

TO: PLANNING & REGULATORY COMMITTEE **DATE:** 25 SEPTEMBER 2024

BY: PLANNING GROUP MANAGER

*DISTRICT REIGATE & BANSTEAD BOUROUGH COUNCIL
ELECTORAL DIVISION: HORLEY WEST SALFORDS AND SIDLOW, MR
LYNCH*

PURPOSE: FOR INFORMATION
143607

GRID REF: 525342

TITLE: Minerals/Waste Application RE18/02667/CON

Report on outcome of the consideration of this matter by the Supreme Court

**Horse Hill Well Site, Horse Hill, Hookwood, Horley, Surrey
RH6 0HN**

Summary Report:

On 11 September 2019, the Planning and Regulatory Committee approved planning application Ref. RE18/02667/CON for the retention and extension of an existing well site, HH1 and HH2 wells, and vehicular access to allow: the drilling of four new hydrocarbon wells and one water reinjection well; the construction of a process and storage area and tanker loading facility; new boundary fencing; well maintenance workovers and sidetrack drilling; and ancillary development enabling the production of hydrocarbons from six wells, for a period of 25 years at Horse Hill well site, Horse Hill, Hookwood, Horley, Surrey RH6 0HN. The planning permission was issued on 27 September 2019.

A claim for judicial review was subsequently submitted by a Surrey resident on behalf of the Weald Action Group. The claim was considered by the High Court and the Court of Appeal, both of which concluded that the County Council acted lawfully in not considering the downstream carbon emissions from the oil produced at the site.

The resident was then granted permission to take the matter to the Supreme Court where it was heard on 21st and 22nd June 2023. The judgement was handed down on 20th June 2024. The Supreme Court decided, by a majority of 3

to 2, that the County Council acted unlawfully by not considering the indirect, downstream emissions of the oil when burnt.

This report provides the details of the outcome of the decision of the Supreme Court and the implications for the Council.

Recommendation:

The Committee is asked to note the outcome of the claim for judicial review and that the planning permission granted in September 2019 has now been quashed. The application will return to Planning and Regulatory Committee for determination in due course.

Background:

1. Planning permission was first granted at this site for the exploratory stage of onshore oil and gas development under permission reference RE10/2089 dated 16 January 2012. The planning permission allowed for the construction of an exploratory wellsite including plant, buildings and equipment; the use of the wellsite for the drilling of one exploratory borehole and the subsequent short term testing for hydrocarbons; the erection of security fencing; construction of a new access onto Horse Hill and associated access track with passing bays, all on some 1.16 ha, for a temporary period of up to 3 years, with restoration to agriculture and woodland.
2. Works to construct the wellsite commenced in February 2014. The exploratory borehole, known as HH-1, was originally drilled in October 2014 and the well discovered oil accumulations in the Portland Sandstone and in multiple deeper Jurassic formations of the Kimmeridge Limestone members. Flow testing was later carried out in February to March 2016 which the operator considered to be highly successful.
3. A further planning application reference RE16/02556 was granted in 2017 for the retention of the existing exploratory well site and vehicular access onto Horse Hill; the appraisal and further flow testing of the existing borehole (Horse Hill-1) for hydrocarbons, including the drilling of a (deviated) sidetrack well and flow testing for hydrocarbons; installation of a second well cellar and drilling a second (deviated) borehole (Horse Hill-2) and flow testing for hydrocarbons; erection of security fencing on an extended site area; modifications to the internal access track; installation of plant, cabins and equipment, all on some 2.08ha, for a temporary period of three years, with restoration to agriculture and woodland.

4. Planning application Ref. RE18/02667/CON was submitted for the retention and extension of an existing well site, HH1 and HH2 wells, and vehicular access to allow: the drilling of four new hydrocarbon wells and one water reinjection well; the construction of a process and storage area and tanker loading facility; new boundary fencing; well maintenance workovers and sidetrack drilling; and ancillary development enabling the production of hydrocarbons from six wells, for a period of 25 years. This was approved by the Planning and Regulatory Committee on 11 September 2019 and the planning permission was issued on 27 September 2019.
5. At paragraph 122a, the NPPF states that 'Minerals planning authorities should when planning for onshore oil and gas development, clearly distinguish between, and plan positively for, the three phases of development (exploration, appraisal and production), whilst ensuring appropriate monitoring and site restoration is provided for.' Each of these three planning applications reflects one of these stages.

