

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

18 May 2022 – At a meeting of the Committee held at County Hall, Chichester, PO19 1RQ

Present: Cllr Burrett (Chairman)

Cllr Atkins, Cllr Ali, Cllr Duncton, Cllr Gibson, Cllr Hall, Cllr Joy, Cllr McDonald, Cllr Montyn, Cllr Oakley, Cllr Patel, Cllr Sharp

Apologies were received from Cllr Hall and Cllr Joy (for the afternoon session only) and Cllr Quinn (for the whole Committee meeting)

Also in attendance: Cllr Kenyon

### **Part I**

#### **Declarations of Interest**

1.1 The following declarations of interest were made in relation to Agenda Item 4 - Planning Application WSCC/030/21:

- In accordance with the County Council's Code of Conduct, the following members of the Planning and Rights of Way Committee declared personal interests:
  - Cllr Duncton as the local County Councillor for Petworth. Cllr Duncton elected not to speak as local Member, but to retain her seat on the Committee in order to better serve the County Council in respect of this application. Cllr Duncton stated she has taken no part in any discussions in relation to the planning application either prior to or since its submission, and has kept an open mind until she has heard all the evidence.
  - Cllr Simon Oakley and Cllr Sarah Sharp as Chichester District Councillors, which body is a statutory consultee on the application.
- In accordance with the County Council's Constitution: Code of Practice on Probity and Protocol on Public Participation in Planning and Rights of Way Committees, all members of the Committee declared they had been lobbied.

1.2 The following declarations of interest were made in relation to Agenda Item 5 - Planning Applications WSCC/001/22 and WSCC/002/22:  
In accordance with the County Council's Code of Conduct, the following members of the Planning and Rights of Way Committee declared personal interests:

- Cllr Gibson declared a Pecuniary Interest that does not become Prejudicial in respect of his wife's business.
- In accordance with the County Council's Constitution: Code of Practice on Probity and Protocol on Public Participation in Planning and Rights

of Way Committees, all members of the Committee declared they had been lobbied.

1.3 The following declarations of interest were made in relation to Agenda Item 6 - DMMO 2/16 West Hoathly (also known as DMMO/2/16 Sharpthorne):

- Cllr Gibson declared a Personal Interest due to his membership of the British Horse Society and their support for the original application. Cllr Gibson would take no part in any discussion on this matter.

### **Minutes of the last meeting of the Committee**

2.1 Resolved – That the minutes of the Planning and Rights of Way Committee held on 1 March 2022 be approved and that they be signed by the Chairman.

### **Urgent Matters**

3.1 There were no urgent matters.

### **Planning Application: Mineral and Waste**

**WSCC/030/21 – 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.**

4.1 The Chairman advised all present that he had been made aware of representations from members of the public who were concerned that there has not been a physical site visit for Committee members in advance of considering the Loxwood application. National guidance and the County Council's own Constitution make it clear that site visits are not mandatory to enable a Committee to take a decision on an application. The County Council's Constitution (Part 3 Section 3 - Code of Practice on Probity in Planning, para 8.1 Committee Site Visits) sets out that "A site visit may be justified where the complexity or technical aspects of the proposals or public concern at the issues raised is such that Members' understanding would substantially benefit from a site visit.". In view of the rough terrain and remote location of the site it was considered preferable to have a virtual site visit as opposed to an in-person one. This ensured that Committee members were able to remotely view the site and gain an appreciation of the issues involved. This had not precluded individual members of the Committee from visiting the site on their own.

4.2 Michael Elkington, Head of Planning Services, advised that a letter from the applicant's agent, dated 13 May 2022, was received by Planning Officers and Mr Tony Kershaw, Director of Law and Assurance in his capacity as Monitoring Officer. It requested that the Committee report be withdrawn in order to correct alleged inaccuracies in information on which the Committee decision would be based. The report has not been withdrawn. An Agenda Update Sheet was published on 17 May 2022. Both the letter and Agenda Update Sheet are

available on the planning website. Concerns were also stated that not all emails and requests for information have been responded to. The Committee was reassured that Officers have engaged as appropriate with the agent, due process has been followed and all relevant information in relation to the application has been properly considered.

4.3 The Committee considered a report by the Head of Planning Services, as amended by the Agenda Update Sheet (copies appended to the signed copy of the minutes). The report was introduced by Chris Bartlett, Principal Planner, who gave a presentation on the proposals, details of the consultation and key issues in respect of the application. In respect of the Agenda Update Sheet Mr Bartlett noted that since the publication of the Committee report the following has occurred:

- The Council has published its Annual Monitoring Report for minerals and waste planning, affecting some details in the Committee report, as noted.
- A final response to the planning consultation has been received from Natural England. This document does not affect the overall recommendation in the Committee report, but in light of this a revised recommendation is advised which would give officers delegated powers in consultation with the Chairman to address the matters highlighted in the update sheet with regards to The Mens Special Area of Conservation and Ebernoe Common Special Area of Conservation (see Minute 4.15 for details).

