

## **Planning and Rights of Way Committee**

**18 May 2022**

### **County Matter Mineral and Waste Application**

**A clay quarry and construction materials recycling facility (CMRF) for CD&E wastes, including the use of an existing access from Loxwood Road, the extraction and exportation of clay, and restoration using suitable recovered materials from the CMRF to nature conservation interest including woodland, waterbodies and wetland habitats**

**Pallinghurst Woods, Loxwood Road, Loxwood, West Sussex RH14 0RW**

**Application No: WSCC/030/21**

**Report by Head of Planning Services**

**Local Member: Janet Duncton**

**District: Chichester**

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### **Summary**

This report relates to an application for a new clay quarry and a new construction materials recycling facility (CMRF) for the treatment of inert (i.e. non-hazardous) construction, demolition and excavation (CD&E) wastes. The development would include the use of an existing access track from Loxwood Road. Restoration of the site would use suitably-recovered material from the CMRF for nature conservation, including woodland, waterbodies and wetland habitat. Clay extraction would take place over 30 years. The recycling activity would commence in Years 2 or 3 and cease after 33 years from the commencement of the clay extraction.

This report provides a generalised description of the site and a detailed account of the proposed development and appraises it against the relevant policy framework from national to local level.

The main policies of relevance to this application are Policies M5, M8, M9, M12, M14, M15, M16, M17, M18, M19, M20, M22, M23, M24, M25 and M26 of the Joint Minerals Local Plan 2018 (JMLP), Policies W1, W3, W4, W8, W11, W12, W14, W15, W16, W17, W18, W19, W20 and W21 of the West Sussex Waste Local Plan 2014 (WLP), Policies 1, 25, 39, 42, 45, 47, 48, 49 and 52 of the Chichester Local Plan 2014–2031 (CLP) and Policies 12, 14 and 18 of the Loxwood Neighbourhood Plan (2013–2029).

The following consultees object to the proposal: WSCC Ecology, WSCC Trees and Woodland, WSCC Public Rights of Way, WSCC Highways, Loxwood Parish Council, Plaistow and Ifold Parish Council, and Alford Parish Council. Natural England has requested further information.

There have been 1,692 representations from third parties; 1,656 objecting and the rest making general comments.

### **Consideration of Key Issues**

The main material planning considerations in relation to the determination of the application are whether the proposal is acceptable with regard to:

- the need for clay extraction;
- the restoration of the clay pit using inert waste;
- the need for, and location of, the inert waste recycling facility;
- impacts on landscape character and public amenity;
- impacts on biodiversity; and
- impacts on highway capacity and road safety.

### **Need for Clay Extraction**

The JMLP supports extraction of brick clay where it would meet the criteria listed in Policy M5. The proposed development does not accord with Policy M5 as three of the current brickworks have over 25 years reserves of clay, with the other having 24 years. In addition to not being required to supply additional reserves, the applicant has not identified a link between the site and any of the existing brickworks. Furthermore, the development would represent an insignificant contribution (375,000 tonnes) to help maintain supply of clay, given that current reserves are 17.5 million tonnes. As such, the development does not accord with Policy M5 of the JMLP.

### **Restoration of the Clay Pit using Inert Waste**

Policy W8 of the WLP supports recovery operations involving the deposition of inert waste to land where it would meet the relevant criteria. The proposed development is not considered to meet all of the criteria because it has not been demonstrated that the development would result in a clear benefit to the site and the wider area, it would result in an unacceptable impact on the landscape and tranquillity of the area, and there would be a net loss of biodiversity habitats. Therefore, the development is contrary to Policy W8 of the WLP and Paragraph 7 of the National Planning Policy for Waste 2014 (NPPW)

### **Need for, and Location of, the Inert Waste Recycling Facility**

The 'in principle' acceptability of the proposed inert recycling facility depends on two considerations; the need for facility and the suitability of the location. The applicant has not demonstrated that there is a market need for the CMRF consistent with the principle of net self-sufficiency. Therefore, the proposal does not accord with Policy W1 of the WLP. Although the application site has not been allocated in the WLP for waste management uses, it is within the Area of Search where facilities are acceptable in principle. However, the applicant has not demonstrated that an inert waste recycling facility needs to be located on a greenfield site in a countryside location. Furthermore, although co-location of a recycling facility and a restoration site has some advantages, it is an isolated location and more sustainable options would include the recycling of material at source and the transport of only non-recyclable material to the site. Therefore, the proposal does not accord with Policies W3 and W4 of the WLP, Policy 45 of the CLP, and Paragraph 84 of the National Planning Policy Framework (NPPF).

## **Impacts on Landscape Character and Public Amenity**

The application site is situated within a remote countryside woodland setting. Although the site is well-screened by its topography and surrounding trees, the development would still result in adverse impacts upon the landscape and surrounding sensitive receptors, and it would have a significant adverse impact on a tranquil area that currently remains undisturbed by noise and which is locally important for its recreational and amenity value. Overall, the development is considered to result in unacceptable impacts on landscape character and public amenity. Therefore, the proposal does not accord with Policies M12, M18 and M23 of the JMLP, Policies W11, W12 and W19 of the WLP, Policies 45 and 48 of the CLP, Paragraphs 174 and 185 of the NPPF, and Paragraph 7 of the NPPW.

## **Impacts upon Biodiversity**

Ecological impacts associated with the proposed development would result in the net-loss of semi-natural broad-leaved woodland (a habitat of principal importance). Even with embedded mitigation and enhanced off-site mitigation, the impact of the development would still result in a net loss of biodiversity. Therefore, the proposed development does not accord with Policy M17 of the JMLP, Policy W14 of the WLP, Policy 49 of CLP, Paragraphs 174 and 180 of the NPPF, and Paragraph 7 of the NPPW.

Furthermore, the Appropriate Assessment undertaken by officers indicates that, notwithstanding the water neutrality mitigation measures proposed by the applicant, it has not been demonstrated that the proposal would not have an adverse effect on the internationally important Arun Valley SAC/SPA/Ramsar site. Therefore, not only does the proposal not accord with Policy M17 of the JMLP, Policy W14 of the WLP, Policy 49 of CLP, and Paragraph 180 of the NPPF in relation to this specific issue, the County Council must refuse the project under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

## **Impacts on Highway Capacity and Road Safety**

The proposed development would result in up to a maximum of 42 HGV movements each weekday as a result of the clay extraction and waste recycling operations. Although some of the outstanding matters could potentially be addressed by condition and/or a legal agreement, the Local Highway Authority has advised that it requires more information and clarification regarding other key matters, including the access arrangements and visibility splays, and the hazards to other highway users. Therefore, it has not been demonstrated that the proposed development would not have unacceptable impacts on road safety. Therefore, the proposal does not accord with Policy M20 of the JMLP, Policy W18 of the WLP, Paragraphs 110-112 of the NPPF, and Paragraph 7 of the NPPW.

## **Overall Conclusion**

Planning permission is sought for three distinct operations. First, the extraction of 375,000 tonnes of clay over a 30-year period for use in brick-making, second, phased restoration of the clay pit using inert waste, and third, the operation of a construction materials recycling facility (CMRF) processing 25,000 tonnes of inert construction, demolition and excavation (CDE) waste per annum. Half of the waste would be used for the restoration of the clay pit and half would be exported for use elsewhere.

The clay extraction operation appears to be an entirely speculative because the applicant has not demonstrated that there are any links between the proposed extraction of clay and the needs of the brickworks in the County. Notwithstanding that fact, restoration of the clay pit with up to 375,000 tonnes of inert waste is not acceptable.

With regard to the proposed CMRF, the applicant has not demonstrated that there is a need for the facility to meet market need consistent with the principle of net self-sufficiency in the WLP. Similarly, the applicant has not demonstrated that there is a need to locate the facility on a greenfield site in the countryside.

The application site is situated within a remote countryside woodland setting. Although it is well-screened, the proposed development would still result in adverse impacts on landscape character and surrounding sensitive receptors, and it would have a significant adverse impact on a tranquil area that currently remains undisturbed by noise and which is locally important for its recreational and amenity value, including for users of the PROW network.

Although on and off-site ecological mitigation is proposed, the proposed development would still result in a net loss of biodiversity habitats. Furthermore, it has not been demonstrated that the proposed water neutrality measures would not result in the proposal having an adverse effect on the internationally important Arun Valley SAC/SPA/Ramsar site, which is sufficient reason to refuse the application.

The proposal would result in a significant number of HGV movements in and out of the site, in part to export recycled CDE waste for use elsewhere. Although some highway matters have been satisfactorily addressed and could be secured by condition and/or a legal agreement, other matters remain unresolved. Therefore, not been demonstrated that the proposed development would not have unacceptable impacts on road safety.

In summary, there is no proven need for the clay extraction operation or a proven need for the inert waste recycling facility or to locate the facility on a greenfield site in the countryside. The applicant has also failed to demonstrate that there would not be unacceptable impacts on landscape character and public amenity, biodiversity, and road safety. Overall, it is considered that any benefits of the proposal do not outweigh the significant disbenefits that have been identified. As such, the proposed development is not considered to constitute sustainable development in accordance with Paragraphs 7 or 11 of the NPPF and it is contrary to the statutory development plan when read as a whole.

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## **Recommendation**

That planning permission be refused for the reasons set out in **Appendix 1** of this report.

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### **1. Introduction**

- 1.1 This report relates to an application for a new clay quarry and a new construction materials recycling facility (CMRF) for inert (i.e. non-hazardous) construction, demolition and excavation (CD&E) wastes at Pallinghurst Woods,

near Loxwood. The development would include the use of an existing access track from Loxwood Road. Restoration of the site would use suitably-recovered inert material from the CMRF for nature conservation, including woodland, waterbodies and wetland habitat. Clay extraction would take place over 30 years. The recycling activity would commence in Years 2 or 3 and cease after 33 years from the commencement of the clay extraction.

