

MINUTES of the meeting of the **PLANNING AND REGULATORY COMMITTEE** held at 10.30 am on 23 February 2022 at Surrey County Council, Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey, RH2 8EF.

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

Members Present:

Tim Hall (Chairman)
Ernest Mallett MBE
Jonathan Hulley
Victor Lewanski
David Lewis
Catherine Powell
Richard Tear
Jeremy Webster (Vice-Chairman)
Stephen Cooksey (Substitute)
Riasat Khan (Substitute)

Apologies:

Jeffrey Gray
Scott Lewis
Penny Rivers

11/22 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS [Item 1]

Apologies were received from Jeffrey Gray, Penny Rivers and Scott Lewis.

Stephen Cooksey substituted for Penny Rivers and Riasat Khan substituted for Scott Lewis

12/22 MINUTES OF THE LAST MEETING [Item 2]

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

13/22 PETITIONS [Item 3]

There were none.

14/22 PUBLIC QUESTION TIME [Item 4]

There were none.

15/22 MEMBERS' QUESTION TIME [Item 5]

There were none.

16/22 DECLARATIONS OF INTERESTS [Item 6]

There were none.

17/22 MINERALS/WASTE EP21/00223/CMA - LAND AT THE CHALK PIT, COLLEGE ROAD, EPSOM, SURREY KT17 4JA [Item 7]**Officers:**

Caroline Smith, Planning Group Manager
 Stephen Jenkins, Planning Development Manager
 Helen Forbes, Principal Lawyer
 Sonia Sharp, Senior Highways and Planning Solicitor
 Paul Evans, Director – Law and Governance
 James Nolan, Senior Planning Officer
 Nicola Stedman-Jones, Noise Consultant

Speakers:

David Williams made representations in objection to the application. The following key points were made:

1. That since 2020, the unlawful waste processing unit had exposed local people to severe noise and dust pollution.
2. That it was not clear why the operator had been given flexibility on planning regulations and had shown no regard for the local environment.
3. Residents had obtained legal advice which produced legal concerns on the committee reports reliability.
4. That the proposal must be judged against a clear baseline. Instead of providing clarity, the report framed the proposal as a way to regain control over site activity which was misleading.
5. That legal advice had confirmed that limits had been breached which would leave the site open to enforcement action.
6. That the report failed to give national green belt policy proper weight.
7. That the scheme claimed to process the same amount of waste as the previous scheme but required a larger operational area which would cause more harm to the green belt.
8. Any harm to the green belt must be clearly outweighed by very special circumstances and that this was not shown in a previous application in 2017 so could not be shown now.
9. That residents had concerns on the accuracy of the applicant's evidence on noise pollution.
10. That the latest Environmental agency response made several incorrect references to a proposed reduction in waste quantity which was a fundamental misunderstanding of the proposal which had not been addressed.
11. That the application relied on large buildings to contain noise, but main doorways would open six times an hour letting noise escape towards residents.
12. That the situation around noise assessment was uncertain at best.
13. Members should reflect on the opposition from residents and the local council.
14. That the proposal offered only a small contribution to meeting waste targets.
15. Urged Members to vote against the recommendation.

Fiona Macdowel made representations in objection to the application. The following key points were made:

1. They had lived 350 metres from the site for 15 years and that they had never had an issue with the site until summer 2020 which was when the operation was scaled up illegally.
2. For the last 18 months residents had experienced significant noise and dust issues.
3. That key relevant facts had been excluded from the officer report.
4. That it seemed the officer report had been written a considerable time ago as the gym and physio referenced in the report had departed in May 2021.
5. That the Surrey Waste Plan was being ignored and bypassed.
6. That the Environmental Agency independent noise experts stated that noise must reduce by 10 decibels and that the building would only reduce noise by up to seven decibels and possibly one decibel.
7. That the applicant had completed a noise assessment during a quiet period and therefore it had not reflected the reality of the noise issue.
8. That residents over three days, from 6am to 6pm, had recorded 120 vehicle movements each day by the operator.
9. That it was clear that Surrey County Council did not have the capacity or resource to potentially manage conditions if required.
10. That residents requested that the applicant be rejected, and recycling stopped.

