

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

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

(\* present)

**Elected Members:**

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

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

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

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

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

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

There were none.

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

There were none.

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

There were none.

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

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

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

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

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

**Officers:**

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

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

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

**Speakers:**

Alan Hustings, local resident, made the following points:

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

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

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

Lucy Barford, local resident, made the following points:

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

Vicki Elcoate, local resident, made the following points:

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

Max Rosenberg, local resident, made the following points:

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

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

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

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

Hazel Watson, Local Member, made the following points:

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

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

**Key points raised during the discussion:**

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

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

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

*The meeting was adjourned at 11:41am whilst this point was clarified.  
The meeting was reconvened 11:50am*

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



**RESOLVED:**

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

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

**Officers:**

Caroline Smith, Planning Development Manager.

**Key points raised during the discussion:**

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

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

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

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

**Officers:**

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

**Speakers:**

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

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

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

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

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

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

Key points raised during the discussion:

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



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

#### **RESOLVED**

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

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

The date of the next meeting was noted.

Meeting ended at: 12.29 pm

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**Chairman**

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

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

**Paragraph text**

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

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

**Government Policy and Material Considerations**

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

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

**Further letters of representation**

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

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

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

## LEITH HILL ACTION GROUP

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

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

22<sup>nd</sup> May 2018

Dear Caroline,

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

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

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

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

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

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

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

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

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

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

Yours sincerely

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

Alan Hustings  
for Leith Hill Action Group



Planning &amp; Regulatory Committee 23 May 2018

Item No 7

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

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

**FURTHER LETTER FROM LEITH HILL ACTION GROUP**

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

**OFFICER'S COMMENT**

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

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

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

## UPDATE SHEET - AGENDA ITEM 9

Planning &amp; Regulatory Committee 23 May 2018

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

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

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

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

**CONSULTATIONS AND PUBLICITY**

- 17 AONB Officer  
No objection
- 26 Buckland Parish Council  
The local parish has submitted a further letter dated 18 May 2018, which has been circulated to the P&R Committee Members. Helyn Clack, the local Member has also submitted an email summarising and endorsing this response from the parish, as she cannot attend the committee meeting. The local Member asks that her email and the letter from the Chairman of the Buckland Parish Council be taken into account in the deliberation of this Item on Park Pit. The local Member states that *'Our concern being that the conditions of permission as laid out in the report need to be more robust in these specified areas to reflect the detailed and locally negotiated agreement between the community and the owners of the pit, which is supported overall by residents and myself.'*

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

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

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

### **Officer's comment**

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

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

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

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

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

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

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

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

## RECOMMENDATION

### CONDITIONS

#### Hours of Operation

- 3 With the exception of organised group events (e.g. bird watchers, open water swimming, outdoor activity centre), no lights shall be illuminated nor shall any operations or activities authorised or required by this permission, take place other than during the hours of:

08:00 – 18:00 hours

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

#### Noise

- 5 No outdoor live or amplified music is permitted on site at any time.
- 8 Between 08:00 and 18:00 hours, the Rating Level, L<sub>Ar</sub>(1hr), of the combined noise emissions from the plant and activities associated with the application site shall not exceed the existing representative LA<sub>90</sub> background sound level at any time by more than +5 dB(A) at the nearest noise sensitive receptor (NSR). The assessment shall be carried out in accordance with British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound'. The existing representative LA<sub>90</sub> background noise level shall be determined by measurement that shall be sufficient to characterise the environment and the recommended level should be justified following guidance contained within BS 4142:2014.
- 9 Between 18:00 and 23:00 hours, the Rating Level, L<sub>Ar</sub>(1hr), of the combined noise emissions from the plant and activities associated with the application site shall not exceed the existing representative LA<sub>90</sub> background sound level at any time by more than +5 dB(A) at the nearest noise sensitive receptor (NSR). The assessment shall be carried out in accordance with British Standard 4142:2014 'Methods for rating and assessing industrial and commercial sound'. The existing representative LA<sub>90</sub> background noise level shall be determined by measurement that shall be sufficient to characterise the environment and the recommended level should be justified following guidance contained within BS 4142:2014.

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

The following new conditions are also recommended to be added.

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

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

*On 18 May 2018, at 14:24*

Dear Tim,

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

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

These can be summed up as follows:-

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

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

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

Kind regards  
Helyn

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## BUCKLAND PARISH COUNCIL

18<sup>th</sup> May 2018

Dear Helyn,

Thank you again for your help in this matter.

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

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

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

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

### **Hours of operation**

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

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

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

### **Lighting**

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

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

**Nigel Husband, Chairman**

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

## BUCKLAND PARISH COUNCIL

### Music/noise

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

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

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

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

*No fireworks are to be allowed.*

### Management

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

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

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

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

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

Kindest regards



**Nigel Husband, Chairman**

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