4.4 The Chairman advised that due to the level of interest in the application, he had used his discretion to guarantee Loxwood Parish Council and one of the Chichester District Councillors the right to speak as elected representatives of the community. Because five people have been permitted to speak in objection to the application, the applicant and his agent were permitted additional time to speak in support of the application. Additionally, a statement from Cllr Christian Mitchell, County Councillor for Broadbridge, had been accepted.

4.5 Cllr Gareth Evans, Loxwood Ward Councillor for Chichester District Council, spoke in objection to the application. He grew up in the area and has walked and played in Pallinghurst Woods. It is a beautiful natural habitat providing many benefits. It is a community asset, which has been used by some residents for the whole of their lives. Its loss would be a devastation, including to future users. There are climate and biodiversity sensitivities; the woodland contains wild and ancient flowers, bats, badgers and birds of prey and other birds such as nightingales. The installation of a wheel wash would affect water neutrality. There are traffic and safety concerns because of the use of HGVs in the woodland, as well as road safety concerns in Loxwood and Rudgwick. There is no demand for additional clay. The proposed site does not conform to the Loxwood Neighbourhood Plan nor the Chichester Local Plan. There is no benefit to the community.

4.6 Cllr Annette Gardner of Loxwood Parish Council spoke in objection to the application on behalf of Tony Colling, Chair of the Parish Council's Planning Committee. The Parish Council has strongly objected to the application. Most of Pallinghurst Woods consist of ancient woodland. The Parish Council's own expert

planning consultant stated that the application does not comply with the following policies: Policies M5, M17, M18 and M20 of the West Sussex Joint Minerals Local Plan (JMLP), Policies W1, W3, W4, W9, W10 and W12 of the West Sussex Waste Local Plan (WLP), and Policy 12 of the Loxwood Neighbourhood Plan. The application would result in loss of a vital amenity to the whole community. Cllr Colling has lived in Loxwood and walked in Pallinghurst Woods for over 36 years. The woods are a quiet, tranquil place that provides for reflection and a sense of wellbeing; an encounter with a deer was provided as an example. This was especially germane during the pandemic. The 50 or more HGV movements per day, along the 1.4 km of track, the noise and activities of recycling and the clay extraction would completely destroy the sense of place and tranquillity. Residents would stop walking in the woods and the wildlife would be forced out. It would be a travesty if this happens.

4.7 Mr Roger Nash, local resident and representative for Rudgwick Preservation Society, spoke in objection to the application. Vehicle movements on the access track would impact flora and fauna and endanger users. The numerous rights of way or ancient green lanes are in an historic landscape and ancient woodland. A farmer whose land would be crossed by HGVs stated: "The ... plans represent a significant change of use of our land. .... the proposed increase in vehicle movements represents an unacceptable intensification of the right of way across our land.". The wheel wash and parking area would be located in Pephurst ancient woodland. Mature oaks would be removed. Biodiversity offsetting would not compensate for the loss. Alfold Bars and Tisman's Common are only a few hundred yards from the proposed site. Residents would be impacted by noise, dust, air and light pollution and disturbance, as would the residential Rikkyo School. All traffic would be via Tisman's Common to the A281 in Bucks Green, putting Rudgwick in the spotlight. HGV traffic could double on Loxwood Road. It is narrow, with many side roads, bends and hidden dips and a 60mph speed limit up to the built-up area. There are issues for HGVs and other road users passing along its length. There is no cost-effective way to improve the road. The site is 3 miles to the Local Lorry Network, 9 miles to the Strategic Lorry Network and 16 miles to Guildford. The lay-by at Pephurst is on a bend with limited visibility. Improvement proposals are unsatisfactory and pose a risk to road users. Climate change should mean prioritising activities where they do least harm, as noted in the National Planning Policy Framework (NPPF) (2021) and county mineral and waste reports. This clay pit would make a negligible contribution to need. Waste journeys are excessive. The wheel wash would not achieve sustainable water neutrality. There is no need to spoil this sensitive environment.

4.8 Cllr Richard Landeryou, Rudgwick Ward Councillor for Horsham District Council, spoke in objection to the application. His concerned residents make up nearly half of the 1,629 objectors. The site is very close to Rudgwick, which would bear all of the proposed heavy commercial traffic. Rudgwick Parish Council has provided comprehensive objections. A much loved local amenity enjoyed by dog walkers, ramblers and riders would be lost. Noise would have a detrimental effect on nearby hamlets. Rikkyo School sits on a raised position directly north-east of the proposed site. Prevailing winds mean it is in line with noise and other pollution. The application is about digging a large hole in the middle of a beautiful woodland for the extraction of clay and then to use the hole

for what, by another name, is a landfill operation, together with a recycling operation. There is no shortage of clay in the district. Most brick making takes place next to the extraction site. Usually, manufacture is for in excess of 70 years before the clay runs out. The 33 year time-table demonstrates how little clay would be extracted. It would make an insignificant difference to supplies in the area. It would take another 30 years for newly planted saplings to generate sufficient carbon absorption for a biodiversity net gain, actually resulting in a 63 year biodiversity net loss. Loxwood Road is not much more than a country lane. In places it is impossible for HGVs to pass at more than walking pace without damaging verges. The safety of pedestrians and other road users on a road without pavements is a major issue. Safety on the A281 is also a concern. Fatalities have occurred on both roads in the past two years.

