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NOTICE OF MEETING

Meeting	Regulatory Committee
Date and Time	Wednesday, 17th November, 2021 at 10.00 am
Place	Ashburton Hall - HCC
Enquiries to	members.services@hants.gov.uk

Carolyn Williamson FCPFA
Chief Executive
The Castle, Winchester SO23 8UJ

FILMING AND BROADCAST NOTIFICATION

This meeting may be recorded and broadcast live on the County Council's website. The meeting may also be recorded and broadcast by the press and members of the public – please see the Filming Protocol available on the County Council's website.

AGENDA

1. APOLOGIES FOR ABSENCE

To receive any apologies for absence received.

2. DECLARATIONS OF INTEREST

All Members who believe they have a Disclosable Pecuniary Interest in any matter to be considered at the meeting must declare that interest and, having regard to Part 3 Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore all Members with a Personal Interest in a matter being considered at the meeting should consider, having regard to Part 5, Paragraph 4 of the Code, whether such interest should be declared, and having regard to Part 5, Paragraph 5 of the Code, consider whether it is appropriate to leave the meeting while the matter is discussed, save for exercising any right to speak in accordance with the Code.

3. MINUTES OF PREVIOUS MEETING (Pages 5 - 8)

To confirm the minutes of the previous meeting

4. DEPUTATIONS

To receive any deputations notified under Standing Order 12.

5. CHAIRMAN'S ANNOUNCEMENTS

To receive any announcements the Chairman may wish to make.

6. BRAMSHILL QUARRY WARREN HEATH BRICKHOUSE HILL EVERSLEY (Pages 9 - 68)

To consider a report of the Director of Economy, Transport and Environment regarding 2 planning applications (Nos. 20/03153/HCC and 21/00052/HCC) at Bramshill Quarry, Warren Heath, Brickhouse Hill, Eversley:

1. Proposed variation of Conditions 1, 31 and 39 of planning permission 14/00063/CMA so as to allow an extension of time to complete extraction, processing and to remove plant, machinery and buildings until 30 June 2026.
2. Proposed variation of Condition 1 of planning permission 14/00060/CMA so as to allow the extended use of the conveyor bridge, with its removal by 30 June 2026.

7. APPLICATION TO RECORD LAND AT COLES MEDE, OTTERBOURNE, AS A VILLAGE GREEN (REF VG266) (Pages 69 - 124)

The purpose of this report is to assist Members in determining whether to accept an application to record land known as Coles Mede, in the Parish of Otterbourne, as a town or village green.

8. MONITORING AND ENFORCEMENT UPDATE (Pages 125 - 136)

To consider a report of the Director of Economy, Transport and Environment regarding the Monitoring and Enforcement work undertaken by Strategic Planning during the period June 2021 – October 2021.

ABOUT THIS AGENDA:

On request, this agenda can be provided in alternative versions (such as large print, Braille or audio) and in alternative languages.

ABOUT THIS MEETING:

The press and public are welcome to attend the public sessions of the meeting. If you have any particular requirements, for example if you require wheelchair access, please contact members.services@hants.gov.uk for assistance.

County Councillors attending as appointed members of this Committee or by virtue of Standing Order 18.5; or with the concurrence of the Chairman in connection with their duties as members of the Council or as a local County Councillor qualify for travelling expenses.

Agenda Item 3

AT A MEETING of the Regulatory Committee of HAMPSHIRE COUNTY
COUNCIL held at The Castle, Winchester on Wednesday, 20th October, 2021

Chairman:

* Councillor Peter Latham

* Councillor Lance Quantrill
* Councillor Lulu Bowerman
* Councillor Steven Broomfield
* Councillor Mark Cooper
* Councillor Rod Cooper
* Councillor Michael Ford
* Councillor Keith House
* Councillor Gary Hughes
Councillor Adam Jackman

* Councillor Alexis McEvoy
* Councillor Stephen Parker
* Councillor Alexis McEvoy
* Councillor Stephen Parker
* Councillor Louise Parker-Jones
* Councillor Stephen Philpott
* Councillor Roger Price
* Councillor Kim Taylor

*Present

280. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Adam Jackman.

281. DECLARATIONS OF INTEREST

Members were mindful that where they believed they had a Disclosable Pecuniary Interest in any matter considered at the meeting they must declare that interest at the time of the relevant debate and, having regard to the circumstances described in Part 3, Paragraph 1.5 of the County Council's Members' Code of Conduct, leave the meeting while the matter was discussed, save for exercising any right to speak in accordance with Paragraph 1.6 of the Code. Furthermore Members were mindful that where they believed they had a Non-Pecuniary interest in a matter being considered at the meeting they considered whether such interest should be declared, and having regard to Part 5, Paragraph 2 of the Code, considered whether it was appropriate to leave the meeting whilst the matter was discussed, save for exercising any right to speak in accordance with the Code.

282. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were reviewed and agreed.

283. DEPUTATIONS

The Chairman confirmed that there were four deputations, including the local County Councillor. Each deputation would have 10 minutes to address the Committee.

284. **CHAIRMAN'S ANNOUNCEMENTS**

The Chairman confirmed that Item 7 on the agenda (Planning Code of Conduct) had been deferred to the November Committee meeting.

285. **CALF LANE, ODIHAM**

Proposed picking station and fines machinery at Calf Lane, Rye Common, Odiham Hook RG29 1HU (No. 20/02979/HCC) (Site Ref: HR078)

The Committee considered a report from the Assistant Director of Waste, Planning and Environment (Item 6 in the minute book).

The officer confirmed that the existing waste facility benefitted from a Certificate of Lawfulness that allowed for use of the site as an inert and low level hazardous waste recycling and transfer site. Representations had been received, although these covered aspects such as highway impacts (numbers, size and speed of vehicles, dust or mud on roads, wear and tear on roads), noise from general site operations and stockpile locations, which were not material considerations for the application.

A site visit had taken place by the Committee and a location plan was shown along with a site plan and elevation photos.

It was noted that Hart District Council had no issues with the conditions proposed and the Environmental Health Officer also had no objections.

The Committee received four deputations on this item, including the local County Councillor. Simon Cubbage and Heather Morss spoke as local residents against the application and shared their concerns over the lack of communication between the site and local residents and danger and noise of the HGV'S. Toby Comley spoke on behalf of the applicant and spoke of the importance of the site and how as much demolition waste was reused as possible. Measures had been implemented where possible following the feedback of residents, including directional reversing alarms and sound insulation.

Councillor Jonathan Glen thanked officers for their work and also Members for attending the site visit. Whilst supporting recycling across the County, Councillor Glen did share the residents reservations on how the site was managed.

During questions of the deputations, the following points were clarified:

- There was not a current liaison Committee but the applicant was happy to get involved with one.
- The source of the noise disruptions started in 2019, although this was intermittent and not a regular occurrence.
- A new housing development had been built nearby and some HGV traffic was from this and not the site.
- Councillor Jonathan Glen had not received any complaints about the site directly

During questions of the officers, the following points were clarified:

- A liaison panel was best Chaired by the local Member and Hampshire County Council would also attend and help it to get established.
- The noise assessment had not shown a need for the machinery to be enclosed.
- The noise management plan deadline was one month after approval.
- The speed limit for HGV's on the local roads was not relevant to the application, but would be taken away for investigation by Highways.

Some Members felt that the noise management plan should be in place before the application was considered by Committee and it was proposed by Councillor McEvoy and seconded by Councillor Roger Price that the item be deferred to a future meeting, but this was lost on a vote.

During debate, Members agreed that there were ongoing issues outside of the application that having a liaison panel would assist with.

RESOLVED

Permission was GRANTED subject to the conditions in Appendix A and the creation of a liaison panel.

Voting

Favour: 11

Against: 3

Abstentions: 1

286. UPDATE REPORT ON PLANNING CODE OF CONDUCT (TO FOLLOW)

This item was deferred to a future Regulatory Committee meeting.

Chairman,

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HAMPSHIRE COUNTY COUNCIL Decision Report

Decision Maker:	Regulatory Committee
Date:	17 November 2021
Title:	<p>1) Proposed variation of Conditions 1, 31 and 39 of planning permission 14/00063/CMA so as to allow an extension of time to complete extraction, processing and to remove plant, machinery and buildings until 30 June 2026, together with minor amendments to the restoration scheme and submission of the aftercare scheme (No. 20/03153/HCC)</p> <p><u>AND</u></p> <p>2) Proposed variation of Condition 1 of planning permission 14/00060/CMA so as to allow the extended use of the conveyor bridge, with its removal by 30 June 2026 (No. 21/00052/HCC)</p> <p>at Bramshill Quarry, Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB (Site Ref: HR042)</p>
Report From:	Assistant Director of Waste, Planning and Environment

Contact name: Sam Dumbrell

Tel: 0370 779 7412

Email: sam.dumbrell@hants.gov.uk

Recommendation

1. That planning permission be GRANTED for planning application 20/03153/HCC subject to the conditions listed in **Appendix A1** and the deed of variation to the existing Section 106 legal agreement ensuring the delivery of the approved Heathland Site Management Plan, archaeological works, the provision of paths/bridleway routes/public access areas and nature conservation management and hydrological and ecological monitoring being secured.
2. That planning permission be GRANTED for planning application 21/00052/HCC subject to the conditions listed in **Appendix A2** and the deed of variation to the existing Section 106 agreement relating to the method of removal and reinstatement of land occupied by the conveyor bridge and the signalised crossing being secured.

Executive Summary

3. This report relates to two separate planning applications for the variation of a number of conditions on previously approved temporary permissions at Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB.
4. Planning application 20/03153/HCC seeks to enable the continued use of the site for previously approved mineral extraction and processing, changes to the approved restoration and aftercare and other ancillary uses beyond 31 December 2020 up to 30 June 2026.
5. Planning application 21/00052/HCC seeks to allow the extended use of the conveyor bridge, with its removal by 30 June 2026 beyond 31 December 2020.
6. The quarry is identified in Policy 20 (Local land-won aggregate) part 1 (ii) in the adopted Hampshire Minerals and Waste Plan (2013) (HMWP) as an existing mineral extraction site. It is also safeguarded under Policies 15 (Safeguarding - minerals resources), 16 (Safeguarding - minerals infrastructure) and 26 (Safeguarding - waste infrastructure) of the HMPW (2013).
7. These two planning applications are being considered by the Regulatory Committee as they are both major minerals development and both Environmental Impact Assessment development. These proposed developments are classified as Environmental Impact Assessment development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#) as they are development types listed within Schedule 1.
8. Key issues raised are:
 - The need for the development;
 - The impacts of the extensions of time and cumulative impacts; and
 - Restoration of the site.
10. It is considered that both proposals would be in accordance with the relevant policies of the adopted [HMWP \(2013\)](#), Hart Local Plan: Strategy and Sites 2032 (2020) as well as the relevant paragraphs of the [National Planning Policy Framework \(2021\)](#) and associated guidance. This is subject to the existing legal agreements being carried forward as part of these permissions, and subject to the conditions outlined in the appendices. It is considered that the proposal would facilitate the extraction and processing of remaining mineral resources at the site, as well as the site's restoration and aftercare, and is not likely to have a significant adverse impact on amenity of the local residents and the environment by way of the extended time period or during restoration works.

11. It is recommended that planning permission be GRANTED subject to the conditions listed in **Appendices A1** and **A2** and the deed of variations to the existing Section 106 legal agreements (for 20/03153/HCC) in ensuring the delivery of the approved Heathland Site Management Plan, archaeological works, vehicle routeing, the provision of paths/bridleway routes/public access areas and nature conservation management and hydrological and ecological monitoring and (for 21/00052/HCC) the method of removal and reinstatement of land occupied by the conveyor bridge and the signalised crossing being secured.

The Site

12. The application site lies to the west of Blackwater and north-east of Hartley Wintney, immediately west of Blackbushe Airport (see **Appendix B – Committee Plan**).
13. The site comprises an area of approximately 120 hectares, north and south of the A30, west of the A327 and east and west of Blackbushes Road. The site entrance and plant site area lie to the west of the A327.
14. The site is an active sand and gravel quarry, on the edge of the Bramshill Plateau and forms part of an extensive area of coniferous plantation known as Bramshill Forest, which is a commercial forestry plantation. Sand and gravel extraction began at the site following permission in 2002 although the adjacent area has been subject to mineral extraction since the 1970s/80s.
15. The site is currently being worked and progressively restored through twelve phases. The remaining phases to be extracted all lie south of the A30. Phase 10 is to the east of Blackbushes Road and Phases 11 and 12 are to the west. The remaining areas of the site have already been worked and restored.
16. The remaining phases where mineral is to be extracted are Phases 11-12, and parts of Phase 10 (see **Appendix C – Phasing Plan**). Phase 10 is currently being worked and has been soil stripped. Phases 11 and 12 are still commercial forest plantation.
17. In terms of the remaining site, Phase 10 lies within Castle Bottom to Yateley and Hawley Commons Site of Special Scientific Interest (SSSI). Phases 11 and 12 and the plant site are not within any designated area. The conveyor bridge to the plant site crosses an area designated as Bramshill SSSI and Thames Basin Heaths Special Protection Area (SPA).
18. Extracted mineral from Phase 10 is moved westward across Blackbushes Road through Phases 11 and 12 to the southern end of the conveyor bridge and loaded. The bridge crosses the A30 approximately 250m west of the A30 - A327 roundabout. The bridge links the remaining extraction

areas with the storage and processing areas situated to the north of the A30.

19. Once mineral has been deposited in the storage area via the conveyor bridge it is eventually moved by dump truck northward from the storage area (formally known as London Road Heath) towards the processing plant. A tunnel under the B3106 allows trucks to travel between the sites without using the public highway.
20. Processed and raw mineral is exported from the site's processing area by Heavy Goods Vehicles (HGV). Vehicular access to the site is served from Welsh Drive in the form of a priority T junction with the A327. To the north of the site access the A327 travels towards Reading and the M4 motorway while south of the site the A327 joins the A30 at the Hartford Bridge flats junction which can be used to access destinations within Hampshire including the M3 motorway.
21. The nearest residential properties are the Caravan Site (opposite the Collard recycling site), Hawkers Lodge, The Kennels, and 1 & 2 Hartfordbridge Flats.
22. The application site comprises parts of and is situated within close proximity to several designated sites and locations and known environmental constraints, including:
 - Thames Basins Heaths SPA;
 - Castle Bottom to Yateley and Hawley Commons SSSI - located to the east of the A327 and south of the A30 including the area known as Yateley Heath Wood, is designated for the presence of habitat suitable for a range of species including Dartford Warbler;
 - Bramshill SSSI - adjacent to the north and east of the site and including the area known as London Road Heath, is designated for the presence of habitat suitable for a range of species including dragonfly, damselfly and nightjar.
 - Welsh Drive bridleway and footpath;
 - Bramshill Park (Historic Park and Garden);
 - Faeston Dic Linear earthwork Scheduled Ancient Monument;
 - Groundwater Vulnerability Zones;
 - Blackbush Airport Safeguarding Area;
 - Farnborough Airfield Safeguarding Area; and
 - Odiham Airport Safeguarding Area.
23. The Bramshill SSSI, Castle Bottom to Yateley and Hawley Commons SSSI and Hazeley Heath SSSI are all within the Thames Basin Heaths SPA, which is designated for ground nesting birds comprising the Dartford warbler, nightjar and woodlark.
24. 400 metres (m) to the east of the northernmost part of the site is the Castle Bottom National Nature Reserve. This comprises a large valley bog with

associated heathland habitats, which is also part of the Thames Basin Heaths SPA. Approximately 1 kilometre (km) to the east of Yateley Heath Wood is the West Minley Meadow SSSI, which is an example of wet, acid grazed grassland in north-east Hampshire. Approximately 1.7km to the west of Phases 11 & 12 is Hazeley Heath SSSI, designated for its heathland.

25. The Environment Agency Flood Risk Map indicates that the site is wholly within Flood Zone 1, and does not lie within a Groundwater Source Protection Zone. It overlies a Secondary A bedrock aquifer and lies within a Drinking Water Safeguarded Zone.
26. The only public Right of Way within the application site is Bridleway 11 which follows the route of the Welsh Drive, the eastern end of which forms the access road leading to the processing plant site shared by the applicant's HGVs.
27. Chandlers Farm is a CEMEX owned mineral working located at Eversley approximately 3km to the north of Bramshill Plateau. Members may recall the application to extend the life at Chandlers Farm was resolved to be granted subject to a Section 106 agreement in 2020 ([19/02866/HCC](#)). The applicant continues to operate the Chandlers Farm site and is currently extracting sand and gravel and restoring it in a phased manner. Following the removal of the processing plant from Chandlers Farm the remaining unworked extracted mineral is transported by HGV to Bramshill Plateau for processing.

Planning History

28. The planning history of the site is as follows:

Application No	Location	Proposal	Decision	Date Issued
20/03158/HCC	Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB	Proposed retention of existing concrete batching plant and ancillary development until June 2026	Granted	31 March 2021
16/01847/HCC	Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB Bramshill Quarry Warren Heath,	Erection of a temporary concrete batching plant until 31 December 2020	Granted	30 September 2016

	Brickhouse Hill, Eversley, Hook RG27 0QB			
14/00060/CMA	Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB	Variation of Condition 2 of pp 08/00471/CMA to extend the time limit for the retention of the conveyor bridge until 31 December 2020	Granted	24 May 2016
14/00063/CMA	Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB	Variation of Conditions 1 and 27 of pp 00/00679/CMA to extend the life of the site for mineral extraction and restoration until 31 December 2020 and to revise the approved restoration scheme	Granted	24 May 2016
08/00471/CMA	Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB	Variation of Conditions 2 and 26 of pp 00/00679/CMA to vary permitted working methods and the erection of a conveyor bridge	Granted	13 June 2008
00/00679/CMA	Bramshill Quarry Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB	Extraction of sand and gravel and restoration with retention of processing plant and ancillary	Granted	15 November 2002

		facilities		
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29. The site is safeguarded for its mineral resources and the minerals infrastructure through Policies 15 (Safeguarding – mineral resources) and 16 (Safeguarding – minerals infrastructure) of the Hampshire Minerals and Waste Plan (2013).

The Proposals

30. The two applications under consideration - 20/03153/HCC and 21/00052/HCC - are intrinsically linked both physically and operationally, and as such, are being considered together.

Application 20/03153/HCC

31. The current planning permission for the wider Bramshill Quarry site [14/00063/CMA](#) allows the continued extraction of sand and gravel, with continued use of the processing plant and ancillary facilities, and the completion of restoration (with agreed aftercare) until 31st December 2020. This permission has expired. The applicant submitted this application in advance of the permission lapsing.

Application 21/00052/HCC

32. Planning permission [14/00060/CMA](#) allows the continued use of the conveyor bridge over the A30 in conjunction with permission [14/00063/CMA](#) covering the wider site. This permission also expired on 31st December 2020. Like with planning application 20/03153/HCC, the applicant submitted this application in advance of the permission lapsing.

Proposal 1 - Application 20/03153/HCC

33. It is currently estimated that there are 420-440,000 tonnes of mineral at the site remaining to be extracted, in phases 10-12 (see **Appendix C – Phasing Plan**) within the current working area. The current rates of extraction and processing are up to 120,000 tonnes per annum (tpa).
34. It has taken longer than anticipated to extract and process the mineral, which is largely due to market conditions. The COVID-19 pandemic has also meant that sales reduced, and further time than previously anticipated is required. As such it is estimated that it will now take until December 2025 to extract and process the remaining mineral and a further 6 months to be able to remove the plant, machinery and buildings, and complete restoration as required by the conditions.
35. It is therefore proposed to vary the relevant conditions of planning permission [14/00063/CMA](#) so as to allow an extension of time to complete

extraction, processing and removal of plant, machinery and buildings, until 30 June 2026.

36. Planning permission [14/00063/CMA](#) was granted subject to 40 conditions and a S106 agreement. Condition 1 of this permission states that:

‘The extraction of sand and gravel at the site shall cease and all plant, machinery and buildings shall be removed within six months of the completion of extraction or by 31 December 2020, whichever is the sooner.’

37. It is proposed to amend this condition to read 30 June 2026 rather than 31 December 2020 as follows:

‘The extraction of sand and gravel at the site shall cease and all plant, machinery and buildings shall be removed within six months of the completion of extraction or by 30 June 2026, whichever is the sooner.’

Restoration

38. Restoration of the site is dealt with by conditions 31-36 of planning Permission [14/00063/CMA](#). Minor amendments are proposed to the current restoration scheme, firstly to regularise the areas of Phases 8 and 9 that we’re not worked as they ought to have been (due to historic contamination), and secondly to propose minor enhancements to compensate for the delay in restoration and update the contours on the plan.

39. It is proposed to amend Condition 31 to update and amend the approved restoration scheme (see **Appendix D – Approved Restoration Plan**). The restoration scheme will enable the quarry to be restored to a high environmental standard for sustainable, long-term after use in accordance with the concept to provide for nature conservation enhancement and landscape improvements across the area.

40. Condition 31 of planning permission [14/00063/CMA](#) reads as follows:

‘The site shall be restored in accordance with the details shown on Drawing Nos P1/1597/7 (as amended in accordance with Condition 3), P1/1597/10 and P1/1597/17. Furthermore, prior to the extraction commencing within each remaining land block area, that being Star Hill Plantation, restoration details shall be submitted to the Mineral Planning Authority for approval. The schemes shall be implemented as approved.’

41. It is proposed to amend this condition to refer to the revised restoration plan P1/1597/17A being sought (see **Appendix E – Proposed Restoration Plan**) instead of the approved plan, P1/1597/17, as follows:

'The site shall be restored in accordance with the details shown on Drawing Nos P1/1597/7 (as amended in accordance with Condition 3), P1/1597/10 and P1/1597/17A Furthermore, prior to the extraction commencing within each remaining land block area, that being Star Hill Plantation, restoration details shall be submitted to the Mineral Planning Authority for approval. The schemes shall be implemented in full as approved.'

42. Drawing No P1/1597/10 is the restoration plan for the plant site area and is not proposed to be changed

Aftercare

43. In conjunction with the proposed variations to the approved restoration of the site (dealt with by conditions 31-36 of planning permission [14/00063/CMA](#)) a Restoration and Outline Five-Year Aftercare Scheme is submitted with this application, as Appendix 1 to the ES Addendum.

44. Condition 39 of planning permission [14/00063/CMA](#) reads as follows:

'An after-care scheme to provide for a five year period of after-care, and requiring such steps as may be necessary to bring each phase of land restored under Conditions 31 and 32 to the required standard for forestry and permanent heathland, shall be submitted to the Mineral Planning Authority within one year of the date of this permission. The after-care scheme shall be implemented as approved and an aftercare meeting held annually.'

45. It is proposed to also amend Condition 39 to refer to the submitted scheme as follows:

'The submitted Restoration and Outline Five Year Aftercare Scheme (dated October 2020) hereby approved shall provide for a five year period of after-care, and requiring such steps as may be necessary to bring each phase of land restored under Conditions 31 and 32 of this permission to the required standard for forestry and permanent heathland, shall be implemented in accordance with the Mineral Planning Authority's written agreement that restoration has been completed as approved. The Aftercare scheme shall be implemented in full as approved and an Aftercare meeting held annually.'

Staff and Working Hours

46. The site currently employs 7 full time staff and these positions will be retained for the duration of the proposed development being sought.
47. Working hours for operations would remain as Monday to Friday 0700 to 1800 and Saturdays 0700 to 1300 (no site preparation, including soil stripping, works to be undertaken before 0800) should the proposed

development being sought be approved. There will be no operations at any time on Sundays and Bank/Public Holidays.

Chandlers Farm, Eversley

48. Should these two applications be approved, they would not propose any other changes that would affect operations at the applicant's Eversley site (19/02866/HCC) nearby. This means that these two proposals:
- would maintain the current access arrangements;
 - would make no changes to lorry routing or numbers; and
 - would not change the existing working hours of Monday to Friday: 0700 to 1800, Saturday: 0800 to 1300 and no operations at any time on Sundays, Public Holidays or Bank Holidays.

Proposal 2 - Application 21/00052/HCC

49. Planning permission [14/00060/CMA](#) was granted subject to seven conditions and a Section 106 agreement. Condition 1 of this permission states that:

'The conveyor bridge shall be removed within 6 months of the completion of sand and gravel extraction permitted under planning permission no. 00/00679/CMA (as amended) or by 31 December 2020 whichever is the sooner, unless otherwise agreed in writing by the Mineral Planning Authority.'

50. As a consequence of planning application 20/03153/HCC, also submitted to the County Council and being considered within this report, seeking an extension of time in which to extract sand and gravel from Bramshill Plateau, there is a necessary requirement to also vary condition 1 of planning permission [14/00060/CMA](#) to enable the continued use of the conveyor to transport extracted mineral across the A30 to the plant site.

51. It is proposed to amend this condition to read 30 June 2026 in line with the above application as the conveyor bridge will still be required to transport mineral from the extraction site back to the plant site as follows:

'The conveyor bridge shall be removed within 6 months of the completion of sand and gravel extraction permitted under planning permission 20/03153/HCC or by 30 June 2026 whichever is the sooner, unless otherwise agreed in writing by the Mineral Planning Authority.'

52. The proposed variation would enable the use of the conveyor for the transportation of mineral across the A30 to continue for up to a further 5 and half years until 30 June 2026 in tandem with the extension of time for the wider site being sought.

Environmental Impact Assessment (EIA)

53. Scoping Reports were issued by the applicant in April 2020 and these were considered by the Waste Planning Authority who issued their Scoping Opinions on 01 July 2020. In summary, these Opinions indicated general agreement with the issues identified by the submitted Scoping Report, but also identified some areas of disagreement over matters proposed to be scoped in and out, matters requiring clarity and/or additional supporting information to be submitted within any planning application and its accompanying Environmental Statement (ES).
54. Both proposed developments have been assessed under [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). Both developments are classified as a Schedule 1 development - automatically being EIA development - as they fall within parts 19 (Quarries and open-cast mining and 24 (Any change to or extension of development).
55. Environmental Statements (ES) were prepared in support of both previous planning applications [14/00063/CMA](#) and [14/00060/CMA](#). Both ES' were deemed adequate and acceptable when these applications were considered and determined in 2016.
56. The 2011 EIA Regulations were revised in 2017 resulting in [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). As these planning applications seek minor amendments to conditions attached to these permissions, the assessment and conclusions of the respective 2014 Environmental Statements remain of relevance to the determination of this planning application. The 2014 Environmental Statements are therefore reproduced taking account of changes imposed under the 2017 EIA Regulations within the submission.
57. Separate Environmental Statements, and associated assessment methodologies, were submitted. The applicant indicated that the submissions met [Schedule 4 of The Town and Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). The ES' submitted address both applications under consideration and have considered the operations as currently undertaken, which includes the use of the conveyor across the A30
58. The approach to the ES is set out in the ***ES Volume 2 – Environmental Statement Addendum and Technical Appendices***.
59. Following the initial round of public consultation on the application, the Mineral Planning Authority concluded that further information was required for the purposes of determining the application. In accordance with Regulation 25 of the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#), the Mineral Planning Authority issued a Regulation 25 request on 28 May 2021. This additional information was considered to be necessary to enable the full and proper consideration of

the likely environmental effects of the proposed development. The [request](#) for further information is summarised as follows:

1. *Ecology and nature conservation* - Information requested to define differences between previously approved mitigation and restoration and how this has been met taking account of any relevant environmental changes since 2016. Additional information on submitted ecological surveys, including whether they've been completed fully in relation to the presence of protected species and/or their habitats, locally designated areas, and to accord with the Council's responsibilities under the Habitats Regulations; and
 2. *Landscape and Visual Impact* - Information requested to define differences between previously approved mitigation and restoration, how this has been met, and how appropriate restoration would still be achieved by 2026, taking account for environmental changes since 2016. The submission should include further assessment (including on ecology and biodiversity where there is a crossover) on the prolonged period of time sought and its impact and effects on the local landscape and locally designated sites/areas, missing supporting photographs, all taking account of any relevant environmental changes since 2016.
60. Information requested for clarification only focused on the applicant reviewing public representations received and commenting should they wish to.
61. The applicant's Regulation 25 response was received by the Mineral Planning Authority in August 2021 and was subject to thirty days public consultation in accordance with the adopted Statement of Community Involvement (2017).
62. A discussion of the findings of the ES and the subsequent Regulation 25 consultations is set out in the relevant **Commentary** sections of this report.

Development Plan and Guidance

63. Paragraph 47 of the [National Planning Policy Framework \(2021\)](#) (NPPF) requires 'applications for planning permission (to) be determined in accordance with the development plan, unless material considerations indicate otherwise'. Therefore, consideration of the relevant plans, guidance and policies and whether the proposal is in accordance with these is of relevance to decision making.
64. The following plans and associated policies are considered to be relevant to the proposal:

[National Planning Policy Framework \(2021\)](#) (NPPF)

65. The following paragraphs are relevant to this proposal:

- Paragraph 2: Determination of planning permissions;
- Paragraphs 10-12: Presumption in favour of sustainable development;
- Paragraphs 38 - 48: Decision making;
- Paragraphs 55 - 56: Planning conditions;
- Paragraphs 57: Planning obligations;
- Paragraph 81: Support of sustainable economic growth;
- Paragraphs 84 - 85: Supporting a prosperous rural economy;
- Paragraph 92: Healthy, inclusive and safe places;
- Paragraph 100: Protecting and enhancing public rights of way and access;
- Paragraphs 104, 110-113: Sustainable transport;
- Paragraphs 119 - 120: Effective use of land;
- Paragraphs 126 - 136: Design
- Paragraphs 153 - 158: Planning and climate change;
- Paragraphs 159 - 169: Planning and flood risk;
- Paragraphs 174, 180 - 182: Contributions and enhancement of natural and local environment and habitats and biodiversity;
- Paragraphs 180-181: Biodiversity and planning;
- Paragraphs 183-188: Ground conditions and pollution;
- Paragraphs 189-208: Conserving and enhancing historic environment; and
- Paragraphs 209 - 211, 213 - 214: Sustainable use of minerals and maintain supply.

