

NOTICE OF MEETING

Meeting	Regulatory Committee
Date and Time	Wednesday, 18th March, 2020 at 10.00 am
Place	Ashburton Hall - HCC
Enquiries to	members.services@hants.gov.uk

John Coughlan CBE
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 the circumstances described in 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 Non-Pecuniary interest in a matter being considered at the meeting should consider whether such interest should be declared, and having regard to Part 5, Paragraph 2 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 3 - 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. UNIT 5-6 WATERBROOK ESTATE WATERBROOK ROAD ALTON (APPLICATION NO. 51471/007 SITE REF: EH156) (Pages 9 - 52)

To consider a report of the Director of Economy, Transport and Environment regarding a planning application for Variation of conditions 5, 11 & 18 of planning permission 51471/003 to allow for restricted night-time activities including importation of road planings at Unit 5-6 Waterbrook Estate, (formerly referred to as Unit 7), Waterbrook Road, Alton GU34 2UD (Application No. 51471/007 Site Ref: EH156).

7. KINGSLEY QUARRY, BORDON (Pages 53 - 98)

To consider a report of the Director of Economy, Transport and Environment regarding a planning application for an easterly extension of the existing sand extraction area, extend the end date for quarry operations and restoration and amend the approved restoration schemes at Kingsley Quarry, Bordon. Application No. 51188/003. Ref: EH025.

8. APPLICATION FOR A DEFINITIVE MAP MODIFICATION ORDER TO RECORD A BRIDLEWAY AT IRONGATE, OSSEMSLEY PARISH OF NEW MILTON (Pages 99 - 138)

To consider a report from the Director of Culture, Communities and Business Services regarding a claim for a public bridleway at Irongate, Ossemsley, in the parish of New Milton, which seeks approval for a Definitive Map Modification Order for the application route, either under the provisions of section 31 of the Highways Act 1981, or through a dedication at common law.

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, 12th February, 2020

Chairman:

* Councillor Peter Latham

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|---------------------------------|-------------------------------|
| * Councillor Lance Quantrill | * Councillor Wayne Irish |
| * Councillor Christopher Carter | * Councillor Alexis McEvoy |
| * Councillor Mark Cooper | * Councillor Neville Penman |
| * Councillor Rod Cooper | * Councillor Stephen Philpott |
| * Councillor Roland Dibbs | * Councillor Roger Price |
| * Councillor Jane Frankum | Councillor Jan Warwick |
| * Councillor Marge Harvey | * Councillor David Harrison |
| Councillor Keith House | * Councillor Pal Hayre |
| * Councillor Gary Hughes | |

*Present

172. APOLOGIES FOR ABSENCE

Apologies were received from Cllrs Warwick and House, and Cllrs Hayre and Harrison attended in their places respectively.

173. 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.

174. MINUTES OF PREVIOUS MEETING

The minutes of the last meeting were reviewed and agreed.

175. DEPUTATIONS

The process for deputations was explained and it was confirmed that there were two deputation for the meeting.

176. CHAIRMAN'S ANNOUNCEMENTS

There were no Chairman's Announcements.

177. CALTHORPE PARK SCHOOL HITCHES LANE FLEET

The Committee considered a report from the Director of Economy, Transport and Environment (item 6 in the minute book) regarding a planning application for a 2-storey block to provide 16 classrooms and associated ancillary spaces and landscaped areas at Calthorpe Park School, Hitches Lane, Fleet (Application No. 19/02417/HCC) (Site Ref: HRE026).

Members received an overview of the application for a further expansion to the school on land that was previously occupied by Hart Leisure Centre. Members heard that the secondary school's capacity needed to be increased due to substantial housing development in the area. Diagrams reflected the planned flow of travel modes to the school and through the school grounds considering existing environmental constraints and pedestrian safety. Naturally ventilated classrooms, a new dining hall, additional parking, and social spaces with softer landscapes would be provided keeping in mind the visual impact of the design as well as highway safety and traffic management.