4.9 Mrs Fiona Wallace, local resident and representative for the Stop the Clay Pit group, spoke in objection to the application. The application fails to meet all material planning considerations. The volume of clay at the site is commercially insignificant and could only be used for bricks, for which there is no demonstrable market. There is no need for additional construction material recycling capacity. The proposed site, in the midst of wonderful woodland, is wholly inappropriate. The application fails the minimum tests of both the JMLP and the WLP, specific Chichester Local Plan policies, NPPF requirements and the National Planning Policy for Waste (NPPW) (2014). There would be a biodiversity net loss of 36%. Habitats are irreplaceable. Mitigation measures are proposed for land not in the applicant's ownership, so cannot be guaranteed. The goals and challenges of the Climate and Biodiversity Emergencies or UK National Policy are not met. This rural, pastoral and wooded part of the Low Weald should not be subjected to an industrial scale operation. There would be 12,600 HGV movements per year on wholly inadequate rural country lanes. HGV movements could be understated by as much as 50%. There could be significant, dangerous impacts where the access track crosses established Public Rights of Way and paths at multiple intersections. A 1,400 square metre, 8.5 metre high building with associated industrial equipment is proposed in the middle of woodland. Operations would be up to 6 days a week. Noise and dust would destroy the tranquillity and visual beauty of this area. The applicant may not own the mineral rights.

4.10 Mr Chris Williamson, Protreat Ltd, agent for the applicant Loxwood Clay Pits Ltd (LCP), spoke in support of the application. The Annual Monitoring Report (2020-21), which has been written for some months, shows a 17.5% reduction in clay supply. The latest response from Natural England was not on the Planning website. Protreat's letter of 13 May was published at the last minute and feedback was sought regarding whether Committee members had read this. Mineral Policy M5 has been used as the basis for the foundation of the report; it is opaque and reading it in isolation is not helpful. The definition of brick clay is not specified in the JMLP, but the Department for Communities and Local Government's 2006 definition stands and was quoted. DEFRA's 2021 Flood and Coastal Erosion Risk Management Policy Statement requires planning authorities to develop a more comprehensive local plan; Weald Clay could be used as part of flood defence embankments. The February 2019 NPPF, issued after the JMLP, recognises that large tonnages of clay are used in concrete and concrete products. Since the closure of Shoreham cement works, cement has been imported from Kent to West Sussex. All clay markets were analysed in the

applicant's planning statement. The NPPF places importance on co-operation with neighbouring authorities. The proposal is on the Surrey border. Surrey has a large clay deficit. Surrey County Council did not object to the application. NPPF paras. 6.5.1, 6.5.2, 6.5.3 and para. 6.5.6 of the JMLP recognise the shortcomings of a one clay pit to one brickworks policy, however, Policy M5 of the JMLP does not provide the same clarity, although the Planning Inspector made it clear other clay sites could come forward because the 25 year clay reserve is an absolute minimum. The restoration of clay pit voids with inert waste is standard practice; Rudgwick, which uses the same three waste types, was cited as an example of this and also of the need for such sites. The matter should be deferred due to many shortcomings in the report.

4.11 Mr Nigel Danhash, Director, Loxwood Clay Pits Ltd (LCP), spoke in support of the application. Details of the application and investment in the process and investment in woodland management in the family owned land were advised. The report makes no mention of Chichester District Council's revocation of a Tree Preservation Order. If planning permission were granted, refreshed Forestry Commission licences would be required, satisfying mitigation for tree felling. There is no evidence that Planning Officers passed on LCP's response to Natural England's concerns to that body. There is no explanation of how Planning has reached its conclusion on the impact of the felling of 7 acres of trees with replantation over a 30 year period, the majority of which would occur after 15 years from commencement of the development. The Forestry Commission has approved a 10 year plan for felling 50 acres of woodland with replantation. The process has been ongoing for over 60 years. LCP has agreed to Section 106 agreements and covenants to ensure a net biodiversity gain could be achieved. DEFRA's model does not allow for gains outside the planning red-line area, so mitigation throughout the entire 300 acres of woodland is not credited. The report makes no mention of LCP's plans for a brickworks at another location. The 2-3 years before clay could be sold is enough time to establish this facility. Of the 8 brickworks cited in the 2003 Joint Minerals Local Plan, only 4 remain and only 2 have the minimum 25 year clay reserves. Brexit and the UK's exit from the Waste Shipment Regulations is impacting on the 10,000 tonnes per day of waste that used to be exported. The need for clay and a waste recycling facility was provided with the application. It is believed the application has not been handled fairly, including the publication of the Agenda Update Sheet on the evening before the Committee meeting. The County Planning Team Manager stated the Team does not have the resources to handle an application of this type and five extensions of time have been agreed to by LCP to help out the Planning Team.