South East Plan (SEP)

66. The following saved policy is relevant to the proposal:

- Policy NM7: Thames Heath Special Protection Area (saved policy).

Hampshire Minerals & Waste Plan (2013) (HMWP)

67. The following policies are relevant to the proposal:

- Policy 1 (Sustainable minerals and waste development);
- Policy 2 (Climate change - mitigation and adaptation);
- Policy 3 (Protection of habitats and species);
- Policy 5 (Protection of the countryside);
- Policy 7 (Conserving the historic environment and heritage assets);
- Policy 8 (Protection of soils);
- Policy 9 (Restoration of quarries and waste developments);
- Policy 10 (Protecting public health, safety and amenity);
- Policy 11 (Flood risk and prevention);
- Policy 12 (Managing traffic);
- Policy 13 (High-quality design of minerals and waste development);

- Policy 14 (Community benefits);
- Policy 15 (Safeguarding - mineral resources);
- Policy 16 (Safeguarding - minerals infrastructure);
- Policy 17 (Aggregate supply - capacity and source);
- Policy 18 (Recycled and secondary aggregates development); and
- Policy 20 (Local land-won aggregates);

Hart Local Plan Strategy and Sites 2016 - 2032

68. The following emerging policies are relevant to the proposal:

- Policy SD1 – Sustainable Development;
- Policy NBE2 - Landscape;
- Policy NBE3 - Thames Basin Heaths Special Protection Area;
- Policy NBE 4 - Biodiversity;
- Policy NBE9 - Design;
- Policy INF3 - Transport;
- Policy INF4 - Open Space, Sport and Recreation; and
- Policy INF5 - Community Facilities.

Consultations

69. **County Councillor Davies:** Was notified.
70. **Hart District Council:** No objection subject to conditions on the two 2014 permissions being re-imposed.
71. **Hart District Council Environmental Health Officer (EHO):** No objection.
72. **Hart District Council (Conservation officer):** Was notified.
73. **Eversley Parish Council:** Objects to the proposal on the grounds of the HGV traffic and disturbance locally and damage to roadside verges, the environmental and social impacts of that traffic on the residents, impact on the rural character of the parish and on the wider environment. The objection also notes that the applicant failed to engage with EPC in any pre-application discussions and failed to offer any additional community benefits over and above those associated with previous applications, meaning it has not met the spirit of Policy 14 of the HMWP (2013).
74. **Yateley Town Council:** Was notified.
75. **Natural England:** Based on the documents submitted and mitigation proposed we view that impacts upon the integrity of the Thames Basin Heaths Special Protection Area will be avoided and raise no objection to the applications. Advised that the mitigation measures should be secured by the competent authority through appropriate conditions or legal agreements.

76. **Environment Agency:** No objection. Environmental Permit will be required for the importation, storage and treatment of waste materials.
77. **Forestry Commission:** Advise that the comments of Natural England about biodiversity of the adjoining woodland (ancient woodland) are regarded. A felling licence will be required from the Commission to fell trees here regardless of the planning outcomes here.
78. **Historic England:** No comments to make.
79. **The Gardens Trust:** No comments to make.
80. **Local Highway Authority:** No objection subject to conditions controlling mud and debris control and road safety being imposed.
81. **Lead Local Flood Authority (LLFA):** No comments.
82. **County Landscape:** No objection subject to the approval of a detailed, updated planting plan, including bund establishment, which accord with any approved ecological mitigation required.
83. **County Archaeology:** No objection subject to the previously approved mitigation being retained and continued.
84. **County Ecologist:** No objection subject to the approval of an updated Heathland Management Plan through the site's existing s106's 'compensatory area'. Timings over vegetation clearance to ensure the protection of certain protection species and habitat creation is also required to be controlled.
85. **Public Health (HCC):** Was notified.
86. **Rights of Way (HCC):** No rights of way affected.

Representations

87. Hampshire County Council's [Statement of Community Involvement \(2017\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
- In complying with the requirements of the SCI, HCC:
 - Published a notice of the application in the [Hampshire Independent](#);
 - Placed notices of the application at the application site and local area;
 - Consulted all statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); and
 - Notified by letter all residential properties within 100 metres of the boundary of the site.

88. As of 1st November 2021, 1 representation to the proposal had been received. The main areas of concern raised in the objection relate to the following:
- prolonged impact on neighbours through noise and vibration from vehicles and machinery from this site; and
 - illegal activities from quad bike use across the site at evenings and weekends must be stopped from continuing.
89. County Councillor Simpson was the elected Councillor in this area until the May 2021 elections. He was fully aware of both applications and raised the same concerns over debris and material on the local roads as do Eversley Parish Council.
90. The above issues will be addressed within the following **commentary**.

Habitats Regulation Assessment [HRA]

91. The [Conservation of Species and Habitats Regulations 2017](#) (otherwise known as the 'Habitats Regulations') transpose European Directives into UK law.
92. In accordance with the Habitats Regulations, Hampshire County Council (as a 'competent authority') must undertake a formal assessment of the implications of any new projects we may be granting planning permission for e.g. proposals that may be capable of affecting the qualifying interest features of the following European designated sites:
- Special Protection Areas [SPAs];
 - Special Areas of Conservation [SACs]; and
 - Ramsar.
93. Collectively this assessment is described as 'Habitats Regulations Assessment' [HRA]. The HRA will need to be carried out unless the project is wholly connected with or necessary to the conservation management of such sites' qualifying features.
94. It is acknowledged that the proposed development (through its updated ES) includes environmental mitigation essential for the delivery of the proposed development regardless of any effect they may have on impacts on European designated sites.
95. The Mineral Planning Authority, as the 'Competent Authority', via advice taken from the County Ecologist (and Natural England), accepts the applicant's further information submitted to address HRA requirements, and considers the proposed development to have no likely significant effect on the identified European designated sites due to:

- the site is not considered to have any functional impact pathways connecting the proposed works with any European designated sites; and;
- the proposal does not have any significant increase on any adverse impacts the wider site may have.

This is documented in more detail in the **ecology** commentary section of this report.

Climate Change

96. Hampshire County Council declared a [Climate Change Emergency](#) on 17 June 2019. A [Climate Change Strategy and Action Plan](#) has since been adopted by the Council.
97. When it comes to planning decisions, consideration of the relevant national or local climate change planning policy is of relevance. The Strategy and Action Plan do not form part of the Development Plan so is not material to decision making. However, it is true to say that many of the principles of the Strategy and Action Plan may be of relevance to the proposal due to the nature of the development. This proposed development has been subject to consideration of Policy 2 (Climate change - mitigation and adoption) of the [HMWP \(2013\)](#) as well as Paragraphs 152 - 158 of the [NPPF \(2021\)](#). This is documented in more detail in the **climate change** commentary section of this report.

Commentary

Principle of the development and Need

98. The principle of the site as the location for mineral extraction has already been determined through the historical permissions granted for sand and gravel extraction. At the time that both applications were submitted and registered, the application related to a well-established quarry that has permissions in place for all existing activities in accordance with the relevant policies of the Hampshire Minerals and Waste Plan (2013) ([HMWP \(2013\)](#)).
99. Bramshill Quarry is also an important site for Hampshire supply of land-won sand and gravel. The site is safeguarded through Policies 15 (Safeguarding – mineral resources) and 16 (Safeguarding – mineral infrastructure) of the [HMWP \(2013\)](#) which help to protect mineral resources and infrastructure.
100. Policy 17 (Aggregate supply – capacity and source) of the [HMWP \(2013\)](#) states that an adequate and steady supply of aggregates until 2030 will be provided for Hampshire and surrounding areas from local and sand gravel sites at a rate of 1.56mtpa, of which 0.28mtpa will be soft sand. A landbank is the number of years of reserves remaining at an annual rate of

aggregate supply. Hampshire has a requirement to ensure a 7-year landbank to meet Paragraphs 213 - 214 of the [NPPF \(2021\)](#).

101. Hampshire's most recent [Local Aggregates Assessment \(LAA\) 2019](#) indicates that the supply of local sand and gravel is currently at a rate of 1.18 million tonnes per annum (mtpa). This is substantially below the total aggregated requirement of Policy 17 of 1.56 mtpa. In terms of the landbank, this accounts for 5.81 years (Table 3 of the LAA), below the 7 year landbank requirement.
102. For sharp sand and gravel specifically, the local requirement is 6.59 years. This means that currently Hampshire is below the requirement of a minimum seven-year landbank overall for sharp sand and gravel as required by the [NPPF \(2021\)](#) and as a result is not meeting the policy requirements of Policy 17 (Aggregate supply – capacity and source) of the [HMWP \(2013\)](#). The existing site helps to contribute towards the requirement for sand and gravel.
103. Policy 20 (Local land-won aggregate) of the [HMWP \(2013\)](#) identifies sites for the extraction of remaining reserves at permitted sites as identified in part 1 of the Policy. This includes Bramshill Quarry 1 (i). Part 2 of the policy also includes an extension area at the site (ii). The sites are identified to ensure an adequate and steady supply of locally extracted sand and gravel to help to maintain the landbanks. Hampshire's existing sand and gravel extraction sites play an important role in contributing to the amount of aggregate Hampshire needs to meet demand to meet the requirements of Policy 17 (Aggregate supply – capacity and source) of the [HMWP \(2013\)](#).
104. The proposal to extend the timescales for the extraction and restoration of Bramshill Quarry, along with the retention of the conveyor bridge to move mineral internally from extraction points to areas for processing and storage, will help to contribute to Hampshire's supply by enabling the final extraction of mineral in the final phases. The extraction of the remaining mineral resources from Bramshill Quarry would enable the initially anticipated reserves of aggregate to be achieved from the site. The proposals allow for the extraction of the remaining extractable mineral reserves at the site in accordance with Paragraphs 81, 84 - 85, 209 - 211 and 213 - 214 of the [NPPF \(2021\)](#).
105. The proposed development is considered to be in accordance with Policies 15 (Safeguarding – mineral resources) and 16 (Safeguarding – mineral infrastructure), 17 (Aggregate supply – capacity and source) and 20 of the [HMWP \(2013\)](#) as by extending the life of the site, the unextracted mineral reserves can be extracted, thereby contributing to an adequate and steady of supply of sand and gravel.
106. The minerals industry is reporting a shift in demand following the easing of lockdown restriction as a result of the Covid-19 pandemic. It is being reported that local quarries are struggling to meet the surge in demand for

aggregates in particular for development and major construction projects in Hampshire and in nearby market areas. This is also being reported by the applicant. It is indicated that the majority of mineral is being used in local development projects including large scale housing projects both inside of Hampshire and in neighbouring areas such as West Berkshire and Surrey.

107. The [HMWP \(2013\)](#) identifies that inert construction and demolition wastes can be directed to mineral workings (quarries) for agreed restoration schemes. The use of inert fill material to complete the approved restoration scheme designed to deliver a beneficial afteruse is supported by the NPPGW as well as Policies 25 (Sustainable waste management) and 30 (Construction, demolition and excavation waste development) of the [HMWP \(2013\)](#). This is considered in more detail in the restoration part of this commentary.
108. Policy 1 (Sustainable minerals and waste development) of the adopted [HMWP \(2013\)](#) states that the Hampshire Authorities will take a positive approach to minerals and waste development that reflects the presumption in favour of sustainable development contained in the [NPPF \(2021\)](#). The development of the site will be supporting economic growth by maintaining a reliable source of minerals, required to build and repair homes and roads, and are important to the local economy. The presumption is also reflected in Policy SD1 (Sustainable Development) of the HLP (2020). Whether this proposal is considered to be a sustainable minerals development will be considered in the remaining sections of this commentary.

Visual impact and landscape

109. Policy 5 (Protection of the countryside) of the [HMWP \(2013\)](#) identifies mineral extraction as a development which will be permitted in the countryside as it is time limited. It also indicates that development will be expected to meet highest standards of design, operation and restoration. In addition, Policy 13 (High-quality design of minerals and waste development) of the [HMWP \(2013\)](#) states that minerals and waste development should not cause an unacceptable adverse visual impact and should maintain and enhance the distinctive character of the landscape and townscape. It also states that the design of appropriate built facilities for minerals and waste development should be of a high-quality and contribute to achieving sustainable development. Policy 10 (Protecting public health, safety and amenity) of the [HMWP \(2013\)](#) protects residents from significant adverse visual impact.
110. Policy NBE2 (Landscape) of the HLP (2020) states that development proposals must respect and wherever possible enhance the special characteristics, value or visual amenity of the District's landscapes. Policy NBE9 (Design) of the HLP (2020) states that all developments should seek to achieve a high-quality design and positively contribute to the overall appearance of the local area.

111. An assessment of the impact of the development upon the landscape and visual amenity (LVIA) was undertaken for both planning permissions (**Chapter 6 of the 2014 ES**), and which was updated in support of these two applications. This acknowledged that the ongoing operations would continue to have only a slight adverse or negligible effect on residential amenity, with the majority of operations screened from external views and structures such as the conveyor bridge being largely accepted as forming part of the local landscape over what is a highly trafficked A road, albeit on a further temporary basis. It also indicated that there would continue to be medium short-term effects on landscape amenity for those routes with close proximity open views, but effects would continue to be small for those routes where the site is a small element within the landscape. The LVIA concluded that: *“The continuation of quarrying activities will not have any substantial adverse effects on either landscape character, or visual receptors.”*
112. Additional information on landscape impacts was submitted as part of the Regulation 25 response. The County Landscape Architect was able to fully assess the proposal and all potential and actual impacts on the locality beyond 2020 until 2026. They concurred with the applicant’s findings that the continuation of quarrying activities will not have any substantial adverse effects on either landscape character, or visual receptors, but wanted matters such as phasing of restoration, planting details and fertiliser use controlled by condition and/or through the existing s106, which also controls the existing ecological mitigation. These matters would, if further time is granted, be agreed through updated conditions and/or updated s106 informed by discussions between the relevant experts, the applicant and the Mineral Planning Authority.
113. It is already acknowledged the principle of the location of the site in the countryside has already been determined. The focus here should be on the continuation of workings and subtle changes to the approved restoration as well as on the retention of the conveyor bridge, all until 30 June 2026.
114. The restoration works already completed on site will have contributed to reducing the landscape and visual impacts outlined in the 2014. Furthermore, these impacts will continue to reduce as the site is progressively restored, particularly following the large-scale restoration scheduled to be completed by the end of 2025/6, with a suitable aftercare scheme imposed.
115. Therefore, in the absence of any objections from consultees including the County Landscape Architect and Natural England, in relation to the potential visual impact of extending the life of the quarry, and updated conditions controlling restoration and aftercare and/or s106 agreement being imposed for the extended period, the proposal is in accordance with Policies 5 (Protection of the countryside), 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the [HMWP \(2013\)](#) as well as Policies NBE2 (Landscape) and NBE9

(Design) of the HLP (2020) as it is a time limited permission at an existing, and safeguarded, mineral quarry.

Cultural and Archaeological Heritage

116. Policy 7 (Conserving the historic environment and heritage assets) of the [HMWP \(2013\)](#) requires minerals and waste development to protect and, wherever possible, enhance Hampshire's historic environment and heritage assets (designated and non designated), including their settings unless it is demonstrated that the need for and benefits of the development decisively outweigh these interests. In addition, Policy NBE8 (Historic Environment) of the HLP (2020) states that development proposals should conserve or enhance heritage assets and their settings, taking account of their significance.
117. An assessment of the effects of the development on local archaeological and cultural heritage features and resources was undertaken and is contained within **Chapter 11 of the 2014 ES** and has been updated within the **Addendum ES** supporting these two applications for extensions of time.
118. Despite extraction having commenced initially in 2002, all archaeological assessments have reiterated that the several features of potential archaeological interest, including mounds, banks, ditches and historic boundaries, identified within Phases 8 - 12, would need investigating and/or recording prior to any further phases of extraction commencing. This was agreed via a Written Scheme of Investigation (WSI) via s106 in agreement with the County Archaeologist.
119. The designated heritage assets, in the vicinity of the proposed development including local Conservation Areas (Bramshill and Eversley), are sufficiently distant that their settings would not be affected by extraction within or restoration of the site. This position remains unchanged and neither Historic England nor Hart District Council's Conservation Officer.
120. The 2014 ES also noted that Sir Richard's Ride, part of the Grade II* listed Bramshill Park and Garden passes through the north of the development site, however, the land around this area has already been subject to extraction and restoration. The land north of the Ride is currently occupied by the processing plant, as it was at the time of the 2014 application, and there is no change proposed to the restoration of this area which is to go back to woodland. As such it is not considered that this extension of time application has any different or significant effects on the listed Bramshill Park and Garden.
121. The updated assessment still concludes that *"the Proposed Development does not include any changes that would result in a material difference to archaeology and heritage effects in comparison to the approved scheme."*

There have been no changes to operations which would impact the historic environment.

122. No objections have been received from consultees, including Historic England and the Conservation Officer at Hart District Council. The Council's Archaeologist accepts the applicant's proposal to continue implementing all previously agreed mitigation subject to it continuing to be controlled by working practices, condition/s and/or s106 agreements.
123. The proposed time extension contained within both planning applications would not have any material effect to the findings of these conclusions. Based on the provision of the restoration scheme and the archaeological mitigation proposed, and subject to satisfactory restoration and aftercare being maintained and achieved again via the s106 agreement for the extended period, the proposed development is therefore considered to be in accordance with the [NPPF \(2021\)](#), Policy 7 (Conserving the historic environment and heritage assets) of the [HMWP \(2013\)](#) and NBE8 (Historic Environment) of the HLP (2020) which require development to protect heritage assets.

Ecology

124. Policy 3 (Protection of habitats and species) in the [HMWP \(2013\)](#) sets out a requirement for minerals and waste development to not have a significant adverse effect on, and where possible, should enhance, restore or create designated or important habitats and species. The policy sets out a list of sites, habitats and species which will be protected in accordance with the level of their relative importance.
125. The policy states that development which is likely to have a significant adverse impact upon the identified sites, habitats and species will only be permitted where it is judged that the merits of the development outweigh any likely environmental damage. The policy also sets out a requirement for appropriate mitigation and compensation measures where development would cause harm to biodiversity interests.
126. Saved Policy NM7 (Thames Heath Special Protection Area) of the South East Plan and Policy NBE3 (Thames Basin Heaths Special Protection Area) of the HLP (2020) are not considered to be relevant to the proposal as the site is an existing development.
127. The applicant has indicated that the biodiversity pledges including the creation of habitats suitable for biodiversity net gain benefits within their previously approved restoration and aftercare could and would still be delivered through the extended period of time being sought, with no harm caused due to the delay. As described in the ecological assessment undertaken as part of the [14/00063/CMA](#) ES (and the **2020 ES Addendum**), BAP (Biodiversity Action Plan) habitat would be provided within the approved Restoration Scheme, and as a result, **Chapter 5 of the**

2014 ES findings that the restoration scheme would have long-term, permanent, and positive impacts on ecology receptors, are supported by the **ES Addendum** submitted in support of both current applications to extend the duration of both developments to 2026.

128. Looking at future tree and vegetation loss in Phases 10 to 12, Phase 10 is currently bare ground and 11 and 12 comprise coniferous plantation that is due to be felled on a commercial basis by the landowners regardless of the outcome of these applications under a Forestry Commission licence in 2021. Therefore, the continued working of this area within the wider Bramshill Quarry, would through a further approved extension of time guarantee the securing of mitigation to offset the loss and contribute to biodiversity net gain benefits locally.
129. Whilst the restoration and planting schemes would also see this commercial forestry felling programme undertaken, the mitigation would ensure an enhanced biodiversity mix comprising broadleaved and mixed woodland, grassland access rides through the site, areas of acid grassland and bare sand (see **Appendix E - Proposed Restoration Plan**) in Phases 11 and 12.
130. The County Ecologist and Natural England initially raised concerns over omissions in the submission relating to the assessment of the sensitive designated ecological receptors within the vicinity, the quality of surveys concerning protected species and their habitats, and the viability of approved yet incomplete mitigation and delaying it further (i.e. the restoration and aftercare following mineral extraction).
131. Following the submission of the applicant's Regulation 25 further information both the County Council's Ecologist and Natural England were able to fully assess the proposal and all potential and actual impacts on the locality beyond 2020 until 2026. With the County Council being the 'competent authority' in relation to Habitats Regulations, the assessment of the applicant's shadow HRA could also be undertaken too as set out earlier in this report. They concurred with the applicant's findings that the continuation of quarrying activities will not have any substantial adverse effects on either ecological or biodiversity designations or on protected species and their habitats but wanted matters such as phasing of restoration, planting details and fertiliser use controlled by condition and/or through the existing s106, which also controls the existing ecological mitigation within the existing compensation area previously designated under permission [14/00063/CMA](#).
132. The restoration works already completed on site will have contributed to reducing the impacts on ecology and biodiversity as outlined in the 2014. Furthermore, these impacts will continue to reduce as the site is progressively restored, particularly following the large-scale restoration scheduled to be completed by the end of 2025/6, with a suitable aftercare

scheme imposed. The County Council's Ecologist and Natural England both agree with the applicant's approach.

133. The extant s106 'compensation area' approved under [14/00063/CMA](#) occupies a large area of land adjoining the southern boundary of the currently permitted extraction area and Phases 11 and 12. This extant 'management plan' is proposed to be retained, and updated, by the applicant. Again, this is supported by consultees.
134. The targeted clearance and felling of trees and vegetation, the combined with the introduction of specific protected species and their habitats - including nesting birds, bats and reptiles - would ensure that the status of the locality's ecologically designated areas, principally the Thames Basin Heath SPA and Castle Bottom to Yateley and Hawley Commons SSSI.
135. These agreed and approved mitigatory measures will, according to the applicant, be retained and most importantly, and will still be able to deliver the required level of mitigation to deliver net biodiversity gain appropriate to extending quarrying operations and delaying restoration and aftercare beyond 2020 as currently approved.
136. Based on the provision of the restoration scheme and ecological mitigation proposed, and subject to satisfactory restoration and aftercare being maintained and achieved via planning condition/s and/or s106 agreement for the extended period, the proposed development is considered to be in accordance with Policy 3 (Protection of habitats and species) of the [HMWP \(2013\)](#) as well as the relevant paragraphs of the [NPPF \(2021\)](#).

Impact on amenity and health - including noise

137. Policy 10 (Protecting public health, safety and amenity) of the [HMWP \(2013\)](#) requires that any development should not cause adverse public health and safety impacts, and unacceptable adverse amenity impacts, including on the adjoining Thames Basin Heaths SP3. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.
138. As already noted, the previous planning applications ([14/00063/CMA](#) and [14/00060/CMA](#)) were both deemed to be 'EIA development'. This application does not propose any changes to hours of working for the site which are Monday to Friday: 0700 to 1800, Saturday: 0800 to 1300 and no operations at any time on Sundays, Public Holidays or Bank Holidays.

Noise

139. A Noise Assessment is contained within **Chapter 8 of the 2014 ES**. The assessment finds that "worst case noise levels from the continued use of the processing plant area, stockpiling, soil stripping, sand and gravel extraction and site restoration works are predicted to be within the relevant

criteria set out by the [NPPF \(2021\)](#) and NPPG.” The assessment concluded that, no significant adverse noise effects would arise as a result of the proposed development. As described previously, the processing plant has now been removed from site.

140. The remaining operations on site will be more limited than those assessed within the 2014 Noise Assessment and the noise levels generated by the operations will therefore be lower than those assessed. They will also be more concentrated to the operational mineral storage and processing areas and the areas where extraction and restoration works are incomplete and/or yet to commence rather.
141. Concerns raised about the prolonged impact on neighbours through noise and vibration from vehicles and machinery from the site are noted.
142. The Environmental Health Officer at Hart District Council raises no objection to the proposed extension of time affecting both [14/00063/CMA](#) and [14/00060/CMA](#) respectively. No noise-related complaints have been received by the Mineral Planning Authority since the granting of planning permission in 2016.
143. The proposed development would continue to be undertaken in accordance with conditions 13 - 15 of planning permission [14/00063/CMA](#) which impose maximum noise levels at the nearest affected properties (to not exceed 53 to 55dB(LAeq) respectively), monitoring and recording of on-site noise emissions from plant, machinery and operations and the requirement that all plant, vehicles and machinery are well maintained and fitted with effective silencers and for the noise levels attributable to site operations,. The proposed time extension contained within this planning application would not have any material effect to the findings of these conclusions.
144. Whilst it is recognised that local residents will continue living in close proximity to a working mineral extraction site throughout the extended lifespan of the site and the extension of time, securing the completion of the site is paramount. Local Environmental Health officers have raised no objections relating to impacts from noise subject to existing conditions regulating noise emissions and hours and use being retained. The proposal is therefore in accordance with Policy 10 (Protecting public health, safety and amenity) of the [HMWP \(2013\)](#).

Air quality and dust

145. An assessment of the potential for dust and air quality effects to arise as a result of the proposed development has been assessed within **Chapter 9 of the 2014 ES**, which concludes that “... there would be no significant adverse effect t air quality resulting from the proposed development site.” The applicant has indicated that the proposed development would continue to be undertaken in accordance with best practice guidance, which includes the implementation to measures including:

- Limiting stockpile heights;
 - Stockpile damping;
 - Road sweeping;
 - Low site speed limits; and
 - Minimising drop heights.
146. The proposed time extension contained within this planning application would not have any material effect to the findings of these conclusions.
147. The Environmental Health Officer at Hart District Council raises no objection to the proposed extension of time affecting both [14/00063/CMA](#) and [14/00060/CMA](#) respectively. No air quality dust-related complaints from on-site operations have been received by the Mineral Planning Authority since the granting of both planning permissions in 2016 either.
148. Whilst it is recognised that local residents will continue living in close proximity to a working mineral extraction site throughout the extended lifespan of the site and the extension of time, securing the completion of the site is paramount. Local Environmental Health officers have raised no objections - subject to extant conditions being retained - relating to impacts from air quality and dust from on-site operations. These would continue to be undertaken in accordance with conditions 13 - 15 of planning permission [14/00063/CMA](#) The proposal is therefore in accordance with Policy 10 (Protecting public health, safety and amenity) of the [HMWP \(2013\)](#).

Potential pollution associated with the development

149. National Planning Practice Guidance states that Planning Authorities should assume that other regulatory regimes will operate effectively rather than seek to control any processes, health and safety issues or emissions themselves where these are subject to approval under other regimes ([Paragraph 050 Reference ID: 28-050-20141016](#))
150. Planning and permitting decisions are separate but closely linked. Planning permission determines if a development is an acceptable use of the land. Permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution. The Environment Agency has a role to play in both.
151. The use of waste materials for restoration purposes within the development is controlled via an Environmental Permit as issued by the Environment Agency. The scope of an Environmental Permit is defined by the activities set out in the Environmental Permitting Regulations (England and Wales) 2016 (EPR) The aim of the EPR regime is to protect the environment from potential impacts associated with certain liable facilities or installations. The permitted activities may form a part of, but not all, of the development needing planning permission. In these cases, the planning application will

need to address environmental considerations from those parts of the development that are not covered by the permit.

152. The development is acceptable in terms of planning. The site is monitored and enforced in the same manner as any other regulated site by the Environment Agency. Several mechanisms are put in place to monitor to ensure compliance such as audits, site visits, data analysis and compliance checks are carried out by the regulator.

Flooding

153. Policy 10 (Protection of public health, safety and amenity) of the [HMWP \(2013\)](#) requires that any development should not cause adverse public health and safety impacts, and unacceptable adverse amenity impacts. This includes impacts on the water environment.
154. In addition, Policy 11 (Flood risk and prevention) of the [HMWP \(2013\)](#) relates to minerals and waste development in flood risk areas and sets criteria which developments should be consistent with relating to flood risk offsite, flood protection, flood resilience and resistance measures, design of drainage, net surface water run-off and Sustainable Drainage Systems.
155. An assessment of the potential for the proposed development to result in hydrological or hydrogeological effects was undertaken **within Chapter 7 of the 2014 ES**. This highlighted that the superficial sands and gravels form an aquifer which support flow in the River Blackwater and its tributaries. Water quality in the aquifer is naturally poor, with moderately acidic water and elevated concentrations of iron and manganese. The assessment identified the potential for the development to result in changes to surface and ground water quality. However, these effects can be mitigated through the continued monitoring of surface and groundwater and the adoption of standard good practice measures and adherence to the existing Environment Management System. This is controlled through conditions 18 and 22 on planning permission 14/00640/CMA.
156. The restoration activities at the site are undertaken under an Environmental Permit issued by the Environment Agency. Under the conditions of the permit, there is a substantial groundwater and surface water monitoring network at the site for both water level and quality. In general, the results from the environmental monitoring do not show any adverse historical impact from the quarrying or restoration activities.
157. The assessment concludes that: "Potential impacts to groundwater and surface water have been assessed as those typically associated with quarrying activities (such as the storage of fuels, operation of machinery, etc.) and those associated with the importation of inert restoration materials." "It is considered that by following the conditions defined in the Environmental Permit, continuing to operate the environmental monitoring

network and applying industry good practise, all the identified risks can be mitigated against.”

158. The time extension is unlikely to affect the findings of **Chapter 7 of the 2014 ES**. No changes are proposed to the controls contained within conditions 16 to 23 of planning permission 14/00063CMA all of which are designed to protect the water environment during extraction, restoration and aftercare operations..
159. The assessment of flood risk found that the flood storage capacity to be provided by the proposed development would be greatly in excess of that which existed prior to extractive works taking place.
160. No objections were received from consultees including the Lead Local Flood Authority and the Environment Agency.
161. The proposal would continue to be undertaken in accordance with the approved existing drainage and water quality scheme related conditions 16 - 23 of planning permission [14/00063/CMA](#) and is therefore in accordance with Policies 10 (Protection of public health, safety and amenity) and 11 (Flood risk and prevention) of the [HMWP \(2013\)](#).

