

LEITH HILL ACTION GROUP

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

Caroline Smith
 Planning Development Manager
 County Hall
 Kingston upon Thames
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22nd May 2018

Dear Caroline,

MO/2016/1563 Redetermination

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

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

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

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

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

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

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

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

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

Yours sincerely

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

Alan Hustings
for Leith Hill Action Group