- 1.2 The applicant's states that the clay in the proposed area is suitable for brick making and the establishment of a new clay pit would replace the loss of the recently-closed Rudgwick clay pit.
- 1.3 The extraction of clay and the movement of waste into and out of the site would generate 42 heavy goods vehicle (HGV) movements each day (21 in and 21 out), with vehicles ranging from 18-32 tonne lorries.

## **2. Site and Description**

- 2.1 The application site extends to approximately eight hectares including the access road, with six hectares planned for clay extraction (see **Appendix 2 – Site Location Plan and Appendix 3 – Site Area Plan**).
- 2.2 It is located in rural, wooded countryside in the north of Chichester District, close to the county boundary. The operational area is just over a kilometre from the village of Loxwood, to the south-west of the site. The proposed access to the site would be from Loxwood Road to the south, utilising existing woodland access tracks (approximately 1.3km in length) that have been used for timber extraction.
- 2.3 The area where clay extraction is proposed is broadly rectangular in shape and is a wooded area with no building or structures on the land.
- 2.4 The site is generally flat and located within mature, mixed deciduous woodland, with some coniferous areas, and with some of the application site having been replanted within the last five years. There are also a number of mature and semi-mature trees around the site and along its boundary, including areas of ancient woodland. The surrounding woodland encloses the application site.
- 2.5 There is a Public Right of Way (PROW) abutting the site to the north, with two PROW along the access route to the application site and another cutting across the access route (see **Appendix 4 – PROW Network**). There is an area of ancient woodland to the west of the site with other areas of ancient woodland along the access route.
- 2.6 The closest residential property to the operational site area is Keepers Cottage, located approximately 370m to the north-west. Another residential property, Ivyhurst, is located approximately 65m from the access to the site.
- 2.7 The site itself is undesignated with no historic, ecological, landscape or other relevant designations. No Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar site are located with 5km of the site and there are no Sites of Special Scientific Interest (SSSI) with 2km.

### **3. Relevant Planning History**

- 3.1 The application site has no previous development or planning history. The submitted Planning Statement states that historically the area 'has either been woodland or agricultural (arable) land going back many years'. It explains that the site 'had been used as a commercial coniferous forestry plantation until the current owners began to restore the 300 acres to native woodland some 25-30 years ago. These deciduous plantations now form a designated 'priority habitat' of local importance'.

### **4. The Proposal**

- 4.1 Planning permission is sought for three distinct operations: a new clay pit extracting 375,000 tonnes of clay over a 30-year period; restoration of the site using inert waste; and the operation of a construction materials recycling facility (CMRF) processing 25,000 tonnes of inert waste per annum (see **Appendix 5 – Proposed Site Layout**).
- 4.2 The length of time for clay extraction sought is based on an extraction rate of 12,500 tonnes per annum (which over 30 years equates to 375,000 tonnes). The clay would be extracted in 30 phases, with restoration following shortly after the extraction of the clay in each phase; restoration of Phase 1 would commence when extraction in Phase 3 commences with Phase 2 providing separation between the extraction and restoration activities. This would mean that only three of the 30 phases would be operational at any one time (see **Appendix 6 – Extraction and Restoration Phasing Plan**).
- 4.3 The restoration of the site would be undertaken using materials sourced from inert (i.e. non-hazardous) construction, demolition and excavation (CDE) wastes processed through the CMRF, together with stored soils from stripped overburden. The importation and processing of the restoration materials would commence in Year 2 or 3 of the development, when the clay extraction enters Phase 3.
- 4.4 The CMRF would take up to 25,000 tonnes of waste per annum, recycling and exporting half of that, with the other 12,500 tonnes being used on-site for restoration of the clay extraction area. The applicant states that due to the lower density of the restoration material, the amount of compacted material required for the restoration may be less than the 12,500 tonnes per annum (tpa) and, therefore, less than the extracted 375,000 tonnes over the lifetime of the project. However, they have confirmed that the final restored ground levels at the end of the development would be the same as prior to excavation.
- 4.5 The clay to be extracted is stated to be 6m thick on average, with a maximum of 8-9m. It is located approximately 0.5m below the surface. The extracted clay would be stockpiled for weathering before being transported off site for sale. As shown on **Appendix 6**, the extraction would initially start in the north-eastern part of the site, and then move into the south-eastern area, and then into the south-western part of the site in the final years.
- 4.6 The extraction area would have at least a 10m standoff between it and the habitats along the eastern, western and southern boundaries, and extending to 15m along the northern boundary. The standoff would be at least 75m to the nearest ancient woodland. Closing of gaps in hedgerows and other planting is proposed following the grant of permission and prior to development; it would

be permanently retained as part of the long-term restoration of the site. Trees would be felled as and when required as the operations move into different phases, with the exception of the area where the surface water lagoon would be located on the southern side of the site, where they would be removed at the beginning of the operation.

- 4.7 The CMRF building would be positioned in the north-west corner of the application site and measure 40m x 35m by 8.5m in height to the apex of the pitched roof. It would be steel clad and coloured black and have a roller shutter door 6m wide and 5m in height on the southern elevation. To the north of the CMRF, there would be a site office and amenity building measuring 18m x 4m, with a height of 6m (see **Appendix 7 – CMRF and Office Buildings**).
- 4.8 A temporary storage area is proposed adjacent to the CMRF building using a concrete and stone surface. This area would hold lidded steel containers to store the recovered waste for restoration; the containers would be filled inside the building. A weighbridge would be placed inside the western boundary, to the south of the CMRF, and a wheel-wash would be located near to the entrance of the access on Loxwood Road.
- 4.9 The extraction of clay and the movement of waste into and out of the site would generate 42 heavy goods vehicle (HGV) movements each day (21 in and 21 out), with vehicles ranging from 18-32 tonne lorries. The existing access roads would be maintained using MOT Type 1 stone, a widely-used sub-base for the construction of roads, car parks and pathways. A new bridge would be installed replacing the existing bridge, which is located just to the south of the extraction area. The applicant states that although the design of the bridge would not be materially different, it would be designed to take the additional number of HGV movements. The final design is sought through planning condition.
- 4.10 Clay extraction and restoration activities would be between the hours of 08:00–18:00 Monday to Friday, and 08:00–13:00 on Saturday. Waste imports and exports would only take place between the hours of 08:00–18:00 Monday to Friday. Gates would be locked outside operational hours and when the site would be unmanned.
- 4.11 In order to access the Lorry Route Network (LRN) by the quickest and shortest route and to avoid traffic travelling through Loxwood village, the applicant is willing to enter into an HGV routing agreement (via a Section 106 Agreement) meaning that all HGVs would approach the site from the east and leave the site in an easterly direction via Loxwood Road to the junction with the A281 at Bucks Green. The A281, which is approximately 2 miles from the site entrance, is part of the LRN. The applicant proposes to widen the entrance to the layby adjacent to the access and regularly trim the hedgerows to ensure maximum visibility.

## **Environmental Impact Assessment (EIA) and Habitats Regulation Assessment (HRA)**

### *Environmental Impact Assessment*

- 5.1 The development falls within Part 2(1) of Schedule 2 to the EIA Regulations as it relates to a quarry (for which all development falls within Schedule 2, other than buildings less than 1,000m<sup>2</sup> in area) and Part 11(b) as it relates to an

'installation for the disposal of waste' (for which development with a site area exceeding 0.5 hectares falls within Schedule 2). Therefore, the proposal is required to be screened.

- 5.2 The County Council provided a EIA Screening Opinion on 28 January 2020 setting out its formal view about the scope of information to be supplied and considered in an Environmental Statement. The application is supported by an EIA.

#### *Habitats Regulation Assessment*

- 5.3 Under 'The Conservation of Habitats and Species Regulations 2017 (as amended)', all planning applications that potentially affect the protected features of a European Habitat Site require consideration of whether the plan or project is likely to have significant effects on that site.
- 5.4 The application site falls within the Sussex North Water Supply Zone, which draws its water supply from groundwater abstraction in the Arun Valley. Natural England has issued a Position Statement which states that it cannot be concluded with the required degree of certainty that any new development that would increase the use of the public water supply in this zone, would not contribute to an adverse effect on the integrity of the Arun Valley, a Special Area of Conservation (SAC), Special Protection Area (SPA), and Ramsar site.
- 5.5 HRA screening has been undertaken, which concludes that, without mitigation in place, the proposal will have a 'likely significant effect' on the designated features of the Arun Valley site, either alone or in combination with other plans and projects. Therefore, an Appropriate Assessment under the Regulations is required.

## **5. Policy**

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the statutory 'development plan' unless material considerations indicate otherwise.
- 6.2 For the purposes of this application, the statutory development plan comprises the West Sussex Joint Minerals Local Plan 2018 (JMLP), West Sussex Waste Local Plan 2014 (WLP), the Chichester Local Plan 2014-2031 (CLP), and the Loxwood Neighbourhood Plan (2013 - 2029).
- 6.3 The key policies in the development plan which are material to the determination of the application, are summarised below. In addition, reference is made to relevant national planning policy and other policies that guide the decision-making process and which are material to the determination of the application.

### **West Sussex Joint Minerals Local Plan (July 2018 – Partial Review March 2021) (JMLP)**

- 6.4 The JMLP was adopted in July 2018 and covers the period up to 2033. It is the most up-to-date statement of the County Council's land-use planning policy for minerals. Following the Soft Sand Review of the plan, formal revisions to the JMLP were adopted in March 2021 but they are not relevant to this application.