Highways impact

162. Policy 12 (Managing traffic) of the [HMWP \(2013\)](#) requires minerals and waste development to have a safe and suitable access to the highway network and where possible minimise the impact of its generated traffic through the use of alternative methods of transportation. It also requires highway improvements to mitigate any significant adverse effects on highway safety, pedestrian safety, highway capacity and environment and amenity. In addition, Policy INF3 (Transport) of the HLP (2020) also states that proposals will be supported that: a) integrate into existing movement networks; b) provide safe, suitable and convenient access for all potential users; c) provide an on-site movement layout compatible for all potential users.
163. The Bramshill Quarry site is subject to two Section 106 (s106) legal agreements, within which one of the principal requirements is in relation to lorry and vehicle routeing to and from the site and vehicles moving extracted mineral to the conveyor belt (south of the A30), These legal agreements would be rolled forward as part of these permissions.
164. The Highway Authority was consulted on the proposal, raising no objection and indicated that they were satisfied that the accident record had not identified any patterns that are likely to be exacerbated by this application.
165. The Highway Authority recommend that conditions controlling vehicular access to and from the site shall continue via the junction between the Welsh Drive with A327, that the site access shall be kept clean and free pf

mud and debris at all times and that the applicant will ensure that mud and debris does not deposited on the public highway by departing vehicles. These conditions - 9, 10 and 12 on permissions [14/00063/CMA](#) - would be re-imposed should permission be granted.

166. It is noted that concerns were raised in representations about the quality of surrounding roads and the access. The County Council does investigate allegations received from third parties concerning mud and debris being deposited on the public highway and damage done to the highways itself including to grass verges. This has been investigated with the applicant and adjoining operators using the local roads. The Local Highway Authority has found no direct evidence that the applicant and the applicant's vehicles are causing the alleged debris spillages and/or verge damage.
167. On the basis of the proposed conditions and the section 106, the proposed development is in accordance with Policy 12 (Managing traffic) of the [HMWP \(2013\)](#) and Policy INF3 (Transport) of the HLP (2020) as well as the relevant paragraphs of the [NPPF \(2021\)](#) which requires that planning decisions take account of whether "safe and suitable access to the site can be achieved for all people".

Restoration

168. Policy 9 (Restoration of minerals and waste developments) of the [HMWP \(2013\)](#) states that temporary minerals and waste development should be restored to beneficial after-uses consistent with the development plan. It also states that restoration of minerals and waste developments should be in keeping with the character and setting of the local area and should contribute to the delivery of local objectives for habitats, biodiversity or community use where these are consistent with the development plan, and the restoration should be phased throughout the life of the development.
169. The approved Restoration Plans for the site were assessed in detail within the **2014 Environmental Statement's**. The Committee Report for planning permission [14/00063/CMA](#) concluded, with respect of the approved restoration plan, that the proposal "*will provide for local needs in the form of rights of way, informal recreation and enhance biodiversity.*" and that it would bring; "*significant recreational benefit in line with the strategy for the area*". Areas in the western part of the site have been infilled to the approved contours and restored. Areas within the central area of the site have been tipped to the approved contours (subject to some regrading) and will be restored in through the spreading of soils and seeding.
170. The approved Restoration Scheme seeks to provide a landform suitable for the future development of formal recreation facilities and public rights of way. As such, the proposals are considered to contribute towards enabling the realisation of future proposals. The restoration seeks to ensure that no Biodiversity Action Plan (BAP) habitat is lost as a result of the revised scheme. The Plan recognises that a site may be restored to a range of

different afteruses and refers to the opportunities for multiple use of restored sites such as to enhance biodiversity and also provide recreational use for the public.

171. A significant part of the Bramshill site has already been restored. The submitted **Restoration Strategy** will ensure that a further 12.0 ha is restored by June 2026. This would leave 4.4 ha (less than 10% of the site) being retained as operational until it is fully restored in 2026. The restoration scheme would enhance the nature conservation and informal recreation value of the site, which forms part of a wider network of greenspaces, habitats, footpaths and bridleways which will be provided across the restored Bramshill Quarry site
172. As already identified, the [HMWP \(2013\)](#) identifies that inert construction and demolition wastes can be directed to mineral workings (quarries) for agreed restoration schemes. The use of inert fill material to complete the approved restoration scheme designed to deliver a beneficial afteruse is supported by the NPPGW as well as Policies 25 (Sustainable waste management) and 30 (Construction, demolition and excavation waste development) of the [HMWP \(2013\)](#). Policy 30 of the [HMWP \(2013\)](#) promotes the use of inert material in the restoration of mineral workings where a beneficial outcome can be achieved.
173. Paragraph 4.87 of the HMWP states in relation to the restoration of mineral workings that: *“Where it is necessary to import material ... only residues after treatment of inert construction, demolition and excavation waste should be used in the restoration.”* The proposed use of residual inert material in place of non-waste materials would ensure waste is managed higher up the waste hierarchy and diverted away from landfill, in accordance with the objectives of national guidance and Policy 25 (Sustainable waste management) of the [HMWP \(2013\)](#). The approved Restoration Scheme is therefore considered to represent a sustainable solution to the need to restore a mineral extraction site, beneficial use of residual inert waste arising.
174. The proposal helps to secure the restoration of a mineral site, including the retention of the conveyor bridge, in the most practical, timely and efficient way without adversely impacting upon the environment, landscape character or the amenity/safety of local residents in accordance with Policy 9 (Restoration of minerals and waste sites of the [HMWP \(2013\)](#)) as well as Policies INF4 (Open Space, Sport and Recreation) and INF5 (Community Facilities) of the HLP (2020). The proposal is also considered to be in accordance with Policies 25 (Sustainable waste management) and 30 (Construction, demolition and excavation waste development) of the [HMWP \(2013\)](#).

Climate change

175. **Chapter 10 of the Environmental Statement (ES) Addendum (November 2020)** discusses the issue of climate change for the application as requested within the Council's issued Scoping Opinion (and acknowledging the County Council's own declared Climate Emergency).
176. Policy 2 (Climate change – mitigation and adaptation) of the [HMWP \(2013\)](#) states '*minerals development should minimise their impact on the causes of climate change. Where applicable, minerals development should reduce vulnerability and provide resilience to impacts of climate change*'.
177. The applicant has considered the following ways in which the proposals could potentially affect, and be affected by, climate change;
- Flood risk;
 - Vehicle emissions;
 - Use of renewable energy;
 - Site location to market; and
 - Change to habitats.
178. In terms of flood risk, the submitted **Flood Risk Assessment (FRA)** within the ES Addendum has accounted for a conservative increase of 30% of rainfall going forward until 2026, according with the [NPPF \(2021\)](#). This coupled with the site being situated in flood zone 1 - the lowest risk zone - concludes that the proposed development would not increase surface water flood risk during the operational phases, with the capacity of the site to store surface water-off increasing through additional quarry void.
179. The applicant's fleet of HGVs are on average under 5 years old and are regularly replaced with more modern, clean and fuel-efficient vehicles (meeting Euro IV or exceeding Euro III standards). Furthermore, all CEMEX fleet drivers are trained in 'Safe and Fuel-Efficient Driving (SAFED) and assessed on their fuel usage and driving style, in order to both conserve fuel, reduce emissions and ensure safe driving.
180. The applicant is presently trialling a 50% bio-diesel fuel blend, which subject to positive outcomes, could be rolled out nationally.
181. The applicant uses 100% renewable energy at all of its sites (in partnership with Engie), from wind and solar sources. The site is close to its market with no other active quarries (the nearest at Eversley is Cemex's too) nearby, and close to the Central and Eastern Berkshire and Surrey borders also, the former having no active sand and gravel quarries presently.
182. In terms of habitat change and impact on species', climate change is leading to losses of certain species' according to DEFRA's 2020 Biodiversity Strategy. With the application sites lying close to several designated nature conservation sites, and partly within the Thames Basin

Heaths Special Protection Area (SPA) and the Castle Bottom to Yateley and Hawley Commons Site of Special Scientific Interest (SSSI), the balance between the extraction of mineral and the temporary loss of established planting and vegetation, and associated habitats, is an important consideration.

183. As already set out in the **Ecology** section of this commentary, the continued working of this area within the wider Bramshill Quarry, would through a further approved extension of time guarantee the securing of mitigation to offset the loss and contribute to biodiversity net gain benefits locally.
184. The boundary with Phase 9 would be reinstated with acid grassland, heath scrub and birch colonies, and as detailed in the **Ecology** section of this commentary, there exists potential for badger and reptile habitats in Phases 11 and 12 and Great Crested Newts in Phase 12, and following tree felling in Phases 11 and 12, suitable ground for nesting birds, particularly woodlark and nightjar, could be provided. This would support and enhance the nesting birds habitat within the adjoining Thames Basin Heaths Special Protection Area (SPA), upon which its designation is based.
185. Whilst the prolonged use of this site, and the use of vehicles and machinery until 2026, and its associated emissions can impact on climate change, it is only a temporary impact. The measures proposed in paragraphs 168 - 175 above will help prevent these. It is worth noting that National minerals policy states that a proposal involving an extension to an existing quarry (including a time-limited only extension) allowing the use of established facilities and markets is typically more efficient, with less emissions, than the creation of a new extraction site.
186. In terms of sustainability, whilst the extraction of raw materials is not wholly sustainable in its own right, and there is a national drive to recycle materials to create secondary aggregates, this is an existing approved site with a significant amount of infrastructure in place, most importantly that has (at the time planning permission was applied for) permission for a determined volume of mineral to be extracted and moved over the A30 using the conveyor bridge.
187. Furthermore, looking at the County Council's [Local Aggregates Assessment \(LAA\) 2019](#), it is evident that sales were rising in 2018 and have been since 2012. With the construction industry becoming more active again through 2021 (post-Covid 19 lockdowns), and significant number of housing and transport projects planned to 2022, the demand for aggregates is increasing. Bramshill is one of eleven active sand and gravel quarries in Hampshire which already contributes to demand. To leave the mineral in-situ and sterilise it would conflict with National and Local planning policy. The continuation of an already existing quarry, albeit for a

longer period, would have less climate change impacts than the establishment of a new quarry.

188. On balance, the continuation of this existing quarry and its operations are considered to be in accordance with Policy 2 (Climate change - mitigation and adaptation) of the [HMWP \(2013\)](#).

Cumulative impacts

189. Policy 10 (Protecting public health, safety and amenity) of the [HMWP \(2013\)](#) states that a proposal should not cause an unacceptable cumulative impact arising from the interactions between minerals and waste developments, and between mineral, waste and other forms of development. It also states that the potential cumulative impacts of minerals and waste development and the way they relate to existing developments must be addressed to an acceptable standard.
190. Concerns raised about the prolonged impact on neighbours through noise and vibration from vehicles and machinery from the site are noted.
191. With no concerns being raised by consultees, the existing measures put in place to offset the potential impacts of the proposed development on nearby and proposed residential areas are noted. The proposal is in accordance with Policy 10 (Protection of public health, safety and amenity) in the adopted [HMWP \(2013\)](#) in relation to cumulative impacts.

Community benefits

192. A frequent concern of communities that host minerals development is that there are no immediate benefits to 'compensate' for the inconvenience that occurs. In Hampshire there is already a precedent for minerals or waste operators to contribute to local communities' funds. However, this process lies outside of the planning system.
193. Policy 14 (Community Benefits) of the [HMWP \(2013\)](#) encourages negotiated agreements between relevant minerals and waste developers/operators and a community as a source of funding for local benefits. Agreements can be between operators and local bodies such as Parish Councils or residents' associations. Whilst the Minerals and Waste Planning Authority encourages these agreements, it cannot be party to such agreements and the agreements cannot be considered in decision making.
194. The concerns raised by Eversley Parish Council in relation to the lack of engagement by the operator are noted. The Authority encourage the applicant to engage with the local community on this issue. The formation of a Liaison Panel by the applicant is strongly recommended as it provides opportunity for all local residents and interested parties to engage with the operator and environmental regulators, including the Mineral Planning

Authority, as well as elected County Councillors. An informative is included on this point.

Other issues

195. Concerns were raised by a nearby resident over the continued use of areas of the wider site by motorbikes and quad bikes during evenings and weekends, and the disturbance caused in relation to noise. The Mineral Planning Authority are aware of these allegations and do discuss them with the applicant as and when they are received. That said, no complaints whether alleged or proven, have been received by the Mineral Planning Authority in 2021.
196. Whilst there is a duty from a health and safety aspect on the operator that all unauthorised access is prevented, the wider quarry site occupies a large area, and is bordered by multiple land uses and landowners. Furthermore, the site is accessed and traversed by various rights of way and the public highway, neither of which can be legally obstructed to prevent access by the public and neighbouring businesses.
197. The Mineral Planning Authority will continue to respond to any allegations received and seek to resolve them with the applicant, local Environmental Health (in relation to noise) and other organisations within our remit. As detailed in paragraphs 191 and 192 above, the formation of a Liaison Panel, which can include affected neighbours as well as local Councillors, will continue to be pursued. Direct and face to face engagement between the local community and applicants/operators can significantly reduce actual and perceived disturbance and harm being experienced.

Changes / updates to the conditions

198. Beyond the applicant's requested variations to Conditions 1, 31 and 39 of planning permission [14/00063/CMA](#) and Condition 1 of planning permission [14/00060/CMA](#) at Bramshill Quarry, updates have been made to other conditions on these extant permissions.
199. These updates include the removal of redundant conditions, the merging of duplicitous conditions, but in the main updates to affected conditional plans and schemes, whether these are being updated solely as requested or due to the effects of time, legislative requirements, mitigation or a combination of all of these material considerations.

Planning Application [20/03153/HCC](#)

200. Updates have been made to conditions 1 - 4, 11, 13 - 14, 16 - 17, 19 - 20, 22, 25 - 28, 30 - 33, 36 - 40 of planning permission [14/00063/CMA](#) and can be viewed in **Appendix A1**.

Planning Application [21/00052/HCC](#)

201. Updates have been made to conditions 1 - 7 of planning permission [14/00060/CMA](#) and can be viewed in **Appendix A2**.

Conclusions

202. The applicant seeks to extend the time to allow mineral extraction and infilling operations to continue and final restoration to be achieved by 30 June 2026 through the variations of conditions 1, 31 and 39 of planning permission [14/00063/CMA](#) and to retain and continue to use the conveyor bridge by varying Condition 1 of planning permission [14/00060/CMA](#) at Bramshill Quarry.
203. The completion of the extraction of sand and gravel at an existing quarry site, and one that is safeguarded for its mineral resources and the minerals infrastructure through Policies 15 (Safeguarding – mineral resources) and 16 (Safeguarding – minerals infrastructure) of the [HMWP \(2013\)](#), would continue to contribute to the Hampshire’s mineral landbank, avoiding sterilisation and helping to meet the landbank requirements set out under Policy 17 (Aggregate supply) of the [HMWP \(2013\)](#). This work will be undertaken in conjunction with infilling operation and would not create any further delay to the final restoration of the Bramshill Quarry site as a whole.
204. The restoration of the site would enhance the nature conservation and informal recreation value of the site, which farms part of a wider network of greenspaces, habitats, footpaths and bridleways which will be provided across the restored Bramshill Quarry site, and according with the requirements of Policy 9 (Restoration of quarries and waste developments) and in turn Policies 3 (Protection of habitats and species), 5 (Protection of the countryside), 10 (Protecting public health, safety and amenity) and 14 (Community benefits) of the [HMWP \(2013\)](#).
205. The site will continue to operate in accordance with all other planning conditions pursuant to planning permissions [14/00063/CMA](#) and [14/00060/CMA](#) and the deed of variations to their respective Section 106 legal agreements.

Recommendation

206. That planning permission be GRANTED for planning application 20/03153/HCC subject to the conditions listed in **Appendix A1** and the deed of variation to the existing Section 106 legal agreement ensuring the delivery of the approved Heathland Site Management Plan, archaeological works, the provision of paths/bridleway routes/public access areas and

nature conservation management and hydrological and ecological monitoring being secured.

207. That planning permission be GRANTED for planning application 21/00052/HCC subject to the conditions listed in **Appendix A2** and the deed of variation to the existing Section 106 agreement relating to the method of removal and reinstatement of land occupied by the conveyor bridge and the signalised crossing being secured.

Appendices:

Appendix A1 – Conditions for planning application 20/03153/HCC

Appendix A2 – Conditions for planning application 21/00052/HCC

Appendix B – Committee Plan

Appendix C – Phasing Plan

Appendix D – Approved Restoration Plan

Appendix E – Proposed Restoration Plan

Other documents relating to this application:

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=20887>

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	No
People in Hampshire live safe, healthy and independent lives:	No
People in Hampshire enjoy a rich and diverse environment:	No
People in Hampshire enjoy being part of strong, inclusive communities:	No
OR	
This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:	
the proposal is an application for planning permission and requires determination by the County Council in its statutory role as the minerals and waste or local planning authority.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

20/03153/HCC

Hampshire County Council

HR042

Bramshill Quarry Warren Heath,
Brickhouse Hill

Eversley Hook RG27 0QB

(Proposed variation of Conditions 1, 31
and 39 of planning permission
14/00063/CMA so as to allow an extension
of time to complete extraction, processing
and to remove plant, machinery and
buildings until 30 June 2026, together with
minor amendments to the restoration
scheme and submission of the aftercare
scheme

21/00052/HCC

HR042

Bramshill Quarry Warren Heath,
Brickhouse Hill

Eversley Hook RG27 0QB

Proposed variation of Condition 1 of
planning permission 14/00060/CMA so as
to allow the extended use of the conveyor
bridge, with its removal by 30 June 2026

EQUALITIES IMPACT ASSESSMENTS:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

Officers considered the information provided by the applicant, together with the response 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.

Appendix A1

CONDITIONS for planning application 20/03153/HCC

Time Limit

1. The extraction of sand and gravel at the site shall cease and all plant, machinery and buildings shall be removed within six months of the completion of extraction or by 30 June 2026, whichever is the sooner.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

Restriction of Permitted Development Rights

2. Notwithstanding the provisions of Parts 4, 7 and 17 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order):
 - (i) fixed plant or machinery, buildings, structures and erections or private ways shall not be erected, extended, installed or replaced at the site without the prior written agreement of the Mineral Planning Authority; and
 - (ii) no telecommunications antenna shall be installed or erected without the prior written agreement of the Mineral Planning Authority.

Reason: To protect the quality and characteristics of the designated Thames Basin Heaths Special Protection Area (SPA) and adjoining Castle Bottom to Yateley and Hawley Commons Site of Special Scientific Interest (SSSI), local Historic Parkland and local amenity in accordance with Policies 3 (Protection of habitats and species), 5 (Protection of the countryside), 7 (Cultural heritage) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Screening

3. The positioning of bunds around all four sides of London Road Heath shall be retained as approved under planning permission no. 00/00679/CMA.

Reason: In the interests of protecting local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

4. All bunds around London Road Heath shall be retained at 4 metres in height from the level of the adjoining highway and all planting approved under planning permission no. 00/00679/CMA shall be retained throughout the life of the development hereby permitted.

Reason: In the interests of the local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

5. No working of minerals shall take place within: 20 metres of the A327 and within 30 metres of the A30 adjoining London Road Heath; 10 metres along the A30 adjoining Star Hill Plantation increasing to 20 metres at the junction of the A30 and C2 Blackbushes Road; 10 metres along the C2 Blackbushes Road adjoining Star Hill Plantation and Yateley Heath Wood

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Hours of Working

6. No operation shall take place on the site except between the hours of 0700 and 1800 Monday to Friday and between 0700 and 1300 on Saturdays. There shall be no site preparation works including soil stripping before 0800 on Saturdays. No operations shall take place on a Sunday or any recognised Bank/Public holidays.

Reason: In the interests of protecting local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Importation of Waste

7. No imported waste shall be deposited in the excavation or elsewhere on the site.

Reason: In the interests of the local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Highways

8. Access to the quarry shall be via the existing access point from the A327. The first 30 metres of the Welsh Drive access road from the A327 shall be metalled and maintained to the satisfaction of the Mineral Planning Authority.

Reason: In the interests of highway safety in accordance with Policy 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

9. The surface of the existing site access road shall be maintained in a good state of repair and kept clean and free of mud and other dirt or debris at all times to the satisfaction of the Mineral Planning Authority.

Reason: In the interests of protecting local amenity and highway safety in accordance with Policies 10 (Protection of public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

10. Adequate measures shall be taken to the satisfaction of the Mineral Planning Authority to ensure that vehicles leaving the site shall not deposit mud or other dirt or debris on the public highway.

Reason: In the interests of protecting local amenity and highway safety in accordance with Policies 10 (Protection of public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

Dust

11. Dust control for the site shall be undertaken in accordance with the mitigation stated within the Air Quality report within the Environmental Statement (approved under permission 14/00063/CMA). Dust from the site shall be minimised. Regular sweeping shall take place of the metalled length of the access road into the site from the A327 and the use of a water bowser, sprayer or hose or other similar equipment, as appropriate elsewhere to reduce dust.

Reason: In the interests of protecting local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

12. No loaded open-backed lorries shall leave the site unless they are securely sheeted or otherwise covered.

Reason: In the interests of protecting local amenity and highway safety in accordance with Policies 10 (Protection of public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

Noise

13. Noise from the mineral extraction shall not exceed the maximum noise levels at the following locations:

<u>Location</u>	<u>Criterion LAeq</u>
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Caravan Site	55
Hawkers Lodge	55
The Kennels	53
1 & 2 Hartfordbridge Flats	55

Reason: In the interests of protecting local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

- The development hereby permitted shall continue to implement the noise monitoring and mitigation scheme approved under permission 00/00679/CMA during all mineral extraction and associated operations.

Reason: In the interests of protecting local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

- All vehicles, plant and equipment operated within the site shall be maintained in accordance with the manufacturer's specification at all times and shall be fitted with and use effective silencers.

Reason: In the interests of protecting local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Protection of Water Environment

- Any facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The bund capacity shall give 110% of the total volume for single and hydraulically linked tanks. If there is multiple tankage, the bund capacity shall be 110% of the largest tank or 25% of the total capacity of all tanks, whichever is the greatest. All filling points, vents, gauges and sight glasses and overflow pipes shall be located within the bund. There shall be no outlet connecting the bund to any drain, sewer or watercourse or discharging onto the ground.

Reason: To prevent pollution of the water environment in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

- Any associated pipework required within the development hereby permitted shall be located above ground where possible and protected from accidental damage.

Reason: To prevent pollution of the water environment in accordance with Policies 10 (Protecting public health, safety and amenity) and 11 (Flood risk and flooding) of the Hampshire Minerals and Waste Plan (2013).

18. No sewage or trade effluent (including vehicle wash or vehicle steam cleaning effluent) shall be discharged to any surface water drainage system.

Reason: In the interests of protecting public health, safety and amenity and mitigating flood risk in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

19. The development hereby permitted shall be implemented in strict accordance with the groundwater protection and drainage details and report within the Environmental Statement (approved under permission 14/00063/CMA).

Reason: In the interests of protecting public health, water quality and mitigating flood risk in in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

20. No watercourse shall be incorporated into the workings and there shall be no direct connection between the workings and any watercourse.

Reason: In the interests of protecting public health, water quality and mitigating flood risk in in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

21. No solid matter, sand or gravel, oil or grease or other injurious matter shall be allowed to pass from the workings to any watercourse.

Reason: In the interests of protecting public health, water quality and mitigating flood risk in in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

22. Not later than three months following the grant of planning permission, the previously approved scheme for monitoring rainfall, surface water flow and ground water levels (comprising a weir plate in the stream channel feeding the Warren Heath Ponds Site of Special Scientific Interest, and adjacent borehole and rain gauge) shall be updated and submitted to the Mineral Planning Authority in writing for approval. The scheme shall include:

- Mitigatory details relating to the event that if surface water flows and/or groundwater levels fall below the recorded baseline levels as a result of the extraction operations, must be provided. Extraction will cease until suitable mitigation measures have been agreed to protect the water flows/levels.

Once approved, the scheme shall be implemented in full.

Reason: In the interests of protecting water resources and water quality in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

23. Save for any changes required under Condition 22 above, drainage of the site shall be provided in accordance with the details shown on Drawing No.PI/1597/9 approved under permission no. 00/00679/CMA

Reason: In the interests of protecting public health, safety and amenity and mitigating flood risk in accordance with Policies 10 (Protection of public health, safety and amenity) and 11 (Flood risk and prevention) of the Hampshire Minerals and Waste Plan (2013).

Public Utilities

24. Protection shall be given to public utilities crossing the site, including overhead lines and underground pipes (in accordance with the requirements of the relevant regulations).

Reason: In order to secure orderly development and in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Landscaping

25. All advanced planting in the form of dense screen planting in areas Phases 1 to Phases 6 (as identified on Drawing No PI/1597/4/1) shall be maintained as approved under planning permission no. 00/00679/CMA at all times throughout the duration of the development hereby permitted.

In the event that any of the advanced planting is damaged, removed and/or dies during the life of the development hereby permitted, mitigation shall be submitted to the Mineral Planning Authority within three months of its occurrence for approval in writing. Once approved, the mitigation shall be undertaken in full.

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste development) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

26. All remaining trees to a depth of 20 metres adjoining the A327 shall be retained for the duration of the development; and the three additional rows of tree planting - provided behind existing vegetation adjoining the A30 at Yateley Heath Wood - shall be retained throughout the duration of the development hereby permitted. Any remaining trees that die or become damaged, diseased or are removed, shall be replaced in the next planting season with others of similar size and species to be agreed in writing with the Mineral Planning Authority.

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste development) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

27. The soil bunds adjoining the A327 north of the Welsh Drive, as shown on Drawing No. PJ/213/2, as approved under Planning Permission for the Determination of Conditions at Bramshill Quarry, Eversley (plan 0000349), shall be retained throughout the life of the development hereby permitted and in accordance with the requirements of all approved restoration and aftercare related conditions (and schemes/plans) as required by this consent.

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

28. The limit of extraction and adjoining trees to be retained shall be clearly marked by a post and wire fencing. The siting of which for each phase of extraction is to be agreed with the Minerals Planning Authority prior to the commencement of each remaining phase. The fence shall be erected before commencement of extraction in the relevant phase and retained until extraction is completed and restoration work commences.

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste development) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

29. No material shall be stored or bunds formed within five metres of the trunk of any retained trees.

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste development) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Dump Truck Tunnels

30. Save for any changes to the approved restoration and aftercare schemes implemented by this consent, the dump truck tunnels shall be maintained throughout the life of the development hereby permitted (as originally approved under planning permission no. 00/00679/CMA) including the landscaping approved to screen the tunnels.

Reason: In the interests of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and

waste development) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Restoration

31. The site shall be restored in accordance with the details shown on Drawing No's P1/1597/7 (as amended in accordance with condition 3), P1/1597/10 and P1/1597/17 A. The restoration hereby approved shall be implemented in full.

Reason: To ensure the satisfactory restoration of the site and in the interest of local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste development) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

32. In accordance with Condition 31 above, progressive restoration shall take place in the previously worked Phase concurrent with extraction works in the next permitted Phase, with the exception of the areas used for silt lagoons during extraction operations. No extraction shall be commenced in the next Phase unless restoration has commenced in the previously worked Phase.

Reason: To ensure the satisfactory and timely restoration of the site, and in the interest of local amenity in accordance with Policies 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

33. All overburden, subsoil and topsoil removed prior to extraction shall be removed and replaced separately and in the correct sequence. No topsoil or subsoil shall be removed from the site. Prior to the commencement of extraction works in Phase 11 an updated storage location plan with details on protecting the restoration quality of the materials shall be submitted in writing to the Mineral Planning Authority for approval. Once approved, the plan shall be implemented in full.

Reason: To ensure the satisfactory working, phasing and restoration of the site in accordance with Policies 8 (Protection of soils) and 9 (Restoration of minerals and waste developments) of the Hampshire Minerals and Waste Plan (2013).

34. Topsoil and subsoil shall not be handled, re-spread or ripped except when dry and friable.

Reason: To ensure the satisfactory working, phasing and restoration of the site in accordance with Policies 8 (Protection of soils) and 9 (Restoration of minerals and waste developments) of the Hampshire Minerals and Waste Plan (2013).

35. All ridges formed as part of the restoration programme shall be ripped prior to the planting of trees. The formation of the final 1.5 metres of cover to be provided shall be by loose tipping of soil with no machine movement over the loose tipped area.

Reason: To ensure the satisfactory restoration of the site and in the interest of protecting local amenity in accordance with Policies 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

36. All plant, buildings, machinery and sanitary facilities, its foundations and bases, together with any internal access roads, tunnels and vehicle parking, shall be removed from the site at such time as the Mineral Planning Authority, after consultation with the operator, shall determine that they are no longer required for the working or restoration of the site and the site restored in accordance with the restoration scheme approved under Condition (31) above.

Reason: To ensure the satisfactory restoration of the site and the countryside setting and in the interest of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Nature Conservation

37. Mitigation measures to prevent negative impacts to nature conservation and to increase the biodiversity of the site (and benefit the wider area and its designations, including the Thames Heath SPA) shall be implemented as outlined in the Ecological Assessment, Strategy and Translocation Scheme and Aftercare Plan (in accordance with Conditions 38 and 39 below) comprising the plans and particulars hereby approved- including those measures detailed in the approved planning statement and Environmental Statement and Addendum Environmental Statement (2020) and its Regulation 25 documentation (August 2021) shall be maintained for the duration of the development as appropriate.

Reason: To ensure the protection of biodiversity, the satisfactory restoration of the site and in the interest of protecting local amenity in accordance with Policies 3 (Protection of habitats and species), 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

38. All planting and seeding shall be carried out in accordance with the details approved under Conditions 25 and 31 above, and shall be maintained to the satisfaction of the Mineral Planning Authority for five years after completion of the restoration (as determined by the Mineral Planning Authority). Any trees or hedgerow that, within a year of planting, die or

become damaged, diseased or are removed, shall be replaced in the next planting season with others of similar size and species as approved by the Mineral Planning Authority in writing. Once approved, the mitigation shall be undertaken in full.