Nigel Collin made representations in objection to the application. The following key points were made:

1. That residents had been subject to nuisance caused by the chalk pit since summer 2020 which was when a skip hire company began operating from the chalk pit site under NJB's licence. This also coincided with NJB's introduction of a large trommel and equipment which created further noise nuisance.
2. That residents could no longer have quiet enjoyment of their property or sit in their gardens due to a combination of noise and dust.
3. That Epsom Borough Council had submitted a rejection to the application. Epsom Borough Council was also investigating noise complaints under its statutory powers.
4. That, as a local councillor, he had received a number of calls from distressed residents who could not understand why formal procedures had not taken place.
5. That a recycling facility was far removed from a waste transfer facility.
6. That the retrospective application sought to legalise what was an illegal operation.
7. That operations before the application had already exceed that which was permitted by the clud and that the county had failed to enforce its parameters.
8. That in 2017 a retrospective application of a similar nature was recommended for refusal by officers.
9. That unless Members lived in the area then they would not understand frustrations.

Steve Gebbett made representations in objection to the application. The following key points were made:

1. That he was a Road Steward for Epsom Resident Association and lived 167 metres from the site.
2. That the operator had caused noise and dust issues for residents for over 18 months.
3. That residents had complained and registered 1200 times.
4. That the application was contentious and high profile with 717 objections and a 3000 signed petition.
5. That a non-resident location was obviously essential for the operation.
6. That planning policy dictated that residents and the green belt should be protected from harm.
7. That the large doors would be open most of the day and would only reduce noise by one decibel.
8. That Surrey County Council had failed to employ early non-enforcement procedures.
9. That the Environmental Agency internal review had stated that the Environmental Agency had completed assessments biased towards the operator.
10. That the Surrey Local Waste Plan had designated six non-resident sites for the operation however discussions on relocation had not taken place.
11. That there was an opportunity to introduce five conditions to mitigate some issues. These included conditions related to limiting hours of use, additional CCTV monitoring to monitor lorry movements, that the trommel could not be restarted until both builds were completed, banning articulated lorries from the site, and the introduction of a 2.5 green acoustic fence around the site.
12. Asked the committee to rebalance the decision and put people before waste.

Chris Grayling made representations in objection to the application. The following key points were made:

1. That he was here for the first time in over 20 years as a Member of Parliament
2. That the application was an example of commercial bad behaviour and official failure of the County Council and the Environmental Agency.
3. That the application was for a green belt site and that there was no evidence of special circumstances within the application. The site had not been identified in the local waste plan, nor had alternative sites been identified.
4. That there was no evidence that alternative sites had been approached to consider alternative locations for the operation.
5. That the application was an unlawful change of use retrospective application.
6. That the independent noise assessment taken by the Environmental Agency made clear that the operator's noise assessment was wrong, and that Members should not take the operator's data as correct.
7. That Counsel advice highlighted issues with the information provided by county council officers.
8. That Members cannot trust officers to enforce conditions within the application.
9. That Members should not endorse the behaviour of a company that acted unlawfully and reward it by granting the planning application.

The applicant and the applicant's agent Jamie Bowie and Suzi Coyne spoke in response to the public speakers' comments. The following key points were made:

1. The applicant provided a brief overview of the history of the organisation.
2. That national rules had changed over recent years to improve how operators recycle waste and that there was less landfill space to use.
3. That recycling had taken place in The Chalk Pit for over 40 years in one form or another.
4. That there were three waste operators on the site and nine skip firms.
5. In regard to noise and dust issues, numerous reports had concluded that there was not excessive noise or dust and that the site complied with all regulation.
6. That, as a local resident, he had done all he could to mitigate resident and councillor concerns.
7. That the local ward councillor had told residents that he would shut down the operation. The Member of Parliament had also stated that an alternative site would be located however this did not materialise.
8. That residents had signed a petition that they did not understand.
9. That breaches of Environmental Agency rules were dealt with almost instantly.
10. That the applicant had done all he could to appease residents and councils which included allowing site visits and making his contact information available.
11. That resident issues related to The Chalk Pit as a whole and not just his operation.
12. That the application would allow the local area to recycle waste and build a sustainable future for future generations.
13. That if the application was to be rejected then operations would return to how they had been operated over the previous 40 years.
14. The applicant's agent highlighted that 'waste transfer' was a historic term and did not exclude the treatment of waste.
15. That the development was highly sustainable and met national policy to use waste as a resource.
16. That recycling had taken place at the site for a very long time.
17. That another operator was also using the same equipment within the same location.
18. That containment of the waste processing within a building was identified with the Environmental Agency as the best available technology to contain potential emissions and would ensure surface water run off was not contaminated by the external storage of non-hazardous waste.
19. That Members of the Independent Institute of Air Quality Management deemed the site very unlikely to cause a nuisance, and that dust was more likely to be caused by other operations at The Chalk Pit.
20. Regarding noise, alterations to the trommel operation, including insulation of barriers, had also resolved the effects of noise emissions from the site, and that the new building would offer significant further benefits.
21. That a normal amount of waste was processed when noise assessments took place.
22. That NJB were not asked to 'stop' recycling, they were asked 'whether' they would stop recycling.
23. That very special circumstances had been demonstrated.

24. That the Surrey Waste Plan acknowledged that, in order to meet waste needs in the county, waste management would need to take place within the green belt.
25. That, if rejected the waste management site would remain in waste management use.
26. That an alternative within Leatherhead would have an increased impact on the green belt.
27. That the building of Building 1 would be built at a later stage.
28. That the increased use of articulated lorries would mean fewer HGV (Heavy Goods Vehicles) movements.
29. That the size of the operation was 0.36 hectares

The Local Member, Steven McCormick, spoke for three minutes. The following key points were made:

1. That the applicant would need to show very special circumstances to show that the harm to the green belt is outweighed by the need for the facility.
2. That the new buildings were not for agriculture, forestry or in connection with outdoor sport, cemetery, or an allotment.
3. That the new building was largest in size and would have a greater impact on the green belt.
4. The proposal was not an exception to green belt policy and therefore should be refused.
5. That the change of use as inappropriate and harmful to the green belt and does not preserve openness and conflicts with the protection of the green belt land policies.
6. Urged Members to reject the application.

The Local Member, John Beckett, spoke for three minutes. The following key points were made:

1. Thanked Members for attending the various site visits.
2. That the application had impacted various divisions.
3. That an independent report stated that NJB was the major cause of noise and dust. The Environmental agency report reported that there was a noise breach at the site and that the building was not efficient enough to reduce the legal limit for noise.
4. That residents had been subject to increased noise and dust due to the applications operations from the summer of 2020.
5. That the site's previous application in 2017 which was rejected.
6. That the current site was deemed 'light industrial' but the application would change the site to 'heavy machinery'.
7. That the report stated that the nearest house was 160 metres away however the boundary of the house was only 80 metres from the site.
8. That the Committee should be aware that Epsom Borough Council was in the process of creating a local plan which set out strong guidance for what was inappropriate development in the borough.
9. That the NPPF stated that applicants should contribute positively to the character and quality of the area of which it is located.
10. That point 6 of the report identified six suitable sites within the county for the operation and that The Chalk Pit was not one of them.
11. That the officers report state that the waste operation contribution in question was small compared to other operations in the county.

12. That residents cannot use their gardens because of the noise and windows cannot be opened due to the dust.
13. Asked the committee to refuse the application.