- 6.5 Policy M5: Clay is of greatest relevance to the current application, relating as it does to the extraction of brick clay. Policy M5 states:
- (a) *Proposals will be permitted for the extraction of brick clay provided that:*
    - (i) *They would help maintain a stock of permitted reserves of at least 25 years of permitted clay reserves for individual brickworks; and*
    - (ii) *The clay required for appropriate blending for manufacture of bricks is no longer available adjacent to the brick making factory.*
  - (b) *Proposals for the extraction of clay, for uses other than brick making, will be permitted provided that:*
    - (i) *There is a need for the clay for engineering purposes; and*
    - (ii) *The clay cannot be used for brick-making; or*
    - (iii) *The resource is within an existing sand and gravel quarry and the extraction of clay would be ancillary to the extraction of sand and gravel.*
  - (c) *Proposals that accord with Part (a) or (b) will be permitted provided that:*
    - (i) *They are located outside the High Weald AONB/South Downs National Park unless there are exceptional circumstances and that it is in the public interest, in accordance with Policy M13, to locate within those areas;*
    - (ii) *they are extensions of time and and/or physical extensions to existing clay pits or, where this is not possible, they should be sited as close as possible to the site where the clay will be used;*
    - (iii) *where transportation by rail or water is not practicable or viable, the proposal is well-related to the Lorry Route Network.*
- 6.6 The other policies of relevance are: Policy M8: Minerals Processing at Minerals Sites; Policy M9: Safeguarding Minerals; Policy M12: Character; Policy M14: Historic Environment; Policy M15: Air and Soil; Policy M16: Water Resources; Policy M17: Biodiversity and Geodiversity; Policy M18: Public Health and Amenity; Policy M19: Flood Risk Management; Policy M20: Transport; Policy M22: Cumulative Impact; Policy M23: Design and Operation of Mineral Development; Policy M24: Restoration and Aftercare; Policy M25: Community Engagement; and Policy M26: Maximising the use of Secondary and Recycled Aggregates.

### **West Sussex Waste Local Plan 2014 (WLP)**

- 6.8 The WLP was adopted in April 2014 and covers the period up to 2031. It is the most up-to-date statement of the County Council's land-use planning policy for waste.
- 6.9 Policy W1 relates to the need for waste management facilities and seeks to prevent waste landfill/disposal operations over and above that required to meet the shortfall in capacity set in the policy, with an objective of zero waste to landfill in West Sussex by 2031.
- 6.10 Policy W3 of the WLP relates to the location of built waste management facilities. It states:

- (a) *Proposals for built waste management facilities, on unallocated sites, to enable the transfer, recycling, and recovery of waste will be permitted provided that:*
  - (i) *it can be demonstrated that they cannot be delivered on permitted sites for built waste management facilities or on the sites allocated for that purpose in Policy W10; and*
  - (ii) *they are located in the Areas of Search along the coast and in the north and east of the County as identified on the Key Diagram; or*
  - (iii) *outside the Areas of Search identified on the Key Diagram, they are only small-scale facilities to serve a local need.*
- (b) *Proposals that accord with part (a) must:*
  - (i) *be located within built-up areas, or on suitable previously-developed land outside built-up areas; or*
  - (ii) *be located on a site in agricultural use where it involves the treatment of waste for reuse within that unit; or*
  - (iii) *only be located on a greenfield site, if it can be demonstrated that no suitable alternative sites are available; and*
  - (iv) *where transportation by rail or water is not practicable or viable, be well-related to the Lorry Route Network; large-scale facilities must have good access to the Strategic Lorry Route.*
- (c) *Proposals for new facilities within the boundaries of existing waste management sites to enable the transfer, recycling, and recovery of waste, will be permitted unless:*
  - (i) *the current use is temporary and the site is unsuitable for continued waste use; or*
  - (ii) *continued use of the site for waste management purposes would be unacceptable in terms of its impact on local communities and/or the environment.*

6.11 The other policies of relevance are: Policy W4: Inert Waste Recycling; Policy W8: Recovery Operations involving the Deposit of Inert Waste to Land; Policy W11: Character; Policy W12: High Quality Development; Policy W14: Biodiversity and Geodiversity; Policy W15: Historic Environment; Policy W16: Air, Soil and Water; Policy W17: Flooding; Policy W18: Transport; Policy W19: Public Health and Amenity; Policy W20: Restoration and Aftercare; and Policy W21: Cumulative Impact.

#### **Chichester Local Plan 2014-2031 (CLP)**

6.12 The relevant policies are: 1 – Presumption in Favour of Sustainable Development; 25 – Development in the North of the Plan; 39 – Transport; Accessibility and Parking; 42 – Flood Risk and Water Management; 45 – Development in the Countryside; 47 - Heritage and Design; 48 – Natural Environment; 49 – Biodiversity; and 52 – Green Infrastructure.

#### **Loxwood Neighbourhood Plan (November 2016)**

6.13 The relevant policies are: 12 – Rural Area Policy, 14 – Economy and Business and 18 – Flood Risk.

## **National Planning Policy Framework 2021 (NPPF)**

- 6.14 The NPPF sets out the Government's planning policies for England (excluding waste) and how these are expected to be applied. Although the NPPF does not form part of the development plan, it is a material consideration in determining planning applications.
- 6.15 The sections in the NPPF of most relevance are: Section 2: Achieving sustainable development; Section 3: Decision making; Section 6: Building a strong, competitive economy; Section 11: Making effective use of land; Section 15: Conserving and enhancing the natural environment; and Section 17: Facilitating the sustainable use of minerals.

### **Planning Practice Guidance**

- 6.16 Planning Practice Guides (PPGs) were first published in March 2014 to accompany the NPPF. They are a material consideration in determining planning applications.

#### *PPG: Minerals*

- 6.17 PPG: Minerals (March 2014) sets out the Government's approach to planning for mineral extraction in both plan-making and the planning application process.
- 6.18 Paragraph 12 sets out the relationship between planning and other regulatory regimes noting that "*the planning system controls development and the use of land in the public interest*" including ensuring development is appropriate for its location and an acceptable use of land.
- 6.19 It notes that "*the focus of the planning system should be on whether the development itself is an acceptable use of the land and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under regimes. Mineral planning authorities should assume that these non-planning regimes will operate effectively*".
- 6.20 Paragraph 13 sets out the environmental issues minerals planning authorities should address including noise, air quality, lighting, visual impact, traffic, risk of contamination to land, geological structure, flood risk, impacts on protected landscapes, surface and in some cases ground water issues, and water abstraction.
- 6.21 Paragraph 14 sets out issues which are for other regulatory regimes to address and Paragraph 17 notes that the cumulative impact of mineral development can be a material consideration in determining planning applications.

#### *Other PPGs*

- 6.22 PPG: Air Quality notes that when deciding whether air quality is relevant to a planning application, considerations could include whether the development would (in summary): significantly affect traffic (through congestion, volumes, speed, or traffic composition on local roads); introducing new point sources of air pollution; give rise to potentially unacceptable impact (such as dust) during construction; or affect biodiversity (paragraph 5).

- 6.23 PPG: Noise notes that noise can override other planning concerns (paragraph 2), and that the acoustic environment should be taken account of in making decisions, including consideration of (in summary) whether a significant adverse effect is likely to occur; whether an adverse effect is likely to occur; and whether a good standard of amenity can be achieved (paragraph 3).
- 6.24 PPG: Natural Environment examines key issues in implementing policies to protect and enhance natural environment, including landscape.

### **National Planning Policy for Waste 2014 (NPPW)**

- 6.26 The NPPW sets out the Government's planning policies for waste management in England and how these are expected to be applied. Although the NPPW does not form part of the development plan, it is a material consideration in determining planning applications. Paragraph 7 relates to determining waste planning applications. In summary, sections of key relevance to this application require planning authorities to:
- *"Consider the likely impact on the local environment and amenity against the locational criteria set out in Appendix B (see below); and*
  - *Ensure that facilities are well-designed, contributing positively to the character and quality of the area; and*
  - *Concern themselves with implementing the strategy in the Local Plan and not control of processes which are a matter for pollution control authorities, on the assumption that such regimes are properly applied and enforced."*

Appendix B to the NPPW sets out locational criteria for testing the suitability of sites, namely the protection of water quality and resources and flood risk management; land instability; landscape and visual impacts; nature conservation; conserving the historic environment; traffic and access; air emissions including dust; odours; vermin and birds; noise, light and vibration; litter; and potential land conflict.

### **EU Council Directives 2008/98/EC and 1999/31/EC**

- 6.27 By virtue of arts.18 and 20 of the Waste (England and Wales) Regulations 2011 (SI 2011/988) when determining any application for planning permission that relates to waste management (art.18) or landfill (art.20), the authority is required to take into account the Council Directives 2008/98EC and 1999/31EC. For waste management, Directive 2008/98EC sets out the objectives of the protection of human health and the environment (article 13) and self-sufficiency and proximity (first paragraph of article 16(1), article 16(2) and (3)). 1999/31/EC (the Landfill Directive sets out the key considerations for the location of a landfill and requirement to prevent serious environmental risk and nuisance. Case law has confirmed that these are objectives at which to aim. As objectives they must be kept in mind whilst assessing the application and provided this is done, any decision in which the furtherance of the objectives are not achieved, may stand.
- 6.28 Further, under the Waste Management Licensing Regulations 1994, Sch.4, para.4 (now substituted by the Waste (England and Wales) Regulations 2011 (2011/988), waste authorities, when considering a planning application for use of a site for waste management purposes, must approach their decision as

required by ss.54A and 70(2) of the Town and Country Planning Act 1990, that is, in accordance with the development plan unless material considerations indicate otherwise.

