 there was a letting of this land (and further land to the north-west) on licence by the owners to a Mrs Watts, living in Crofts Close, for a mixed purpose of grazing and being amenity land. The Objectors believed that Mrs Watts took this licence on behalf of a local Residents Association, although it was not made entirely clear to the Inquiry how such an arrangement might have worked in practice, and no other witness at the Inquiry made any reference to it.
- 11.37. Be that as it may, the licence to Mrs Watts in the late 1980s included fencing obligations (to maintain stock-proof fencing along all boundaries). There was no clear evidence as to how Mrs Watts complied with those obligations.
- 11.38. What is clear is that Mrs Watts moved away from Crofts Close, and that in 1990 a new grazier for the main part of the application land, a Mr Turner, had appeared on the scene. There is considerable surviving documentary material (including some plans) relating to Mr Turner’s occupation, from which it is clear that he took his

fencing obligations seriously. I conclude, on the balance of the evidence, that during Mr Turner's term as grazier there was adequate stock-proof fencing around the main part of the application site, including between that part and the 'southern strip', as it then was; that there was fencing, with a gate in it, between the grazed area and the south-eastern area around the garages; and that there was some other internal fencing within the overall grazed area.

- 11.39. However the documentary evidence (which is entirely credible on this) is clear that in April 1993 Mr Turner gave up his grazing licence, largely because he could not obtain planning permission for some additional stables and a hay store, which he had been seeking. He left, leaving the land (I find) fenced, and stating (in a letter of 1.4.93) that he had "*chained and locked the gate to keep out undesirables*".
- 11.40. That was effectively the end of any kind of formal or semi-formal letting/licensing arrangement on the main part of the land (i.e. leaving aside the garages and any continuing permissions relating to parts of the southern strip). A Mr Edgson, living in one of the Woodside Road properties, wrote in February 1994 enquiring about the possibility of 'renting the field', but nothing definitive seems to have followed from that. The tenor of Mr Edgson's letter does not however suggest that in February 1994 that gentleman could have believed that by that date the field in general was in some kind of 'as of right' recreational use by the local community at large.
- 11.41. Nevertheless that was still (in February 1994) over 1½ years before the 'relevant period' for present purposes commenced in September 1995. What the evidence relating to Mr Turner's occupation does however is to cast doubt on the soundness of the memories of those witnesses or statement-providers who claimed to have known the site well before 1995, but not to recall the presence of stock-proof fencing etc.
- 11.42. For my part, I would be inclined to accept, on the balance of probabilities, the argument for the Objectors that Mr Turner's stock-proof fencing, which was clearly there in mid-1993, was more likely than not still there in September 1995, unless there was some plausible, convincing evidence explaining how it came effectively to disappear during the intervening period of somewhat over two years. It did not appear to me, considering the matter as a whole, that there was any such evidence.

"A significant number of the inhabitants..."
"Lawful sports and pastimes"

- 11.43. It was clear to me on the evidence, including the evidence on behalf of the Objectors, that a mixture of activities, some of which would undoubtedly be 'lawful sports and pastimes', was indulged in by the neighbouring residents of Woodside Road, and to a lesser extent their visitors, for a prolonged period before

and including 2015, on significant parts of what I have called the ‘southern strip’ of the application land. Indeed that point was more or less conceded by Mr Faux, the only oral witness for the Objectors. However he said, and I incline to accept this evidence, that signs of this kind of use had been considerably more obvious and intense during the latter part of the period, compared with earlier on.