Key points raised during the discussion:

1. The Officer introduced the report and provided a brief overview of the plans and arials included in the agenda. Members noted the following points:
 - a. That Members needed to consider the development before them today and whether it was an acceptable use of land.
 - b. Details on the size of the site.
 - c. Highlighted details on Epsom Skip Hire and the use of the trommel which had the correct permissions and was therefore being used lawfully. There were no controls on the lawful use of the trommel except for those permitted by the Environmental Agency.
 - d. That the County Council was working with the Local Borough Council and the Environmental Agency in terms of statutory controls and permits.
 - e. That Members should focus on the proposal rather than the other activities on the Chalk Pite site.
 - f. Officers highlighted the reasons why the application was part retrospective.
 - g. That a summary of publicity taken, and issues raised could be found on paragraphs 57 – 71 of the officer's report.
 - h. That a total number of 684 letters of representation had been received in objection to the application.
 - i. Two petitions with a total of 3320 signatories had been received.
 - j. Key issues were access, parking and transport impacts, dust and air quality, drainage, ground contamination, landscape character & virtual impact, lighting, noise, ecology and biodiversity, waste management issues and green belt.
 - k. All technical consultees had raised no objections to the proposal subject to the application of conditions.
 - l. Objections had been received from Epsom and Ewell Borough Council.
 - m. Objections had been received from three resident associations.
 - n. Officers believed that the applicant had demonstrated very special circumstances.
2. A Member highlighted the rules around predetermination as a member of the Planning and Regulatory Committee. The Member further stated that a retrospective application was not unlawful and that the site was a commercial and industrial site and would continue to be one going forward.
3. A Member stated that waste processing sites were a requirement of modern society.
4. A Member asked whether a green belt impact assessment had been carried out. Officers stated that the interpretation of the green belt assessment was covered clearly in the report however Members should not confuse the green belt assessment with the alternative site assessment. Officers further stated that, as waste was already being transported into the site, they believed it was not necessary to conduct an alternative site assessment.

5. A Member asked for confirmation on the 'very special circumstances' noted in the officer report.
6. In terms of identifying a separate site for the operation to take place, officers stated that waste had been transferred to the site for over 40 years and therefore the site had an existing waste use.
7. A Committee Member made the following comments:
 - a. That the conditions on noise were not enforceable.
 - b. Highlighted that Condition 12 had changed from the previous Condition 12 in the previously published report.
 - c. That the conditions on dust were not enforceable.
 - d. That Condition 19 needed to be strengthened.
 - e. That condition 20 should include a consequence associated with records not being submitted or tonnages being exceed.
 - f. That condition 21 should require external facing surfaces to minimise visual impact
 - g. That condition 24 should include post planting inspections for a period of 5 years to ensure that planting has taken and where planting was not successful require replacement and sign off of this after care period before moving into long term aftercare.
 - h. That the operations taking place on the whole Chalk Pit site were concerning, especially around surface water management, and that something should be done to improve it. Specially concerns should be raised to the landowner around noise at the Chalk Pit boundary, the need for a wheel wash area, the need for a common car parking area to reduce traffic on the public road, the need to reduce working hours across the site, the need for a properly surfaced area across the whole site to allow for proper management of surface water and drainage, improved lighting on the site, increasing the use of buildings when undertaken noisy or dusty operations, and for the requirement of all leaseholders to have their plant vehicles on site fitted with white noise and non-tonal reversing alarms.
8. A Member said that he felt the 'need' for the application had not yet been shown.
9. Officers highlighted to the committee that retrospective applications were allowed in law. It was also highlighted that that Building 2 was where screenings operations, including the trommel, and the picking station would be located. Building 1 was for the storage of skips and the parking of lorries.
10. Officers stated that the height of the buildings was based on Department for Environment, Food & Rural Affairs guidance.
11. The officer also highlighted that it was outside the scope of the application to require the operator of the site to undertake operations outside the area of the application site in question. Members noted that the landowner had already submitted a certificate of proposed operations for the resurfacing of 50 metres of road on the upper rim which was granted in the previous month. Regarding pollution issues, officers went on to further clarify that it would be for the Environmental Agency to look at the wider Chalk Pit site.
12. A Member said that, when visiting the site and walking around it, they had found that it was difficult to distinguish the noise from the application site from other background noise in the area. The Member further stated that another operator on the site used a trommel and that they had longer working hours than the application site discussed.