4.12 The Chairman read out a statement from Cllr Christian Mitchell, County Councillor for Broadbridge. The western part of the Broadbridge Division is significantly affected by the application. 8 hectares from the tranquil woodland would be dug up for a quarry and the site building and works would have significant harm on the landscape and countryside. There is no need for such clay works and no economic case to be made to depart from local and national planning policies to outweigh the significant harm that this site would have on the countryside. The site access would see daily use by many HGVs adding to pressure on rural roads and make them unsafe. Tisman's Common and Rudgwick would be significantly affected with large HGVs on the road seeking access to the A281, to either go onwards to the north or southbound to the A29

or A24. There is already too much traffic on the A281, which is particularly carrying unsuitable HGV traffic. The application is strongly objected to.

4.13 In response to points made by speakers, Planning Officers clarified the following:

- Regulation 25 information was passed to Natural England and other statutory consultees at the appropriate time.

4.14 During the debate the Committee raised the points below and a response or clarification was provided by the Planning and Legal Officers, where applicable, as follows:

### **Approach to the application by Planning and Rights of Way Committee members**

**Points raised** – Some Committee members made it clear that they have approached the application in a fair manner and aimed to see both sides. Some members also clarified that they had read the agent's letter of 13 May 2022. Additionally some members also clarified that they had made visits to the site. One member pointed out that the Committee report must be cross referenced with planning documents.

**Response** – The Committee report provides a concise summary of key issues. It is not possible to include all material or points within the report. [NOTE: the County Council places planning documents on its planning website at: <https://westsussex.planning-register.co.uk/Planning/Display/WSCC/030/21>].

### **Need for and Uses of Clay**

**Points raised** – The argument on both sides regarding the need for clay could be seen. In reference to the applicant's comments about use of clay for flood defence, it is noted that Policy M5 of the JMLP has differing criteria for approval of clay extraction sites for brickmaking and other uses. Additionally, it was queried if there is evidence of the need for clay from brick makers for blending, as per Policy M5 and clarification was sought regarding whether there is a sufficiently robust supply to satisfy the 25 year supply both in West Sussex and Surrey. It is not clear in Policy M5 where brickworks would be in relation to the link between quarries and brickworks. Clarification was sought regarding where clay is expected to be sent to, because it is not demonstrated that there is any link regarding the proposed clay production and existing brickworks, although the applicant advised they intend to start a brick making facility. There is a duty to co-operate with neighbouring planning authorities regarding the supply of clay. The impacts of Brexit and plans for future housing in West Sussex may have relevance to the review of the JMLP.

**Response** – Within West Sussex, two brickworks have a minimum of 25 years supply and two do not. There are two active clay production sites in Surrey, which has no need for additional clay, because they have sufficient for 25 years. Surrey County Council has not objected to the

application; however, the site is not in their county. The applicant has advised they intend to start a brick making facility although this is speculative; no planning application has been submitted. Otherwise, other markets for the clay have not been specified. The JMLP allows for new clay extraction sites to come forward. The 25 year reserves of clay applies to individual brickworks. There is a duty to co-operate on the JMLP, but this does not apply to planning applications. The JMLP was adopted in 2018 and formal review is carried out every 5 years, with the next due in 2023, which will consider all policies and context. An Annual Monitoring Report is produced. There is nothing to suggest that the JMLP is out of date or has been superseded. The applicant has not demonstrated there is a need for this clay quarry, nor demonstrated a link between extraction and brickworks in West Sussex or elsewhere, nor use for other purposes.

### **Highway Safety and Road Capacity**

**Points raised** – Routeing via the A281 would be no better than routeing via the opposite direction [through Loxwood Village] which also has residential properties and a difficult junction. Some members stated that the local roads are not suitable for the HGV traffic, e.g. the right turn onto Loxwood Road would need attention. One member noted that it was not clear that reasons for refusal on the grounds of highway safety are based on WSCC Highways' concerns, so clarification was sought regarding site access and the road east towards Rudgwick and whether issues might be overcome by condition or whether there is insufficient information to determine if issues could be overcome. Two of the three proposed HGV movements are from recycling activities, not clay production.

**Response** – Para. 9.96 of the Committee report addresses information supplied regarding road and access track safety. During visits, Planning Officers have noted visibility problems at the access and on Loxwood Road. Officers have not received sufficient information to determine if concerns regarding road safety could be resolved. The onus is on the applicant to supply the relevant information.