- 11.44. However it needs to be recalled that any ‘collective’ use, in common, of parts of this strip by neighbouring inhabitants was physically interspersed with patches of that land being used by *individual* neighbours, for their own individual garden extension or other gardening purposes (including domestic fowl rearing), some of which at least was quite clearly permitted by licence from the owners. Further, many of the neighbours clearly had also been given licence or permission by the owners (and often specifically by Mr Faux in person) to pass and re-pass through the southern strip, in order to gain access to the block of garages to the east, and thence out of the site to Woodside Road or elsewhere. Such permissive use would have included any other activities on that land which were incidental to such passing and re-passing.
- 11.45. I am inclined to accept, on the balance of probabilities from the evidence, that there probably was at least an element of ‘lawful sports and pastimes’ use, effectively in common, by some of the immediately neighbouring residents, for the entire period of 1995 to 2015 inclusive, on some parts of the southern strip. However, that was so mixed up with the permissive right of passage across this land for many local residents, and the patches of the land devoted to individual neighbours’ private gardening endeavours, that it would be extremely difficult to distinguish the various elements geographically.
- 11.46. No party to these proceedings in fact suggested that it might be appropriate to seek to register under *Section 15* of the *Commons Act* a much smaller area of land (compared with the whole site) consisting only of some parts of the ‘southern strip’, and nor was I provided with any means of ascertaining in a clear way on a plan which areas of the southern strip might have been generally used by the neighbours collectively for ‘lawful sports and pastimes’, as opposed to being used individually, either under licence or through individual acts of trespassory possession..
- 11.47. Thus although in theory it might be open to a Registration Authority to register only some lesser part of an application site, where the evidence justifies such a course, there is no real basis for doing that in this case, even if the view were taken on the evidence that there had been *some* ‘lawful sports and pastimes’ use by the immediate neighbours collectively, over the full period of 20 years, on some parts of the southern strip.
- 11.48. It seems to me to be arguable in any event that what took place on the ‘southern strip’ here was in reality more akin to a multiple trespass by a number of individual immediately neighbouring occupiers, via their individual back garden gates, out

onto the land behind those gardens, rather than an effective assertion of ‘as of right’ use on behalf of the inhabitants of a wider ‘neighbourhood’ collectively.

- 11.49. In this regard, I note also that it was clear from the documentary evidence produced by the Objectors, together with what Mr Faux said about the matter, that at some point in late 1999 or early 2000 the owners’ solicitors had addressed a ‘circular’ letter to neighbouring residents on the north side of Woodside Road, and (it seems) Crofts Close, raising the issue of trespass onto the owners’ land, including the application site. It was unfortunate that a copy of the original ‘circular’ letter had not been found, but that such a letter had existed, and been sent, and attracted multiple responses, is in my view clear from the letter to Mr Faux from his solicitors, dated 19th April 2000, which has survived.
- 11.50. This circumstance alone calls into serious question, it seems to me, whether any of the immediately neighbouring residents (or at least those who were in occupation in early 2000) could really claim to be using any part of the field “*as of right*” (i.e. without permission, but *as if* they had a *right* to be there, which had never been questioned). It seems clear, on the balance of probabilities, that in 2000 the landowners’ rights in respect of their land, and objection to trespass thereon by the neighbours, had been asserted on the owners’ behalf to those neighbours, so that any trespassory activities by those neighbours thereafter would not have been “*as of right*”.
- 11.51. Clearly, however, it might be the case that even if warnings against trespass had been given to individual close neighbours during the relevant period, e.g. in 2000, those warnings could not be assumed necessarily to have been conveyed on to the inhabitants of a much wider ‘neighbourhood’ area, who could (in theory) have carried on using the relevant land in an ‘as of right’ manner.
- 11.52. It is therefore necessary to consider what the evidence says about ‘lawful sports and pastimes’ use of this land during the whole relevant period, by inhabitants of the whole wider neighbourhood. On the Applicants’ case, of course, that means in effect the inhabitants of the whole village of Chiddingfold.
- 11.53. The evidence of use of any part of the application site by inhabitants of the wider neighbourhood (not being immediate neighbours or their friends/family) during the earlier years of the relevant period seemed to me to be rather scant, especially as far as the oral evidence was concerned. There was however what I found to be a telling piece of documentary evidence, found in an email exchange in early 2009 between Mr Faux and Mr de Watteville (one of the present Applicants, who had also been a renter of garages in the block at the south-east corner of the site).
- 11.54. This exchange related to the garages area, and the desirability of possibly erecting signage aimed at keeping trespassers out of that area. Mr de Watteville said (5th February 2009): “*The signage thing is possibly a bit of a double edged sword – at present the area has a very low profile, the track is somewhat overgrown and I*

suspect that very few people even know the garages are there. It may be that a sign would actually attract attention ...”