The Committee received two deputations for this item. Charlotte Gregory spoke first on behalf of the applicant and described how stakeholders (including students, staff, governors, parents, local neighbours, etc.) had been engaged to learn what was working well, what needed addressing and future aspirations. Informal breakout spaces, driveways with a pedestrian feel, buildings with mechanical ventilation facing North and South to avoid overheating and traffic noise, wildflower borders for biodiversity, grass amphitheatre, grab and go servery, and areas for summer clubs were all part of the plans.

Cllr Steve Forster spoke on behalf of his local area and was delighted to see this investment in secondary schooling and building on previous decisions taken by the County Council. The expansion of this fantastic school is an essential element and reflects the population growth in the area. The location and sustainability of the improvements are appreciated, and the engagement undertaken by the officers and school has been commendable. While very supportive of this planning application, Cllr Forster requested minor updates to the plan, suggesting video surveillance in the bicycle storage areas to prevent thefts currently taking place in the area.

In relation to external aspects about highway safety and access, Cllr Forster suggested reducing the speed to 20mph with flashing lights during pick up and drop off times and safer crossings. Pedestrian access from the north is via a very narrow footpath used by over 300 children in an area of severe risk. A bike path through the woods would encourage sustainable, environmentally friendly changes with children safely riding to school.

During questions of the deputation, the following points were confirmed:

- Fire safety updates from 2019 include a new hydrant and sprinkler system linked to a new mains source and the new building will be broken down into 60-minute containment compartments;
- The woods that a potential cycle path could go through is most likely partly owned by Hampshire and some developers of the Edenbrook estate but would need further verification;
- Existing trees on the site would remain with marginal improvements;
- Car park lighting would need to be added;
- On site energy production was maximised during the 2015 expansion and any further infrastructure changes would have a considerable cost;
- Accessible parking bays would exist at several locations on the campus and a new lift installed but currently there are no wheelchair staff or students at the school;
- A liaison panel does not currently exist, but it is up to the school to choose a model for effective engagement with the community;
- Further details about drainage would be submitted for approval prior to construction;
- Current plans reflect working with the school and collaborating with stakeholders to review existing video surveillance, storage, safety, lighting, and pedestrian access issues;
- Speed restrictions are currently reduced to 40mph down from the national speed limit and any further reduction would be a separate matter for highway authority;
- Active measures are being taken to change behaviours and improve control and flow of traffic;
- Projected increase of the student population and the extent of the geographical catchment area could be confirmed by Childrens' Services; and
- Local members could make further representations and follow up directly with Children's Services to address wider issues and any further work needed.

In debate, Members agreed that the project architects and officers had produced an excellent development and commended their hard work. Members were happy to support the plans but also acknowledged and recognized the road safety concerns of the local councillor which could be raised through separate channels.

RESOLVED:

Planning permission was GRANTED subject to the conditions listed in integral appendix B.

Voting Favour - 16 (Unanimous)

178. **BLUE HAZE LANDFILL SITE VERWOOD ROAD SOMERLEY**

The Committee considered a report of the Director of Economy, Transport and Environment (item 7 in the minute book) regarding the need for an extension of time until 30 April 2020 for the satisfactory completion of the Deed of Variation to the Section 106 agreement for permission 19/10066 at Blue Haze Landfill Site, Verwood Road, Somerley.

Members heard that there had been delays in the past, but that progress was being made. Having regard to past delay it was agreed that a further 6 months, until 31 July 2020, would be allowed for completion,

RESOLVED:

1. An extension of time until 31 July 2020 was agreed for the satisfactory completion of the Deed of Variation to the Section 106 agreement for permission 19/10066 to transfer the Section 106 [S106] legal obligations relating to planning permission 07/90183, to secure: lorry routing agreement restricting the use of Harbridge Drove and the B3081 northwards, except for local deliveries; Management Agreement for Nature Conservation and the provision of footpaths/access for public recreation (including amendments to enhance the scheme of environmental compensation); and off-site heathland works within Plumley Wood.
2. An extension of time was agreed until 31 July 2020 for the determination of applications 19/10064 and 19/10063, as they are both dependant on the prior granting of 19/10066.
3. Upon completion of the Deed of Variation, it was agreed that authority be delegated to the Director of Economy, Transport and Environment to grant permission in all other respects in accordance with the resolution for planning applications 19/10066, 19/10064 and 19/10063 made at the meeting held on 17 April 2019.