Reason: To ensure the protection of biodiversity, the satisfactory restoration of the site and the countryside setting and in the interest of protecting local amenity in accordance with Policies 3 (Protection of habitats and species), 5 (Protection of the countryside), 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Aftercare

39. The updated aftercare scheme contained within Appendix 1 of the Addendum Environmental Statement (2020), to provide for a five year period of after-care and requiring such steps as may be necessary to bring each phase of land restored under conditions 31 and 32 above to the required standard for forestry and permanent heathland, shall be implemented in full as approved. An aftercare meeting to be held annually to assess compliance shall be arranged by the operator and/or landowner with the Mineral Planning Authority.

Reason: To ensure the satisfactory aftercare of restored site and to ensure the protection of biodiversity and the countryside setting, and in the interest of protecting local amenity in accordance with Policies 3 (Protection of habitats and species), 5 (Protection of the countryside), 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Plans

40. The development hereby permitted shall be implemented strictly in accordance with the method of working, infilling and restoration approved under planning permissions 00/00679/CMA and 14/00063/CMA, carried forward and amended by this permission in accordance with the following approved plans:

Figure 1;
Figure 2;
P1/1597/17 A
P1/1597/ 17 - Page 2 only;
1909/P7/BRMSHILL/3B

Reason: For the avoidance of doubt and in the interests of proper planning.

Notes to applicant

1. In determining this planning application, the Mineral Planning Authority has worked with the applicant in a positive and proactive manner based providing pre-application advice to the Developer, seeking solutions to problems arising in relation to dealing with the planning application by liaising with consultees, respondents and the applicant/agent and discussing changes to the proposal where considered appropriate or necessary. This approach has been taken positively and proactively in accordance with the requirement in the NPPF (2021), as set out in the Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2015.
2. There is a Section 106 Legal Agreement associated with this permission which secures heathland management, restoration and aftercare and improvements to the Public Rights of Way network.
3. This decision does not purport or convey any approval or consent which may be required under the Building Regulations or any other Acts, including Byelaws, orders or Regulations made under such acts.
4. The Waste Planning Authority encourages the applicant to engage with the local community on this issue. The formation of a Liaison Panel by the applicant is recommended as it provides opportunity for all local residents and interested parties to engage with the operator and environmental regulators, including the Mineral Planning Authority, as well as elected County Councillors.

Appendix A2

CONDITIONS for planning application 20/00052/HCC

Timescale

1. The conveyor bridge shall be removed within 6 months of the completion of sand and gravel extraction operations permitted under planning permission 21/01353/HCC.

Reason: To ensure satisfactory restoration of the site and the countryside setting, and in the interest of protecting local amenity in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Materials

2. The conveyor bridge shall be maintained and repaired as necessary in accordance with the details and materials approved under planning permission no. 14/00060/CMA

Reason: In the interests of visual amenity and to secure a satisfactory development in the interest of protecting local amenity in accordance with Policy 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

Highways

3. The signal crossing of Blackbushes Road shall be maintained and operated as approved under planning permission 08/00471/CMA (24 September 2010).

Reason: In the interests of highway safety in accordance with Policies 5 (Protection of the countryside), 9 (Restoration of minerals and waste developments) and 10 (Protection of public health, safety and amenity) of the Hampshire Minerals and Waste Plan (2013).

4. The conveyor bridge crossing of the A30 shall remain constructed for the duration of the development as approved under planning permission 08/00471/CMA (24 September 2010).

Reason: In the interests of protecting local amenity and highway safety in accordance with Policies 10 (Protection of public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

5. The Traffic Management Plan approved under planning permission 08/00471/CMA (24 September 2010) shall continue to be implemented as approved for the duration of the development hereby permitted.

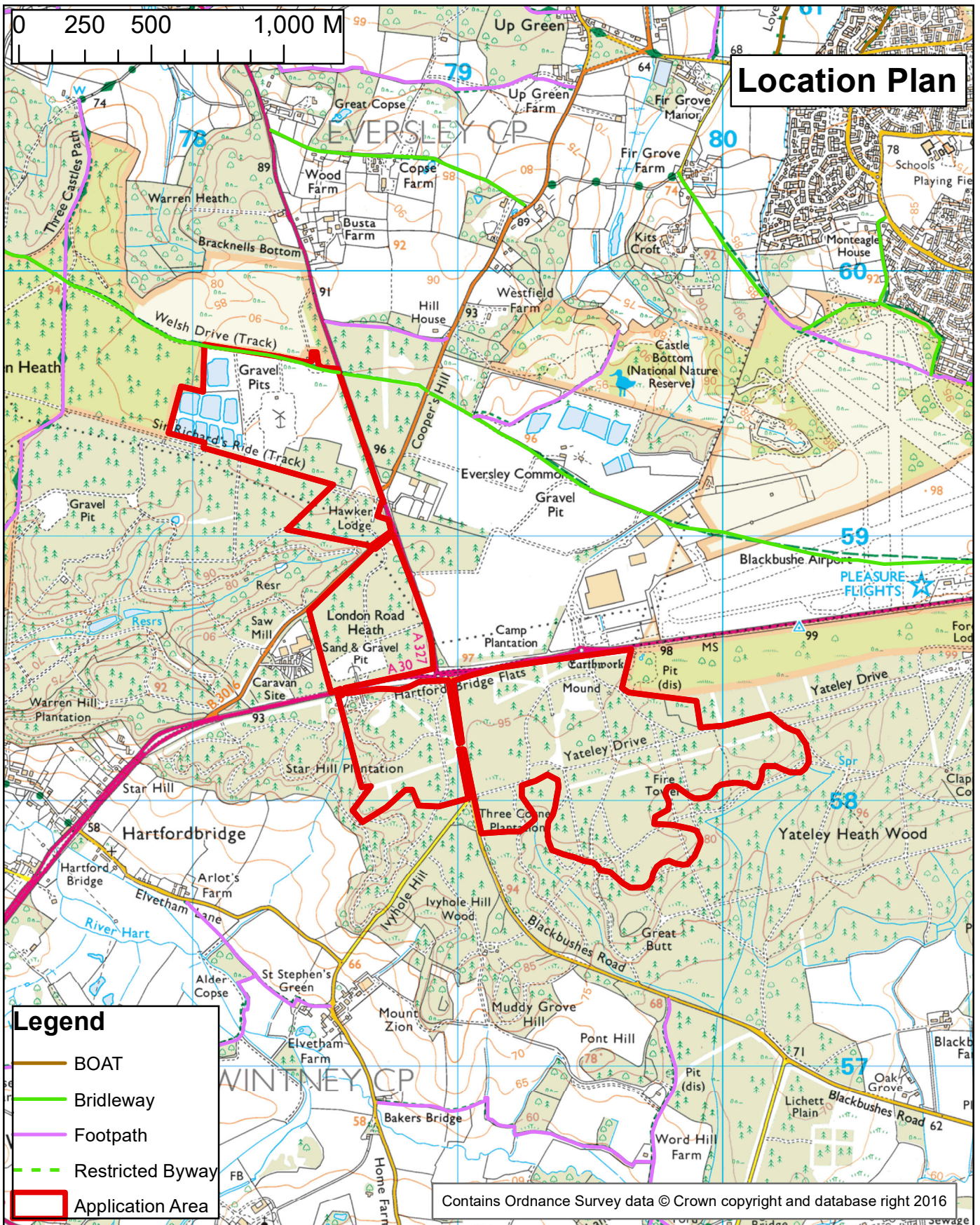
Reason: In the interests of protecting local amenity and highway safety in accordance with Policies 10 (Protection of public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

6. Measures to prevent mud and spoil being deposited on the public highway shall continue to be implemented as approved under planning permission no. 08/00471/CMA (24 September 2010) and retained for the duration of the development hereby permitted

Reason: In the interests of protecting local amenity and highway safety in accordance with Policies 10 (Protection of public health, safety and amenity) and 12 (Managing traffic) of the Hampshire Minerals and Waste Plan (2013).

Advice Notes to applicant:

1. In determining this planning application, the Mineral Planning Authority has worked with the applicant in a positive and proactive manner based providing pre-application advice to the Developer, seeking solutions to problems arising in relation to dealing with the planning application by liaising with consultees, respondents and the applicant/agent and discussing changes to the proposal where considered appropriate or necessary. This approach has been taken positively and proactively in accordance with the requirement in the NPPF (2021), as set out in the Town and Country Planning (Development Management Procedure) (England) (Amendment No.2) Order 2015.
2. Any diversion of the overhead electricity lines will require consent from SSE Power Distribution.
3. Advanced liaison remains necessary with Blackbushe Airport prior to work commencing on removal of the bridge in the interests of aircraft safety.
4. There is a Section 106 Legal Agreement attached to this permission relating to the traffic light crossing and method of removal and re-instatement of the crossing and the conveyor bridge.
5. The Waste Planning Authority encourages the applicant to engage with the local community on this issue. The formation of a Liaison Panel by the applicant is recommended as it provides opportunity for all local residents and interested parties to engage with the operator and environmental regulators, including the Mineral Planning Authority, as well as elected County Councillors.



Location Plan

Legend

- BOAT
- Bridleway
- Footpath
- - - Restricted Byway
- ▭ Application Area

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1) Variation of Conditions 1, 31 and 39 of planning permission 14/00063/CMA for an extension of time until 30 June 2026 to complete extraction, processing and to remove plant, machinery and buildings and to complete the amended restoration and aftercare schemes No. 20/03153/HCC and 2) Variation of Condition 1 of planning permission 14/00060/CMA to allow the extended use of the conveyor bridge with its removal by 30 June 2026 No. 21/00052/HCC at Bramshill Quarry, Warren Heath, Brickhouse Hill, Eversley, Hook RG27 0QB Site Ref: HR042

Regulatory Committee

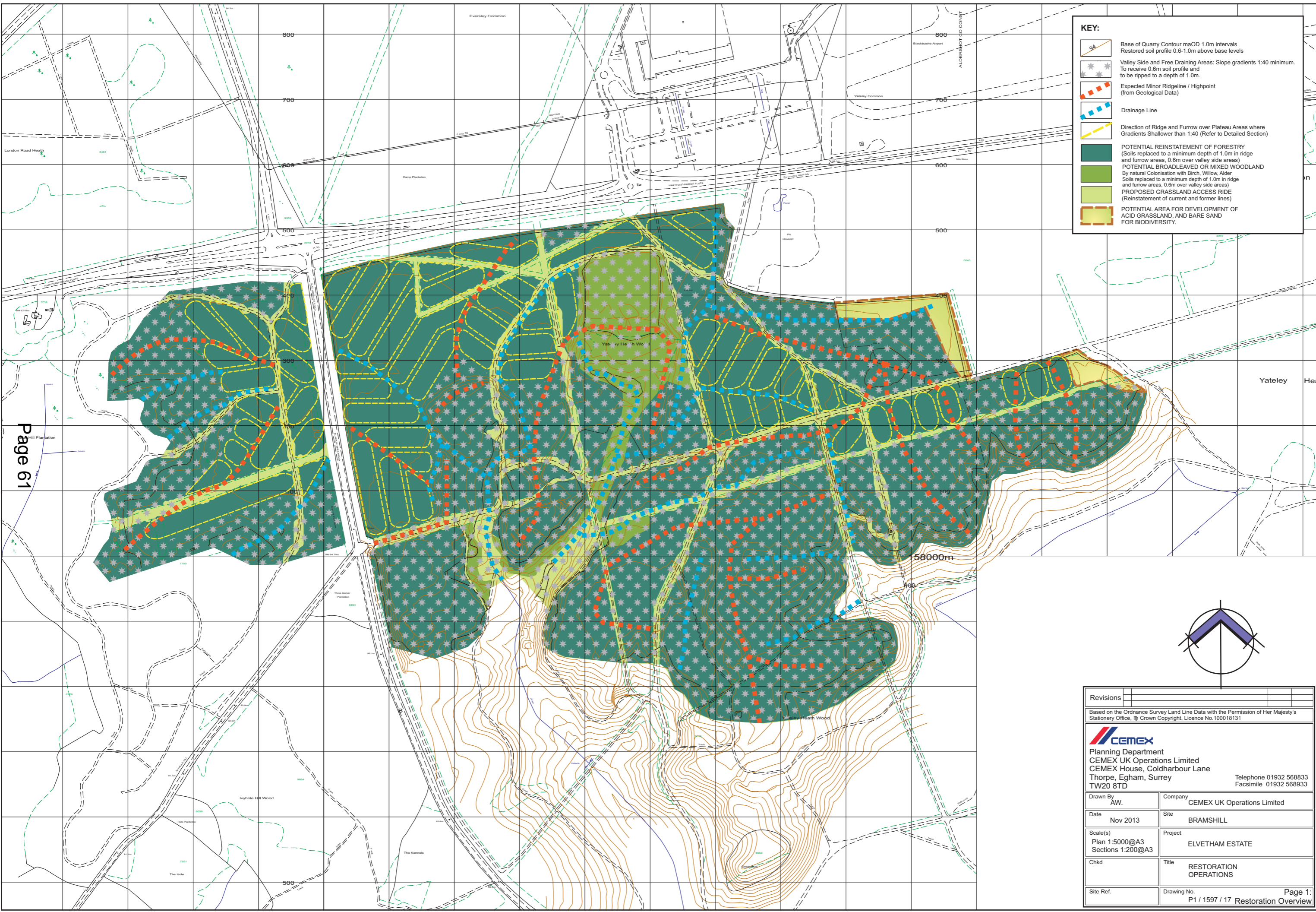
Date 17 November 2021

1:20,000



Hampshire
County Council

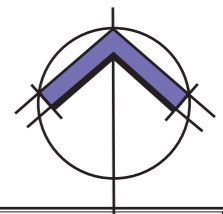
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KEY:

- Base of Quarry Contour maOD 1.0m intervals
Restored soil profile 0.6-1.0m above base levels
- Valley Side and Free Draining Areas: Slope gradients 1:40 minimum.
To receive 0.6m soil profile and to be ripped to a depth of 1.0m.
- Expected Minor Ridgeline / Highpoint (from Geological Data)
- Drainage Line
- Direction of Ridge and Furrow over Plateau Areas where Gradients Shallower than 1:40 (Refer to Detailed Section)
- POTENTIAL REINSTATEMENT OF FORESTRY (Soils replaced to a minimum depth of 1.0m in ridge and furrow areas, 0.6m over valley side areas)
- POTENTIAL BROADLEAVED OR MIXED WOODLAND By natural Colonisation with Birch, Willow, Alder (Soils replaced to a minimum depth of 1.0m in ridge and furrow areas, 0.6m over valley side areas)
- PROPOSED GRASSLAND ACCESS RIDE (Reinstatement of current and former lines)
- POTENTIAL AREA FOR DEVELOPMENT OF ACID GRASSLAND, AND BARE SAND FOR BIODIVERSITY.

Page 61



Revisions	
Based on the Ordnance Survey Land Line Data with the Permission of Her Majesty's Stationery Office, © Crown Copyright. Licence No.100018131	
Planning Department CEMEX UK Operations Limited CEMEX House, Coldharbour Lane Thorpe, Egham, Surrey TW20 8TD Telephone 01932 568833 Facsimile 01932 568933	
Drawn By AW.	Company CEMEX UK Operations Limited
Date Nov 2013	Site BRAMSHILL
Scale(s) Plan 1:5000@A3 Sections 1:200@A3	Project ELVETHAM ESTATE
Chkd	Title RESTORATION OPERATIONS
Site Ref.	Drawing No. P1 / 1597 / 17 Restoration Overview

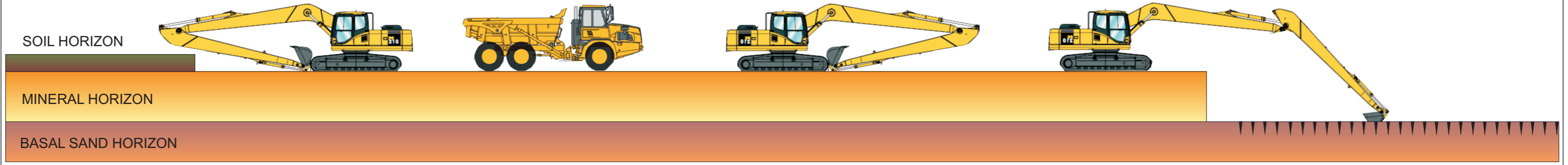
TYPICAL DETAIL OF WORKING
SCALE 1:200

(A) Soil Stripping -
Soil placed to perimeter mounds or taken to area of pre-ripped base of mineral

Where possible plant to work on top of exposed mineral

(B) Mineral Extraction

(C) Ripping of Base of Mineral
with 3 tine ripper to depth of 0.6m

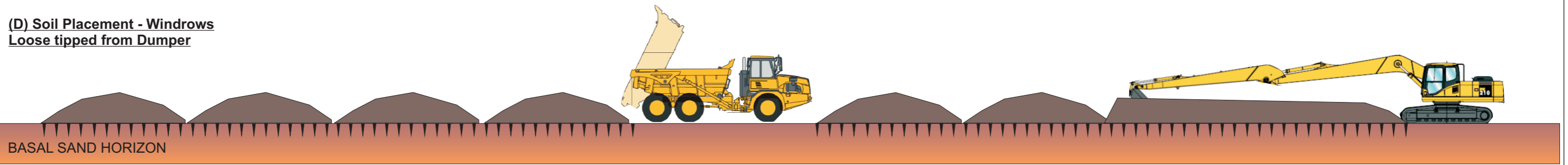


TYPICAL RESTORATION WORKS
SCALE 1:200

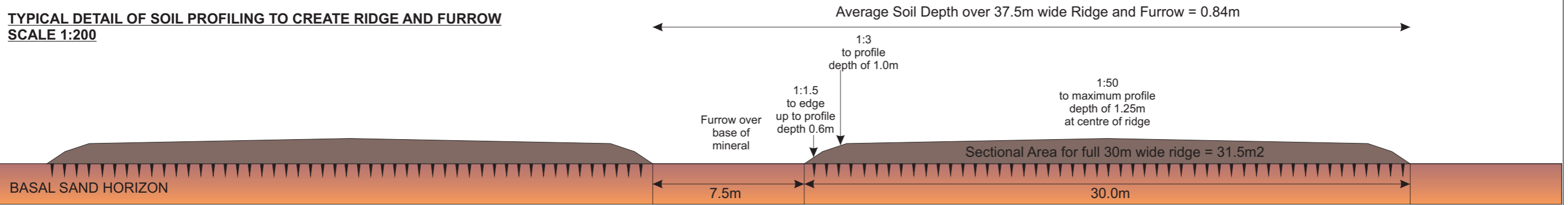
(D) Soil Placement - Windrows
Loose tipped from Dumper

Machinery to work on top of exposed base of mineral within proposed furrow area

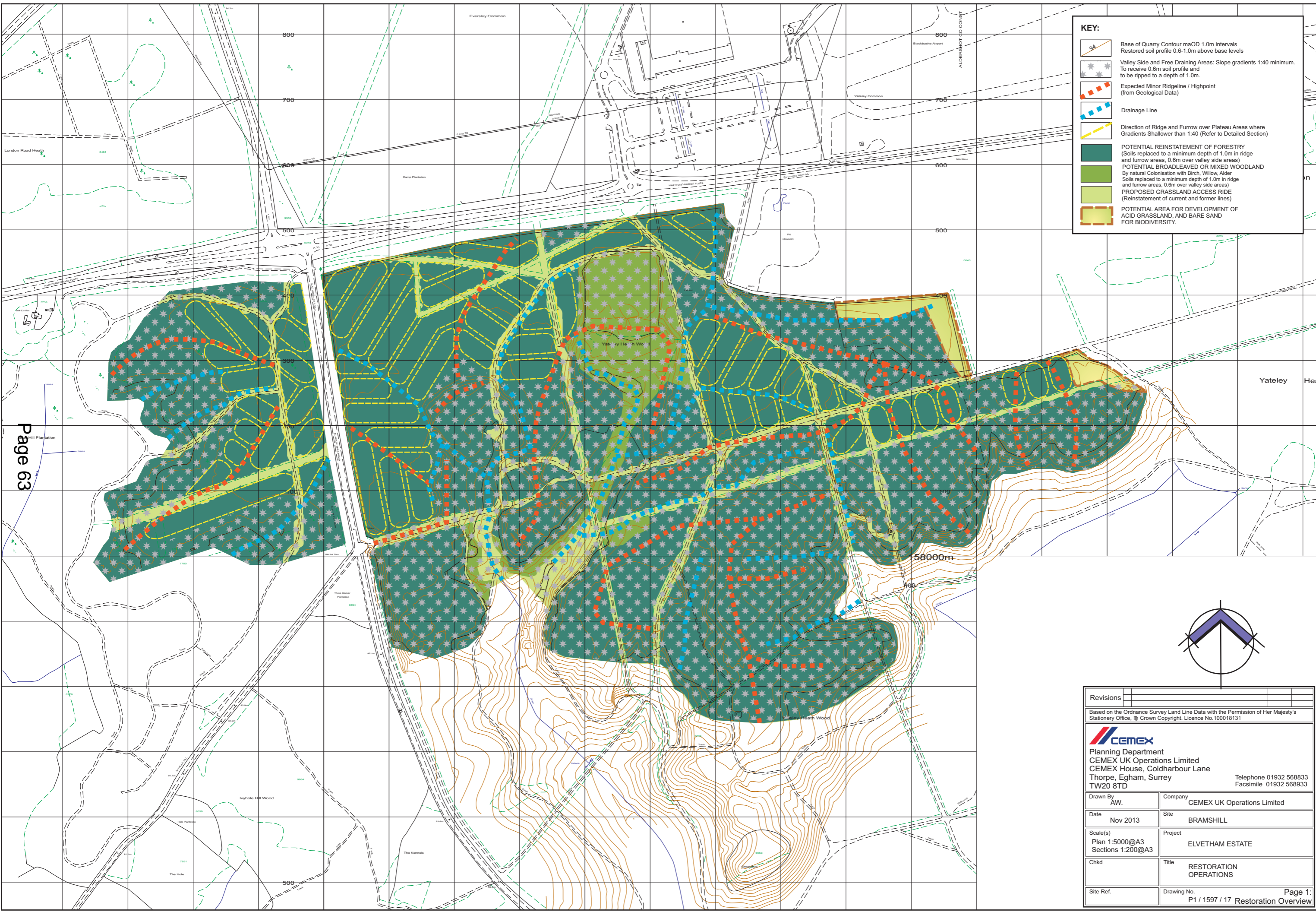
(E) Soils Bladed over to final profile
with long reach excavator;
no tracking over proposed ridge zone












TYPICAL DETAIL OF SOIL PROFILING TO CREATE RIDGE AND FURROW
SCALE 1:200



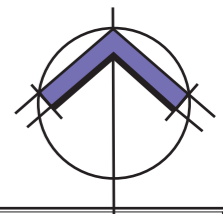
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Drawn By AW.	Company CEMEX UK Operations Limited
Date Nov 2013	Site BRAMSHILL
Scale(s) Plan 1:5000@A3 Sections 1:200@A3	Project ELVETHAM ESTATE
Chkd	Title RESTORATION OPERATIONS
Site Ref.	Drawing No. P1 / 1597 / 17
	Page 2: Methodology



KEY:

-  Base of Quarry Contour maOD 1.0m intervals
Restored soil profile 0.6-1.0m above base levels
-  Valley Side and Free Draining Areas: Slope gradients 1:40 minimum.
To receive 0.6m soil profile and to be ripped to a depth of 1.0m.
-  Expected Minor Ridgeline / Highpoint
(from Geological Data)
-  Drainage Line
-  Direction of Ridge and Furrow over Plateau Areas where
Gradients Shallower than 1:40 (Refer to Detailed Section)
-  **POTENTIAL REINSTATEMENT OF FORESTRY**
(Soils replaced to a minimum depth of 1.0m in ridge
and furrow areas, 0.6m over valley side areas)
-  **POTENTIAL BROADLEAVED OR MIXED WOODLAND**
By natural Colonisation with Birch, Willow, Alder
Soils replaced to a minimum depth of 1.0m in ridge
and furrow areas, 0.6m over valley side areas)
-  **PROPOSED GRASSLAND ACCESS RIDE**
(Reinstatement of current and former lines)
-  **POTENTIAL AREA FOR DEVELOPMENT OF
ACID GRASSLAND, AND BARE SAND
FOR BIODIVERSITY.**

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Drawn By AW.	Company CEMEX UK Operations Limited
Date Nov 2013	Site BRAMSHILL
Scale(s) Plan 1:5000@A3 Sections 1:200@A3	Project ELVETHAM ESTATE
Chkd	Title RESTORATION OPERATIONS
Site Ref.	Drawing No. Page 1: P1 / 1597 / 17 Restoration Overview

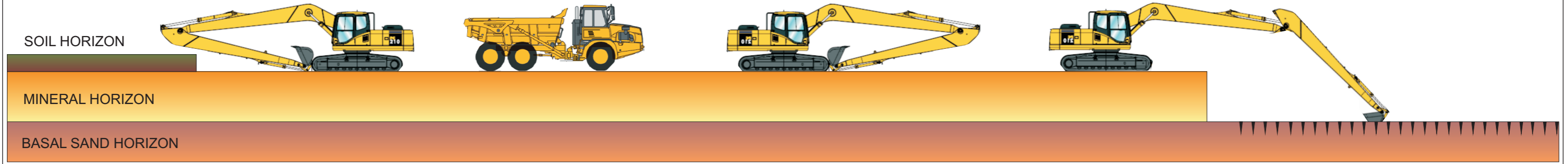
TYPICAL DETAIL OF WORKING
SCALE 1:200

(A) Soil Stripping -
Soil placed to perimeter mounds or taken to area of pre-ripped base of mineral

Where possible plant to work on top of exposed mineral

(B) Mineral Extraction

(C) Ripping of Base of Mineral
with 3 tine ripper to depth of 0.6m

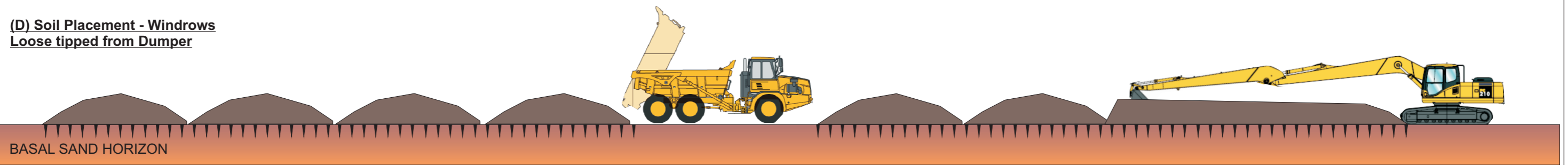


TYPICAL RESTORATION WORKS
SCALE 1:200

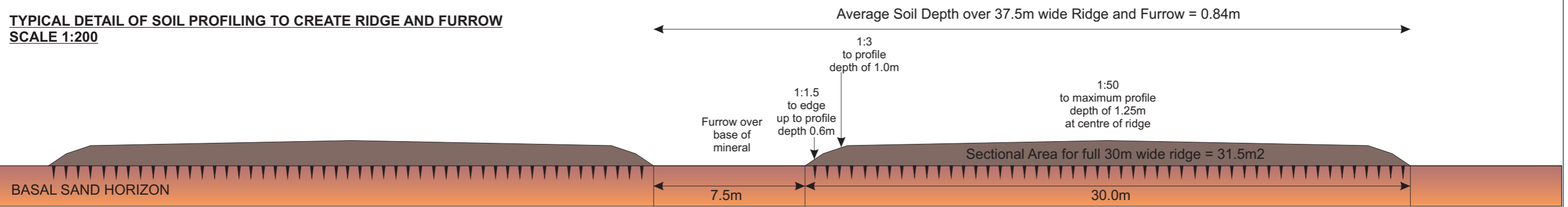
(D) Soil Placement - Windrows
Loose tipped from Dumper

Machinery to work on top of exposed base of mineral within proposed furrow area

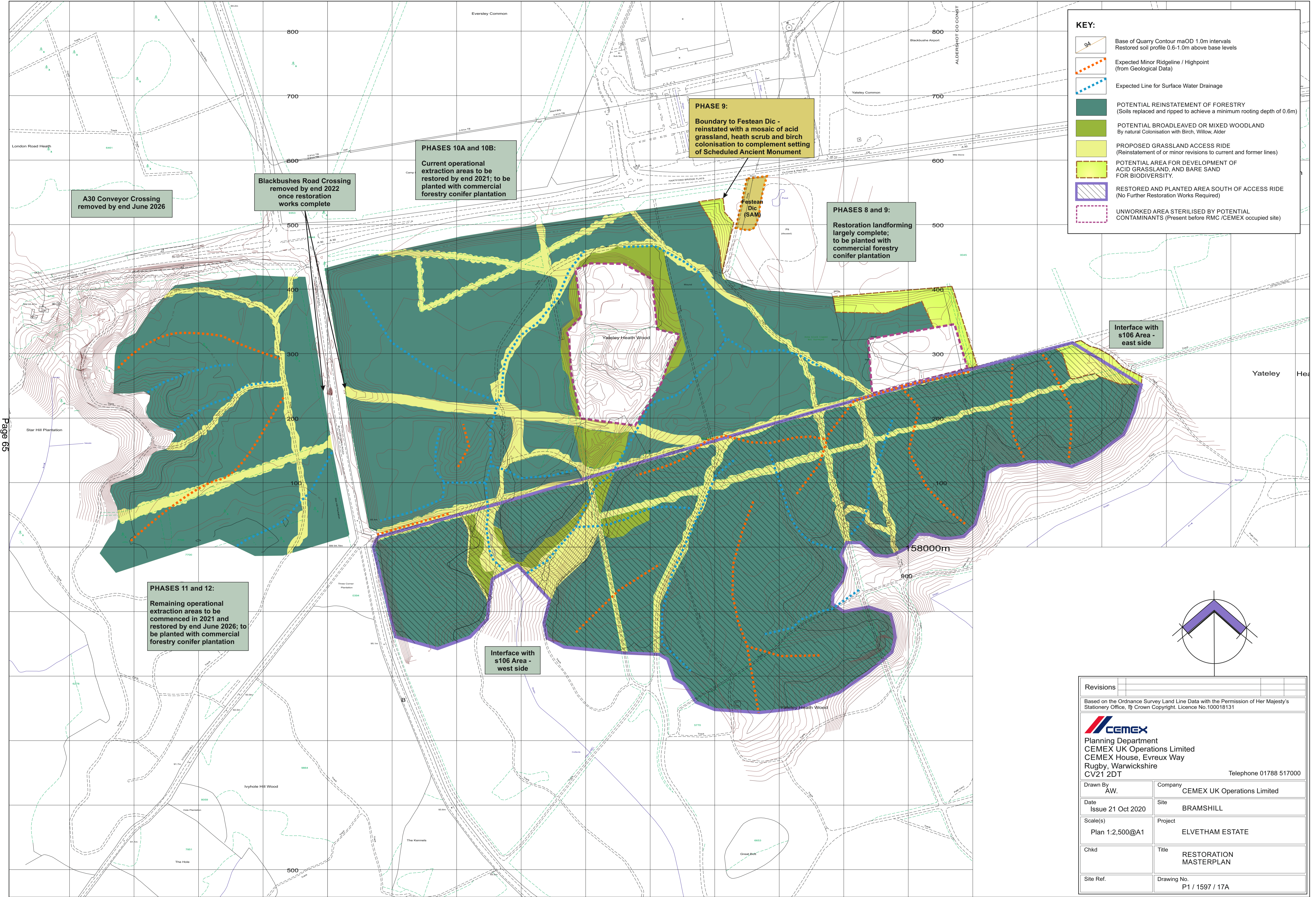
(E) Soils Bladed over to final profile
with long reach excavator;
no tracking over proposed ridge zone



TYPICAL DETAIL OF SOIL PROFILING TO CREATE RIDGE AND FURROW
SCALE 1:200

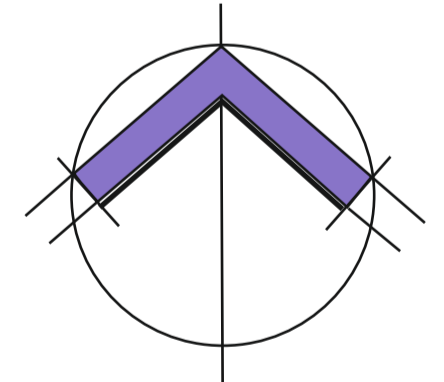


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Drawn By AW.	Company CEMEX UK Operations Limited
Date Nov 2013	Site BRAMSHILL
Scale(s) Plan 1:5000@A3 Sections 1:200@A3	Project ELVETHAM ESTATE
Chkd	Title RESTORATION OPERATIONS
Site Ref.	Drawing No. P1 / 1597 / 17
	Page 2: Methodology



KEY:

- Base of Quarry Contour maOD 1.0m intervals
- Restored soil profile 0.6-1.0m above base levels
- Expected Minor Ridgeline / Highpoint (from Geological Data)
- Expected Line for Surface Water Drainage
- POTENTIAL REINSTATEMENT OF FORESTRY (Soils replaced and ripped to achieve a minimum rooting depth of 0.6m)
- POTENTIAL BROADLEAVED OR MIXED WOODLAND (By natural Colonisation with Birch, Willow, Alder)
- PROPOSED GRASSLAND ACCESS RIDE (Reinstatement of or minor revisions to current and former lines)
- POTENTIAL AREA FOR DEVELOPMENT OF ACID GRASSLAND, AND BARE SAND FOR BIODIVERSITY.
- RESTORED AND PLANTED AREA SOUTH OF ACCESS RIDE (No Further Restoration Works Required)
- UNWORKED AREA STERILISED BY POTENTIAL CONTAMINANTS (Present before RMC /CEMEX occupied site)



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Telephone 01788 517000	
Drawn By AW.	Company CEMEX UK Operations Limited
Date Issue 21 Oct 2020	Site BRAMSHILL
Scale(s) Plan 1:2,500@A1	Project ELVETHAM ESTATE
Chkd	Title RESTORATION MASTERPLAN
Site Ref.	Drawing No. P1 / 1597 / 17A

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HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	17 November 2021
Title:	Application for registration of land known as 'Coles Mede', Otterbourne, as a town or village green (Application No. VG266)
Report From:	Director of Culture, Communities and Business Services

Contact name: Harry Goodchild - Map Review Manager

Tel: 0370 779 7652

Email: harry.goodchild@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to assist Members in determining whether to accept an application to record land known as Coles Mede, in the Parish of Otterbourne, as a town or village green.