- 11.55. It is true that this exchange was about the garage area, rather than specifically about the present application site, just beyond the garages. However, by far the most feasible route of access to the application site for inhabitants of the wider neighbourhood was via the “*somewhat overgrown*” track, and passing through the area of garages that ‘very few people’ even knew about, unless perhaps they entered via the private back garden gate of one of the immediate neighbours who they happened to be friendly with.
- 11.56. This strongly suggests that the existence of the whole application site (and in particular its existence as a place which might be used and enjoyed) was in reality very little known about by residents of the wider ‘neighbourhood’, as of February 2009 (and by inference before that). This view is consistent both with the submissions for the Objectors, and the evidence of Mr Faux, and in my judgment, on the balance of the evidence, it is most likely to represent the reality of the situation.
- 11.57. It is also consistent with the impression I formed as to how slight the evidence was as to any significant level of use of any part of the application land, over the full requisite period, by people from the neighbourhood who were *not* neighbouring Woodside Road residents, or their guests or relations. No oral evidence was given of visits to the land by the local Scout/Beaver group(s), and such mention as there was in written material suggested the site had been visited by them only near the very end of the period.
- 11.58. The evidence of Mrs Wallbank suggested that the local nursery school had visited the site twice ever, only one of those occasions being within (but very near the end of) the relevant 20 year period. It was clear from her evidence that she had been pleasantly surprised on her first visit by the attractiveness of the application land, strongly suggesting that it was previously ‘unknown territory’ to her.
- 11.59. There was evidence about Bonfire ‘after-parties’ held on the application land, after the main annual village Bonfire event on the village green in the centre of the village. Witnesses’ evidence about this was not completely consistent, but the predominant evidence from those whose recollection seemed reasonably clear was that such events had happened quite regularly from about the year 2000 onwards, in the dark, for about 10-15 people who had been involved in organising the earlier main celebration. They seem from the evidence to have taken place mainly on the ‘southern strip’, but occasionally a little further north.
- 11.60. However the evidence suggested that the reason this ‘after-party’ took place here was to a considerable extent associated with the circumstances of one or more of the organisers of the main village bonfire in fact residing in Woodside Road, backing onto the ‘southern strip’, and having ‘garden gate’ access onto that strip.

- 11.61. It seems to me therefore, on my assessment of the evidence, that these bonfire ‘after-parties’, as well as not having taken place over the full 20 year period, had much of the character of some of the uses of parts of the ‘southern strip’ by the immediate neighbours which I have discussed earlier.
- 11.62. I turn now to the evidence about use of the larger, northern part of the application site (north of the ‘southern strip’) over the relevant period, and further back. There was inconsistency among the recollections of witnesses for the Applicants in relation to this. That is not of itself particularly surprising, as it is difficult for anyone to remember with accuracy over a period in excess of 20 years, especially in relation to changes to a day to day state of affairs, in respect of which there would have seemed at the time to be little reason to take a detailed or careful note.
- 11.63. I have to say however that I was impressed by the sincerity and straightforwardness of the way in which Mr Faux, for the Objectors, gave his evidence. He acknowledged that he had not been a frequent visitor over the years, but he had been a regular one – and of course he had a particular reason actually to take note of the general state of affairs on the land, on his visits. I found entirely credible, on the balance of probabilities, his evidence to the effect that, apart from noting the signs of some trespassory activities by neighbouring residents on the southern strip, it was extremely rare to see anyone on the land at all.
- 11.64. Of course it would be possible, in principle, that significant levels of activity by local people *could* have been occurring at other times, which just happened to be missed by Mr Faux’s infrequent visits, or the even more isolated (in terms of time) visits reported in writing by Mrs Turner (in probably the mid-part of 2005) and Dr Matthews (from South Africa) in January 2005.
- 11.65. There is some limited photographic evidence, but none of it is particularly conclusive, especially in relation to the early to mid-years of the 1995 – 2005 period. The January 2005 photographs of Dr Matthews do appear to show a continuous line of fence posts, in reasonably good order, running across the middle part of the land. But they are inconclusive (at least to my eye from the copies I have been provided with) as to whether there actually survived at that time any effective fence wire attached to those posts. [I do acknowledge that on my site visit in December 2017 a short length of fencing, with wire still attached (albeit largely covered with vegetation), was identified within the field, just to the north of the garages].
- 11.66. I have concluded on the balance of probabilities from the evidence overall, that it is likely that Mr Turner’s sound fencing around what had been his (rented) horse paddock did still survive in reasonable condition in September 1995, even though his use of the land had by then ceased for some time. Conversely however, as I have noted above, it seems clear that the ‘southern strip’ has always (in the context of the 20 year period under consideration) been easily accessible from the back

gardens along Woodside Road, with some parts of that strip at least being available for children in particular to come out of their gardens to play on, without interfering with the cultivated patches being tended by individual neighbours.