## **7. Consultations**

- 7.1 **Chichester District Council (inc. Environmental Protection Officer):** No objection, subject to conditions securing noise management, dust management and working hours.
- 7.2 **Loxwood Parish Council:** Objection raised stating that the development does not accord with minerals or waste policy and would have an adverse effect on biodiversity, public amenity, highways matters, character of the area and water neutrality.
- 7.3 **Environment Agency:** No objection subject to a condition securing mitigation for any previously unidentified contaminated land.
- 7.4 **Natural England:** Advise that further information is required to determine impacts on designated areas, without which they may need to object to the proposal. Standing advice also provided.
- 7.5 **WSCC Archaeology:** No objection subject to the protection of boundaries and the provision of a Written Scheme of Investigation prior to the commencement of development.
- 7.6 **WSCC Drainage:** No objection subject to a pre-development condition securing a detailed surface water management scheme.
- 7.7 **WSCC Ecology:** Objection, as the development would result in net loss of biodiversity.
- 7.8 **WSCC Tree Officer:** Objection. The development would result in the loss of Category A & B trees and priority habitats.
- 7.9 **WSCC PROW:** Objection due to segregation of PROW 795.
- 7.10 **WSCC Highways:** Objection. Further information is required in relation to the Road Safety Audit and visibility splays.
- 7.11 **Surrey County Council:** No objection subject to WSCC being satisfied there is a need for clay, need for additional waste capacity and need for landfilling. They also note that conditions should ensure impacts are mitigated or avoided, traffic impacts are acceptable and restoration is a high standard.
- 7.12 **Alfold Parish Council:** Objection due to no need for clay extraction, nor additional recycling capacity. Also concerned about impact on ancient woodland and traffic on local roads.
- 7.13 **Plaistow and Ifold Parish Council:** Objects to development. Highlights Water Neutrality concerns, the lack of need for clay extraction and limited requirement for a waste site. Also notes the adverse impacts on tranquillity of area and protected wildlife from the development and the traffic impacts would be detrimental to the site and local area.

7.14 **Waverley Borough Council:** No objection as there would not likely be any material cross boundary impacts.

7.15 **Local Councillor Janet Duncton:** No comments made.

## **8. Representations**

8.1 The application was publicised in accordance with Schedule 3 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 involving the erection of site notices located around the application site, an advertisement in the local newspaper, and neighbour notification letters.

8.2 There have been 1,692 representations from third parties, including Sussex Wildlife Trust, Woodland Trust and Campaign to Protect Rural England (CPRE); 1,656 objecting and the rest making general comments.

8.3 The main issues raised in representations are that:

- There is no need for new clay extraction;
- Insufficient evidence provided to support a new waste facility;
- Waste facilities should be on brownfield land, not greenfield land;
- Rural location not suitable for a waste operation;
- Application is for landfill;
- Detrimental impact on tranquil rural environment and local villages;
- the local area cannot support any more traffic and local roads are already difficult to navigate;
- Increased traffic will lead to more accidents;
- the proposal would generate unacceptable noise, dust and odour;
- traffic will lead to pollution and ruining roads which are already in a poor state;
- there will be risks to the safety of persons and animals when using footpaths and bridleways;
- development would destroy walking routes and woodland and users enjoyment of them;
- increased risk to pedestrians, cyclists and horse riders;
- the submitted traffic information is incorrect;
- traffic generation information is not realistic and underestimated;
- Loxwood road is not suitable to accommodate increase in HGV traffic;
- proposed site access arrangements are not safe and suitable;
- the building would create a negative visual impact;
- economic benefits are limited;
- there will be an adverse impact upon the environment and wildlife;
- huge damage to local wildlife;
- Biodiversity Net Gain show huge loss of habitats;
- Ancient Woodland and woodland habitats are irreplaceable;

- Development does not enhance, protect or compliment the natural environment;
- the scheme would have an adverse impact on local residents;
- no benefits to local community;
- the site is in a water stressed area and the proposed operation is not water neutral;
- the evidence on need provided is unreliable/there is no need for the development.

## **9. Consideration of Key Issues**

9.1 The main material planning considerations in relation to this application are:

- the need for clay extraction;
- the restoration of the clay pit using inert waste;
- the need for, and location of, the inert waste recycling facility;
- impacts on landscape character and public amenity;
- impacts on biodiversity; and
- impacts on highway capacity and road safety.

### **Need for Clay Extraction**

9.2 Paragraph 214 of the NPPF states that mineral planning authorities should plan for a steady and adequate supply of industrial minerals by “maintaining a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant, and the maintenance and improvement of existing plant and equipment”; reserves for brick clay should be at least 25 years. Account should also be taken of “the need for provision of brick clay from a number of different sources to enable appropriate blends to be made”. Paragraph 001 of PPG: Minerals notes that minerals can only be worked where they occur, but also notes at paragraph 010 that the suitability for each site must be considered on its individual merits taking into account, amongst other matters, the need for the specific mineral.

9.3 Policy M5 of the JMLP (see paragraph 6.5 of this report) supports proposals for the extraction of brick clay subject to a number of criteria, which must be satisfied for the proposal to be acceptable in principle. Therefore, under part (a) of Policy M5, there is a need to consider whether the proposal would help maintain a stock of permitted reserves of at least 25 years of permitted clay reserves for individual brickworks and whether clay, which is required for appropriate blending for manufacturing of bricks, is no longer available adjacent to the brick making factory.

9.4 West Sussex has four active brickworks; Wealden/Warnham Brickworks, Laybrook Brickworks, Freshfield Lane Brickworks, and Pitsham Brickworks (located within the South Downs National Park). The JMLP and the latest Annual Monitoring Report (AMR - 2019/20) indicate that three of these brickworks have at least 25 years of reserve and that, at the time of writing the JMLP, the other one had 24 years of reserve, totalling 17.5 million tonnes.

- 9.5 At the time of adoption of the JMLP, West Hoathly Brickworks (a fifth brickworks) had less than 10 years left. However, since the plan was adopted, the winning of clay at West Hoathly last occurred in 2019, with brick manufacturing permanently ceasing in August 2020.
- 9.6 The applicant also identifies that the Rudgwick Clay Pit and Brickworks were supposed to provide clay reserves up to 2042, but that the clay pit and brickworks was closed down and restored 30 years earlier than originally intended. In this case, the 2014 Committee Report for restoration of the Rudgwick site noted that the extracted clay was not of usable quality and that clay had to be imported during the last years of operation.
- 9.7 With regard to the current application, the applicant seeks to provide West Sussex with a new supply of clay reserves over a period of 30-years that would replace the loss of the clay reserve at the former Rudgwick site. Policy M5 of the JMLP however, does not require replacement of such reserves. It only seeks to help maintain a stock of reserves for individual brickworks. As set out above, three of the remaining active brickworks have at least 25 years of reserve, with the other standing at 24 years. There is no evidence that additional clay reserves are required at any brickworks in West Sussex.
- 9.8 In addition, although the applicant states that the reserves would provide an additional 30-year supply, no specific destination for the clay has been identified by the applicant. There is, therefore, no evidence of any link between this proposal and the established brickworks identified in paragraph 9.3 above.
- 9.9 Part (b) of Policy M5 of the JMLP addresses the extraction of clay for uses other than brick-making. The applicant has indicated that the clay is suitable, and intended, for brick making and extraction is proposed for this purpose. Therefore, Part (b) of Policy M5 is not relevant.
- 9.10 In conclusion, the JMLP supports extraction of brick clay where it would meet the criteria listed in Policy M5. The proposed development does not accord with Policy M5 as three of the current brickworks have over 25 years reserves of clay, with the other having 24 years. In addition to not being required to supply additional reserves, the applicant has not identified a link between the site and any of the existing brickworks. Furthermore, the development would represent an insignificant contribution (375,000 tonnes) to help maintain supply of clay, given that current reserves are 17.5 million tonnes. As such, the development does not accord with Policy M5 of the JMLP.

### **Restoration of the Clay Pit using Inert Waste**

- 9.11 It is proposed that restoration of the clay pit would be undertaken in a phased manner using inert (i.e. non-hazardous) construction, demolition and excavation (CDE) wastes processed through the CMRF, together with stored soils stripped from the top of the site to expose the clay.
- 9.12 Paragraph 7 of the NPPW states that, in determining planning applications, waste planning authorities should consider the likely impact on the local environment and on amenity against specific criteria, including landscape and visual impacts, and nature conservation.
- 9.13 Waste recovery operations include the restoration of mineral workings. Policy W8 of the WLP permits the depositing of inert waste to land for recovery

operations provided that specific criteria are satisfied (which are considered in turn below).

*(a) the proposal results in clear benefits for the site and, where possible, the wider area*

9.14 The applicant considers the restoration would bring increased biodiversity and geodiversity to the area, leading to improvements in the landscape. The final levels are proposed to be the same as the existing levels, prior to any extraction. It is stated that the area would be replanted with deciduous broadleaved woodland, with the site lagoon portioned into a small fishing lake and pond.

9.15 However, in terms of landscape and biodiversity, as noted later in this report, the development would give rise to landscape harm and there would be a net loss of biodiversity habitat regardless of the proposed embedded mitigation and enhanced off-site mitigation. As a result, the development would not result in a clear benefit and this criterion is not met.

*(b) the material to be used is only residual waste following recycling and/or recovery or it is a waste that cannot be recycled or treated*

9.16 The restoration would use only imported materials derived from the recycling operations of the CMRF. Of the 25,000 tonnes of construction and demolition waste imported into the CMRF, half would be used in the restoration, with the rest being exported from the site as recovered waste. Therefore, this criterion is met.

*(c) there is a genuine need to use the waste material as a substitute for a non-waste material that would otherwise have to be used*

9.17 The development would make use of inert waste and materials that cannot be recycled further rather than 'virgin' soils to restore the site. Therefore, this criterion is met.

*(d) the material to be reused is suitable for its intended use*

9.18 The applicant asserts that only clean and screened construction and demolition inert waste would be used, which is typical of the waste used for restoration and engineering projects. The supporting Agricultural Supporting Statement notes that upper layers include fine soils/gravel and porous materials, which are suitable to improve drainage and to support seeding for agricultural after use.

9.19 Deposition of waste materials would also be subject to the Environmental Permitting/Exemption regime (as regulated by the Environment Agency), which seeks to ensure impacts from potentially harmful substances are minimised to an acceptable level. The Environment Agency has not raised any objection to the development, advising the applicant to liaise with them to confirm permitting requirements.