### **Proposed Access Track**

**Points raised** – Concerns were raised regarding the risks associated with vehicles, including HGVs, using the access track through the woods and the risks to walkers, riders, etc., on the Public Right of Way and other woodland paths where they intersect with the access track. Despite the inclusion of lay-bys, concern was raised regarding sight lines and how HGVs might pass, so it was queried how this would be managed. Any addition of barriers and signage may help with safety but would not add to the enjoyment of the woods. Concern was also raised about HGVs encroaching on verges. There is no information about whether ditches alongside the access track would need to be maintained. It was suggested that impacts on the Public Rights of Way be referenced within any recommendation for refusal and the reasons for refusal, should the Committee refuse the application.

**Response** – Outgoing HGVs would have priority on the access track. If planning permission were approved, condition to control access would be included, requiring the submission of a Construction Management Plan. (Please also see response to 'Highway Safety and Road Capacity' within Minute 4.14, above). Should the Committee decide to refuse the application and consider it appropriate, the impacts on the Public Rights of Way could be referenced within any recommendation for refusal and the reasons for refusal.

### **Landscape Character**

**Points raised** – Although the area is not in the South Downs National Park, it is beautiful. The area is not protected; however, it is deep woodland and the protection of the countryside is stated in national policies. It was queried, further to the applicant's letter, whether there is a need for a WSCC landscape and visual impact assessment. Concern was raised about the movement of livestock, which does not seem to have been covered. Clarification was sought on whether there would be a permanent loss of ancient woodland.

**Response** – Loss of ancient woodland would be in the car parking area, wheel wash (located in Pephurst Wood) and the layby located in Hurst Wood. The applicants have stated they would restore these areas.

**Comment by the applicant:** Mr Danhash disputed this statement and advised that from the start it has been stated that there would be no loss of ancient woodland.

### **Biodiversity, including Water Neutrality**

**Points raised** – It was stated that there is clear assurance that Natural England has had sufficient time to consider any new information. The net biodiversity loss within the red-line site versus the biodiversity gain within the blue-line site was noted. It was stated that it is a pity that a site could not be found where there could be a net biodiversity gain. The licensing process for tree felling and the need to consider the bird nesting season were noted. Concerns about water neutrality were raised, including the requirement for water as part of the operations and the ability to maintain water neutrality. Clarification was sought whether the lagoon would be sufficient for the water needs on site. Clarification was sought regarding the 15 metre and 50 metre buffers mentioned in para. 9.68 of the report.

**Response** – The Agenda Update Sheet provides relevant references regarding Natural England's final response received on 17 May. If planning permission were to be approved, appropriate conditions and informatives would be included to ensure the protection of trees. Water neutrality is intrinsic to biodiversity policies. The 15 metre buffer would protect woodland trees and fauna, the 50 metre buffer would protect the deep excavation site. This would effectively be a buffer within a buffer.

### **Land Restoration and Inert Waste Recycling**

**Points raised** – 50% recycled material is a low rate for land filling operations, which goes against the circular economy; however, if the rate were to be improved this would increase the number of HGV movements through the woods. The matter of exemption from landfill tax if material is used for land restoration was raised. It was noted that some concern has been highlighted regarding use of trommel fines. Clarification was sought regarding the 'headroom' of c.174,000 tonnes per annum of recycled inert waste and whether this would be used up in years to come.

**Response** – The revised statistics in the new Annual Monitoring Report are likely to be due to new waste facilities becoming operational. The Annual Monitoring Report is a statutory requirement, produced by the County Council's Planning Policy Team. Information provided through a survey of all operators is taken into account. The Committee must decide the application on the basis of the current position rather than on what might happen in the future.

### **Construction Materials Recycling Facility**

**Points raised** – The large building and 4.5 metre high stockpiles would have an impact on the amenity of the area. There is no power source in the woods so generators would need to be used. This is not compliant with carbon reduction policies and it was suggested that solar power ought to be used instead.

**Response** – None required.

### **Loxwood Neighbourhood Plan**

**Points raised** – Relevant policies in the Loxwood Neighbourhood Plan were queried and it was suggested that the Plan be referenced within any recommendation for refusal and the reasons for refusal, should the Committee refuse the application.

**Response** – The relevant sections of the Loxwood Neighbourhood Plan are outlined in the Committee Report [section 6.13]. Should the Committee refuse the application, it is recommended that delegated authority be given to officers to include appropriate references to the Neighbourhood Plan.

### **Planning Process - Extensions of Time**

**Points raised** – Clarification was sought regarding the reasons for the five extensions of time mentioned by the applicant.

**Response** – Extensions of time are not unusual in the planning process and are usually as a result of awaited information, the processing of information and review of such. The Committee was again reassured that all relevant information submitted has been shared with all parties and consultees and taken into account.

### **Possible Precedent**

**Points raised** – One third of West Sussex is Weald Clay. If the application were to be approved, this could set an alarming precedent. There is a need to respect greenfield and ancient woodland sites.