- 11.67. It clearly was also ‘always’ (in the same context) possible for neighbouring children and others to come out of their back garden gates and proceed on foot (or bicycle, etc) along the southern strip and thence (via the garages area) onto the wide network of paths over the open fields further to the east and north-east. This could be done without passing through any fences or gates on the application site. Indeed the evidence suggests that this could be done even during the period in the early 1990s when Mr Turner (the grazier) was in occupation, with his sound fencing around the main part of the field to the north of the ‘southern strip’.
- 11.68. In reaching conclusions such as this on the evidence, I should not be taken as suggesting that any of the witnesses from among the neighbours have been telling me deliberate untruths (albeit clearly they could not all be right, when they have been mutually inconsistent with each other). What I conclude has happened here, on the balance of probabilities, is that witnesses have in their minds elided a state of affairs which has undoubtedly come about in more recent years (no effective fencing on the application site, mown path(s) across it, etc) with a position where it has ‘always’ (i.e. for at least the requisite 20 year period) been possible for children and others to get out on to the southern strip through back garden gates and play there, or wander off into other open land to the east; and they have convinced themselves, in my judgment erroneously, that the accessibility of the main, northern part of the application site has always been more or less as it is now.
- 11.69. The probability however, it seems to me from the evidence as a whole, is that the paddock fencing on the application site fell away only gradually, only later in the 1990s, or quite possibly more recently than that, and that it gradually became feasible for the occasional adventurous child or adult to venture into and across the increasingly rough ground of the former paddock to the north.
- 11.70. This has led, eventually and over the years, to the current situation, seen by me in 2017, where neighbouring residents actively mow at least one clear path across the main part of the field, leading to a route out through the eastern boundary. Indeed it seems to me probable on the evidence that the use of this main path as a route of passage has been the most significant use made of any of the northern land, even in more recent years. I accept the evidence that there has been *some* blackberry picking around the hedge/tree lines on the boundaries of the site, and clearly someone at some point put some effort towards creating a tree-house in one of the boundary trees. I also accept that it is probable on the evidence that at least some children will have played from time to time in the rough ground of the northern part of the site, especially during the latter part of the 20 year period. The evidence did suggest to me however that even in more recent times the main areas used for local children’s play have in fact still been within the southern strip.

- 11.71. What the evidence taken as a whole has *not* done is to show, on the balance of probabilities, that any significant ‘lawful sports and pastimes’ activity by local inhabitants has taken place on the bulk of the application site for the full 20 year period – and certainly not use at a level which would suggest general use by the local community ‘as of right’, as opposed to sporadic, occasional trespass.
- 11.72. Indeed the evidence suggested to me that, even in the more recent, latter years of the relevant period, almost the only thing that would bring onto the site any Chiddingfold person who was not an immediate neighbour, or the guest of one, would be the additional walking route (albeit a ‘dog leg’) made available by the combination of the main current (mown) walking route across the site towards the eastern boundary, and the longer-established east-west route along (and within) the southern strip.

“As of right”

“... for a period of at least 20 years”

- 11.73. It will be apparent to anyone who has read through the earlier paragraphs of this section of my Report that I have already in fact addressed many of the considerations which arise in respect of the two statutory criteria highlighted in the heading above this paragraph. To recapitulate, it seems to me on the balance of probabilities, from all of the evidence (the written material as well as the oral evidence which has been able to be tested), that there probably has been at least some noticeable open (i.e. unconcealed) use of a significant proportion of the southern strip of the land, for purposes including ‘lawful sports and pastimes’, for the full requisite period of 20 years from 1995, by people (children and adults) living in the immediately neighbouring properties on Woodside Road, sometimes accompanied by visiting relations and friends.
- 11.74. By ‘noticeable’, I mean use to an extent where a reasonably observant landowner, who took the trouble to inspect his land from time to time, should have noticed it. In fairness to the landowners here, in spite of their relatively infrequent visits, they did in fact, during the relevant period, notice this trespassory activity by neighbours, and attempted on at least one occasion to reassert their rights, and communicate with all their neighbours.
- 11.75. However any such use by neighbours (and their visitors from time to time) was mixed up, in a way where the evidence does not provide the ability to make a ready distinction, with the permissive right that many of them had to traverse along the southern strip for access to the garages and beyond (and to do anything else reasonably incidental to that right); and the clearly permissive right that some neighbours had individually to cultivate a particular patch of the southern strip; and the fact of some other neighbours individually cultivating (or engaging in analogous activity on) particular patches of that strip.
- 11.76. I was not convinced, on the balance of probabilities, that any significant use of the southern strip was made during the whole 20 year period by other inhabitants of