9.20 Based on the above, there is no evidence to suggest the materials are not suitable for the intended use. Therefore, this criterion is met.

*(e) the amount of waste material to be used is no more than is necessary to deliver the benefits identified under (a)*

9.21 The applicant has stated that in terms of achieving the correct landform, the final profiles would be the same as prior to extraction. Therefore, it is not considered that the amount of waste material proposed is excessive to achieve the applicant's desired restoration. Therefore, this criterion is met.

*(f) there would be no unacceptable impact on natural resources and other environmental constraints*

9.22 The development has the potential to have detrimental effects on the environment and natural resources. As detailed in the sections below, there would be adverse impacts on the landscape and the tranquillity of the area and there would be a loss in biodiversity habitats. Therefore, this criterion is not met.

*(g) the proposal accords with Policy W13 (Protected Landscapes)*

9.23 The site does not lie within or close to a protected landscape (national park or area of outstanding natural beauty) and, therefore, this criterion is met.

*(h) any important mineral reserves would not be sterilised*

9.24 The proposal involves the prior extraction of the clay reserves and, therefore, this criterion is met.

*(i) restoration of the site to a high-quality standard would take place in accordance with Policy W20*

9.25 Policy W20 seeks a comprehensive scheme for restoration and aftercare which would be appropriate to the location, maximising benefits for local landscape character, biodiversity and wider environmental objectives and also maximising public amenity benefits. It is considered that a scheme could be provided to maximise such criteria, thereby according with the objectives of Policy W20. Therefore, this criterion is met.

9.26 In conclusion, Policy W8 of the WLP supports recovery operations involving the deposition of inert waste to land where it would meet the relevant criteria. The proposed development is not considered to meet all of the criteria because it has not been demonstrated that the development would result in a clear benefit to the site and the wider area, it would result in an unacceptable impact on the landscape and tranquillity of the area, and there would be a net loss of biodiversity habitats. Therefore, the development is contrary to Policy W8 of the WLP and Paragraph 7 of the National Planning Policy for Waste (2014).

### **Need for, and Location of, the Inert Waste Recycling Facility**

9.27 It is considered that the 'in principle' acceptability of the proposed construction materials recycling facility (CMRF) depends on two considerations, that is, the need for it and suitability of the location.

#### *Need for the Facility*

9.28 Policy W1 of the WLP addresses the need for waste management facilities; criterion (c) is relevant:

*“(c) Proposals on unallocated sites for the recycling of inert waste will be permitted where it can be demonstrated that there is a market need, consistent with the principle of net self-sufficiency.”*

9.29 Paragraph 6.2.9 of the WLP, which supports Policy W1, states:

*“On unallocated sites, applicants may be required to demonstrate that there is a quantitative need for their facilities to address the identified shortfalls in recycling or recovery capacity (to meet the objective of net self-sufficiency). Any changes to identified shortfalls, for example, to take account of new permitted capacity, will be monitored in the [Annual Monitoring Report] AMR. In other cases, for example, where an identified shortfall has already been met on other sites, applicants will be required to demonstrate there is a market need for their proposal on an unallocated site to deal with waste arising in West Sussex or that it is necessary to move waste up the hierarchy away from landfill. In cases where there is no identified shortfall, proposals on unallocated sites should still be consistent with the net self-sufficiency and, where appropriate, the objective of zero waste to landfill.”*

9.31 Paragraph 6.2.10 of the WLP goes on to state:

*“Where an applicant has to demonstrate the need for a proposal, the following information will be required as part of the planning application:*

- the nature and origin of the waste to be managed;*
- the existing or permitted operating capacity within the plan or catchment area (which can be drawn from the AMR and updated as necessary);*
- the levels of waste arising within the plan or catchment area; and*
- the potential shortfall in capacity or market need that the proposal seeks to address.”*

9.32 Although proposing a facility with a throughput of 25,000 tonnes per annum of CDE waste on an unallocated site, the applicant has not provided any evidence in relation to where the waste will originate. Similarly, the applicant has not provided any evidence to demonstrate that there is a shortfall in existing or permitted inert recycling capacity to manage the levels of waste arising in the plan or catchment area. Moreover, the most recent AMR states that there is ‘headroom’ of c.174,000 tonnes per annum in operational capacity, which suggest that there is no shortfall for aggregate recycling in the County. Therefore, there is no demonstrable need for the CMRF and the proposal is contrary to Policy W1 of the WLP.

#### *Location of the Facility*

9.33 With regard to the location of the proposed CMRF, the application site is a greenfield site in a countryside location. Policy W3 of the WLP addresses the location of built waste management facilities for recycling. Part (a) of Policy W3 permits such facilities on unallocated sites provided that:

- “(i) it can be demonstrated that they cannot be delivered on permitted sites for built waste management facilities or the sites allocated for that purpose in Policy W10; and*
- (ii) they are located in the Areas of Search along the coast and in the north and east of the County as identified on the Key Diagram”.*

9.34 Paragraph 6.4.6 of the WLP, which supports Policy W3, explains that:

*"Where an applicant is proposing the use of an alternative [i.e. unallocated] site, they will be required to demonstrate that permitted or allocated sites cannot be used for the following, or some other, reason:*

- they are not suitable for the proposed use (for example they are too small or there would be unacceptable impacts);*
- they are located outside that catchment area for the proposed use;*
- they are unavailable for commercial reasons; or*
- the proposal needs to be co-located with an existing facility".*

9.35 To address this requirement, evidence has been submitted with the planning application demonstrating that the applicant has investigated the sites allocated under Policy 10 of the WLP. The sites have been discounted for reasons of being in use for waste/other uses or being unsuitable due the distance from the site. However, no documentation has been submitted indicating that a search for permitted sites has taken place. Therefore, it cannot be considered that adequate evidence has been submitted to demonstrate why those sites could not be taken forward or any reasons for discounting them. Therefore, the proposal is contrary to criterion (a)(i) of Policy W3 of the WLP.

9.36 The site is within the Area of Search as defined on the Key Diagram; this is because the site is close to the A281. Therefore, the site is suitable 'in principle' for waste management uses (as recognised by paragraph 6.4.7 of the WLP). However, although the location may be acceptable in principle, Part (b) of Policy W3 notes that built waste facilities located within Areas of Search must:

- "(i) be located within built-up areas, or on suitable previously developed land outside built-up areas; or*
- (ii) be located on a site in agricultural use where it involves the treatment of waste for reuse within that unit; or*
- (iii) be located on a greenfield site, only if it can be demonstrated that no suitable alternative sites are available; and*
- (iv) where transportation by rail or water is not practicable or viable, be well-related to the Lorry Route Network; large-scale facilities must have good access to the Strategic Lorry Route.*

9.37 In this case, the application site is not located within the built-up area or on previously-developed land, and it does not involve the treatment of waste for use within the surrounding agricultural unit. Therefore, as a greenfield site, the proposal needs to accord with criterion (iii) of Part (b) of Policy W3. Paragraph 6.4.16 of the WLP states that, in proposing the use of a greenfield site:

*"Applicants will be required to demonstrate that all alternatives have been fully investigated, appropriate to the scale and nature of the development. This includes consideration of existing, permitted, or allocated sites for built waste management uses; other sites within built-up areas; and previously-developed land outside built-up areas."*

9.38 In this instance, the applicant has failed to comply with this requirement by not demonstrating that all alternatives have been fully investigated and there is no evidence to demonstrate that a greenfield location is required for the proposed

use. Therefore, the proposal is contrary to criterion (b)(iii) of Policy W3 of the WLP. Furthermore, although co-location of a recycling facility and a restoration site has some advantages, it is an isolated location and more sustainable options would include the recycling of material at source and the transport of only non-recyclable material to the site to be used for the restoration. There is no evidence that these options have been considered by the applicant.

- 9.39 Policy W4 of the WLP specifically addresses inert waste recycling. Proposals for such should (a) be located in accordance with Policy W3 or (b) be located at active landfill or mineral sites, subject to meeting specific criteria. As the site is only a proposed, not active, mineral operation, part (b) of Policy W4 does not apply. Therefore, there is a need to consider whether the location of the inert recycling facility proposal accords with Policy W3. For the reasons identified above, there is a clear conflict with the locational criteria in Policy W3 and, therefore, the proposal does not accord with Policy W4 of the WLP.
- 9.40 Policy 45 of the CLP states that within the countryside '*development will be granted where it requires a countryside location and meets the essential, small scale and local need.*' The applicant has not submitted any evidence to demonstrate that a countryside location is needed for the waste recycling facility.
- 9.41 The applicant highlights that the NPPF is a material consideration when determining applications and that there is a presumption in favour of sustainable development and, therefore, that significant weight should be placed on economic growth on the basis that the development (clay extraction and waste recycling operation) would help create approximately 12 jobs on site, plus 6 HGV drivers. They also highlight that, once restored, the site would provide a new fishing lake, new habitats and wetlands and a new PROW to access the restored area.
- 9.42 Paragraph 84 of the NPPF sets out national policy on supporting a prosperous rural economy. The focus is on the sustainable growth and expansion of existing businesses, the development and diversification of agricultural and other land-based rural activities, and sustainable rural tourism and leisure developments. It does not identify new waste or industrial-type operations as being a key to a prosperous rural economy. Therefore, although jobs may be created through clay extraction in a rural location (because the clay can only be worked where it occurs), there is no national policy support for the location of a waste recycling operation on a greenfield site in the countryside to support the rural economy.
- 9.43 In conclusion, the 'in principle' acceptability of the proposed inert recycling facility depends on two considerations, that is, the need for facility and the suitability of the location. The applicant has not demonstrated that there is a market need for the CMRF consistent with the principle of net self-sufficiency. Therefore, the proposal does not accord with Policy W1 of the WLP. Although the application site has not been allocated in the WLP for waste management uses, it is within the Area of Search where facilities are acceptable in principle. However, the applicant has not demonstrated that an inert waste recycling facility needs to be located on a greenfield site in a countryside location. Furthermore, although co-location of a recycling facility and a restoration site has some advantages, it is an isolated location and more sustainable options would include the recycling of material at source and the transport of only non-recyclable material to the site. Therefore, the proposal does not accord with

Policies W3 and W4 of the WLP, Policy 45 of the CLP, and Paragraph 84 of the NPPF.