**Response** – None required.

### **Western Arm of the Access Road Triangle**

**Points raised** – Clarification was sought regarding the reference to the “western arm of the access road triangle” in para. 9.55 of the Committee report.

**Response** – This refers to the layby by Loxwood Road.

### **Public Right of Way Status**

**Points raised** – Clarification was sought on whether Public Rights of Way are considered to be highways.

**Response** – Public Rights of Way are considered to be highways.

### **Overview of Reasons for Refusal**

**Points raised** – Aside from the discussion of the need for clay and inert waste recycling, as discussed by the Committee, Officers have provided four other reasons for refusal of which landscape character, amenity and biodiversity and the impacts of HGV movements, including safety concerns, may be considered key.

**Response** – None required.

4.15 As noted in Minute 4.3, Bullet Point 2 above, and also in response to suggestions made by the Committee, Planning Officers put forward the following revised recommendation, which was proposed by Cllr Duncton and seconded by Cllr Atkins:

“That planning permission be refused for the reasons set out in Appendix 1 of this report, subject to the final wording for Reason for Refusal 5 (Biodiversity) being delegated to officers and the Chairman following the completion of an appropriate assessment to assess the likely impacts of the proposal on the conservation objectives for The Mens Special Area of Conservation and Ebernoe Common Special Area of Conservation, that authority be delegated to officers and the Chairman to, as appropriate, include policies from the Loxwood Neighbourhood Plan in the reasons for refusal and also that authority be delegated to officers and the Chairman to ensure that the Reason for Refusal 6 (Highways) is clear about the potential impacts on the Public Rights of Way.”

The proposal was put to the Committee and approved unanimously.

4.16 It was resolved that planning permission be refused for the reasons set out in Minute 4.15, above.

4.17 The Committee recessed for lunch at 1.16 p.m.

4.18 Cllr Hall and Cllr Joy left the meeting, having given apologies for the afternoon session.

4.19 The Committee reconvened at 2.16 p.m.

### **Planning Applications: Mineral**

**WSCC/001/22 - Amendment of condition no. 1 of planning permission WSCC/078/19/WC to enable the retention of security fencing, gates and cabins for a further 24 months**

**WSCC/002/22 - Amendment of condition no. 1 of planning permission WSCC/079/19/WC extending the permission by 24 months to enable the completion of phase 4 site retention and restoration**

**at Wood Barn Farm, Adversane Lane, Broadford Bridge, Billingshurst, West Sussex, RH14 9ED**

5.1 The Committee considered a report by the Head of Planning Services, as amended by the Agenda Update Sheet (copies appended to the signed copy of the minutes). The report was introduced by James Neave, Principal Planner, who gave a presentation on the proposals, details of the consultation and key issues in respect of the applications. In addition, a further third-party representation had been received on the day of the meeting; however, the content did not affect the Officer's recommendation to the Committee.

5.2 Dr Jill Sutcliffe, an environmental scientist, representing the Keep Kirdford and Wisborough Green group spoke in objection to the applications. The applicant has previously stated four times that the site will be restored, so it is questioned how many times this can be permitted to go on. An independent observer has made the following comment about the site: "low reservoir productivity indicates zone likely not economically viable" and the company itself has stated "flow rates...are likely sub commercial". This Committee report describes the site as being "of an industrial character within a rural setting". It is a rural part of both the country and the county, which should not be subjected to an industrial scale operation. The infrastructure is not suitable. Concerns have been raised about well integrity and the possibility of toxic chemicals having leaked out. The NPPF paras. 210 h) and 211 e) state that restoration should take place at the "earliest opportunity". Para. 55 states that "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.", hence the reason for applying a time limit on the previous planning permission. Para. 59 states, "Effective enforcement is important to maintain public confidence in the planning system." There is no real evidence to support that more time is needed. The climate emergency and the drive towards net zero carbon emissions are vitally important. Climate policy should consider such planning applications.

5.3 Mr Matt Cartwright, Commercial Director, UK Oil & Gas PLC, the applicant, spoke in support of the application. The well site, built in 2014, only undertook 7 months of exploration activity in the next 36 months whilst UKOG took ownership. Oil to surface has been achieved. The 'Kimmeridge' reserve is regional, but it must be confirmed. In 2020 the Committee was informed about planning consent at Horse Hill in Surrey, but a legal challenge has delayed progress. It is hoped to progress later this year. The required data from this site is still needed for analysis for the Broadford Bridge oil site. Wider world events are acknowledged. Although Covid showed we can live greener lifestyles, the need for a secure supply chain, e.g. for PPE, was demonstrated. The bedding-in of net zero is happening, but it is a challenge that will take years. The Broadford Bridge oil site's primary aim is to contribute to UK domestic supply, but a secondary aim is to repurpose the well for geothermal energy. The war in Ukraine has shown how the impacts of Russia, as a commodity superpower, have affected costs - businesses have been particularly affected by price increases - and dependence on external supply and the UK's neglect of our own energy security. Right now, there is a perfect storm of insufficient renewables combined with insufficient fossil fuels. UK supply would mean not outsourcing to countries with less regulation and poor environmental records and would reduce international transport. It would free the UK from the whims of dictators.