Voting:

Favour: 16 (unanimous)

179. **NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS IN HAMPSHIRE**

The Committee considered a report of the Director of Economy, Transport and Environment (item 9 in the minute book) regarding updates on current Nationally Significant Infrastructure Projects that were being planned within Hampshire.

Members received an update following the previous one in May 2019, on the four projects:

a. Southampton to London Pipeline

Good progress had been made and the process is nearly at its end. The hope is that the examiner will agree with the recommendations in place.

b. AQUIND Interconnector

This project is being dealt with as a Development Consent Order because the applicant referred it to the Secretary of State; an interconnector would not normally be defined as a Nationally Significant Infrastructure Project. The local authorities requested that the Secretary of State reconsider so it could be determined locally but this was unsuccessful. There are serious concerns regarding the expected disruptions as works could take 3-4 years to complete and are largely within the highway.

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

- Concern about disruptions at the pinch point at the A3 London Road;
- Concern that planned work to address deteriorating network maintenance is being put on hold as a result of the scheme. Hampshire Highways are ensuring that necessary maintenance works are undertaken but any concerns should be addressed to them directly.
- Concern about the potential impact of electromagnetic fields;
- Reassurance that the local authorities are working closely together on this project to ensure a joined-up approach and avoid duplication of efforts;
- Flooding concerns and identifying issues with existing buildings in the Lovedean area ought to be addressed;
- Mitigations about visual impact of the building and the proximity to the South Downs; and
- There is an Officers' Group for this development that includes all stakeholder areas that meets regularly to consider key issues and shared resources.

Local members would continue to make representations to the planning inspector.

c. M3 Junction 9 Improvements

There had been a pre-application process for this consultation but submission of the application is currently delayed as design aspects are being revisited. A statement of common grounds for shared issues is planned for the County Council, Winchester, and the South Downs National Park. Visual impact issues have been noted, alongside other benefits and concerns. The County Council is generally supportive of the project from a transportation point of view

d. Wheelabrator Harewood Waste to Energy Facility

This project was subject to a pre-application consultation before Christmas. The County Council raised serious concerns about the location and compatibility with requirements of the Minerals and Waste Plan, though it will also be judged against the national renewable energy planning statement. There has been a comprehensive response to the consultation and the application is due to be submitted next month. There has been considerable opposition to the proposal and it has been discussed the House of Commons, which may have a bearing on progress. Members noted that representations could be made on this item, but not a decision and the effects are considerable in comparison with the output. There is a 28-day period for the proposal to be accepted after submission and a preliminary

hearing would be set within 3 months. A website with updated information regarding this project would be shared with Members.

RESOLVED:

The Regulatory Committee noted the report.

There was no vote required for this item.

180. MONITORING AND ENFORCEMENT UPDATE

The Committee considered a report of the Director of Economy, Transport and Environment regarding the Monitoring and Enforcement work undertaken by Strategic Planning during the period October 2019 – January 2020.

Members had no questions or concerns about the report shared.

Members heard that complaints had been made about odours from the Basingstoke AD Plant spreading into residential areas north of the motorway. While not a planning matter, an update was provided regarding the Environment Agency having determined that there is a breach of the permit and are intending to serve an enforcement notice. Potential solutions would require a 1 to 3-month lead-in time.

It was noted that an application related to the Waterbrook Estate in Alton will be coming to the Committee next month.

RESOLVED:

The Regulatory Committee noted the content of the report.

Chairman,

HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	18 March 2020
Title:	Variation of conditions 5, 11 & 18 of planning permission 51471/003 to allow for restricted night-time activities including importation of road planings at Unit 5-6 Waterbrook Estate, (formerly referred to as Unit 7), Waterbrook Road, Alton GU34 2UD (Application No. 51471/007 Site Ref: EH156)
Report From:	Head of Strategic Planning

Contact name: Philip Millard

Tel: 01962 846496

Email: philip.millard@hants.gov.uk

Recommendation

1. That, subject to all parties entering into a Section 106 Agreement with the County Council to secure the routing of out of hours Heavy Good Vehicle movements to and from the site, the Director of Economy, Transport and Environment be authorised to GRANT permission subject to the conditions listed in integral appendix A.