13. A Member said that they were uncomfortable with the negative comments made about officers as it was a complicated issue with a number of aspects to consider.
14. A Member asked why the application submitted in 2017 was refused. Officers confirmed that the application was refused due to a lack of information from the applicant.
15. The Committee noted that there were two trommels on the Chalk Pit site.
16. The Noise Consultant highlighted that when carrying out a noise assessment, the equipment would record all noise in the area and not just noise emitted from the site.

The Chairman held a comfort break from 12:21pm – 12:35pm

17. Officers confirmed that the emerging plan by the local borough council carried no weight because it was still in its consultation phase and open to change.
18. Members noted that the noise condition was worded so that, in the event the noise monitoring showed that noise levels were above those agreed, then additional mitigations could be put in place. This included upgrading the building structure to include noise mitigation equipment.
19. Members stated that they continued to have concerns around the negative impact of the site as a whole on the local area rather than specifically the NJB site. A Member suggested that the committee write to the landowner to outline the various generic concerns raised by both Members and residents. The committee agreed to write to the landowner to outline these concerns.
20. The committee agreed to write to the Epsom and Ewell Local Committee to raise concerns based on the parking issues on the road and entrance to the site.
21. A Member requested that the terminology around trommel and mechanical screening was consistent throughout the conditions.
22. A Member stated that they felt 'very special circumstances' had not been met and therefore they could not support the application.
23. The Chairman moved the recommendation which received six votes for, four votes against and zero abstentions. Therefore the application was granted subject to the conditions outlined in the officer report and update sheet.

Actions:

1. The committee agreed to write to the landowner to outline concerns raised by residents and councillors on the Chalk Pit as a whole.
2. The committee agreed to write to the Epsom and Ewell Local Committee to raise concerns based on the parking issues on the road and entrance to the Chalk Pit site.

Resolved:

The Committee agreed to grant planning permission subject to the conditions from page 64 of the agenda and the update sheet.

18/22 SURREY COUNTY COUNCIL PROPOSAL SP21/00258/SCC - BISHOP WAND CHURCH OF ENGLAND SECONDARY SCHOOL, LAYTONS LANE, SUNBURY ON THAMES, SURREY TW16 6LT [Item 8]

Ernest Mallet and Stephen Cooksey left the meeting at 13:02

The Chairman held a comfort break from 13:03 – 13:09

Officers:

Katie Jewell, Planning Officer
 Charlie Cruise, Principal Transport Development Planning Officer
 Caroline Smith, Planning Group Manager
 Stephen Jenkins, Planning Development Manager
 Helen Forbes, Principal Lawyer
 Sonia Sharp, Senior Highways and Planning Solicitor

Speakers:

The Local Member, Buddhi Weerasinghe, spoke for three minutes. The following key points were made:

1. That he was supportive of the application as the school age population was set to increase by 5.5% over the next few years.
2. Provided a brief overview of the proposal.
3. That there was a need for the development in the area and that it would benefit residents.
4. That the expansion would increase students from 930 to 1050 total. The total number of sixth form students were also set to increase.
5. That the proposal would be a great increase for governors, teachers, students, and parents.