Recommendation

2. That the application to register as a town or village green the land, shown edged blue on the plans appended to this report, be refused.

Executive Summary

3. Hampshire County Council is the Commons Registration Authority (CRA) for the purpose of exercising functions under the Commons Act 2006. One such function is the determination of applications made to register land as a town or village green. The Regulatory Committee is asked to consider an application for the registration of land known as 'Coles Mede', in Otterbourne, as a town or village green. The application was advertised and attracted objections, from the landowner and local residents. The applicant was given the opportunity to rebut these objections.
4. Whilst it is commonplace for applications under the 2006 Act to be determined following the holding of a non-statutory public inquiry, in this case the matter hinges upon the interpretation of relevant case law, and it is recommended that the application can be determined without the need for a public inquiry to be held.

Legal framework for the decision

Section 15 - COMMONS ACT 2006

Registration of greens:

15(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

15(2) This subsection applies where-

- (a) a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
- (b) they continue to do so at the time of the application.

Registration of greens: exclusions

15(C)(1) The right under Section 15(1) to apply to register land as a town or village green ceases to apply if an event specified in the first column of the Table set out in the relevant Schedule has occurred in relation to the land (“a trigger event”).

15(C)(2) Where the right under Section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again only if an event specified in the corresponding entry in the second column of the Table set out in the relevant Schedule occurs in relation to the land (“a terminating event”).

THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND AND WALES) REGULATIONS 2007

Consideration of objections

6(1) Where an objection is made under Section 15(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

- (2) The registration authority –
 - (a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and
 - (b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.
- (3) The registration authority must send the applicant a copy of every statement which it is required under paragraph (2) to consider, and of every statement which it is permitted to consider and intends to consider.
- (4) The registration authority must not reject the application without giving the applicant a reasonable opportunity of dealing with—
 - (a) the matters contained in any statement of which copies are sent to him under paragraph (3); and
 - (b) any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.

RELEVANT CASE LAW

R (on the application of Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs and another; and R (on the application of NHS Property Services Ltd) v Surrey County Council and another - Supreme Court [2019]

This Supreme Court decision confirms that town or village greens cannot be registered where there is statutory incompatibility was based on two conjoined cases:

The *Lancashire* case concerned an application to register land adjacent to a Primary School held for educational purposes by the local authority as a town or village green. Not all of the Application Land was being used at the time of the application by the school.

The *NHS* case concerned an application to register an area of woodland adjacent to a hospital as a town or village green. The land in question was held for healthcare purposes by NHS Property Services Ltd, although it was not being used at the time the application was made.

The Supreme Court allowed the appeals by a majority of three to two. The specific public interest contained in the statutory purposes for which the land in both cases was held outweighed the public interest in registering the land as a town or village green.

The decision centred around the court's interpretation of 'statutory incompatibility', considered in an earlier Supreme Court decision in *R (Newhaven Port & Properties Ltd) v East Sussex County Council [2015]*. In the *Newhaven* case the court found a beach which fell within the area of a working harbour, could not be registered as a town or village green because use of land as such was incompatible with the statutory operational purposes of the harbour, for which the beach was held.

The court's interpretation of the majority judgment in *Newhaven* was that land acquired and held by a public authority for statutory purposes could not be registered as a town or village green if those purposes were (or would be) incompatible with the land being used as a town or village green. It was also held that the test is not whether the land has been allocated by statute for statutory purposes, but whether the land has been acquired for statutory purposes.

The Supreme Court's decision means that where there is a conflict between the statutory purpose of publicly-owned land and the registration of it as a town and village green, the statutory purpose will prevail.

R (on the application of Barkas) v North Yorkshire County Council and another - Supreme Court [2014]

The Court determined that where land owned by a local authority is provided and maintained as recreational land for the public under statutory powers (section 12(1) of the House Act 1985 or its statutory predecessors), the public have a statutory entitlement to use the land for such purposes. Such use of the land is therefore "by

right” and not “as of right” within the meaning of section 15(2)(a) of the Commons Act 2006, and as a consequence cannot be registered as a town or village green on the basis of such use.

Description of the Land (please refer to the map attached to this report)

5. The land which is the subject of the application VG266 (‘the Application Land’) is shown edged blue on the plan annexed to this report. It consists of approximately 0.18 hectares (0.44 acres) of land. The land is owned by, and is registered to, Winchester City Council (‘WCC’).

Background to the Application

6. The application was submitted in 2015 by a member of the public. The form states that the Application Land should be registered as a town or village green because it has been used by a significant number of the inhabitants of a locality (or neighbourhood in a locality) for lawful sports and pastimes for at least 20 years, and they continue so to use it. Due to a backlog of applications the matter was not taken up for investigation immediately but was subsequently expedited under the County Council’s policy for prioritising village green applications, due to development proposals relating to the land.
7. The applicant identifies the ‘locality’ served by the Application Land (as is a requirement under Section 15(2) of the 2006 Act) as being a neighbourhood of several residential streets situated to the west of Main Road, between the local school and church to the south, and the local shop and Post Office to the north, and has provided a map outlining this area (see Appendix 2).
8. The Application Land has existed in its present form since the 1930s, when the majority of the houses on Coles Mede were built. It is now bounded to the south-east by a service road which connects to Coles Mede, a cul-de-sac which abuts the Land to the north-east and north-west. The Land currently accommodates a bench, two dog waste/litter bins and a red telephone box. Adjacent to its south-west corner is a row of five garages which open onto a forecourt, which is connected to the service road by a metalled path (the garage and forecourt area, though also owned by WCC, does not form part of the Application Land).

Issues to be decided

9. For the application to register the Land as a town or village green to be accepted, the legal tests under Section 15(2) of the Commons Act 2006 must be met. That is, ‘a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years’. All parts of the legal test must be satisfied for registration to take place.

User Evidence

10. The application is supported by the evidence of 32 people, who completed user evidence forms detailing use of the land between 1940 and 2015.
11. The majority of users attest to having accessed the land on a daily basis, with reasons given including playing games with children and grandchildren, dog walking, picnicking and attending village events (e.g. carnivals/fetes).
12. Most of the use falls within the relevant period for the purposes of Section 15(2), that is 1995 – 2015. The vast majority of users claim to have seen other people using the Land while visiting the Land.
13. None of the 32 users stated that they sought permission to use the Land, nor where they challenged or physical prevented from doing so.

Landowner Evidence

14. Upon advertisement of the application on 2 October 2020, objections were received from WCC, Otterbourne Parish Council, and five local residents. These objections are discussed below.

Winchester City Council

15. WCC, in its capacity as landowner, provided substantial submissions to support its objection (included as Appendix 1), accompanied by documentary evidence detailing when, and the purpose for which, the Land was acquired (Appendix 2). This includes:
 - i. Copy of a conveyance dated 24 December 1936
 - ii. Copy of a conveyance dated 31 May 1938
 - iii. Copy of a valuation report prepared for Winchester College on 4 August 1936
 - iv. Copy of a valuation report prepared for Winchester College on 22 February 1938
 - v. Copy of a valuation report prepared for Winchester College on 19 January 1945
 - vi. Copies of extracts from records of Otterbourne Parish Council between 1936 and 1945
 - vii. Copy of Winchester Rural District Council Regulations as to allocation of Tenants for Council houses dated 1 September 1937
16. In a further submission of 29 April 2021, WCC also provided two additional pieces of evidence – a report to Cabinet by the Head of New Homes Delivery dated 13 June 2012, and a report to the Cabinet (Housing) Committee by the Head of New Homes Delivery dated 11 October 2016.
17. WCC's objection includes a commentary on the acquisition of Coles Mede to accompany the documentary evidence, which can be summarised as follows.
18. The Application Land forms part of a wider parcel of land acquired by Winchester Rural District Council (WRDC) - the statutory authority that preceded WCC - from Winchester College through two separate conveyances completed in 1936 and

1938. The decision to acquire the land was made by the Housing Committee of WRDC. WCC points to contemporaneous records (namely Otterbourne Parish Council minutes and valuation reports prepared for Winchester College) which demonstrate that the land was acquired for the purposes of building houses.

19. The area was subsequently developed, and the Application Land was laid out as open space forming part of a new housing estate [this is corroborated by a comparison of the Ordnance Survey County Series 25 inch to 1 mile maps of 1932 and 1946 (see Appendix 3), the former of which shows the area as undeveloped open fields, and the latter showing newly constructed dwellings and road which is labelled 'Coles Mede']. WCC states that the Application Land *"has thereafter and at all times been maintained as open space."*
20. WCC states that the statutory powers under which the Application Land was acquired were the Housing Act 1925 and The Housing Act 1936. Section 58 of the 1925 Act conferred a power on local authorities to acquire land for the erection of dwelling houses, and Section 59(1) further enabled authorities that had acquired land for such purposes to *'lay out and construct...open spaces on the land'*. Equivalent provisions were included in the 1936 Act under Sections 73 and 79(1)(a) respectively.
21. WCC also asserts that the Application Land is still held for the same statutory purpose that it was first acquired. In support of this assertion WCC has provided the report from the Head of New Homes Delivery to Cabinet dated 13 June 2012, which sets out the proposed new build programme for council houses between 2012 and 2015. Paragraph 2.2 of the report states that *"...in a District like Winchester with high demand for housing and low availability of land, there will be significant issues in finding suitable development sites. The first choice of land to develop is and should be land which is already in the Council's ownership."* Land at Coles Mede appears in a list entitled 'Proposed Development Programme 14/15' at Appendix 1 to the Report, and is described as *"in fill site overlooking green"*.
22. The report from the Head of New Homes Delivery to the Cabinet (Housing) Committee dated 11 October 2016, entitled *"Disposal of Land at Coles Mede, Otterbourne"*, discusses an approach made by a developer to acquire and develop part of the Application Land, and notes that the freehold title currently rests with WCC.
23. In an email dated 29 April 2021, WCC's Senior Environmental and Planning Lawyer confirmed that they had found no evidence of the appropriation of the Application Land for a different purpose. The response states:

"An appropriation of land held by the City Council is required to have been formally undertaken in accordance with WCC's normal procedures, namely by way of a report to Committee and in many cases (including any appropriation of the Coles Mede TVG application land) public consultation would also have been required (please see s.122 (2A) Local Government Act 1972). The appropriation would then have been recorded in Council minutes. I have checked the Council's records and can confirm that I have found no appropriation of the land which is the subject of the Coles Mede TVG application from being held for housing purposes to an alternative purpose recorded in the City Council's minutes. I therefore remain satisfied that no such appropriation has taken place."
24. WCC's grounds of objection can be summarised as follows:

- i. Where land is held or made available by a local authority as recreational open space pursuant to an express statutory power, use of that land by the public will be *by right* and not *as of right*, as per *Barkas*. Such is the case in this instance (*Ground 1*).
- ii. Even if the Application Land was not laid out as open space pursuant to statutory powers (which is not accepted), then the fact it has been laid out and maintained as open space so as to facilitate recreational use will mean such use will have been *by right* and not *as of right* (*Ground 2*).
- iii. The Application Land was acquired, and has since been held, for statutory purposes. WCC is therefore entitled to use the land for general housing purposes notwithstanding that it is currently set out as open space. The decision in the *Lancashire/NHS* cases is engaged in respect of the Application Land. Registration of the land as village green would preclude its future potential use for general housing purposes. It is not necessary, for the principle of statutory incompatibility to be engaged, for there to be a positive intention to use the land for the statutory purposes for which the land is held. The registration of the land is precluded by the decision reached in the *Lancashire/NHS* cases (*Ground 3*).

Otterbourne Parish Council

25. In an initial objection submitted on 5 November 2020, the Parish Council objected to the application “...on the basis that there is no evidence to support that such use has taken place and that the land in question, which is laid to grass and a variety of trees, does not lend itself to such use. Scrutiny of parish records reveals no evidence of community use and the collective memory of the Parish Council going back in excess of 20 years additionally does not support the view that the local community has engaged in lawful sports and pastimes on the land.”
26. A further statement was received by the Parish Clerk on 1 April 2021, confirming that since their employment in the role as parish clerk on 1 February 2005, the open space at Coles Mede had been maintained by WCC. Maintenance included cutting of the grass and the removal of dead trees and the planting of new ones. Otterbourne Parish Council has at no time been involved in maintaining the Application Land, nor, as far as they are aware, has any other person or body.

Local Residents

27. Five local residents also submitted objections to the application, some of whom were Otterbourne Parish Councillors objecting in their own name. All these objectors assert that they have never observed the land being used for the purposes alleged in the application, either while walking past the land or driving along Main Road.

Response to objections

28. Under the regulations governing the processing of an application made under Section 15 (see ‘Legal Framework’ Section above), the County Council is not able to reject an application without first allowing the applicant to meet any objections

received in response to the advertisement of the application. This was done, and the Applicant submitted a response accompanied by additional comments made by their solicitor in January 2021. These are included at Appendix 4, and can be summarised as follows:

- i. Only partial copies of the 1936 and 1938 conveyances have been provided – it is impossible to understand the conveyances from the information provided.
- ii. The onus is on WCC to demonstrate how the land is held, and the archive material provided by WCC does not adequately demonstrate that the land was acquired for the purposes of delivering housing. If WCC cannot establish that the land is held under the Housing Act or any other statutory power, then the rulings in *Barkas* and *Lancashire* do not apply.
- iii. No evidence is provided that the land is laid out as open space pursuant to any Housing Act or any other statutory power. The land was originally appropriated for the delivery of housing, and not for the provision of open space, and as per *R (on the application of Goodman) v Secretary of State for Environment, Food and Rural Affairs [2015]*, it is not possible to imply a change in appropriation as a result of how the land is being used by the Council. The Council states that the land was laid out as open space pursuant to an express right to do so, but no evidence is provided that the land was laid out for such purposes.
- iv. In the event that the Registration Authority finds that the land has not been acquired, laid out and retained as open space under statutory powers, then there is no indication that the land is used with permission, and therefore the Registration Authority should register the land as a village green immediately.
- v. In *Barkas*, it was held that that land laid out and maintained as ‘recreation grounds’ pursuant to Section 80(1) of the Housing Act, 1936 and with the ‘consent of the Minister’ could not be determined to be used ‘as of right’, but use must be ‘by right’. The Housing Act 1925 does not include clause 80(1) or an equivalent clause, and therefore there is no specific statutory provision that grants rights for public use of the land in a way that is equivalent to *Barkas*. Therefore, the foundation of the City Council’s objections based on *Barkas* are invalid in the context of this application and do not justify that use is ‘by right’.
- vi. As the land subject to this application has not had access restricted and no licence has been issued that grants the right of use, and without the benefit of the statutory powers introduced in the 1936 Housing Act, it does meet the criteria that public use of the land is ‘as of right’.
- vii. WCC relies upon another case - *R (Beresford) v Sunderland City Council [2004]* - to support their second objection. However, when ruling on the *Barkas* case, Lord Neuberger called into question the reliability of the *Beresford* case, and so as this is no longer considered to be reliable law, any reliance on this case should be dismissed.
- viii. As there is statutory provision within the Housing Act 1925 for land to be held and maintained as open space, there is no statutory incompatibility between

this act and the registration of the land as a village green under the Commons Act 2006.

- ix. None of the local residents who have disputed that the land has been used for lawful sports and pastimes lives in Coles Mede. Their observations have principally been made from the main road - from which most of the land is screened by trees.

29. In turn, WCC submitted additional comments in reply to the Applicant's response (Appendix 5). These are summarised as follows:

- i. *Holding Power* – the evidence on which WCC relies demonstrates that, on the balance of probabilities, the land was acquired, laid out, and at all times maintained as open space pursuant to the powers in the relevant Housing Acts. No appropriation of the land is claimed or relied upon. WCC relied only on statutory powers when acquiring the land (Housing Act 1925 and its succeeding Acts).
- ii. *Barkas* – the application land was acquired as housing land and laid out as open space pursuant to powers contained in s59 Housing Act 1926 and s79 Housing Act 1936. No ministerial consent was required. In *Barkas*, the land was laid as a recreation ground for which such consent was required (as set out in s80 Housing Act 1936). If (which is not the case) the application was not acquired for housing purposes and laid out and maintained as open space pursuant to express provisions within the Housing Acts, the fact that the land has been maintained as open space to facilitate public use is such that any use for lawful sports and pastimes would be permissive in any event.
- iii. *As of right* – by reason of the statutory holding power or by reason of the maintenance of the land to make it suitable for public recreational use, any use for lawful sports or pastimes is *by right* and not *as of right*.
- iv. *Beresford* was not overruled in *Barkas* in respect of the court's conclusions as to the burden and standard of proof. *Barkas* expressly held that encouragement by a landowner of use of the land is such that use is permissive and not *as of right*. To that extent *Barkas* did overrule *Beresford* and it is in that context that *Beresford* is referred to and relied on.
- v. *Statutory Incompatibility* – The majority judgment in *Lancashire* is that of Lord Carnwath and Lord Sales JSS with whom Lady Black JSS agreed. That majority judgment is the ratio in the case. Registration of the land as TVG would prevent the application land being developed for housing, which is the statutory purpose for which the land was acquired. A fixed intention to use the land for such purposes is not necessary for the incompatibility argument to be engaged, as made clear in *Lancashire*.

Analysis of the evidence

30. Each limb of the criteria set out in Section 15(2) (see above) must be satisfied for village green rights be recorded over the Land. If any test cannot be satisfied, then the application must be refused. Moreover, in light of recent court decisions it must also be determined whether, irrespective of whether each of the tests in Section 15 is met, the Application Land is in any event incapable of registration on grounds of statutory incompatibility, as is asserted by WCC.
31. Enquiries made of WCC (in its capacity as local planning authority) upon receipt of the application indicated that there was no relevant 'trigger event' relating to the land, and therefore no automatic exclusion can be applied under Section 15C of the 2006 Act.

Sufficiency of use / Locality / 20 years' use

32. It is common ground between the applicants and WCC as main objector that the Application Land has been used for lawful sports and pastimes for a significant period of time (exceeding twenty years), and although disputed by Otterbourne Parish Council and other local residents, the *prima facie* evidence put forward in support of the application appears to be sufficient to satisfy this test. In other circumstances, it might be necessary to test the strength of the user evidence at a public inquiry, but because the question of sufficiency is not considered relevant to determination, it has not been necessary to consider this evidence further.
33. The locality or neighbourhood cited by the applicant is an area surrounding the Application Land that encompasses the neighbourhoods of Coles Mede, Cranbury Close, Cranbourne Drive and areas to the east and west of Main Road extending to the north and south of the Application Land. This is shown on a shaded plan accompanying the application. The majority of witnesses live within this area. None of the objectors have made submissions in respect of this requirement. Again, in light of other findings it has not been considered necessary to explore this aspect further.
34. In keeping with its representations on sufficiency of use, Otterbourne Parish Council disputes that the Application Land has been used for lawful sports and pastimes for a period of 20 years. Although not specifically addressed in any of the submissions of local residents, it is implicit that objections relating to sufficiency will also relate to the requisite twenty-year period. Consistent with its representations on sufficiency, WCC does not contest that the Application Land has been used for lawful sports and pastimes for the entire relevant period. As with the question of sufficiency of use, this issue is not considered to be pivotal to the determination of the application.

Use 'as of right' (Grounds 1 and 2)

35. Qualifying use must be 'as of right', that is, without stealth, without force and without permission. It is asserted by WCC that, following the ruling in *Barkas*, the application should be refused on account of user having been 'by right', rather than 'as of right'.

This is disputed by the applicants. There follows a summary of that case, and its impact on this application.

Ground 1 (Barkas)

36. In *Barkas*, the application land in question was known as Helredale playing field and was the subject of an application for village green status. The application land of some two hectares was acquired as part of a larger parcel of land amounting to some fourteen hectares by the local council using their powers under Section 73(a) of the Housing Act 1936, which provided for a local authority "to acquire any land ... as a site for the erection of houses". The majority of the fourteen acres was developed and, and laid out and maintained the application land as "recreation grounds" pursuant to section 80(1) of the 1936 Act, with the consent of the Minister as required by that section. Sections 73 and 80 of the 1936 Act were repealed and substantially re-enacted in the Housing Act 1957, whose provisions were in turn repealed and substantially re-enacted (albeit with more amendments) in the Housing Act 1985. The land continued to be held under the relevant successor provision to Section 80(1) - Section 12(1) of the Housing Act 1985.
37. In the leading judgment on the case when it was considered by the Supreme Court, Lord Neuberger said:

"In the present case, the Council's argument is that it acquired and has always held the Field pursuant to Section 12(1) of the 1985 Act and its statutory predecessors, so the Field has been held for public recreational purposes; consequently, members of the public have always had the statutory right to use the Field for recreational purposes, and, accordingly, there can be no question of any "inhabitants of the locality" having indulged in "lawful sports and pastimes" "as of right", as they have done so "of right" or "by right". In other words, the argument is that members of the public have been using the Field for recreational purposes lawfully...and the 20-year period referred to in Section 15(2) of the 2006 Act has not even started to run – and indeed it could not do so unless and until the Council lawfully ceased to hold the Field under Section 12(1) of the 1985 Act. (Para 20)

In my judgment, this argument is as compelling as it is simple. So long as land is held under a provision such as Section 12(1) of the 1985 Act, it appears to me that members of the public have a statutory right to use the land for recreational purposes, and therefore they use the land "by right" and not as trespassers, so that no question of user "as of right" can arise. (Para 21)

...where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land "as of right", simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a

village green, and who would be expected to protect his or her legal rights." (Para 24)

38. Lord Carnwath agreed with this judgment, also emphasising that there were circumstances where publicly owned land could be capable of registration:

"Where land is owned by a public authority with power to dedicate it for public recreation, and is laid out as such, there may be no reason to attribute subsequent public use to the assertion of a distinct village green right. (Para 64)

The point can also be tested by reference to the "general proposition" ...that, if a right is to be obtained by prescription, the persons claiming that right –

'must by their conduct bring home to the landowner that a right is being asserted against him, so that the landowner has to choose between warning the trespassers off, or eventually finding that they have established the asserted right against him.'

It follows that, in cases of possible ambiguity, the conduct must bring home to the owner, not merely that "a right" is being asserted, but that it is a village green right. Where the owner is a public authority, no adverse inference can sensibly be drawn from its failure to "warn off" the users as trespassers, if it has validly and visibly committed the land for public recreation, under powers that have nothing to do with the acquisition of village green rights. (Para 65)

*This does not mean of course that land in public ownership can never be subject to acquisition of village green rights under the 2006 Act. That is demonstrated by the "Trap Grounds" case (*Oxfordshire County Council v Oxford City Council* – [2006]). Although the land was in public ownership, it had not been laid out or identified in any way for public recreational use, and indeed was largely inaccessible ("... 25% of the surface area of the scrubland is reasonably accessible to the hardy walker": para 1, quoting the inspector's report). It was held that the facts justified the inference that the rights asserted were rights under the 1965 Act. (Para 66)*

39. *Barkas* also had the effect of reversing the precedence of an earlier case relating to the registration of land as village green, which had been considered by the House of Lords. In *R (Beresford) v Sunderland City Council* [2003] it had been argued by Sunderland City Council that by mowing grass and erecting seating on land in its ownership, it had given implied permission for people to use that land, which was therefore inconsistent with use 'as of right'. The Lords had at the time rejected this argument and held that the land should be registered as a town or village green, overturning an earlier decision by the Court of Appeal.
40. In *Barkas*, the earlier ruling in *Beresford* had formed a central part of the arguments forwarded by the appellant seeking the registration of the land. But in revisiting the case, the Supreme Court decided that *Beresford* had been wrongly decided, and should therefore no longer be relied on. In addressing the decision reached in *Beresford*, Lord Neuberger drew a parallel with his conclusions in respect of the *Barkas* case (Para 24 of the decision, as quoted at Paragraph 37 above), and said:

It seems to me clear on the facts...that the city council and its predecessors had lawfully allocated the land for the purpose of public recreation for an indefinite period, and that, in those circumstances, there was no basis upon which it could be said that the public use of the land was "as of right": it was "by right". (Para 49)

Lord Carnwath also addressed *Beresford*, and made particular reference to acts of encouragement by a local authority:

"If land in the ownership of a public authority had been validly registered as a village green, it might well be a reasonable inference that acts of maintenance were attributable to that status. But that has no relevance to the position during a period of public use before registration, when there were no village green rights, actual or notional. The explanation for acts of maintenance by the authority during that period has to be found elsewhere. The reasonable inference was not that the public had no rights, but that the land had been committed to their use under other powers."(Para 84)

41. The consequences of the decision in *Barkas* are that where land is held under a statutory provision such as Section 12(1) of the Housing Act 1985, members of the public have a statutory right to use the land for recreation. Use of the land will therefore be 'by right' and not 'as of right'. Furthermore, in determining that *Beresford* should no longer be relied upon, the Lords effectively ruled that where land is held by a public authority, and that authority lays the land out for public recreation, and by doing so encourages such use, that use will also be 'by right'.
42. In the present case, WCC contends that its predecessor, Winchester Rural District Council, acquired the Application Land through two conveyances under the statutory powers of the Housing Acts of 1925 and 1936, and that it still holds the land for that same purpose. As a consequence, it argues, use of the Application Land will have been 'by right' and not 'as of right' (*Ground 1* of its objection).
43. Section 59(1) of the Housing Act 1925 reads:

'Where a local authority have acquired or appropriated any land for the purposes of this Part of this Act, then, without prejudice to any of their other powers under this Act, the authority may —

(a) lay out and construct public streets or roads and open spaces on the land...'

This provision was re-enacted as Section 79 of the Housing Act 1936 and, in almost identical wording, as Section 13 of the Housing Act 1985, which remains in force today.