the neighbourhood of Chiddingfold, apart from the immediate neighbours, and their guests from time to time. Furthermore, it seemed clear from the evidence that the extent of the ‘southern strip’ had gradually increased over time.

- 11.77. As I have noted previously, no party to the proceedings sought to define the extent of the southern strip at its various stages through time, still less to distinguish and define the parts of it which appeared to have been used for *individual* permitted or trespassory activities (e.g. cultivation), as opposed to some sort of collective ‘lawful sports and pastimes’ use. And, significantly in this context, no party sought to suggest that I and the Registration Authority ought to consider the possibility of registration of just the ‘southern strip’, or any relevant part(s) of it.
- 11.78. Thus, even if the evidence had otherwise warranted it (and my conclusion is that it does not), it would not have been incumbent upon myself or the Registration Authority to seek to identify from unclear evidence some lesser part of the application site where the case in favour of registration might have been stronger than elsewhere.
- 11.79. Another important point to make in this overall context is that it does not in any event, it seems to me, fall upon myself or the Registration Authority to present some sort of detailed conclusion as to exactly what *did* happen on a claimed area of land at all times during the relevant period. The balance of the matter is the other way round: the onus was on the *Applicants* to show, by their evidence, and their arguments as applied to that evidence, that on the balance of probabilities all of the statutory criteria under *Section 15* of the *Commons Act* can be seen to be met in this case.
- 11.80. My conclusion is that the Applicants have failed, through their evidence and arguments, to establish that the statutory criteria are met here, even in respect of the undoubtedly more heavily used ‘southern strip’ of the application site.
- 11.81. As far as the remainder of the land, further north, is concerned, the evidence when considered and weighed overall does not in my judgment even come close to establishing that lawful sports and pastimes uses had been indulged in ‘as of right’, by a significant number of the inhabitants of Chiddingfold, over the whole relevant period.
- 11.82. It seems to me probable on the evidence that any forays into the northern land by local people in the early years of the period from 1995 are likely to have involved stepping or climbing over extant fencing, so calling into question the ‘not by force’ aspect of the ‘as of right’ requirement. In any event the evidence viewed overall suggested that any such instances were likely to have been sporadic incidents of trespass, rather than an implied assertion by local people generally of a right to use this land recreationally.

- 11.83. Undoubtedly this trespass increased later on, as it became more obvious that the owners were neglecting this land, in the absence of any tenant or licensee occupier. Plainly at some point one or more local residents started mowing at least one path across the northern area, initially it seems using a mower which Mr de Watteville, one of the Applicants, purchased for that purpose, after he moved into the area in 2002 – according to Mr de Watteville’s written statement [he did not give oral evidence].
- 11.84. But the evidence as a whole suggested that even after that change took place, any use of the northern area was very sporadic, other than as a route of passage out of the field via the main path or paths. That there has been some reasonably regular picking of blackberries etc, by people from the neighbouring houses, around the boundaries of the site, seems more probable; and I have already noted that someone at some point put up a tree-house in a tree on the north-eastern boundary. However, as I have remarked earlier, the evidence overall was not convincing, on the balance of probabilities, that there was sufficient use of the surface of the land generally, as opposed to the path(s), and possibly the boundaries, on any basis higher than sporadic trespass. Even this sporadic level of trespass seems to me on the balance of the evidence likely to have been very much lower during the earlier years of the relevant period.
- 11.85. The evidence of any use at all, for most of the relevant period, by the inhabitants of Chiddingfold more widely than the immediate Woodside Road neighbours (with back garden gates) and their occasional guests, seemed to me to be extremely thin and unconvincing. I therefore conclude that the Applicants have not shown that the relevant statutory criteria are met in respect of the main, northern part of the application site, either.