5.4 Mr Nigel Moore, Planning Manager at Zetland Group Ltd, agent for the applicant, spoke in support of the application. The application is to extend the life of a temporary planning consent. The additional 24 months will allow time for review, followed by site restoration. No new drilling works are planned, no new impacts are predicted, and the proposal remains temporary and reversible. The proposal seeks to defer restoration to enable a review of existing data in light of data to come, including the mix of oil and gas and pressures and flow rates. Restoring the Broadford Bridge oil site prematurely would sever the link to a possible vital source of oil and gas. UKOG is exploring new, less harmful, methods of oil recovery, which could be used at Broadford Bridge if it matures to production. Under this application, actions remaining would be to seal the wells, remove fencing, scrape back the top soil and re-seed, so residential amenity would not be harmed. Effects of landscape character, ecology, water environment and water neutrality are acceptable or can be made so through conditions already approved. There are very few objections and no statutory consultees have objected.

5.5 Cllr Charlotte Kenyon, the local County Councillor for Pulborough, spoke on the application. All of the previous speakers' points were of interest, including the climate consequences, but also the need for a domestic oil and gas supply and stability of energy supply. However, it is understood that this site will provide only a small contribution to supply. It is not fully clear that the extension is justified given what has been found to date. This is the fourth extension requested for this site in nine years. Repeated extensions can undermine public confidence in the planning system, particularly if reasons don't appear to be new or based on new evidence. The South Downs National Park Authority has had to issue an Enforcement Notice for the restoration of UKOG's site at Markwells Wood, leading to concern about their commitment to the restoration of the site at Wood Barn Farm. The definition of temporary is

something lasting only for a limited period of time. It was queried how this can be a temporary borehole or if it is not to be limited by enforcement of the restoration requirement. How long does the applicant go on looking for oil and what is to prevent a further request for temporary planning permission? West Chiltington Parish Council has raised objections and it would be useful to understand how these objections have been unpicked.

5.6 In response to points made by speakers Planning Officers clarified the following:

- The application is to retain existing infrastructure and restore the site at the end of the 24 month period.
- No application for exploration has been received and that matter cannot be considered.
- Planning applications must be considered on their merits each time they are received.
- This planning application was received prior to the expiration of the previous planning permission.
- The site is regulated through permits from the Environment Agency (EA) and other authorities. The applicant has an EA permit that controls potential impacts to the water environment.
- The site had planning permission prior to Natural England's water neutrality statement being issued.
- West Chiltington Parish Council stated the site should be restored immediately and raised a question about a bond to secure the restoration. Para. 9.17 of the Committee report addresses the matter of bonds or guarantees; however, bonds should only be required in exceptional circumstances.

5.7 The Chairman pointed out that previous planning applications cannot bind future applications.

5.8 During the debate the Committee raised the points below and a response or clarification was provided by the Planning and Legal Officers, where applicable, as follows:

### **Need for a UK Oil and Gas Supply**

**Points raised** – Both sides of the argument for and against oil production could be seen. The possibility of the Broadford Bridge oil site adding to UK supply may help with price stability, which is important given the current cost of living crisis. It was also stated that onshore oil production is only 1.71% of the whole UK production and 80% of UK oil is exported. This site would provide a commercial production in a global market, so it cannot be expected to provide cheaper oil for UK residents. Clarification was sought on whether The British Energy Security Strategy is orientated

towards promoting production as opposed to maintaining the background potential capabilities for future production and how this has a bearing on the application site. Clarification was sought on how this site fits into the overall resource in the south-east versus its viability as a standalone site, noting that in the original planning application the site was described as being located within the Willow Prospect, and whether there is enough evidence to suggest that this site is dependent on the Horse Hill site in Surrey and the Loxley site.

**Response** – In relation to The British Energy Security Strategy, this has not changed the overall national context contained within the NPPF with regard to the provision of minerals extraction as part of the national economy and the need for oil. The JMLP also provides for hydrocarbon exploration as part of minerals extraction. Without checking back on the detail of previous planning applications, it cannot be stated whether the site was originally proposed as a standalone site; however, it has been made clear that the application site forms part of the same geological formation as other sites that the applicant is awaiting data on, including Horse Hill in Surrey.

### **Need for Proposed Extension in Time and Site Restoration**

**Points raised** – The site does not yet appear to have proved that there is enough flow from the well or an available oil resource and all evidence appears to indicate the Broadford Bridge well is not commercially viable. A decision to approve the planning application may just push the restoration of the site further away. The South Downs National Park Authority has had to take court action to force the applicant to restore their Markwells Wood site; this does not inspire confidence that the Broadford Bridge oil site would be restored at the appropriate time, and it is likely to affect the public's confidence in the planning process. One member pointed out that if the previous planning permission ran out in March 2022 and site restoration takes 6 weeks, then restoration work should really have started in February 2022; so, it was queried why a commencement date is not applied by condition, rather than a completion date.