### **Impacts on Landscape Character and Public Amenity**

- 9.44 The site is located within a very rural, dense area of woodland, that is remote from existing development and comprises a varied mix of trees. By its nature, the extraction of clay and importation of waste in HGVs and restoration operations involving plant and machinery, has the potential to result in visual, noise and other adverse impacts on local amenity and the local environment. In this specific case, the development has the potential to result in an impact on landscape character and public amenity from two sources: on-site operations (clay extraction and waste operations); and the use of the access track.
- 9.45 Policy M12 of the JMLP and Policy W11 of the WLP state that proposals for mineral and waste development will be permitted provided that they would not have an unacceptable impact upon the character, distinctiveness and sense of place of the area. Character is defined as a distinct, recognisable and consistent pattern of elements that make each area different; therefore, any changes to individual elements can have an adverse impact on landscape character. Policies M23 of the JMLP and W12 of the WLP promote high quality development where the scale, form and design of the development takes account of, amongst other matters, the local context, including the character of the area, the landscape, natural features, and views into the site.
- 9.46 Policy M18 of the JMLP and Policy W19 of the WLP state that proposals for mineral and waste development will be permitted provided that they would not have unacceptable impacts on public amenity, including for users of PROW, due to noise, dust, odours, vibrations and other emissions.
- 9.47 Policies 45 of the CLP states that proposals will be granted where it has been demonstrated that "their scale, siting, design and materials would have a minimal impact on the landscape and rural character of the area". Policy 48 states permission will be granted subject to the applicant being able to demonstrate that "there is no adverse impact on the tranquil and rural character of the area', that the development 'recognises distinct local landscape character and sensitively contributes to its setting and quality" and that any proposal "respect(s) and enhance the landscape character of the surrounding area and site, and public amenity through detailed design".
- 9.48 Paragraph 174 of the NPPF sets out national policy on conserving and enhancing the natural environment, which includes (amongst other matters) the need to protect and enhance valued landscapes, recognising the intrinsic character and beauty of the countryside, and preventing unacceptable levels of noise pollution. Paragraph 185 of the NPPF addresses pollution and states, amongst other matters, that new development should not give rise to significant adverse impacts on quality of life and that there is a need to protect tranquil areas that have "remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason".
- 9.49 Paragraph 7 of the NPPW states that, in determining planning applications, waste planning authorities should consider the likely impact on the local environment and on amenity against specific criteria, including landscape and visual impacts, and noise pollution.

- 9.50 The Landscape and Visual Impact Assessment (LVIA) states that visual impacts from on-site operations are, in the main, restricted to the northern boundary for people walking along public footpath 792/1, footpath 797 to the north-west and bridleway 801. Walkers along these footpaths are considered to have high sensitivity as their main activity on these routes is related to landscape appreciation.
- 9.51 In terms of the access route, the LVIA identifies that walkers and riders on bridleway 3240 and footpaths 795 and 792 would have a high to moderate sensitivity, as their main activity on these routes is related to landscape appreciation.
- 9.52 Appendix 4 of the LVIA identifies the visual impacts from 15 different viewpoints. All viewpoints would experience a moderate to slight adverse impact from the development, with one viewpoint experiencing a potential high adverse impact. The landscape effects can range from visual, noise and dust or a combination, all of which would contribute to, or will result in, a loss of tranquillity.
- 9.53 Although the application states that new planting and gapping-up between trees would enhance the views from PROWs and help maintain and retain key features, the mitigation would not be immediate and would take a period of time to establish. Notwithstanding this, little can be done to mitigate the establishment of a new clay quarry and waste recycling facility in such a quiet tranquil woodland in a countryside setting.
- 9.54 With specific regard to noise, the applicant has submitted a Noise Impact Assessment (NIA). The District Council's Environmental Protection Officer (EPO) has reviewed the NIA and is content that the report has been undertaken in accordance with the relevant guidance and policies. In summary, the report acknowledges that all noise criteria have been met with the exception of two receptors; at Ivyhurst near the access road, and at Old Songhurst Cottage to the north-west of the site. The noise from the activities of the development at these receptors would marginally above the background level.
- 9.55 However, the EPO comments that the noise impacts can be mitigated through the imposition of conditions securing regular inspection and maintenance of the access road, use of the western arm of the access road triangle only and keeping the door to the CMRF shut whenever possible. They also suggest that an increase in the thickness of the buildings' walls should be investigated.
- 9.56 Off-site HGV movements are also predicted to increase noise levels for properties fronting Loxwood Road by 2dB, with the assessment noting this to be "no more than a minor impact in the short term". The EPO requests that a condition be included limiting vehicle movements to Monday to Friday only in order to keep noise impacts to a minimum.
- 9.57 Subject to monitoring of noise levels and a Noise Management Plan (NMP), along those conditions highlighted above, the EPO considers the development to be acceptable. The NMP would require compliance with noise limits and mitigation measures set out in the approved NMP, which, if necessary, can be enforced, in the event that the noise limits are breached.
- 9.58 However, the NIA failed to fully consider or mitigate against the impact of the development on the surrounding PROW network which is also a sensitive

receptor. Paragraph 5.2.3 of the NIA states that "at an absolute worst, with the excavator operating within 10m of the footpath, a maximum noise level of 83dB(A) for the short period (less than 30 seconds) taken for walkers to pass the plant might result." Apart from the Sussex Border Path, over 200m from the north-west corner of the site area, none of any of the other footpaths in close vicinity are discussed.

- 9.59 It is considered there would inevitably be some disturbance in the locality as a result of the proposed development. The imposition of conditions to control hours of operation, noise impacts would not completely ensure that there are no impacts upon amenity and the local environment. Significantly, it has not been demonstrated that the development would not have an unacceptable impact on the local PROW network.
- 9.60 In conclusion, the application site is situated within a remote countryside woodland setting. Although the site is well-screened by its topography and surrounding trees, the development would still result in adverse impacts upon the landscape and surrounding sensitive receptors, and it would have a significant adverse impact on a tranquil area that currently remains undisturbed by noise and which is locally important for its recreational and amenity value. Overall, the development is considered to result in unacceptable impacts on landscape character and public amenity. Therefore, the proposal does not accord with Policies M12, M18 and M23 of the JMLP, Policies W11, W12 and W19 of the WLP, Policies 45 and 48 of the CLP, Paragraphs 174 and 185 of the NPPF, and Paragraph 7 of the NPPW.

### **Impacts upon Biodiversity**

- 9.61 There are two key issues to be considered: the potential impacts of the proposal on biodiversity of the site and adjoining area; and the issue of 'water neutrality' and potential impacts of the proposal on the Arun Valley, a Special Area of Conservation (SAC), Special Protection Area (SPA), and Ramsar site.

#### *Impacts on the Site and Adjoining Areas*

- 9.62 The application site comprises mature, mixed woodland and is adjoined by semi-natural and ancient deciduous woodland, planted deciduous plantation, mature coniferous plantation, scrub, hedgerows and grassland. The wider landscape comprises a patchwork of woodland, arable and grassed fields and networks of hedgerows.
- 9.63 Important ecological features that may be affected by the proposed development include deciduous woodland, deciduous plantation, local stream, ponds, hedgerow, breeding birds, wintering birds, invertebrates, roosting bats, foraging and commuting bats and reptiles.
- 9.64 Policy M17 of the MLP and Policy W14 of the WLP state that proposals for mineral and waste development will be permitted provided that there is no significant harm to wildlife habitats and species (including through mitigation) unless the benefits of the development outweigh the harm. They also seek net gains in biodiversity through the creation, enhancement and management of habitats, ecological networks, geodiversity, and ecosystem services.
- 9.65 Policy 49 of the CLP states planning permission will be granted for development where it can be demonstrated that all the following criteria have been met,

including safeguarding the biodiversity value of the site, avoiding or mitigating harm to protected or important habitats and species, and protecting, managing and enhancing the network of ecology, biodiversity and geological sites, (including the international, national and local designated sites (statutory and non-statutory), priority habitats, wildlife corridors and stepping stones that connect them).

- 9.66 Paragraph 174 of the NPPF sets out national policy on conserving and enhancing the natural environment, which includes (amongst other matters) protecting and enhancing sites of biodiversity value, recognising the wider benefits of natural capital and ecosystem services, and minimising impacts on and providing net gains for biodiversity. Paragraph 180 states that when determining planning applications, local planning authorities should refuse planning permission if significant harm to biodiversity cannot be adequately mitigated or, as a last resort, compensated for.
- 9.67 Paragraph 7 of the National Planning Policy Waste (NPPW) states that, in determining planning applications, waste planning authorities should consider the likely impact on the local environment and on amenity against specific criteria, including nature conservation.
- 9.68 The Ecological Impact Assessment submitted with the application states that proposed development has been developed with embedded mitigation for adverse impacts on the biodiversity of the site. These include:
- a 10m buffer around the retained deciduous woodland at the north, west and east boundaries of the extraction site to protect the woodland, trees and ground fauna within the buffer for the duration of the development;
  - a 15m buffer around the retained Ancient Replanted Woodland at the north-west corner of the extraction site to protect the woodland, trees and ground fauna within the buffer for the duration of the development;
  - a 50m buffer around retained Ancient Replanted Woodland at the north-west corner of the extraction site. The CMRF is within this zone, thereby avoiding deep excavations in this area; and
  - passing places which avoid impacts on mature trees or habitat used by important invertebrates.
- 9.69 In addition to the embedded mitigation, the applicant also proposes:
- a habitat mitigation and enhancement strategy with the objective of translocating or re-creating deciduous and plantation habitat within and outside of the site area (on land within the applicants' control);
  - enhanced woodland management outside the development site, but on land within the applicant's control;
  - an invertebrate mitigation strategy with the objective of translocating or re-creating habitat resources of greatest potential value to invertebrate fauna outside the development site, but on land within the applicant's control; and
  - translocation of reptiles from the proposed development site to a receptor site of similar character within the applicant's control, preceded by habitat enhancements to increase the carrying capacity of the receptor site.
- 9.70 However, the submitted Biodiversity Net Gain (BNG) Assessment states in conclusion that although new areas will be created as part of the site

restoration and a large extent of off-site habitat will be enhanced, these interventions are outweighed by the impact of development on semi-natural broadleaved woodland, which is a Habitat of Principal Importance (Section 41, Natural Environment and Rural Communities Act 2006). Overall, this would result in a net loss of 36.59% in area habitats.