44. In *Barkas*, the land in question had been laid out and maintained as a recreation ground pursuant to Section 80(1) of the Housing Act 1936 with the 'consent of the Minister'. The Applicants assert that as the Housing Act 1925 did not include an equivalent clause, there is no specific statutory provision that would render public use of the Application Land acquired under that statutory provision 'by right', as was held to be the case in *Barkas*. Notwithstanding the fact that such a provision was included in the 1925 Act (under Section 107) it is not asserted by WCC that the Application Land was laid out in this way. The capacity for local authorities to lay out open space

was expressly provided for in Section 59 of the Housing Act 1925, Section 73 of the Housing Act 1936 and, most recently, in Section 13 of the Housing Act 1985. None of these provisions required that ministerial consent was sought before laying land out as open space, in contrast to the specific requirement to do so when laying out a *recreation ground*. However, officers consider that there is a direct parallel between the two provisions, in that they both provide for a local authority to set out land acquired under the Housing Acts for recreational purposes. The principle established in *Barkas* is therefore engaged, notwithstanding that the land was set out under a different section of the legislation.

45. Having had regard to the circumstances surrounding the acquisition and development of Coles Mede, as well as the relevant case law, officers are satisfied that the Application Land was acquired as part of a wider area of land for the purposes of providing housing, pursuant to statutory powers, and that these powers also empowered the authority to lay that land out as open space, without the need for any further appropriation or ministerial approval. Adopting the reasoning of the Supreme Court in *Barkas*, users of land acquired and held in such a way could not be considered ‘trespassers’, because their use was pursuant to a statutory right to do so. It follows that use of the land in this case will have been ‘by right’, and not ‘as of right’, and this point alone ought to be fatal to the application.

Ground 2 (Beresford)

46. As a supplementary point, and in the alternative to *Ground 1*, WCC also asserts that the ruling in *Barkas* that the *Beresford* case should no longer be relied upon reinforces the argument that use of the Application Land will have been ‘by right’, owing to the fact that it has been laid out and maintained as open space (*Ground 2*).
47. In light of the conclusions regarding *Ground 1* of WCC’s objections, the question of whether *Ground 2* is also made out is not considered pivotal. However, officers consider it is arguable that the circumstances of the Application Land are such that the ruling of House of Lords in *Barkas* (in overturning *Beresford*) is of relevance, and applying this ruling, use of the land could be said to have been ‘by right’. Public use has been facilitated and encouraged by the provision of a bench, waste bins, and by the regular mowing of the grass. The land therefore appears to fall within the scenario set out by Lord Carnwath when he stated that acts of maintenance by a public authority to facilitate use of the land implied a permission to use it, and “*not that the public had no rights, but that the land had been committed to their use under other powers*”. Further, the circumstances in this application appear to be distinct from the position in the *Trap Grounds* case (highlighted by Lord Carnwath), where the land had not been laid out for recreational use and was largely inaccessible.

Statutory Incompatibility (Ground 3)

48. It is also submitted by WCC in objection to the application that, in the wake of the decision of the Supreme Court in the conjoined cases of *R (on the application of Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs* and *R (on the application of NHS Property Services Ltd) v Surrey County*

Council [2019] (collectively referred to as *Lancashire*), the Application Land is not capable of being registered because this would conflict with the statutory purposes for which the land was acquired, and is held (*Ground 3*).

49. Both cases were heard together on appeal from the court of appeal. Lancashire County Council, as the local education authority, appealed against a decision by the Secretary of State to register land held by it for educational purposes as village green. In the other case the NHS contested a similar decision by Surrey County Council.
50. Central to the Supreme Court's deliberations in *Lancashire* was the earlier decision of the same court in *R (Newhaven Port & Properties Ltd) v East Sussex County Council [2015]*. In *Newhaven*, it had been decided that the provisions of Section 15 of the Commons Act 2006 did not extend to an area held under the specific statutes relating to a working harbour. The question for the court in *Lancashire* was whether the same principle applied to land held by statutory authorities under more general statutes, relating in these cases to education and health services. By a majority of 3 to 2, the Supreme Court held that it did, and that in both cases there was an incompatibility between the statutory purposes for which the land was held, and registration of that land as a town or village green.
51. In *Newhaven*, Lord Neuberger and Lord Hodge said:

The question is: 'does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?' In our view it does not. Where Parliament has conferred on a statutory undertaker power to acquire land compulsorily and to hold and use that land for defined statutory purposes, the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes. Where there is a conflict between two statutory regimes, some assistance may be obtained from the rule that a general provision does not derogate from a special one" (Para 93)

52. In the majority judgment in *Lancashire*, Lord Carnwath and Lord Sales endorsed this view:

"The principle stated in the key passage of the majority judgment at para 93 is expressed in general terms. The test as stated is not whether the land has been allocated by statute itself for particular statutory purposes, but whether it has been acquired for such purposes (compulsorily or by agreement) and is for the time-being so held. Although the passage refers to land "acquired by a statutory undertaker", we agree...that there is no reason in principle to limit it to statutory undertakers as such..." (Para 56)

53. And referring specifically to the circumstances of the *Lancashire* and *NHS* cases, they stated:

"[Village green] rights are incompatible with the use of any of [the application land] for education purposes, including for example construction of new school buildings or playing fields. It is not necessary for LCC to show that they are currently being used for such purposes, only that they are held for such statutory purposes." (Para 65)

“Similar points apply in the Surrey case...the issue of incompatibility has to be decided by reference to the statutory regime which is applicable and the statutory purposes for which the land is held, not by reference to how the land happens to be being used at any particular point in time.” (Para 66)

54. WCC asserts that because the Application Land formed part of land acquired for housing pursuant to statutory powers, and has continued to be held for this purpose, it is entitled to use that land for those purposes. Further, WCC states that registration of the land as village green would preclude the development of the land in this way. For that reason, WCC states that the ruling in *Lancashire* applies in respect of the Application Land, and this is fatal to the application.
55. It is considered that the principle established in *Lancashire* is engaged in respect of the Application Land. The land was acquired for a statutory purpose, and there is no evidence before the County Council to suggest that there has been any subsequent appropriation to another purpose. Although the Applicants argue that the provision in the Housing Acts that enables authorities to lay out land as open space would not conflict with the registration of the Application Land as a village green, to do so would restrict WCC’s capacity to subsequently develop any part of the Application Land under the statutory purposes for which it was originally acquired. As discussed above, no appropriation was necessary to set the land out as open space, this being expressly provided for in the Housing Acts. It would still be open to WCC to use the land for another purpose within the statutory powers under which it was held (such as the building of houses). However, this notwithstanding, in accordance with the principle established in *Lancashire*, it is not necessary for WCC to demonstrate that there is a positive intention to develop the land for housing purposes, only that it is held for such purposes (see Paragraph 53 above).
56. As established in *Newhaven* and *Lancashire*, the provisions of the Commons Act 2006 do not override the statutory purpose for which the land was acquired - as Lord Carnwath and Lord Sales stated in the majority judgment in *Lancashire*:

“We do not find the construction of the 2006 Act as identified by the wider reasoning of the majority in Newhaven surprising. It would be a strong thing to find that Parliament intended to allow use of land held by a public authority for good public purposes defined in statute to be stymied by the operation of a subsequent general statute such as the 2006 Act. There is no indication in that Act, or its predecessor, that it was intended to have such an effect.” (Para 61)

As the statutory purpose for which the land was acquired (under the provisions of the Housing Acts of 1925 and 1936) would conflict with the registration of the land under Section 15 of the Commons Act 2006, following the ruling in *Lancashire* it follows that the Application Land is incapable of being registered as a village green.

57. The Applicants highlight the fact that the *Lancashire* case was decided by a narrow majority of three to two, and quote the dissenting view of Lord Wilson in *Lancashire* that, if Parliament’s intention had been for public authorities which hold land for specified statutory purposes to be immune from the effects of registration, it would have made specific provision for this within Section 15 of the Commons Act 2006.

However, as WCC has pointed out, Lord Wilson was in the minority, and its objections to the application place reliance on the majority decision, which takes precedence.

Other Matters

58. There follows a discussion of other issues raised during the consultation and exchanges between the parties.

Acquisition of the land

59. The Applicants have questioned whether WCC has adequately demonstrated that the Application Land was acquired for the statutory purposes it contends, and points out that the copies of conveyances provided by WCC make no mention of this purpose. In response, WCC points to two cases to support its assertions that the land was acquired for statutory purposes - the *Lancashire* case, and *Naylor v Essex County Council* [2014].
60. In *Lancashire*, Lancashire County Council had provided copies of records reflecting the management of the land by its Education Department, Land Registry documents showing that it owned the freehold to the land, and copies of conveyances (which made no mention of the purpose for which the land was being acquired). The Inspector at first instance concluded that the information regarding the purposes for which the Application Land was held by Council was 'unsatisfactory'. However, when the case reached the High Court, Justice Ouseley stated that he would have taken a different view:

"I rather doubt that, confined to the express reasoning in the DL [the decision letter], I would have reached the same conclusion as the inspector as to what could be inferred from the conveyances and endorsements on them in relation to the purpose of the acquisition of the various areas. I can see no real reason not to conclude, on that basis, that the acquisition was for educational purposes. No other statutory purpose for the acquisition was put forward; there was no suggestion that the parcels were acquired for public open space. I would have inferred that there were resolutions in existence authorising the acquisitions for that contemporaneously evidenced intended purpose, which simply had not been found at this considerable distance in time. It would be highly improbable for the lands to have been purchased without resolutions approving it. The presumption of regularity would warrant the assumption that there had been resolutions to that effect, and that the purpose resolved upon would have been the one endorsed on the conveyances. This is reinforced by the evidence in DL para 116, which shows the property, after acquisition, to be managed by or on behalf of the Education Committee. The actual use made of some of the land is of limited value in relation to the basis of its acquisition or continued holding." (Para 57)

Despite this view, Justice Ouseley was unwilling to conclude that the Inspector's findings had been 'irrational'. However, when the case reached the Supreme Court, the Lords took a different view:

In our view, Ouseley J's approach to the natural inferences to be drawn from the material before the inspector was correct, but he was wrong to be deflected by

deference to the inspector's fact-finding role. The main difference between them was in the weight given by the inspector to the absence of specific resolutions, from which she found it "not possible to be sure" that the land had been acquired and held for educational purposes. On its face the language appears to raise the threshold of proof above the ordinary civil test to which she had properly referred earlier in the decision. But even discounting that point, she was wrong in our view to place such emphasis on the lack of such resolutions. Her task was to take the evidence before her as it stood, and determine, on the balance of probabilities, for what purpose the land was held." (Para 32).

61. In *Naylor*, which concerned an application to register village green rights on privately owned land that had been managed by a local authority (and the basis for that arrangement), John Howell QC placed reliance on the 'presumption of regularity', stating that "...it must be assumed, unless there is evidence to the contrary, that the District Council did what it did properly and lawfully in pursuance of some statutory power enabling it to do so" (Para 27).
62. Although WCC has not been able to produce any evidence which positively identifies the land as having been acquired for housing purposes (such as statutory powers of the Housing Acts 1925 and 1936, officers consider that there is sufficient contemporaneous evidence which demonstrates, on the balance of probabilities, that this was the case. The parish council minutes relating to the scarcity of council housing in the area, the Winchester College valuation reports which confirmed that the College had "...sold the western half of the field to the Winchester RDC for a housing site in 1936, and a further plot adjoining that area for a similar purpose in 1938", and by the evidence that the land was developed in the years immediately after acquisition (as shown on Ordnance Survey mapping from the period), all provide corroborative evidence to support WCC's assertions.

Statutory holding power

63. The Applicants state that no evidence has been provided to demonstrate that the land is laid out as open space pursuant to any Housing Act or any other statutory power. They cite *R (on the application of Goodman) v Secretary of State for Environment, Food and Rural Affairs [2015]*, which found that it is not possible to infer a change in appropriation as a result of how the land is actually being used by the Council.
64. As discussed above, the provisions of the Housing Acts of 1925 and 1936 made provision for a local authority to lay out land that had been acquired for the purpose of providing housing as open space, without the need for further appropriation. The provision of both housing and open space (as well as 'public streets or roads') all fell within the ambit of the Housing Acts. In the absence of evidence to the contrary (and WCC has confirmed that it can find no evidence of any subsequent appropriation of the Application Land to a different purpose) it is reasonable to infer that the land continues to be held for the same statutory purpose for which it was originally acquired.

Conclusions

65. There is *prima facie* evidence that the Application Land has been used for lawful sports and pastimes by a significant number of local inhabitants, for a period that includes the twenty years running up to the submission of the application (1985 – 2015). Although this is contested by Otterbourne Parish Council, the assertion is not disputed by the landowner, WCC. As has been noted in this report, the land has been maintained as open space, with public use seemingly encouraged by the provision of waste bins and a bench, which would be consistent with the type of use necessary to meet the legal test.
66. No submissions have been made in respect of the identification of the locality served by the Application Land, but in any event, they are not considered relevant to the determination of the application.
67. Although the Applicants assert that WCC has not proven the purpose for which the Application Land was acquired, the *Lancashire* case affirms that the burden of proof in this matter is the ‘ordinary civil test’, and so it need only be demonstrated on the *balance of probabilities* that WCC had acquired (and subsequently held the land) under the statutory powers that have been asserted. The contemporaneous evidence indicates the purpose for which the land was acquired, and that it was developed shortly afterwards.
68. As set out in Ground 1 of WCC’s objections, it is considered that use of the Application Land has not been ‘as of right’, by virtue of the statutory provisions under which it was acquired and subsequently held, which specifically provided for the land to be set out as open space. Following the ruling in *Barkas*, use is therefore deemed to have been ‘by right’, on account of it having taken place on land held by a local authority that was provided specifically for the purpose of public recreation, and so the requirement of ‘as of right’ under Section 15(2)(a) of the Commons Act 2006 has not been met.
69. WCC also argues that, if it is held that the Application Land was not laid out as open space pursuant to statutory powers then, as a result of the ruling in *Barkas* (in overturning *Beresford*) the fact it was laid out and maintained as open space will also have rendered use ‘by right’ (Ground 2). Officers consider that the decision in *Barkas* to rule that *Beresford* was wrongly decided, provides support for this argument, and so the requirement of ‘as of right’ under Section 15(2)(a) of the Commons Act 2006 has not been met.
70. Without prejudice to the above points, it is also considered that the application must fail for reasons of statutory incompatibility (Ground 3). The decision in the *Lancashire* case means that registration of the Application Land as a village green under Section 15 of the Commons Act 2006 would conflict with the statutory purpose for which the land was acquired (and is still held), under the provisions of the Housing Acts.

71. In light of the above, it is considered that the application to register as a town or village green the land, shown edged blue on the plans appended to this report should be refused.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes/no
People in Hampshire live safe, healthy and independent lives:	yes/no
People in Hampshire enjoy a rich and diverse environment:	yes/no
People in Hampshire enjoy being part of strong, inclusive communities:	yes/no
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because the County Council, in its capacity as Commons Registration Authority, has a legal duty to decide whether the register of towns and village greens should be amended.	

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

File: VG 266 – Coles Mede

Countryside Access Team
 Castle Avenue
 Winchester
 SO23 8UL

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in Section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within Section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within Section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

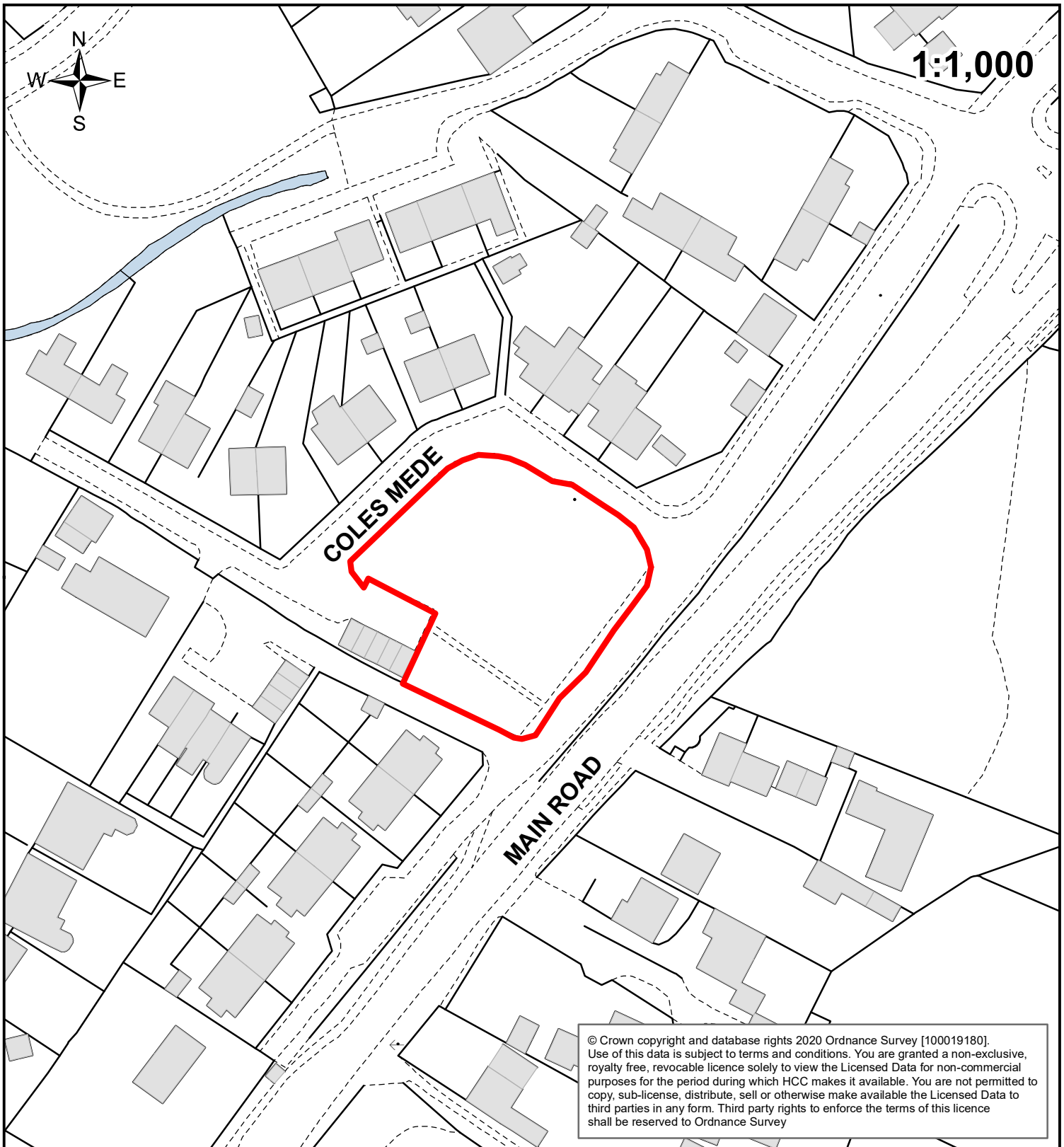
Hampshire County Council, in its capacity as in its capacity as Commons Registration Authority, has a legal duty to decide whether the register of towns and village greens should be amended. It is not considered that there are any aspects of the County Council's duty under the Equality Act which will impact upon the determination of this application.

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Commons Act 2006 - Section 15(1)

Notice of an application for the registration of land as a town or village green



COLES MEDE, OTTERBOURNE



Approximate extent of land
Page 89 subject to this application

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Mr H Goodchild
Map Review Manager
Hampshire County Council
Countryside Access Team
Castle Avenue
Winchester
SO23 8UL

Your Ref:
Our Ref : MW/TVG Coles
Contact: Michael Woods
Direct Line: (01962) 848181
M: 07713 691821

Email: mwoods@winchester.gov.uk

By email to: Harry.Goodchild@hants.gov.uk
and by post

25 June 2020

Dear Sir

Application for the registration as a town green of land described as The Green, Coles Mede, Otterbourne, near Winchester, Hampshire SO21 2EG.

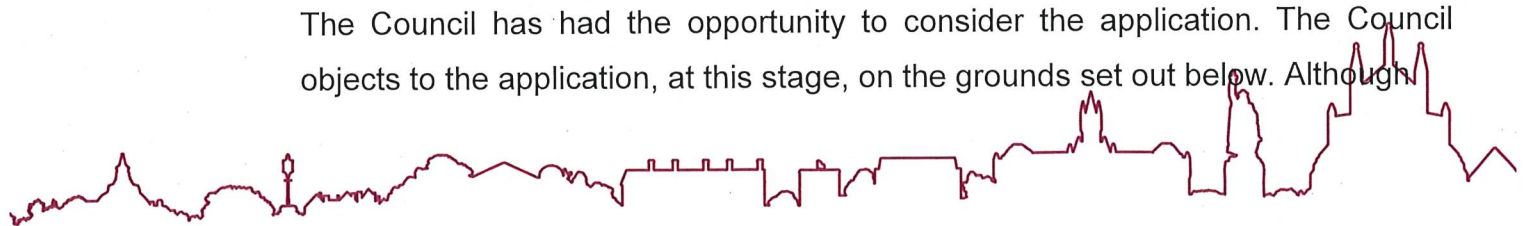
Application Reference: VG266.

By an application ("the application") made under the section 15(2) of the Commons Act 2006 on 25 June 2015, Jennifer Larby seeks to register as a town green a parcel of land used as public open space and described at part 5 of the application form as "The Green", at Coles Mede, Otterbourne ("the application land").

The application was made to Hampshire County Council as the Commons Registration Authority ("the Registration Authority"). The application has been given the reference VG266.

Winchester City Council ("the Council") is the owner of the freehold interest in the application land. Coles Mede is an unclassified publicly maintainable highway.

The Council has had the opportunity to consider the application. The Council objects to the application, at this stage, on the grounds set out below. Although



the Council has not yet been asked to submit formally its Statement of Objection, it is considered that those grounds of objection, if accepted by the Registration Authority, each are fatal to the application and each give rise to a series of “knock out blows”. As such, the Registration Authority is invited to consider these grounds of objection and the matters raised, as preliminary issues and to determine, on the basis of them, that the application should be rejected at this stage.

The grounds of objection set out below are limited to those which, the Council considers, generate *in principle* objections to the application. The Council reserves an entitlement to supplement or to amend these grounds of objection should the application proceed further.

Approach to the Determination of the Application

The burden of proving that the relevant qualifying criteria are met rests on the Applicant.

The standard of proof is the civil standard, namely the balance of probabilities. The need for particular and careful scrutiny of the Applicant's case has been emphasised by the Court. In *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 Lord Bingham held as follows, at paragraph 2:

“As Pill LJ rightly pointed out in *R v Suffolk County Council, Ex p Steed* (1996) 75 P & CR 102, 111: “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...” It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met...”

The Qualifying Requirements

The relevant qualifying requirements are derived from s.15(2) of the Commons Act 2006. Those are as follows:

- the use of the land for lawful sports and pastimes
- by a significance number of the inhabitants of a locality or of a neighbourhood within a locality

- as of right
- for a period of not less than 20 years up continuing up to the date of the application.

That the application land has been used for lawful sports and pastimes for many years is not in dispute. The grounds of objection set out below are concerned, principally, with the qualifying requirement that use of the application land should be *as of right*.

The Statutory Holding Power

The application land was acquired by the statutory predecessor to the Council - the Winchester Rural District Council - through two separate conveyances completed in 1936 and in 1938. On both occasions, the land parcels were conveyed to the Rural District Council by Winchester College. The consideration payable was stated to be £450 and £150 respectively. As is not uncommon, neither conveyance states the power relied upon for the acquisition, nor the purpose of the acquisition.

However, material within the Council's archive demonstrates that the parcels of land were acquired for the purpose of delivering new homes. The decision to acquire the two parcels of land was made by the Housing Committee of the former Winchester RDC.

Records held by Otterbourne Parish Council are consistent too with the land acquired in 1936 and in 1938 having been acquired for housing purposes. The Parish Council records demonstrate that (a) there was a demand for new council housing in Otterbourne, (b) that the Parish Council were pressing for new housing to be provided, (c) the Parish Council drew the attention of the former Winchester Rural District Council to the availability of land at Otterbourne Hill, and (d) that following acquisition, the land acquired was to be know as Coles Mede, being the name of the former field on which the houses had been built.

Moreover, a valuation report prepared for Winchester College, from whom the two parcels of land were acquired in 1936 and 1938 respectively, records that the land

transferred in 1936 was intended by the Council "for their housing scheme" (see report of 4 August 1936). A further valuation report prepared for Winchester College for the purposes of the acquisition of further land in 1938 records that the Council had "built cottages on the part of the area" conveyed in 1936 (see valuation report of 22 February 1938). Moreover, a third valuation report of 19 January 1945 (which concerns a further parcel of land acquired by Winchester RDC (but outside the application land)), records that "The College sold the western half of this field to the Winchester R.D.C. for a housing site in 1936, and a further plot adjoining that for a similar purpose in 1938".

The land so conveyed was thereafter laid out as a housing estate which became known as Coles Mede.

The application land was developed as part of that wider estate and was laid out and thereafter maintained as an area of open space within the Coles Mede estate. That this was the case is confirmed by Part 7 of the Application form, where it is stated that the application land "was established in 1936 when the current houses of Coles Mede were constructed".

The land has thereafter and at all times been maintained as open space.

At the time of acquisition of land in 1936, the operative legislation by which local authorities were empowered to acquire land for housing purposes and thereafter develop and lay out such land was the Housing Act 1925. By 1938, the relevant legislation was set out within the Housing Act 1936.

Section 58 of the Housing Act 1925 provided a power for a local authority to acquire land for the erection of dwellinghouses. S.59(1)(a) of the Housing Act 1925 provides that where land has been acquired by a local authority for housing purposes then it may "lay out and construct ... open spaces on the land". The corresponding provisions within the Housing Act 1936 are ss.73 and 79(1)(a) respectively.

Where land is acquired by a local authority and thereafter held for housing purposes, it is to be presumed that the authority was acting lawfully and pursuant to the statutory powers available to the authority to acquire and hold land for such purposes. It follows, on the basis of the matters of fact set out above, that, on the balance of probabilities, the application land (together with other land subsequently laid out as Coles Mede) was acquired and laid out pursuant to powers within the Housing Acts (see *Naylor v Essex County Council* [2014] EWHC 2550 (Admin); *R (Lancashire County Council) v Secretary of State for the Environment, Food and Rural Affairs* [2019] UKSC 58) ('Lancashire').

Thus,

- the Application land, as part of a wider parcel, was acquired by the Council's predecessor pursuant to express statutory powers to acquire land for housing purposes; and
- the application land was laid out as open space and has at all material times thereafter been made available and maintained as open space pursuant to statutory powers to provide open space on land acquired for housing purposes.

The relevant documentation which is available in copy form to the Council is included in an appendix to this letter. Some documentation referred to above is held in archives maintained by Hampshire County Council. This material has been inspected by officers of the Council. Given the condition of some of this material, it was not possible to take copies of this material. In the event that the Registration Authority considers that copies of this material would be of assistance, the Council will seek to obtain copies of this same upon request and when the archived can again be accessed.

Grounds of Objection

Ground 1

It is well established in law that where land is held or made available by a local authority as recreational open space pursuant to an express statutory power to do

so, then the use by the public of that land for recreation will be *by right* not *as of right* (see *R (Barkas) v North Yorkshire County Council* [2015] AC 195 ('*Barkas*') per Lord Neuberger PSC at paras.21, 23-24).

The application land was acquired for housing purposes and was laid out as open space pursuant to express statutory powers to do so, as identified above. The land has at all times thereafter been retained and maintained as open space.

Use of the application land as for lawful sports and pastimes here therefore been *by right* rather than *as of right* following *Barkas*.

It follows that the requirement for the Applicant to demonstrate that the application land has been used for lawful sports and pastimes *as of right* throughout the qualifying period cannot be met.

This omission is, of itself, fatal to the application.

Ground 2

Moreover, and without prejudice to ground 1, if (which is not accepted) the application land was not laid out as open space pursuant to the statutory powers set out in the Housing Acts or other statutory powers, then the fact that the land has been laid out and maintained as open space so as to facilitate its use for recreational purposes means that any use of it for lawful sports and pastimes is *by right* in any event (see *Barkas* (above) and *Beresford* (above)).

Ground 3

The application land was acquired for statutory housing purposes. The application land has thereafter remained held for statutory land housing purposes, albeit laid out and maintained as open space. In terms of its statutory holding power, the Council is therefore entitled statutorily to use the application land for general housing purposes, not limited to open space, should it consider it expedient to do so. Such purposes would include its development for housing (subject to securing planning permission).

The registration of the application land as a town green would prevent the use of the land for wider housing purpose; its development to deliver new homes, in particular, would be precluded absolutely.

The Supreme Court confirmed in *Lancashire* that where the effect of registration as a town/village green of land held by a public authority would be to prevent the use or development of the land for the statutory purposes for which it is held then, on the basis of statutory incompatibility, the registration of the land is precluded as a matter of law.

The principle of statutory incompatibility established in *Lancashire* is engaged in respect of the application land. The registration of the application land will preclude its potential future use for general housing purposes by the Council and therefore for the purposes for which it is statutorily held. For the avoidance of doubt, it is not necessary, for the principle of statutory incompatibility to be engaged, for there to be a positive or firm intention to use the land for the statutory purposes which would be impeded by registration. Following *Lancashire*, the registration of the application land is precluded as a matter of law.

Disposal of the Application

The grounds of objection set out above are fundamental and unanswerable.

The issues raised by the above grounds are capable of being determined without the time and expense of a public inquiry which would necessarily be incurred by the Applicant, the Council and the Registration Authority. The Registration Authority is therefore requested to consider these grounds of objection as preliminary issues and to determine whether the application should be rejected accordingly.

We anticipate that the Registration Authority will wish to set directions for determination of a preliminary issue, including for lodging of evidence and any submissions by the Applicant and the Council, as Objector. The Council will provide copies of the archival and other evidential material referred to above in accordance

with such directions or upon request. We request that such directions are issued forthwith.

Yours faithfully

A handwritten signature in black ink, appearing to read 'CK', is positioned above the printed name.

Catherine Knight
Service Lead – Legal

cc The Applicant - Jennifer Larby, 13, Coles Mede, Otterbourne, Winchester, SO21
2EG by post and email

Application made by Ms Jennifer Larby for the registration as a town green of land described as The Green, Coles Mede, Otterbourne, near Winchester, Hampshire SO21 2EG.