**Response** – Paras. 9.2 to 9.7 of the Committee report address the need for the proposed extension of time. The applicant has stressed the commonality of the sites through the same oil reserve and the time that would be required to analyse and evaluate data. Para. 100 of the relevant PPG guidance states that the evaluation stage and available appraisal phases can be reliant on information received from other sites. The Committee must balance the need for time for analysis and testing against any impacts associated with the delay to restoration of the site. Under the previous planning permission, the site was due to be restored by the end of March 2022. If a new planning application had not been received, then enforcement action could be considered to require the site's restoration. In setting dates for restoration, planting seasons must be taken into consideration. The necessary conditions and safeguards are in place to ensure site restoration at the relevant point.

## **Impacts of Fossil Fuel Development / Environmental Concerns**

**Points raised** – The Committee report does not place enough emphasis on the impacts of fossil fuel development or climate change, and it was questioned what weight should be given to The British Energy Security Strategy when weighed against other policies and guidance. The report makes reference to areas outside the red-line application site and the applicant relies on studies, some of which are in other counties; it is questioned why this application is different from other applications where only the area within the red-line can be considered. Fossil fuel exploration is much more expensive than renewables. Whilst this application would see no impact on water neutrality, any future exploration or production at the site would have an impact.

**Response** – Matters pertaining to The British Energy Security Strategy are addressed in para. 6.20 of the Committee report. However, this is not an application for oil extraction, but to maintain the site in its current dormant state and restore it at the end of a 24 month period. The question of water neutrality would only be relevant to any future applications.

## **Temporary Planning Permission and Public Confidence in the Planning System**

**Points raised** – Clarification was sought regarding what is temporary planning permission, bearing in mind that the NPPF states that sites should be restored at the “earliest opportunity”. One member noted that the site is lying dormant and because of this there is no harm, so no reason not to extend the temporary permission once again.

**Response** – Policy M23 and para. 8.12.8 of the JMLP provide for extensions of planning applications, provided there is a need. Temporary planning permission depends on the nature of the application, but temporary can be for a number of years. The Committee needs to balance any impacts of delayed restoration of the site against the need for the proposed extension of time.

## **Number of Objectors**

**Points raised** – The number of objectors was raised by one of the speakers. It was noted that there were over 500 objectors to the previous planning applications for this site (applications: WSCC/078/19 and WSCC/079/19), which had permission granted in March 2020.

**Response** – The applications have been advertised and notified in the same way as the previous applications. It is difficult to speculate on the higher level of interest in the previous applications; however, it could have been driven by a number of factors including interest in the Balcombe oil site, media coverage and interest from campaign groups at the time.

## **Community Liaison**

**Points raised** – Clarification was sought on what previous engagement has taken place with the local community and whether or not a Community Liaison Group exists.

**Response** – During a previous phase of the oil site development there was community engagement by the applicant. However, there is no conditional requirement for community engagement via a formal liaison group, and this is not recommended for this application, since the site lies dormant.

### **Concerns about the Well Integrity**

**Points raised** – In the absence of any contrary information from the Environment Agency, any concerns about the integrity of the well would not be reasons for refusal of the application.

**Response** – None required.

### **Public Rights of Way**

**Points raised** – One member stated that he had asked at the virtual site visit whether any Public Rights of Way had been closed off and the answer from the Planning Officer was no.

**Response** – None required.

5.9 The substantive recommendation including changes to Conditions and Informatives as set out in Appendix 1 of the Committee report, as amended by the Agenda Update Sheet, was proposed by Cllr Montyn and seconded by Cllr Atkins and approved by a majority.

5.10 Resolved – That planning permission be granted subject to the Conditions and Informatives as set out in Appendix 1 of the report and amended, as agreed, by the Committee.

### **Recent Decision by the Secretary of State's Inspector**

#### **DMMO 2/16 – To add a bridleway and upgrade footpath 51Esx to bridleway from Top Road to Grinstead Lane in West Hoathly**

6.1 The Committee received and noted a report by the Director of Law and Assurance setting out the outcomes of the recent decision made by the Secretary of State (copy attached to the signed minutes).

6.2 The Committee noted that the appeal highlights the complexity of dealing with applications based on archive evidence and the need for clear documents for future generations, as well as highlighting the complexity of the appeals process.

6.3 Cllr Gibson took no part in the vote to note the report due to his declared personal interest in the item. Otherwise, the Committee voted unanimously to note the report.

6.4 Resolved – That the Committee notes the report.

**Date of the next meeting**

7.1 The next scheduled meeting of the Planning and Rights of Way Committee will be on Tuesday, 14 June 2021 at 10.30 a.m.

The meeting concluded at 3.48 p.m.

Chairman