- 9.71 WSCC's Ecologist endorses the conclusions, querying whether compensation can be achieved. In their response to the consultation, they explain that:

*"the requirement for BNG is set out in national and local planning policy. The NPPF advocates that planning policies and decisions should take opportunities to achieve net environmental and biodiversity gains such as developments that would enable habitat creation. It also advocates that, when making planning decisions, local planning authorities should encourage biodiversity enhancements, especially where this can secure measurable gains for biodiversity. BNG will be mandated through the enactment of the Environment Bill [now the Environment Act 2021] requiring a minimum of 10% biodiversity net gain. Policy M17 of the Adopted West Sussex Joint Minerals Local Plan requires that minerals development proposals should, where possible, achieve net gains in biodiversity and that there are no unacceptable impacts on areas, sites or features of regional or local biodiversity [...] unless the benefits of the development clearly outweigh both the impact on the features of interest and on the wider network of such designated areas or sites. Further, the supporting text explains that significant weight in planning terms should be given to conserving biodiversity [...] assets."*

- 9.72 The WSCC Ecologist explains that as the baseline for "deciduous woodland is in 'fairly good' condition, this allows limited headroom for improving habitat condition on site, despite the extent of enhancements proposed". Therefore, the proposal is likely to result in the net loss of habitats contrary to national and local policy.
- 9.73 WSCC Trees and Woodland Officer objects to the development due to the removal of Category A & B trees. Although tree removal is proposed, the removal of the trees would be over a period of time and a landscaping plan would be able to be secured through planning condition that would mitigate the loss of trees over the long-term. The applicant has agreed to submit a Landscape and Ecological Management Plan to ensure such mitigation and long-term maintenance. Furthermore, the site is part of the Woodland Management Plan and associated felling licences agreed with the Forestry Commission. These include restocking conditions requiring any felled trees to be replaced and maintained for a period of 10 years.

#### *Water Neutrality*

- 9.74 Policy M17 of the MLP and Policy W14 of the WLP states that areas of sites of international biodiversity importance must be protected unless there are no appropriate alternative solutions and there are overriding reasons that outweigh the need to safeguard their value and provided that favourable conservation status is maintained.
- 9.75 The well site is located within the Sussex North Water Supply Zone, which is subject to a position statement issued by Natural England on 14 September 2021 (see paragraphs 5.3–5.5 above).

- 9.76 The following measures are proposed by the applicant to minimise or avoid water use, which would be secured as part of any planning consent:
- provision of an on-site surface water collection lagoon;
  - use of an on-site surface water collection lagoon to supply the dust suppression system (where possible). This requires prior treatment;
  - use of an on-site surface water collection lagoon to supply staff facilities for hand washing and toilet flushing. This requires prior treatment; and
  - staff drinking water to be imported in 50 litre containers sourced from outside the North Sussex Water Supply Zone.
- 9.77 Contrary to the applicant's submitted 'Report to Inform a Habitats Regulation Assessment (December 2021)', which 'screens out' potential for significant effects on the Arun Valley SAC/SPA/Ramsar site, West Sussex officers have carried out HRA screening, which concludes that without mitigation in place, it is not possible to rule out likely significant effects.
- 9.78 If there are likely to be significant effects, an Appropriate Assessment must be carried out. The Planning Practice Guidance on Appropriate Assessment states that "an appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project" (PPG paragraph 003).
- 9.79 Accordingly, an Appropriate Assessment has been carried out by County Council officers, which has been subject to consultation with Natural England. The conclusion is that there is insufficient information/evidence has been provided by the applicant to demonstrate the required degree of certainty that the mitigation measures identified in paragraph 9.76 above would be effective and guaranteed.
- 9.80 Limited details of the required volumes of water usage have been provided for the wheel wash (e.g. based on plant specifications/frequency of use), staff welfare facilities (e.g. based on staff numbers and typical usage), and staff drinking water consumption. Further, the details provided in respect of water usage for the proposed dust suppression system are not evidenced or based on a system specified within the development proposals.
- 9.81 Insufficient detail has been provided of the proposed mitigation features necessary to achieve water neutrality, which, to provide the required level of certainty and deliverability, must be supported by detailed technical specifications (including water consumption rates where applicable) of toilets, sinks, wheel wash, any required ancillary treatment facilities, connecting infrastructure, and full specifications of the proposed surface water lagoon (including capacity and evidence that rainfall would be sufficient to provide a year-round source of water). Any such features should be clearly set out within proposed plans and layouts.
- 9.82 Further, the calculations provided for the capacity of the surface water lagoon are based on surface water arising from the entire six hectare extraction site, whereas supporting information indicates it would be worked in phases with progressive restoration following extraction (limiting areas draining to the surface water lagoon that would be dependent on the phase of working).

- 9.83 In addition, although the applicant proposes staff drinking water would be imported, this could not be secured by condition or Section 106 legal agreement (failing the relevant tests of enforceability). Therefore, provision could not be guaranteed.
- 9.84 For clarity, it would not be an acceptable approach to seek to deal with such details by way of a pre-commencement condition, as that would not provide the necessary certainty that the impacts of the development on the Arun Valley sites can and will be mitigated as required by the Habitat Regulations.
- 9.85 Having considered the above proposed avoidance and mitigation measures, it has been concluded that insufficient information/evidence has been provided to demonstrate with sufficient certainty that the proposed development would not have an adverse effect on the integrity of the Arun Valley SAC/SPA/Ramsar site, either alone or in combination with other plan and projects.

#### *Overall Conclusion*

- 9.86 In conclusion, ecological impacts associated with the proposed development would result in the net-loss of semi-natural broad-leaved woodland (a habitat of principal importance<sup>1</sup>). Even with embedded mitigation and enhanced off-site mitigation, the impact of the development would still result in a net loss of biodiversity. Therefore, the proposed development does not accord with Policy M17 of the JMLP, Policy W14 of the WLP, Policy 49 of CLP, Paragraphs 174 and 180 of the NPPF, and Paragraph 7 of the NPPW.
- 9.87 Furthermore, the Appropriate Assessment undertaken by officers indicates that, notwithstanding the water neutrality mitigation measures proposed by the applicant, it has not been demonstrated that the Proposal would not have an adverse effect on the internationally important Arun Valley SAC/SPA/Ramsar site. Therefore, not only does the proposal not accord with Policy M17 of the JMLP, Policy W14 of the WLP, Policy 49 of CLP, and Paragraph 180 of the NPPF in relation to this specific issue, the County Council must refuse the project under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

#### **Impacts on Highway Capacity and Road Safety**

- 9.88 One of the key issues raised in third party objections is that impact of HGVs on the road network. In addition to concerns about HGV numbers, concerns have been raised regarding HGVs driving through Loxwood village and that the local highway network is not adequate for a number of reasons, including the narrowness of local roads, pinch points, and conflict with other road users.
- 9.89 Policy M20 of the JMLP and Policy W18 of the WLP state that proposals for minerals and waste development will be permitted provided that transport links are adequate to serve the development or can be appropriately improved to an acceptable standard and that, amongst other matters, there would not be unacceptable impacts on the capacity of the highway network and road safety.

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<sup>1</sup> Natural Environment and Rural Communities Act 2006 s.41

- 9.90 Paragraphs 110 to 112 of the NPPF set out national policy on promoting sustainable transport, which includes, amongst other matters, the need for safe and suitable access to the site and the need for any significant impacts on the transport network or highway safety to be appropriately mitigated. Paragraph 111 states that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe".
- 9.91 Paragraph 7 of the National Planning Policy Waste (NPPW) states that, in determining planning applications, waste planning authorities should consider the likely impact on the local environment and on amenity against specific criteria, including traffic and access.
- 9.92 The extraction of clay and the movement of waste into and out of the site would generate 42 HGV movements each day (21 in and 21 out), with vehicles ranging from 18-32 tonne lorries. The applicant is proposing widening the access road in two places, to 7.5m across and 20m in length, thereby allowing HGVs to pass. The eastern most passing bay is located in Ancient Woodland. A traffic management system would limit the number of inbound vehicles to a maximum two, with outbound vehicles having priority.
- 9.93 In addition to the gates located at the main entrance to the site, further barriers are proposed on the applicants' land at the crossing to bridleway 3240, footpath 792 and at the entrance to the development site. All would be locked outside operational hours and when the site is unmanned.
- 9.94 Technical drawings have indicated that the existing layby junction does not meet current design standards to allow for the movement of rigid HGVs into and out of the site. Therefore, the applicant proposes to widen the entrance to the layby, which would be secured through a Section 106 Agreement.
- 9.95 As set out in paragraph 4.11 above, the applicant is also willing to enter into a HGV routing agreement secured through the Section 106 Agreement. This would require all HGVs to approach the site from the east and leave the site towards the east, thereby avoiding Loxwood village.
- 9.96 Although WSCC Highway Officers carried out pre-application discussions with the applicant setting out matters that should be taken into account, further information has had to be requested post-submission. Although matters such as the layout of the compound (car parking arrangements and wheel wash position), the final bridge detail, the traffic management system, a construction management plan and the routing of HGVs could be secured through planning conditions and/or a Section 106 Agreement, other matters remain unresolved. These include visibility splays, vehicle tracking, suitability of forward visibility and signing to mitigate risks, and visibility/signage relating to the use of the lay-by by non-motorised users and HGVs. Therefore, it has not been demonstrated to the satisfaction of the Local Highway Authority that the proposal would not have an unacceptable impact on road safety.
- 9.97 In conclusion, the proposed development would result in up to a maximum of 42 HGV movements each weekday as a result of the clay extraction and waste recycling operations. Although some of the outstanding matters could potentially be addressed by condition and or a legal agreement, the Local Highway Authority has advised that it requires more information and clarification regarding other key matters, including the access arrangements

and visibility splays, and the hazards to other highway users. Therefore, it has not been demonstrated that the proposed development would not have unacceptable impacts on road safety. Therefore, the proposal does not accord with Policy M20 of the JMLP, Policy W18 of the WLP, Paragraphs 110-112 of the NPPF, and Paragraph 7 of the NPPW.