Key points raised during the discussion:

1. The officer introduced the item and the update sheet. Members noted that the proposal included the construction of a new two storey dining hall and classroom block; single storey extension to science lab; and associated works. Members were provided with an overview of the plans and photographs of the site.
2. Members raised concerns around the provision of a 'raised table' at the northern end of Layton's Lane and whether it would successfully mitigate the issue of speeding vehicles. Officers explained that the table would be included at the end of the lane so that it would set the tone of speed of 20 miles per hour for the remaining lane. Officers explained that, due to there being dropped curbs and the potential of noise issues, there was limited scope to introduce more tables throughout the lane. Officers further stated that the scheme proposed was the best scheme available.
3. Discussion was had on the informal footpath and the reason why an updated footpath was proposed to be implemented if another path was available. Officers explained that the informal path was located on land owned by a third party and therefore there was no formal right of access to it and could be closed at any time.

4. Members noted that the cycle lane along Layton's Lane was no longer part of the proposal.
5. The committee unanimously agreed to permit the application.

Resolved:

The Committee agreed that, pursuant to Regulation 3 of the Town and County Planning General Regulations 1992, planning application ref: SP21/00258/SCC be permitted subject to conditions within the officer report and update sheet.

19/22 ADOPTION OF THE UPDATED PLANNING ENFORCEMENT AND MONITORING PROTOCOL MINERALS & WASTE PLANNING DEVELOPMENT [Item 9]

Officers:

Caroline Smith, Planning Group Manager
 Stephen Jenkins, Planning Development Manager
 Helen Forbes, Principal Lawyer
 Sonia Sharp, Senior Highways and Planning Solicitor

Key points raised during the discussion:

1. The Chairman introduced the item.
2. Members noted that an 'odour' condition would be included on a planning application when necessary, however, the Environmental Agency were responsible for monitoring pollution and odour issues.
3. Officers highlighting that the Enforcement Team would provide a round-up report to the committee on occasion.
4. A Member raised concern with the current process of dealing with operators in breach of planning conditions. Officers explained that, in the event of an operator being in breach of planning conditions, if appropriate, and in line with government policy, a retrospective application would be negotiated. However, in the event that the breach was unacceptable then an enforcement process would begin.
5. In regard to the flow chart located on page 39 of the supplementary agenda, Members raised concerned as the chart presented that a risk of significant harm could lead to 'no further action'. A Member further stressed that it was important to ensure that any serious harm by an operator was met with enforcement action.
6. A legal representative highlighted that she had reviewed various enforcement policy from across the country and that the policy being considered at the meeting was the best written policy seen by her to date.
7. A legal representative further stated that issues were likely to be related to the Enforcement Team's resource to monitor, inspect, make decisions and to follow up. Member also noted that, as seen in the flow chart, enforcement notices would not be issued in a situation where planning permission could be granted.
8. In regard to the 'Is enforcement action expedient?' section of the chart, the legal representative proposed that it may be more appropriate to state, 'is enforcement action possible?' as there were situations where

enforcement action was not possible. It was further stated that the council's scheme of delegation stated that the Director – Law and Governance would be involved in any decision to take no further action.

9. Members noted that it was unlikely that the council would be unable to start enforcement actions due to the wording of a condition.
10. Officers proposed two amendments to the flow chart on page 39 of the agenda. These were:
 - a. Removed the word 'significant' from the section of the chart which read 'is the risk of significant harm caused by the breach in our profession judgement?'
 - b. To include an additional box under the box noted in paragraph 10a above, which read 'reconsider enforcement action'.
11. A Member agreed to support the policy and amendments subject to the committee reviewing the policy again in the near-term. It was also requested that Members were allowed time in advance of the committee meeting to consider the policy and make comments. The Committee agreed to hold a working group to consider the policy when appropriate.
12. The Chairman moved the recommendation with the amendments noted in paragraph 10 of this item's minute. The Committee unanimously agreed to support the recommendation.

Resolved:

It was agreed that the amended Planning Enforcement and Monitoring Protocol, Minerals & Waste Planning Development dated February 2022 be adopted to replace the protocol we currently use, Planning Enforcement Protocol, Minerals and Waste Development dated September 2015.

20/22 DATE OF NEXT MEETING [Item 10]

The date of the next meeting was noted.

Meeting closed at 2.10 pm

Chairman