Application Reference: VG266.

APPENDIX TO LETTER OF 25 JUNE 2020

CONTENTS:

1. Copy Conveyance dated 24 December 1936.
2. Copy Conveyance dated 31 May 1938.
3. Copy Valuation report prepared for Winchester College of 4 August 1936.
4. Copy Valuation report prepared for Winchester College of 22 February 1938.
5. Copy Valuation report prepared for Winchester College of 19 January 1945.
6. Copy Extracts from records of Otterbourne Parish Council- various dated between 1936 and 1946.
7. Copy Winchester RDC Regulations as to allocation of Tenants for Council houses dated 1 September 1937.



is made the *Twenty-fourth* day of *December* One thousand nine

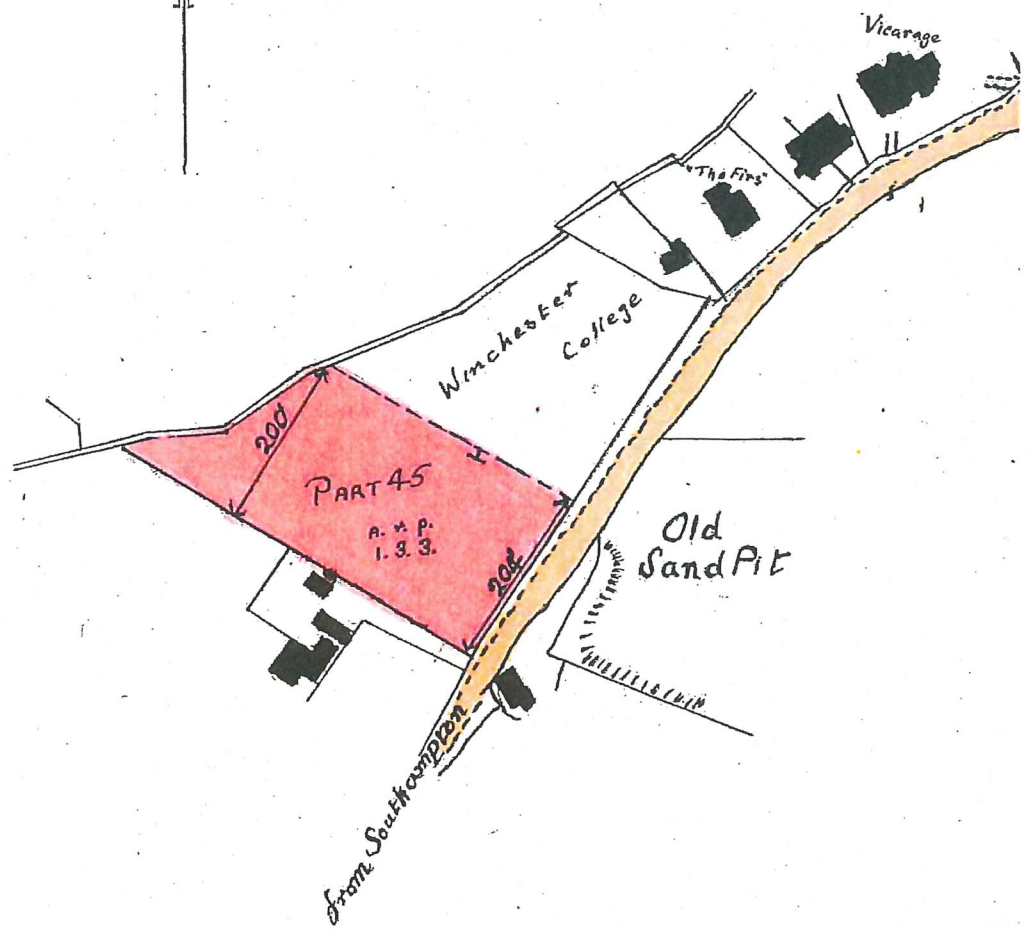
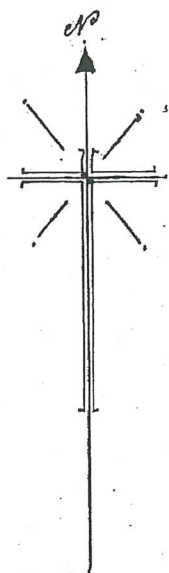
Bill of Lode



hundred and thirty six B E T W E E N THE WARDEN AND SCHOLARS CLERKS OF SAINT MARY COLLEGE OF WINCHESTER near Winchester in the County of Southampton (hereinafter called "the Warden and Scholars Clerks") of the one part and THE WINCHESTER RURAL DISTRICT COUNCIL of 45 Romsey Road in the City of Winchester (hereinafter called "the Council") of the other part



W H E R E A S the Warden and Scholars Clerks are the Estate Owners in respect of the fee simple in possession free from incumbrances of the hereditaments hereinafter described and intended to be hereby conveyed and have agreed with the Council for the sale thereof to the Council at the price of FOUR HUNDRED AND FIFTY POUNDS AND WHEREAS by an Order under his Official Seal dated the sixth day of October One thousand nine hundred and thirty six and made in the matter of the Universities and College Estates Act 1925 exparte the Warden and Scholars Clerks the Minister of Agriculture and Fisheries being satisfied as to the propriety of the said sale did in pursuance of the powers vested in him by the Ministry of Agriculture and Fisheries Acts 1889 to 1919 and the Universities and College Estates Act 1925 authorise the Warden and Scholars Clerks to carry such proposed sale into effect in accordance with the provisions of the said Acts



P.S.

Wm. B. H. 8/6



CONVEYANCE is made the thirty-first day of May One thousand nine hundred and thirty-eight BETWEEN THE WARDEN

AND SCHOLARS CLERKS OF SAINT MARY'S COLLEGE OF WINCHESTER near Winchester in the County of Southampton (hereinafter called "the Warden and Scholars Clerks") of the one part and THE WINCHESTER RURAL DISTRICT COUNCIL of 45 Romsey Road in the City of Winchester (hereinafter called "the Council") of the other part

WHEREAS the Warden and Scholars Clerks are the Estate Owners in respect of the fee simple in possession free from incumbrances of the hereditaments hereinafter described and intended to be hereby conveyed and have agreed with the Council for the sale thereof to the Council at the price of One hundred and fifty pounds AND WHEREAS by an Order under his Official Seal dated the second day of May One thousand nine hundred and thirty-eight and made in the matter of the Universities and College Estates Act 1925 exparte the Warden and Scholars Clerks the Minister of Agriculture and Fisheries being satisfied as to the propriety of the said sale did in pursuance of the powers vested in him by the Ministry of Agriculture and Fisheries Acts 1889 to 1919 and the Universities and College Estates Act 1925 authorise the Warden and Scholars Clerks to carry such proposed sale into effect in accordance with the provisions of the said Acts

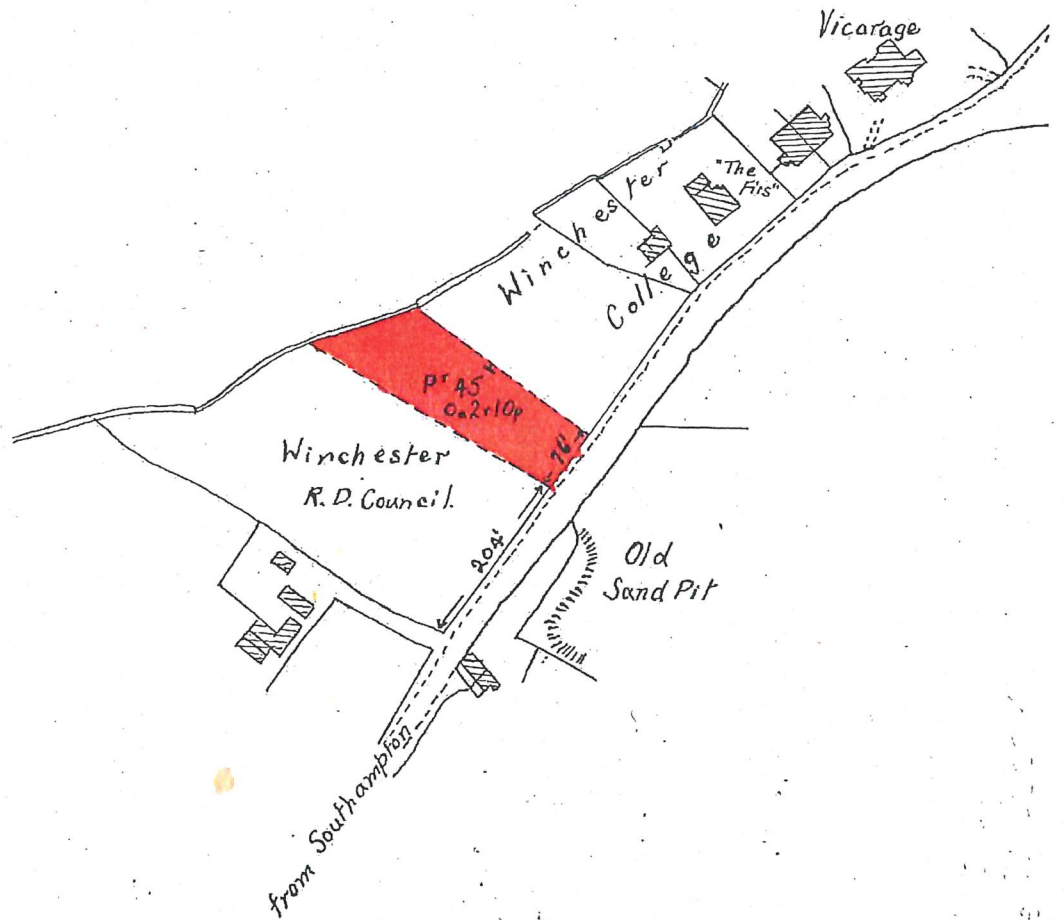
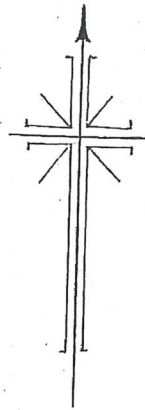
NOW THIS DEED WITNESSETH as follows:-



Produced
Stout

OTTERBOURNE

HANTS



— ORD: SCALE — 1/2500 —
Hampshire Sheet XLIX.16 Ed. 1909

COPY.

Stamp: 15/11/36

VALUATION and REPORT on land at OTTERBOURNE, in the County of HANTS, the property of MANCHESTER COLLEGE and proposed to be sold.

The land is coloured red on the tracing attached to this report, forms part of Ord. No. 45, and contains an area of ~~1.3.3~~ ^{1.3.3} or thereabouts.

The total area of Ord. No. 45 is 3. 0. 18. It is pasture and is let on a yearly tenancy to Mr. P. F. Jewell at a rent of £6. 0. 0. per annum.

The field is subject to the rentcharge computed at £1.13. 0., and it is proposed to apportion the Tiths and rent on the land proposed to be sold at 155/6d and £3 respectively.

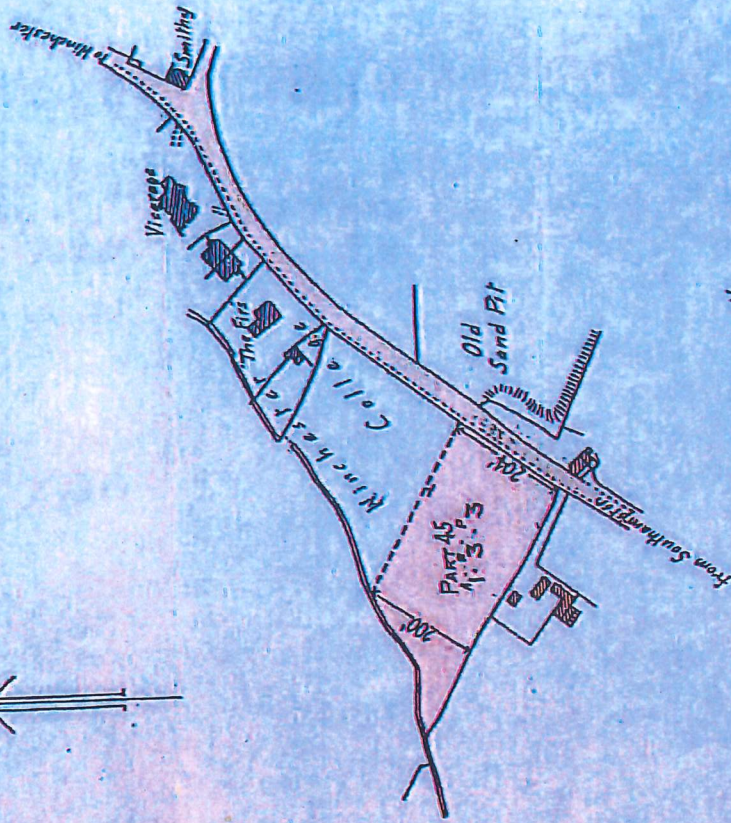
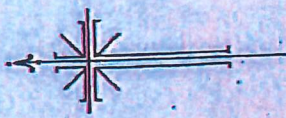
The Manchester Rural District Council now seek to acquire the plot coloured red for their housing scheme, and have agreed to pay FOUR HUNDRED AND FIFTY POUNDS (£450. 0. 0.) for same, to fence the eastern boundary and to pay the College expenses of the sale in addition to the purchase money.

We have inspected the property and have satisfied ourselves that there is no reason why it should not be sold, and we consider that £450. 0. 0. is its full value and that it will be to the advantage of the College to sell at that figure.

Westgate Chambers,
MANCHESTER.
4th August 1936.

(sgd) FINE & ARNOLD.

OTTERBOURNE
HANTS



ORD. SCALE 1/2500
Hampshire Sheet XLIX.16. Edn 1909

1917/12/13
1917/12/13
1917/12/13

copy.

VALUATION and REPORT on land at OTTERBOURNE in the County of HANTS, the property of WINCHESTER COLLEGE and proposed to be sold.

The Ministry will please observe that on the 4th August 1936 we reported on a proposed sale of 1. 3. 3. of land at Otterbourne to the Winchester Rural District Council, the said land being coloured red on the tracing attached to this report.

We now beg to report that the said Council, having built cottages on part of that area, are desirous of purchasing the adjoining strip coloured green on the same plan.

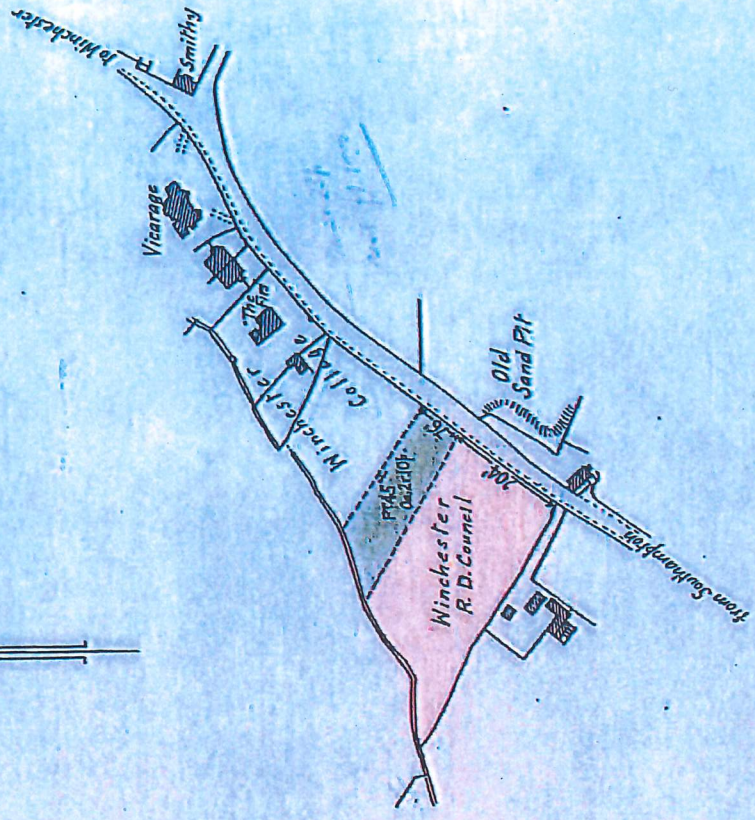
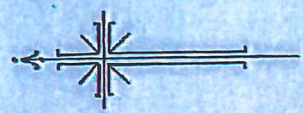
The said strip contains an area of 0. 2. 10. or thereabouts, and we propose to apportion the Tithes Annuity and rent on same at 5s/6d and £1 respectively.

There does not appear to be any good reason why this additional area should not be sold, and having valued it at ONE HUNDRED AND FIFTY POUNDS (£150. 0. 0.) we have ascertained that the Council will be willing to purchase it at that figure, and we recommend the sale accordingly.

Westgate Chambers,
WINCHESTER.
22nd February 1938.

(sgd) PINK & ARNOLD.

OTTERBOURNE
HANTS



ORD. SCALE 1/2500
Hampshire Sheet XLIX.16. Edn 1909

Copy.

Stamp 1/31

Westgate Chambers,
Winchester.

19th January, 1945.

VALUATION and REPORT on a plot of land at OTTERBOURNE
in the County of HANTS, the property of WINCHESTER COLLEGE and
proposed to be sold.

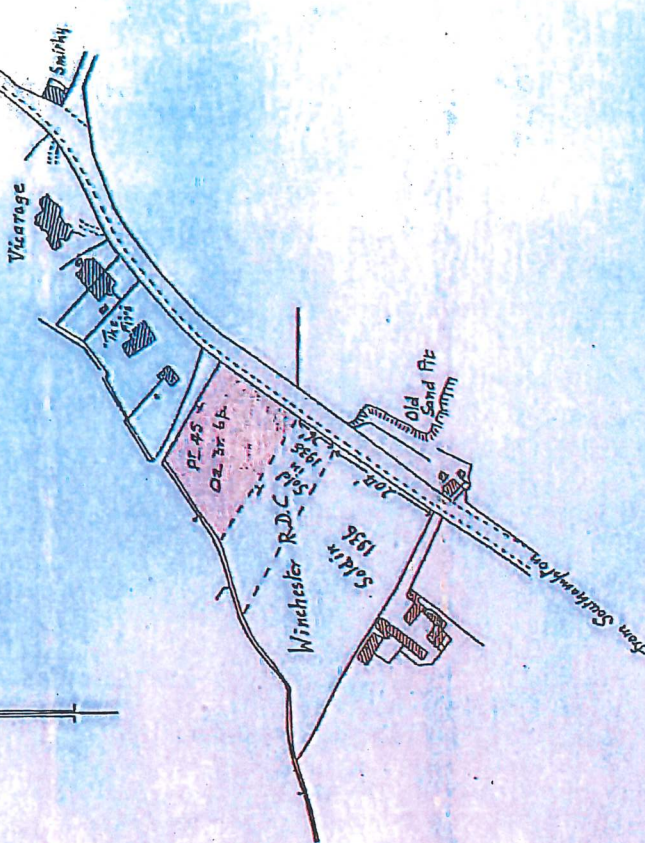
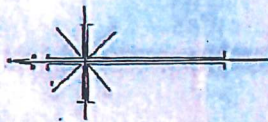
The Freehold plot is coloured red on the tracing attached,
it forms part of Ord. No. 45 and contains an area of 0a.3r.5p.
or thereabouts.

It is let on a yearly tenancy to P.S. Jewell at a rent of
£1. 10. 0. and is subject to the Redemption Annuity 10/8d.

The College sold the western half of this field to the Winchester
R.D.C. for a housing site in 1936, and a further plot adjoining that
area for a similar purpose in 1938. The Winchester R.D.C. now desire
to purchase the remainder of the field for their Post War Housing
Scheme, and the price has been provisionally agreed at THREE HUNDRED
POUNDS (£300. 0. 0.) besides which the R.D.C. will pay the College
expenses of the sale. The tenant is prepared to give early vacant
possession, we are accordingly able to recommend the sale as being
of advantage to the College.

(sgd) Pink & Arnold.

OTTERBOURNE
HANTS



- Ord. Scale - 1:2500 -
Hampshire Sheet XLIX.15.1932

Otterbourne Parish Council Minutes

From Minute Book 19th June 1932 to 19th March 1946

19th May 1936

Council Houses

As several applications had been received for Council Houses in Otterbourne the Council decided for the motion of P. Small sec. by C. Williams that the RDC be approached as to the building of Council Houses in Otterbourne.

16th June 1936

Council Houses

The Clerk read a letter from the RDC stating that at present no available site could be found for building houses.

20th July 1936

Land for Sale

The Clerk was instructed to write to the WRDC and draw their attention to the land now being offered for sale on Otterbourne Hill as suitable for the building of Council Houses on.

15th September 1936

Council Houses

The Clerk reported that she had received a communication from WRDC together with some applications for Council Houses in Otterbourne, stating that unless bona fide applications were received showing a need for Council Houses the question could not be put before the RDC.

19th June 1937

Council Houses

As it was proposed to build the Council Houses without a fixed bath, the Council thought it necessary that they should be acquainted (sic) with the reason of only fixed baths in the bungalows.

15th July 1937

Special Meeting

A Special Meeting was called on Thursday July 15th with regard to the allocation of Council Houses.

The Chairman reported that there was dissatisfaction over the way the houses had been allotted. He had visited the RDC offices and found no letter had been received with regard to the revised allotment and accused the Clerk of not sending in the letter, this she denied, having handed in the letter and on being asked by C. Cocks the copy of the letter was produced. A long discussion followed and it was ultimately decided on the prop. of C. Moncoat-sec by C. Warn to allocate the cottage to Mrs. Kilford.

17th August 1937

Naming Council Houses

The RDC wrote asking for a suitable name for the Council Houses and it was decided to carry on with the name which had been the field had been known by 'Coles Mede' – this was be forwarded to the RDC.

21st September 1937

Council House Regulation

The regulations with regard to the allocation of Council Houses was discussed and it was agreed to accept the rules as set out by the RDC and that all the members of the Council should form the Committee.

See insert (WRDC Regulations as to Allocation of Tenants for Council Houses) dated 1st September 1937 pinned in to the Minute Book.

Council Houses

Several complaints were received about the Council Houses 1. Sanitation 2. The gravelled road 3. The entrance and the Clerk was instructed to write to the RDC and lay these complains before them.

10th October 1937

Council Houses

The Council discussed the question of having Council Houses built in Otterbourne, but to be kept for the use of Compton people and the RDC were to be written to, to know why this should be.

16th November 1937

Council Houses

The RDC sent a list of applicants for the forthcoming Council Houses with a request that the Council should make a selection and forward it to the RDC and the selected list was as follows

1. Mrs. Carter 2. Mr Dowling 3. M. Steele 4. Miss Thorne 5. M. Wallis 6. M. Ward

19th April 1938

Council Houses

Two further applications for Council Houses were received one from Mr. Horn who (sic) house is to be demolished during the summer and one from a Mr. Taylor which it was decided to turn down as he had no connection with the Parish in any way. The amended list now reads as follows

1. Mr. Horn 2. Mr. Smith 3. M. Carter 4. M. Dowling 5. M. Steele 6. Miss Thorne 7. M. Wallis 8. M Ward

15th November 1938

Council Houses

A further selection was made for the Council Houses the four new ones now being all occupied. – as the demand seems to be increasing it was proposed to ask the RDC to erect 6 more in Coles Mede.

17th January 1939

Coles Mede

The road around Coles Mede was reported as being in a very bad state and the Clerk was instructed to write to the RDC in the matter.

18th February 1945

Coles Mede

C. Goodyear raised the question of the state of the road at Coles Mede and the Council agreed that the RDC should be written to on the matter also the CC with regard to the painting of the curbs.

20th March 1945

Council Houses

All the applications for Council Houses in Otterbourne up to date were inspected and a list made for further reference.

19th February 1946

Houses

It was brought to the notice of the Council that there 3 or 4 empty houses on 'The Council' Estate and it was agreed that notice should be handed on to the Housing Committee to ask if they could be requisitioned for to relieve the housing problem in Otterbourne.

WINCHESTER RURAL DISTRICT COUNCIL

Regulations as to Allocation of Tenants for Council Houses

- (a) Parish Councils to have the arranging of lists of prospective tenants of Council Houses and are requested to insert on all Agendas of their meetings an item on these lines "To inspect and make any necessary alterations in the list of applications for Council Houses".
- (b) Application forms from prospective tenants will be forwarded by the Clerk of the Council to Clerks of Parish Councils at the end of each month, with a request that they be returned to him as soon as possible after the next Parish Council meeting, with list revised if found necessary.
- (c) New application forms only will be sent to Parish Councils each month.
- (d) Cases from the Parish concerned arising under the overcrowding and slum clearance (demolition order) provisions of the Housing Act must be given priority and where necessary the Clerk of the District Council (with the concurrence of the Chairman of the Housing Committee of the District Council) must have power to vary the selected list to deal with cases of these kinds. Apart from this the Housing Committee is to be final deciding authority for allotting the houses but where any variation in a selected list becomes necessary the Clerk of the Parish Council will be notified.
- (e) Parish Councils are requested to see that tenants keep the ground attached to houses in decent order and if they fail to report them to the Rural District Council.
- (f) That as Council Houses are generally speaking intended, for accommodating "The Lower Paid Workers" applications from such persons be given a preference.
- (g) Parish Councils to be given the option of accepting the powers of acting for the District Council in these matters, but it must be clearly understood that in the event of any definite indication of cases of unfair discrimination being brought to the notice of the District Council that Council shall have the right to revoke the delegation of its powers in this connection.

45 Romsey Road,
WINCHESTER.
1st September 1937.

G. H. GARDNER
Clerk of the Council.

Otterbourne

Lead of Roman Standard found

56



47
II.53I

Appendix 3 - Ordnance Survey County
Series 1:2,500 - 1946

Reproduced with the permission of the
National Library of Scotland

Otterbourne



Head of Roman Standard found

48
3.856

61
4.271

Winchester... 4
Southampton... 8

69
1.054
M.S.
BM.109-93

48a
276

64
472

62
714

White Horse
(P.H.)
63
1.240

Page 112

68a
1.3154

Church

68
2.679
Otterbourne
House

S.D.

L ROAD
COLE'S MEDE

70a
1.534

70
1.734

40a
1.017
40a1
379

COLE'S
MEDE
45
2.396
46
319

45a
779

47a
2.593

42
2.722

Your Reference
VG266
Our Reference

By Email and Post

Mr H Goodchild
Map Review Manager
Hampshire County Council
Countryside Access Team
Castle Avenue
Winchester
SO23 8UL

20 December 2020

Dear Sir

Registration of the Town Green at The Green, Coles Mede, Otterbourne, Hampshire SO21 2EG ("the Land")

Application Reference VG266

An application was made by Jennifer Larby with the above reference to register the Land as a Town Green ("the Application"). We have recently been copied into the objection letter submitted by Winchester City Council ("the Council") dated 25 June 2020 (a copy of which is enclosed) ("the Objection Letter").

We consider that the objections made by the Council in the Objection Letter cannot currently be made out. We therefore consider that the representations in the letter should be disregarded, and the Application should be granted as soon as possible.

Response to the Council's Grounds of Objection

1. Various appendices were attached to the Objection Letter. In respect of the first two enclosures, namely the Conveyance dated 24 December 1936 and the Conveyance dated 31 May 1938, only the first page of the conveyances have been provided. It is impossible to fully understand the conveyances from that information provided. You will no doubt require full copies of such documents to be provided in order to rely upon them and their terms. Without the full conveyances, we are unable to comment further on their applicability.
2. The Letter of Objection refers to "material within the Council's Archive" demonstrating that the parcels of land were purchased for the delivery of housing. It is unclear from the Objection Letter whether that "material" is the information enclosed with the Objection Letter, or whether it is some further information that neither you nor we have been furnished with. Clearly, the Registration Authority is unable to rely on the statement that the parcels were demonstrated for the delivery of housing without that statement being clearly substantiated. So far as we can see, the documentation provided by the Council plainly fails to adequately do so.

T +44 (0)370 903 1000
F +44 (0)370 904 1099
gowlingwlg.com

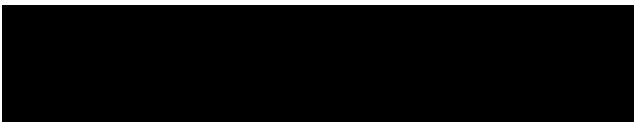
Gowling WLG (UK) LLP is a limited liability partnership registered in England and Wales under registration number OC304378 and is authorised and regulated by the Solicitors Regulation Authority. A list of members may be inspected at 4 More London Riverside, London, SE1 2AU, its registered office.

Gowling WLG (UK) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at www.gowlingwlg.com/legal.

3. The Council appears to accept that all of the requirements of registration as a village green are met, with the exception of using the land "as of right", and, in particular, whether the use of the land is *precarious*. We therefore do not seek cover any issues other than those raised by the Council.
4. We accept that the Council is correct that the onus to prove that the land is a village green is on the applicant. However, notwithstanding the fact that the Council's objections have been split into three different "grounds", all of those grounds are reliant upon the Council demonstrating that the land is being held for purposes pursuant to the current Housing Act. It is plainly not within the applicant's gift to demonstrate how the land is, or is not, held by the Council. The Council must be required to provide evidence clearly demonstrating how the land is held. Based upon the documentation provided, the Council is yet to do so.
5. The Council's position appears to be that the land is held was acquired for housing purposes at a time when the Housing Act 1925 would have been the relevant legislation. No evidence is provided that the land is laid out as open space pursuant to any Housing Act or any other statutory power. The land was originally appropriated for the delivery of housing, and not for the provision of open space, and as per *Goodman*¹, it is not possible to imply a change in appropriation as a result of how the land is being used by the Council. The Council states that the land was laid out as open space pursuant to an express right to do so, but no evidence is provided that the land was laid out for such purposes.
6. In the event that the Council cannot establish that the land is held under the Housing Act or any other statutory power, then the reasoning in *Barkas* does not apply.
7. The Council seeks to differentiate between Ground 1 and Ground 2, but they are essentially the same.
8. Furthermore, Ground 3 is also predicated on the fact that the land is held for housing purposes pursuant to the Housing Acts. Again, no evidence has been provided to demonstrate this.
9. In the event that the Registration Authority finds that the land has not been acquired, laid out and retained as open space pursuant to the express ability to do so pursuant to the Housing Acts, then there is no indication that the land is used with permission. In that event, the City Council acknowledge that all of the other requirements of the registration of the land as a village green are met, and therefore the Registration Authority should register the land as a village green immediately.