### **Other Matters**

- 9.98 With regard to air quality, the applicant has submitted a Dust Management Plan, which concludes that without specific mitigation or dust controls, there is potential for negligible to slight adverse effects at some sensitive receptors. However, following mitigation, the risk of dust causing any significant issue is considered low. The District Council's EPO raises no objection to the development, noting only that dust control measures should be secured by condition.
- 9.99 WSCC's Drainage Engineer advises that insufficient information has been submitted to assess surface water management. However, they further explain that "in view of the relatively low flood risk, the Local Lead Flood Authority is prepared for the detailed drainage strategy to form the subject of a pre-commencement condition" and raise no objection to the development.

### **10. Overall Conclusion and Recommendation**

- 10.1 Planning permission is sought for three distinct operations. First, the extraction of 375,000 tonnes of clay over a 30-year period for use in brick-making, second, phased restoration of the clay pit using inert waste, and third, the operation of a construction materials recycling facility (CMRF) processing 25,000 tonnes of inert construction, demolition and excavation (CDE) waste per annum. Half of the waste would be used for the restoration of the clay pit and half would be exported for use elsewhere.
- 10.2 The clay extraction operation appears to be an entirely speculative because the applicant has not demonstrated that there are any links between the proposed extraction of clay and the needs of the brickworks in the County. Notwithstanding that fact, restoration of the clay pit with up to 375,000 tonnes of inert waste is not acceptable.
- 10.3 With regard to the proposed CMRF, the applicant has not demonstrated that there is a need for the facility to meet market need consistent with the principle of net self-sufficiency in the WLP. Similarly, the applicant has not demonstrated that there is a need to locate the facility on a greenfield site in the countryside.
- 10.4 The application site is situated within a remote countryside woodland setting. Although it is well-screened, the proposed development would still result in adverse impacts on landscape character and surrounding sensitive receptors, and it would have a significant adverse impact on a tranquil area that currently remains undisturbed by noise and which is locally important for its recreational and amenity value, including for users of the PROW network.
- 10.5 Although on and off-site ecological mitigation is proposed, the proposed development would still result in a net loss of biodiversity habitats. Furthermore, it has not been demonstrated that the proposed water neutrality measures would not result in the proposal having an adverse effect on the

internationally important Arun Valley SAC/SPA/Ramsar site, which is sufficient reason to refuse the application.

- 10.6 The proposal would result in a significant number of HGV movements in and out of the site, in part to export recycled CDE waste for use elsewhere. Although some highway matters have been satisfactorily addressed and could be secured by condition and/or a legal agreement, other matters remain unresolved. Therefore, not been demonstrated that the proposed development would not have unacceptable impacts on road safety.
- 10.7 In summary, there is no proven need for the clay extraction operation or a proven need for the inert waste recycling facility or to locate the facility on a greenfield site in the countryside. The applicant has also failed to demonstrate that there would not be unacceptable impacts on landscape character and public amenity, biodiversity, and road safety. Overall, it is considered that any benefits of the proposal do not outweigh the significant disbenefits that have been identified. As such, the proposed development is not considered to constitute sustainable development in accordance with Paragraphs 7 or 11 of the NPPF and it is contrary to the statutory development plan when read as a whole.
- 10.8 Therefore, it is **recommended** that planning permission be refused for the reasons set out in **Appendix 1** of this report.

## **Factors taken into account**

### **11. Consultations**

- 11.1 See Sections 7 and 8.

### **12. Resource Implications and Value for Money**

- 12.1 Not applicable.

### **13. Equality and Human Rights Assessment**

- 13.1 The County Council has a duty to have regard to the impact of any proposal on those people with characteristics protected by the Equality Act. Officers considered the information provided by the applicant, together with the responses from consultees and other parties, and determined that the proposal would have no material impact on individuals or identifiable groups with protected characteristics. Accordingly, no changes to the proposal were required to make it acceptable in this regard.
- 13.2 The Human Rights Act requires the County Council to take into account the rights of the public under the European Convention on Human Rights and prevents the County Council from acting in a manner which is incompatible with those rights. Article 8 of the Convention provides that there shall be respect for an individual's private life and home save for that interference which is in accordance with the law and necessary in a democratic society in the interests of (inter alia) public safety and the economic wellbeing of the country. Article 1 of protocol 1 provides that an individual's peaceful enjoyment of their property shall not be interfered with save as is necessary in the public interest.
- 13.3 For an interference with these rights to be justifiable the interference (and the

means employed) needs to be proportionate to the aims sought to be realised. The main body of this report identifies the extent to which there is any identifiable interference with these rights. The Planning Considerations identified are also relevant in deciding whether any interference is proportionate. Case law has been decided which indicates that certain development does interfere with an individual's rights under Human Rights legislation. This application has been considered in the light of statute and case law and the interference is not considered to be disproportionate.

- 13.4 The Committee should also be aware of Article 6, the focus of which (for the purpose of this committee) is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision-making process as a whole, which includes the right of review by the High Court, complied with Article 6.

#### **14. Risk Management Implications**

- 14.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the determination of planning applications must be made in accordance with the policies of the development plan unless material considerations indicate otherwise. If this is not done, any decision could be susceptible to an application for Judicial Review.

#### **15. Crime and Disorder Reduction Assessment**

- 15.1 There are no implications.

#### **16. Social Value and Sustainability Assessment**

- 16.1 Not applicable.

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#### **Appendices**

Appendix 1 – Reasons for Refusal

Appendix 2 – Site Location Plan

Appendix 3 – Site Area Plan

Appendix 4 – PROW Network

Appendix 5 – Proposed Site Layout

Appendix 6 – Extraction and Restoration Phasing Plan

Appendix 7 – CMRF and Office Buildings

#### **Background papers**

See Section 6.

## **Appendix 1: Reasons for Refusal**

### **1. Need for Clay Extraction**

It has not been demonstrated that there is a need for a new mineral operation in the countryside for the extraction of 375,000 tonnes of clay to support brickmaking production in West Sussex. Therefore, the proposed development is contrary to Policy M5 of the West Sussex Joint Minerals Local Plan 2018.

### **2. Deposit of Inert Waste to Land**

It has not been demonstrated that the deposit of up to 375,000 tonnes of construction, demolition and excavation waste to land would result in a clear benefit for the site or the wider area. The development would result in unacceptable impacts on landscape character and public amenity and in a net loss of biodiversity habitats. Therefore, the proposed development is contrary to Policy W8 of the West Sussex Waste Local Plan 2014 and Paragraph 7 of the National Planning Policy for Waste.

### **3. Waste Recycling Site in the Countryside**

It has not demonstrated that there is a market need for the Construction Material Recycling Facility consistent with the principle of net self-sufficiency in West Sussex. Furthermore, it has not demonstrated that an inert waste recycling facility needs to be located on a greenfield site in a countryside location. Therefore, the proposal is contrary to Policies W1, W3 and W4 of the West Sussex Waste Local Plan 2014, Policy 45 of the Chichester Local Plan 2014-2031, and Paragraph 84 of the National Planning Policy Framework.

### **4. Landscape Character and Public Amenity**

The proposed development would result in unacceptable impacts on landscape character and public amenity. Therefore, the proposal is contrary to Policies M12, M18 and M23 of the West Sussex Joint Minerals Local Plan 2018, Policies W11, W12 and W19 of the West Sussex Waste Local Plan 2014, Policies 45 and 48 of the Chichester Local Plan 2014-2031, Paragraphs 174 and 185 of the National Planning Policy Framework, and Paragraph 7 of the National Planning Policy for Waste.

### **5. Biodiversity**

The proposed development would result in a net loss of biodiversity habitats. Furthermore, it has not been demonstrated that the proposal would not have an adverse effect on the internationally important Arun Valley Special Area of Conservation, Special Protection Area, and Ramsar site. Therefore, the proposed development is contrary to Policy M17 of the West Sussex Joint Minerals Local Plan 2018, Policy W14 of the West Sussex Waste Local Plan 2014, Policy 49 of Chichester Local Plan 2014-2031, Paragraphs 174 and 180 of the National Planning Policy Framework, and Paragraph 7 of the National Planning Policy for Waste.

### **6. Highways**

It has not been demonstrated that the proposed development would not have unacceptable impacts on road safety. Therefore, the proposal is contrary to

Policy M20 of the West Sussex Joint Minerals Local Plan 2018, Policy W18 of the West Sussex Waste Local Plan 2014, Paragraphs 110-112 of the National Planning Policy Framework, and Paragraph 7 of the National Planning Policy for Waste.