Final Conclusion and Recommendation

- 11.86. It follows that my conclusion is that the Applicants have not made out their case for registration of the amended application site under *Section 15(2)* of the *Commons Act*.
- 11.87. My recommendation to the County Council as Registration Authority therefore is that *no part* of the land to which this application relates should be added to the statutory Register of Town or Village Greens, because on the evidence it does not meet the criteria required for such registration, for the reasons explained in this Report.

ALUN ALESBURY
7th March 2018

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I

LIST OF APPEARANCES AT THE INQUIRY

FOR THE APPLICANTS

(Mrs Antonia Cowley and Mr Angus de Watteville):

Mrs Antonia Cowley (Applicant); she called:

Mrs Debbie Wallbank, of 5 Pathfield, Ridgley Road, Chiddingfold

Miss Karen Brewster, of 11 Ladymere Place, Ockford Road, Godalming

Mr Ian Spicer, of 1 Jubilee Villa, Coxcombe Lane, Chiddingfold

Mr Graham de St Croix, of 3 Oakleigh Cottages, Woodside Road, Chiddingfold

Mr David Rauch, of 2 Martindale Place, Woodside Road, Chiddingfold

Mr William Creswell, of Medlar Cottage, High Street Green, Chiddingfold

Mr Ben Fielden, of Keneen, Woodside Road, Chiddingfold

Mrs Sarbjit Dhaliwal, of 3 Mortimore Villas, Woodside Road, Chiddingfold

AS AN ADDITIONAL PARTY

(Parish) Councillor Miss Christine Tebbot, of Okelands Cottage, Pickhurst Lane,
Chiddingfold

FOR THE OBJECTORS:

Mr Scott Stemp of Counsel –

instructed by the McLaren Clark
Group, Park Farm, Chichester Road,
Arundel BN18 0AG

He called:

Mr David Faux, of 6 Calvert Gardens, Dorking, Surrey

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB: This (intentionally brief) list does *not* include the original application and supporting documentation, the original objection, or any material submitted by the parties or others prior to the issue of the Directions for the Inquiry. It also excludes the material contained in the prepared bundles of documents produced for the purpose of the Inquiry on behalf of the Applicants and the Objectors, and provided to the Registration Authority (and me) as complete bundles.

FOR THE APPLICANTS:

- APP1 - Map showing location of facilities in Chiddingfold
- APP2 - List of Individuals who had provided evidence (written) prior to Inquiry
- APP3 - Amended Application Plan, Map A(2)
- APP4 - Note of opening submissions for Applicants
- APP5 - Email survey declaration from Matthew & Karen Prodger of Whistlers, Ridgley Road, Chiddingfold
- APP6 - Note of Closing Submissions for Applicants

FOR ADDITIONAL PARTY

Written Note of Evidence of (Parish) Councillor Miss Christine Tebbot

FOR THE OBJECTORS:

- OBJ1 - Section 13, Chiddingfold (Draft) Neighbourhood Plan, "*Recreation, Sport and Leisure – Site 6*"
- OBJ2 - Interim Consultation on Draft Chiddingfold Neighbourhood Plan, Sections 1 to 6
- OBJ3 - Photograph of play equipment and 'raised beds' on site, (said to be) dated November 2014

Not of Closing Submissions for the Objectors

APPENDIX III

LIST OF DOCUMENTS ADMITTED AFTER THE INQUIRY

From the Objectors:

Covering letter (17th November 2017) from McLaren Clark Consultancy, enclosing:
(Emailed) Letter (17th November 2017) from Dr Alan Matthews, of Durban, South Africa,
and 4 photographs of site, (said to be) dated 15th January 2005

From the Applicants:

Letter (8th January 2018) from Mrs Antonia Cowley (Applicant), commenting on the above
documents, and including a photograph (said to be) dated 23rd July 2004.

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FIGURE 1: Main northern part of the Land



Application for village green status. Land at Woodside Meadow, Chiddingfold.

FIGURE 2: Main northern part of the Land



Application for village green status. Land at Woodside Meadow, Chiddingfold.

FIGURE 3: Garages near to south-eastern corner



Application for village green status. Land at Woodside Meadow, Chiddingfold.

FIGURE 4: South-west corner of southern strip of the Land



Application for village green status. Land at Woodside Meadow, Chiddingfold.

FIGURE 5: South-eastern corner of southern strip of the Land



Application for village green status. Land at Woodside Meadow, Chiddingfold.

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