We trust that this is helpful, and we look forward to hearing from you in due course

Yours faithfully



¹ *R (on the application of Goodman) –v- Secretary of State for Environment, Food and Rural Affairs* [2015] EWHC 2576 (Admin)



Dear Harry,

I am writing in response to the objections laid out by Catherine Knight of Winchester City Council and Otterbourne Parish Council in regards the Village Green registration application VG266 for 'The Green, Coles Mede, Otterbourne'.

I will demonstrate below that the objection presented are invalid and must be rejected.

Firstly, the objection from Otterbourne Parish Council asserts there no evidence that the application meets the tests required for registration under section 15 of the Commons Act 2006.

Evidence submitted with the application prove that the following requirements for registration have been met and the land owner, Winchester City Council, does not contest these:

- The land is used for lawful sports and pastimes
- The land is used by significant number of the inhabitants of a locality or of a neighbourhood within a locality
- The land has been used in this manner for a period of not less than 20 years and continues to be used in this way to the present day

The requirement that use of the land is 'as of right', is being contested and this is addressed below.

As we demonstrate that the objections of the City Council are without basis and that the requirements for registration of The Green under the Commons Act are met, we encourage the County Council as commons registration authority to grant village green status to The Green in line with the powers granted to the public by The Commons Act.

Response 1 – Holding of Land:

The basis of all of Winchester City Council's objections are predicated on the land being held under powers granted by the Housing Act for the statutory purpose of the provision of housing.

They assert this is the case in their letter of objection, yet they provide no evidence to prove the land is held under the Housing Act. As this act is fundamental to all of their objections, there must be a requirement on the City Council to prove the land is being held in line with the requirements of the act, and that the required ministerial consents have been granted.

Without evidence to support this claim, all of the objections presented by the City Council are without basis and should be dismissed.

Response 2 – Barkas

If evidence is found to support this claim and it is accepted that the City Council is holding the land under the powers of the housing act, there are aspects of our application which differentiate it from the case 'R (Barkas) v North Yorkshire County Council [2015]'. Therefore, the City Council's objections that refer to law established in the Barkas case do not apply to our application and should be dismissed.

Specifically, the Barkas case ruled that land laid out and maintained as 'recreation grounds' pursuant to section 80(1) of the Housing Act, 1936 and with the 'consent of the Minister' could not be determined to be used 'as of right', but use must be 'by right'.

In Paragraph 47 of the ruling on Barkas, Lord Neuberger said:

"... the land concerned was acquired and maintained by the local authority as public recreation grounds under a specific statutory power namely section 80(1) of the 1936 Act, now section 12(1) of the 1985 Act, and accordingly members of the public have used the land for recreation "by right".

The documents provided by the City Council along with their objection show that the first parcel of land acquired for the Coles Mede development extends 200 feet from the south-west border in a north-easterly direction. The Green is directly adjacent to this south-west boundary and extends approximately 135 feet to the north-east. Therefore, even allowing for a significant margin of error, the first parcel of land encompasses The Green entirely.

The City Council assert that the first parcel of land was acquired under powers granted by the 1925 Housing Act. The 1925 act does not include clause 80(1) or an equivalent clause, and therefore there is no specific statutory provision that grants rights for public use of the land in a way that is equivalent to Barkas. In addition, there has been no evidence provided that the ministerial consents required by section 80(1) of subsequent Housing Acts have been granted.

Therefore, the foundation of the City Council's objections based on Barkas are invalid in the context of this application and do not justify that use is 'by right'.

Response 3 – As of right

The City Council highlights the requirement for us as applicants to provide evidence that use of the land is indeed 'as of right'. I refer to law established in the case 'R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council [1999] UKHL 28'.

The Sunningwell judgement established the term 'as of right' is equivalent to the Latin phrase, *nec vi, nec clam, nec precario*: not by force, nor stealth, nor the licence of the owner.

As the land subject to this application has not had access restricted and no licence has been issued that grants the right of use, and without the benefit of the statutory powers introduced in the 1936 Housing Act, it does not meet the criteria that public use of the land is 'as of right'.

I understand that the City Council has now published a statement that issues licence for use of land they hold in a similar manner to The Green, however, our application predates this statement, so it is not applicable to our application.

Response 4 - Beresford

The City Council mentions another case, namely Beresford, to support their second objection. However, when ruling on the Barkas case, Lord Neuberger called into question the reliability of the Beresford case when he said (in paragraph 80):

'... I would hold that the decision and reasoning of the House of Lords in Beresford should no longer be relied on.'

On these grounds the Beresford case is no longer considered to be reliable law and any reference to this case should be dismissed.

Response 5 – Statutory Incompatibility

On the issue of Statutory incompatibility a key case to consider is R (Lancashire County Council) v Secretary of State and R (NHS Property Services Ltd) v Surrey County Council and another [2019] UKSC 58.

The ruling on these cases was contentious with a number of dissenting views and the supreme court unable to reach a unanimous verdict. It is therefore vital that all factors are considered in detail as divergences from the cases considered in this ruling could be significant.

Significantly, our application differs from the above cases, in that the Housing Act 1925 and subsequent housing acts grant explicit powers for land to be laid out as open space (although as discussed previously, the 1925 act does not grant explicit rights of use). This is acknowledged by the City Council in their letter of objection. However, similar powers do not exist for the above two cases, which were related to provision of education and health services, not housing.

Because of this, The Green can simultaneously be held as open space under the powers of the Housing Act (as it has been for 90 years) and simultaneously be registered as a village green under the powers of Commons Act. There is no incompatibility.

It is clearly true that application of Village Green Status would apply some restrictions to future use of this small piece of land. However, this is the very purpose of village green registration; and a move to grant immunity from the Commons Act for any land held under a housing act is incompatible with the statutory rights of the public.

In Paragraph 126 of the Lancashire ruling, Lord Wilson stated:

“If public authorities which hold land for specified statutory purposes are to be immune from any registration of it as a green which would be theoretically incompatible with their purposes, the reach of section 15 of the Commons Act 2006 Act is substantially reduced. One would expect that, had such been its intention, Parliament would have so provided within the section. In the absence of any such provision, whence does justification for it come?”

As there is statutory provision within the Housing Act of 1925 for land to be held and maintained as open space there is no statutory inconsistency between the Housing Act and the rights of the public to register land as a village green under the commons act 2006.

Yours Sincerely,



Mr H Goodchild
Map Review Manager
Hampshire County Council
Countryside Access Team
Castle Avenue
Winchester
SO23 8UL

Your Ref:
Our Ref : MW/TVG Coles
Contact: Michael Woods
Direct Line: (01962) 848181
M: 07713 691821

Email: mwoods@winchester.gov.uk

17 February 2021

Dear Sir

Application for the registration as a town green of land described as The Green, Coles Mede, Otterbourne, near Winchester, Hampshire SO21 2EG.

Application Reference: VG266.

We refer to the formal objection dated 25 June 2020 by Winchester City Council ("WCC") to the application ("the application") made under the section 15(2) of the Commons Act 2006 on 25 June 2015 to Hampshire County Council as Registration Authority ("HCC") under which Jennifer Larby seeks to register as a town green a parcel of land used as public open space and described at part 5 of the application form as "The Green", at Coles Mead, Otterbourne.

Following consideration of the submissions made to HCC by the applicant under cover of email of 6 January 2021 and by the applicant's advisers Gowling WLG by way of letter dated 20 December 2020 regarding WCC's formal objection, WCC offers the following response.

Letter of Philip and Jennifer Larby (sent to HCC under cover of email of 6 January 2021)

Response 1 – Holding Power

The evidence on which WCC relies to demonstrate that the application land was acquired and has at all times since been held pursuant to the Housing Acts is summarised in the Statement of Objection and contained within the appendix thereto. That evidence reveals that on the balance of probabilities the application land was acquired and was laid out and thereafter maintained as open space pursuant to powers in the Housing Acts.



Response 2 – Barkas

The application land was acquired as housing land and laid out as open space pursuant to express powers contained therein (see Housing Act 1926 s.59, Housing Act 1936 s.79 and WCC Statement of Objection page 4). No ministerial consent was required. In *Barkas*, the land was laid out as a recreation ground for which such consent was required (see e.g. s.80(1) Housing Act 1936).

The principle established in *Barkas* is engaged in the same way whether or not ministerial consent is required pursuant to a statutory provision.

Response 3 – As of right

WCC's position is that by reason of the statutory holding power or by reason of the maintenance of the land to make it suitable for public recreational use, any use for lawful sports and pastimes is *by right* and not *as of right* (see Statement of Objection Grounds 1 and 2). That conclusion follows ineluctably as a result of the holding power and the operation of *Barkas*.

Response 4 – Beresford

Beresford was not overruled in *Barkas* in respect of Lord Bingham's conclusions as to the burden and standard of proof (see WCC's Statement of Objection (see page 2)).

Barkas expressly held that encouragement by a landowner of use of land is such that the use is permissive and not as of right. To that extent *Barkas* did overrule *Beresford* and it is in that context that *Beresford* is referred to and relied on for the purposes of ground 2 in the Statement of Objection.

Response 5 – Statutory Incompatibility

The majority judgment in *Lancashire* is that of Lord Carnwath and Lord Sales JSS with whom Lady Black JSS agreed. That majority judgment is the ratio in the case.

TVG registration would prevent the application land being developed for housing, which is the statutory purpose for which the land was acquired. Incompatibility therefore arises. A fixed intention to use the land for such purposes is not necessary for the preclusion to registration by reason of incompatibility to be engaged, as is made clear in *Lancashire*.

Gowling WLG letter of 20 December 2020

WCC's response to the points made in Gowling WLG's letter of 20 December 2020 is as follows, using the same paragraph numbers as used in that letter:

1. A full copy of the Appendix to the WCC letter of 25 June 2020 addressed to Mr. Goodchild was sent to Ms. Larby by email of 29 June 2020 and by post (as attached).

2. The information relied on by WCC in support of its position as to the holding power is enclosed as Appendices to the Statement of Objection.
3. This is accepted and reflects WCC's position.
4. WCC has shown that the application land was acquired and is held for housing purposes and was laid out and is maintained as open space pursuant to statutory provisions set out in the Housing Acts. This is fully particularised in the Statement of Objection.
5. WCC's position is set out in its Statement of Objection. The application land was acquired and is held for housing purposes and was laid out and maintained as open space pursuant to express provisions included in successive Housing Acts. No appropriation is claimed and none is relied on. WCC can only act pursuant to statutory powers. The powers relied upon were those in the Housing Act 1925 and successor Acts.
6. The land has been established to have been acquired and laid out pursuant to the Housing Acts.
7. Grounds 1 and 2 are advanced in the alternative; they are not the same. The Statement of Objection is entirely clear. Gowling LLP misunderstand the difference between the two grounds.
8. Already answered above.
9. Ground 2, in the alternative to ground 1, is that *if* (which is not the case) the application land was not acquired for housing purposes and laid out and maintained as open space pursuant to express provisions within the Housing Acts, the fact that the land has been maintained as open space to facilitate public use is such that any use for lawful sports and pastimes would be permissive in any event.

HCC as the Registration Authority is requested to consider the above responses as part of WCC's formal grounds of objection as preliminary issues and to determine whether the application should be rejected accordingly.

Yours faithfully



Catherine Knight
(New Zealand qualified)
Service Lead – Legal
Deputy Monitoring Officer

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HAMPSHIRE COUNTY COUNCIL

Information Report

Decision Maker:	Regulatory Committee
Date:	17 November 2021
Title:	Monitoring and Enforcement Update
Report From:	Director of Economy, Transport and Environment

Contact name: David Smith

Tel: 01962 845891

Email: david.smith@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to provide information to the Regulatory Committee on the Monitoring and Enforcement work undertaken by Strategic Planning during the period June 2021 – October 2021.

Recommendation

2. That the contents of this report be noted.

Executive Summary

3. Although the restrictions imposed under the Covid-19 pandemic have been relaxed, allowing site visits to be undertaken on a much more normal basis, liaison with other agencies is still patchy with self-isolation and cases of illness still affecting the possibility of joint visits being undertaken consistently. However, Officers have been able to undertake the highest priority visits and actively investigate any complaints received.
4. The report details the number of complaints on authorised and unauthorised sites, and the outcome of negotiations, including, when necessary, enforcement action undertaken.
5. The report also details development control work dealing with Planning Condition (Article 27) applications and Non-Material Amendments.

Complaints

6. The majority of the complaints received during the period June 2021 – October 2021 refer to unauthorised development (14 sites) and breaches of operational planning conditions on existing mineral and waste sites (5 sites). A number of these complaints related to 2 existing sites that were already the subject of planning applications and were escalated to the formal complaint's procedure to the Chief Executive. These have been detailed separately. Investigation and negotiation have followed on the remaining sites with planning applications on 1 of the sites. Investigations are still ongoing at 2 sites. The remainder have been resolved or were enquiries made about general site operations, fly-tipping, odour and waste related development that

were dealt with in-house or referred to either the Environment Agency (EA) or Local Planning Authorities as non-County matters.

7. **Bunny Lane** – following refusal of the first application for the installation of the washing plant (planning application [20/01753/CMAS](#)) in December 2020, a formal complaint was made to the Chief Executive regarding the failure to secure removal of the washing plant or enforce other conditions on stockpile heights, working hours and surface water drainage.

The County Council conducted its investigation in response to the complaint against Economy Transport and Environment under the Corporate Complaints procedure. It found that Officers have been operating in accordance with National guidance and our own Enforcement Plan to move the operator to compliance with the planning conditions before resorting to formal enforcement action and that the response to the breaches of planning control has been appropriate and proportionate and as a result, the complaint was not upheld. The outcome of this investigation was reported in previous Enforcement Updates to Committee.

The National Planning Policy Framework states that the use of enforcement powers is discretionary, and local planning authorities should act proportionately. If the operator is willing to work with us within the planning process or by agreed remedial action/works, then enforcement action should be a last resort. In this particular case, the planning application was refused on 21 December 2020. The applicant had until 21 June 2021 to appeal against this refusal of the permission. However, they instead decided to re-submit their application to try and address the reasons for the original refusal. This was submitted on 16 February 2021 (planning application [21/00588/CMAS](#)) and reported to the Council's Regulatory Committee in July, at which time it was approved.

Although the original commissioning work has now been completed, they have continued to experience technical issues with specific parts of the plant such that the wash plant has only been in operation for short periods. This has meant that there has been insufficient working to allow for a proper Noise Assessment as required as part of the noise monitoring and mitigation scheme.

A further application was submitted to address the issue of empty HGV entering and leaving the site outside of the permitted operating hours ([21/00298/CMAS](#)). This was approved by Regulatory Committee on 18 June 2021. Officers continue to visit the site to monitor activities on site and the implementation of the wash plant planning permission.

8. **Calf Lane** - following the submission of an application for retrospective variation of planning permission for the use of a picking station in association with the recycling operation allowed by way of a Certificate of Lawful Use, a formal complaint was made concerning failure to correctly process the application, to enforce the conditions detailed in the original Certificate of Lawful Use and to inform the Regulatory Committee in the Monitoring and Enforcement Update of the complaints pertaining to Calf Lane Quarry.

Again, the County Council fully investigated and found that Officers had been operating in accordance with National guidance and the relevant policies and guidance in relation to the processing of the planning application and its

monitoring and enforcement duties. The full outcomes of the investigation were reported in previous Enforcement Updates in March and July 2021.

The application ([20/02979/CMAS](#)) for changes to the permitted picking station and fines machinery was approved by Committee on 20 October 2021. This was subject to conditions on the agreement of a Noise Management Plan and a commitment by the operator to set up a Liaison Panel meeting to improve the communication between operator and local residents. Arrangements are in hand in setting up the Liaison Panel, with attendees being drawn up and local Member, Councillor Glen, to chair.

Enforcement Actions

9. In the period to October 2021, there was 1 Planning Contravention Notice served, with all other matters either addressed through the planning system or remedied through negotiation.
10. The following provides an update on the latest Notice and enforcement activities since they were previously reported to the committee.

Table 1: Update on enforcement activities

Site	Update
Yokesford Hill Estate, Yokesford Hill, Romsey	Site monitoring determined that stockpile heights had increased substantially over the Covid lockdown period, and although the operator had contacted Officers discussed the submission of an application for a washing plant to address the issue, by improving the product and increasing available markets. An application has subsequently been submitted (HCC/2021/0442), but stockpile heights continue to rise, such that they are now visible from outside the site and subject to complaints. A Planning Contravention Notice has therefore been served requiring information as to how the stockpile height is going to be reduced irrespective of any decision on the application for a washing plant.
Waterbrook Industrial Estate, Alton	The site was subject to a planning application to allow for restricted night-time activities including importation of road planings with a resolution to approve subject to a Legal Agreement on lorry routing <u>planning application 51471/007</u> . The Legal Agreement has been signed and the planning permission issued. A Liaison Panel was also to be set up for the site to encourage greater interaction between the operator and local residents. However, monitoring of the site had indicated that operations had ceased, and waste was no longer accepted at the site. A new owner has subsequently acquired the site and has recommenced operations. They have indicated that they are keen to engage with the Liaison Panel

	and a virtual meeting has been arranged for November 2021.
Carousel Dairy (Basingstoke AD Plant), Manor Farm, Farleigh Wallop, Basingstoke	<p>An application to make the vehicle increases permanent, with other negotiated changes to conditions, was approved at the February 2019 Committee meeting (18/03001/CMA).</p> <p>The ANPR cameras have been retained and access to the database for monitoring HGV movements secured so that any issues in the future can be investigated. There have been no subsequent complaints about HGVs to and from the site and amendments to the Traffic Management Plan, including some changes to road signage, have been agreed by the company and members of the Liaison Panel.</p> <p>There had been issues of odour nuisance to the nearest properties, which were reported to the Environment Agency with increasing frequency since Summer 2019. A new biofilter was installed, but, as there had been no discernible improvement in the situation, the Environment Agency issued an Enforcement Notice requiring measures to be undertaken to improve the odour control process. This led to a number of changes to processes and installation of new equipment, including an application to amend the location and configuration of a previously approved building to contain the screening equipment. The EA were satisfied that their Notice had been complied with and the works undertaken. Further works have continued with improved cooling systems, and the latest results appear to indicate that the problem has largely been addressed. Monitoring is still ongoing with regular Liaison Panels, the last of which was newly constituted under the updated protocol.</p>

11. Further information on the full suite of enforcement powers available to the County Council as Minerals and Waste Planning Authority (including powers to service PCNs, BCNs and ENs) are included in the County's [Enforcement and Site Monitoring Plan](#).
12. The following table provides information on the joint enforcement activities which have been undertaken with the Environment Agency, the Police and District Planning Authorities.

Table 2: Update on joint enforcement activities with the Environment Agency, the Police and District Planning Authorities

Site	Joint working with	Update
Whitehouse Field,	Test Valley Borough Council, Environment Agency,	In late 1990s, planning permission was granted by Test Valley Borough Council (TVBC) for construction of an extension to the existing golf course. This involved

<p>Goodworth Clatford</p>	<p>Hampshire County Council Highways</p>	<p>the importation and tipping of inert materials as an engineering operation. This work continued for approximately 10 years until the then operator left the site in 2010 and TVBC considered the development completed. Several years later the operator of Homestead Farm bought the land. He claimed that surveys of the site had shown that the development had not been fully completed and stated his intention to restart work.</p> <p>The authorities did not accept that this is authorised and have liaised closely to ensure that if and when work does start the appropriate enforcement action can be taken. Following legal advice from Counsel, TVBC decided to enforce against any work as a breach of the original permission, with the EA looking to prosecute for tipping without a Permit. Hampshire County Council Highways were also involved as part of the site access is highway land historically used by locals as a small car park, and the landowner had been fencing and blocking it off. Hampshire County Council Highways have therefore taken legal action to secure clearance of the fences and blockades and maintain access.</p> <p>TVBC served Enforcement Notices against preparatory works on site and the variation of the restoration plans showing increased levels, which was the subject of an Appeal Inquiry on 26 – 28 November. A Decision was issued on 13 January 2020. The Decision dismissed the Appeal against the change in levels, although it did allow the Appeal against the preparatory works, and costs were awarded to TVBC. The landowner is now seeking a Permit from the EA to allow the completion of the golf course as originally approved and has Appealed to the Planning Inspectorate over the non-determination of the application.</p>
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<p>Shedfield Equestrian Centre</p>	<p>Winchester City Council, Environment Agency</p>	<p>Shedfield Equestrian Centre has been the subject of numerous complaints and concern from local councillors over the past few months. This site has multiple uses and, as such, involves both the City Council and the County Council, as well as the Environment Agency. The main source of complaints are the number of HGVs, car transporters, etc visiting the site, burning, importation of waste materials, working hours and unauthorised mobile homes/residential uses. Unfortunately, the situation is complicated by the fact that many of the uses on site are permitted.</p> <p>The County Council are involved as part of the site has a Certificate of Lawful Use (CLU) for inert waste recycling, which was won on Appeal against an Enforcement Notice served by Hampshire County Council in 2013. Unfortunately, the nature of CLUs is that they do not impose any enforceable conditions on the operation, so we have no control over number of HGVs visiting, the hours of operation or height of stockpiles. The only control is that there is a red lined plan limiting where the activity can take place. However, it turns out that the operator/landowner has been screening material on a piece of land to the rear of the Equestrian Centre (which happens to be the former Raglington Farm landfill site; filled in the early 2000s and bought by the family a few years ago). They have also tipped material along the treeline forming a bank approx. 1 - 2 m. high. In addition, they have allowed another company to start a small waste transfer activity in another (unauthorised) unit at the back of the business park. All of these activities are unauthorised and have been addressed by remedial work and by the submission of planning applications to regularise the recapping of the former landfill site (HCC/2021/0615) and for the small waste transfer facility (although this is still being validated). The operation of the waste transfer</p>
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		station has been granted by a Permit by the Environment Agency.
Pinks Farm, Curdrige Lane, Curdrige/Poplar Farm, Curdrige Lane, Curdrige	Winchester City Council (WCC)	Complaints have been received by both Hampshire County Council and WCC about operations on both sites, allegedly part of the disposal activities associated with the Shedfield Equestrian Centre. Investigations on both sites are continuing by both Authorities to ascertain any breaches of planning control.
Redlands, Sherfield-on- Loddon	Environment Agency	Following complaints of continuous stream of lorries using a narrow track to access a field adjacent to Redlands, Sherfield-on-Loddon contact was made with the Environment Agency's (EA) Environmental Crime Team. Information from initial investigations was passed on with agreement that further contact would be made once site visit undertaken. However, on arriving at site, was met by the Police who had attended the site on totally separate investigation and removed the occupants. Accompanied access was allowed and it became apparent that 100+ loads of inert waste and trommel fines (predominantly plastic and wood) had been tipped in the field. Upon discussion with the EA it appears that the names and details provided tie in with a larger case the EA are investigating of systematic illegal tipping by hauliers out of London on numerous sites to the west of London. This wider investigation is ongoing, and Hampshire County Council will assist as necessary.

Site Monitoring

13. Chargeable sites – under the [Town and Country Planning \(Fees for Applications and deemed applications\) \(Amendment\) \(England\) Regulations 2006](#), as amended, the County Council is able to charge fees for the monitoring of quarries and landfill sites in the County. Fees are charged for a set number of monitoring visits, the number of visits being dependent on the stage of operations at each site; whether operational, in aftercare or inactive. The number of visits is agreed with each operator and is in line with an assessment of each site made by the County Council. The latest charges were set out in [The Town and Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits\) \(England\) \(Amendment\)](#)

[Regulations 2017](#). Active sites are charged at £397 per visit for between four and eight visits per year. Sites in aftercare are charged at £397 for one visit per year. Inactive sites are charged £132 for one annual visit.

14. There are now 22 active sites, 10 in aftercare and 7 dormant sites liable for chargeable visits.
15. This work has been prioritised despite Covid-19 restrictions, with inspections for the 2nd and 3rd quarters, bringing in approx. £16 700.
16. Non-chargeable sites – these include waste processing sites, wastewater and treatment works and metal recyclers. These vary from the large Energy Recovery Facilities (ERF) and Materials Recovery Facilities (MRF) to the smaller scale recycling and transfer facilities and updating existing wastewater treatment works. The larger developments attract much attention in their locality and require regular monitoring to ensure that the local amenity is not impacted, whereas the smaller, built developments require monitoring during construction and implementation, but once up and running need less regular attention and these sites only get further visits should complaints be received. Matrix working arrangements have been made with Waste & Resource Management that their officers undertaking visits to waste sites operating under the County's waste contract also look at planning issues to provide greater coverage. Under the Covid restrictions, routine monitoring was limited, concentrating on sites with issues or causing complaints. Monitoring of waste sites covered by the County's waste contract has also resumed, these sites having remained open during the pandemic as one of the essential sectors listed by Government.

Liaison Panels

17. During the past year Liaison Panel meetings have been held as virtual meetings to keep these avenues of communication open. Now restrictions have been relaxed the option to hold virtual meetings has been retained where needed. Liaison Panel meetings have been held for;
 - A303 Recycling Facility, Longparish;
 - Kingsley Quarry, Nr Bordon;
 - Basingstoke AD Facility, Basingstoke;
 - Forest Lodge Home Farm, Hythe;
 - Roke Manor, Nr Romsey
 - Waterbrook Industrial Estate, Alton.

Development Management

Relaxation of Planning Conditions due to Covid-19:

18. As report in previous enforcement updated, the worldwide coronavirus pandemic has led to a number of recommendations from Government including the need for Local Planning Authorities to use their discretion on the enforcement of planning conditions which hinder the effective response to COVID-19. The Strategic Planning have had numerous enquiries as to our view to relaxing planning conditions during this period for both minerals,

waste and Regulation 3 developments. A report was produced in response to each request made and was signed off by the Head of Strategic Planning under delegated powers. Local Members are informed on the relaxation. The periods for the relaxation of conditions have ended. The relaxation of conditions did not impact the authority's ability to use its enforcement powers. They were also subject to review should any significant complaints be received.

19. The below provides an update on sites where an update is required.
20. *A303 IBA Facility* – temporary emergency use of adjacent land (formerly subject of the 'Wheelabrator EfW' proposal) for storage of excess IBA. Due to the existing site being almost filled to the increased levels as agreed above, the operator discussed the use of the adjacent site for a temporary period with both ourselves and the Environment Agency. Following submission of detailed information, the EA agreed that the land could be used, subject to 12 conditions (relating to operations) and the use ceasing on the 30 September 2020. Subsequent to this approval, the County agreed the temporary use of this land subject to a further 6 conditions, including setting a maximum stockpile height of 5m and a meeting to review the situation by the end of July. The operator was also required to inform the local Liaison Panel. Although only about a half of the capacity for storage was utilised, the market for IBAA in construction projects has still not recovered and the need for the emergency storage remains. A further temporary extension was therefore agreed until 31 March 2021 by both ourselves and the EA. This agreement was subject to the previous conditions and also on the recognition that there would be no future temporary extension of time. Should any further extension be necessary then a full planning application would be required so that the issue can be formally considered. An application ([21/00812/CMAN](#)) was submitted for permission to construct the needed concrete surfacing and drainage systems to allow the longer term use of the land for storage of IBAA. However, this was withdrawn following consultation as it was then considered to be larger than actually needed. A further application ([HCC/2021/0545](#)) for a smaller area has now been submitted and is out for consultation.
21. *Warren Heath Secondary Aggregate Recycling Facility, Eversley* - relaxation of conditions 15 (Restriction of number of lorry movements) of planning permission (13/00755/CMA) which restricts the number of lorry movements to the site to 42 per day until the public bridleway (Eversley 11) has been permanently diverted. After this, the number of movements can increase to 136 per day. Despite agreeing the alignment, design and construction of the Bridleway diversion with the County Council, the formal process for registering the diversion has been delayed after being referred to the Planning Inspectorate. The current position is under review in line of the continuing bridleway diversion Appeal, a Hearing of which has been held, but the Decision still awaited.

Planning Condition (Article 27) applications:

25. Where conditions of new permissions require details to be submitted and approved for the proper implementation and control of the development, Article 27 applications are required. Under the [Town and Country Planning \(Fees for Applications and Deemed Applications, Requests and Site Visits\)](#)

[\(England\) Regulations 2012](#), a fee per submission is required for the discharge of any details submitted. This is now £116 per submission.

26. During the period, Article 27 applications were received and approved or are being determined for 14 submissions (12 for Regulation 3 developments and 2 County Matter), totalling £1624.
27. As detailed previously, following adoption of the Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the [Town and Country Planning General Regulations 1992](#), enforcement updates now also include information on Article 27 applications for County Council developments and any breaches of planning control.

Non-Material Amendments (NMAs):

28. Non-Material Amendments (NMAs) are minor changes to the operation of authorised sites that can be agreed by an application for non-material amendment if the change has no substantial impact on the local amenity. Such an application requires a fee but does not involve general consultation and determination by Committee.
29. Over the period 4 NMA applications were received:
 - Little Bushywarren Compost Site, Bushywarren Lane, Ellisfield - amendment of an approved plan to show an extra CCTV Column;
 - Huhtamaki (Uk) Ltd, Rowner Road, Gosport - amendments to Eclipse Busway Phase 1;
 - Grange County Junior School, Franklin Road, Gosport - reduction of 10 car parking spaces to the proposed car park;
 - Sonnet Court Bungalows, Selbourne Drive, Eastleigh - the re-shaping of the approved external bin store located in the northwest corner of the existing Sonnet Court car park.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	yes
People in Hampshire live safe, healthy and independent lives:	yes
People in Hampshire enjoy a rich and diverse environment:	yes
People in Hampshire enjoy being part of strong, inclusive communities:	yes

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

Document

Location

None

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