Legal Challenge:

6. On the 8 November 2019, a local resident submitted a claim on behalf of the Weald Action Group for judicial review of the Planning and Regulatory Committee decision to grant planning permission on 11 September 2019. At this stage, they were seeking judicial review on several grounds. The application for permission to apply for judicial review was refused on the papers on 3 January 2020 and subsequently refused again at a hearing on 13 February 2020.
7. Permission to apply for judicial review was granted on 15 July 2020 following a decision by the Court of Appeal. The substantive hearing at the High Court was held between 16 and 18 November 2020. The claim was dismissed. The claimant appealed and the appeal was dismissed by the Court of Appeal on 17 February 2022, following a hearing on 16 November 2021. By this stage, the grounds for the judicial review had narrowed and the main concern was the treatment of indirect, downstream carbon emissions in the Environmental Impact Assessment and the Environmental Statement that accompanied the planning application. Both the High Court and the Court of Appeal concluded that the County Council acted lawfully in not considering the downstream carbon emissions from the oil produced at the site.
8. Permission was granted to take the matter to the Supreme Court and the case was heard on 21st and 22nd June 2023. The judgement was

handed down on 20th June 2024. The Supreme Court decided, by a majority of 3 to 2, that the County Council acted unlawfully and that the Environmental Statement (ES) that accompanied the planning application should have included an assessment of the downstream greenhouse gases. The planning permission that was issued on 27 September 2019 has therefore been quashed and the application will need to be redetermined.

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9. This was a landmark decision. There was no existing case law that grappled with this question. It is important to note that the County Council's approach to the application was correct with the law as it was interpreted at the time the application was originally considered, the Supreme Court decision has changed the law. A majority of the Supreme Court allowed the claim for judicial review, holding that an EIA must assess the downstream effects on climate from combustion of the oil produced.
10. The court held that greenhouse gas (GHG) emissions were an inevitable consequence of the proposal and that there was a clear chain of causation between the proposal and the burning of the oil in this case. It further held that the Environmental Impact Assessment (EIA) was flawed as it only took into account direct emissions (those arising from the site) but not indirect emissions (those arising from the burning of the oil following refining and sale). Given that there are established methodologies for calculating GHG emissions, there is no technical reason that they couldn't have been taken into account. In essence the court ruled that in considering EIA for a proposal for the extraction of oil, the County Council was required to assess, as an indirect effect of the project, the environmental effects of GHGs arising from the ultimate combustion of the oil once refined and used.
11. The dissenting judgement agreed with the Council's case that the EIA is a means for assessing the impact and mitigation of projects seeking planning permission. The project in this case was the extraction of oil and they found that the downstream GHG emissions were outside the scope of that specific project.
12. The impact of the judgement is that for future EIA development, planning authorities will need to take a pragmatic and cautionary approach to indirect effects and, where there is an inevitability of a consequence and the ability to undertake a meaningful assessment, it must be included in the EIA. Any separation from the project does not negate this requirement.
13. All applicants with proposals for hydrocarbon development in the County that are deemed to be EIA development will now need to assess the

downstream GHG emissions as a matter of course. It is not yet clear how the ruling impacts other types of development but it is conceivable that it will have implications for other types of mineral development and transport schemes that require EIA.

Costs

14. No order has yet been made in relation to costs which have been the subject of separate submissions. As the losing party, the County Council will be required to pay some or all of the appellant's costs.

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15. The planning permission granted by the Planning and Regulatory Committee on 11 September 2019 has been quashed by the Supreme Court. The planning application will need to be redetermined in due course.
16. Counsel has advised that the applicant will need to update their EIA and resubmit their ES to take account of the downstream GHG emissions and also to update the other information given the passage of time since the original planning application was submitted. Once this information has been submitted to the satisfaction of the minerals planning authority, there will need to be further consultation and neighbour notification. It will be some time before this will be considered again by the Planning and Regulatory Committee.
17. The applicant discharged a number of conditions attached to RE18/02667/CON and has implemented the planning permission. This was at their own risk whilst the legal process was ongoing. Had they not implemented however, their planning permission may have lapsed. The planning application will need to be amended to take the works undertaken in account and to make it part retrospective.

Recommendation:

18. The Committee notes the Supreme Court's decision to allow the claim for judicial review of the County Council's decision to grant planning permission for application Ref. RE18/02667/CON, holding that an EIA must assess the downstream effects on climate from the combustion of the oil produced and that the planning permission RE18/02667/CON has been quashed.

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Background papers

Committee report for RE18/02667/CON dated 11 September 2019
[COMMITTEE REPORT \(surreycc.gov.uk\)](https://www.surreycc.gov.uk)

Supreme Court judgement [R \(on the application of Finch on behalf of the Weald Action Group\) \(Appellant\) v Surrey County Council and others \(Respondents\) - The Supreme Court](#)