Executive Summary

2. The proposal is for variations to Conditions 5 (Operating times), 11 (Dust and noise management) and 18 (Materials permitted) of Planning Permission [51471/003](#) to allow for the importation of road planings, and the night-time importation and exportation of waste at the existing Waste Recycling Centre at Unit 7 Waterbrook Estate, Waterbrook Road, Alton GU34 2UD. It comprises the following:
 - variation of Condition 5 (Operating times) (changed to 6) to allow for 12 HGV movements to and from the site, of the existing 612 limit stated by Condition 20 (HGV movements) (changed to 22), to occur outside the existing operating hours of the site, and therefore, allow for limited night time operations to occur at the site;
 - variation of Condition 11 (Dust and noise management plan) (changed to 12) to allow for the approval of a revised Dust and Noise Management Plan for the site; and
 - variation of Condition 18 (Materials permitted) (changed to 19) to allow for the addition of road planings to the list of waste types accepted at the site.
3. The proposed development includes:
 - 10 HGV movements to and from the site outside of the approved operating hours to enable the importation and tipping of road planings;

- 2 HGV movements to and from the site outside of the approved operating hours to enable the drop off and collection of a preloaded trailer; and
 - Limited on-site operations associated with the above HGV movements to include no additional lighting and limited to that defined in the application.
4. A variation to the above three conditions was previously sought (application 51471/006) and refused on 31 July 2018. This was subsequently the subject of an appeal by the applicant which was dismissed on 29 August 2019 (APP/Q1770/W/18/3217698). The Inspector's reason for dismissal was that without an HGV routing agreement in place the proposal would be harmful to the living conditions of neighbouring residents as a result of vehicle noise during the night time working. This decision and the Inspector's conclusions are important and significant material considerations in the determination of the application.
 5. The applicant has submitted with this planning application a draft copy of the Section 106 paperwork relating to a routing agreement.
 6. A committee site visit took place on 16 July 2018 for application 51471/006. No committee site visit took place for this application, 51471/007.
 7. The application is being considered by the Regulatory Committee, as the Minerals and Waste Planning Authority considers the case to have sufficient public interest to merit determination at Regulatory Committee.
 8. Key issues raised are:
 - the impact of the proposal on the living conditions of neighbouring residents, in terms of noise and disturbance;
 - the impact of light pollution and visual impact on amenity and landscape from night-time operations;
 - dust and noise management at the site;
 - the importation and storage of road planings at the site; and
 - provision of waste transfer and storage for highways works, located on the Strategic Road Network.
 9. The proposed development is not an Environmental Impact Assessment development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#) and an environmental statement has not been submitted.
 10. It is considered that the proposal would be in accordance with the relevant policies of the adopted [Hampshire Minerals and Waste Plan](#) (2013) [HMWP], in that it provides a suitable location to support highways works in Hampshire through the transfer of road planings to an existing Waste transfer facility located on the Strategic Road Network in a central Hampshire location. It is considered that the proposal's benefits in providing this facility for road planings outweighs the impacts to neighbourhood

amenity and the environment within the site's context on an existing industrial estate adjacent to a residential area of Alton along the Strategic Road Network.

11. It is considered that the proposed development for 12 HGV movements per night, when considered with the proposed mitigation, subject to conditions and legal agreement, has been demonstrated to not cause a significant adverse impact on public amenity, noise or light pollution, or to highway safety or amenity.

The Site

12. The application relates to a 2.2-hectare site within the Waterbrook Industrial Estate, within the settlement boundary on the eastern edge of Alton. The site was previously part of the adjacent Alton Sewage Treatment Works and is currently used as a Waste Transfer Station [WTS]. The site is a safeguarded aggregates recycling site in the [Hampshire Minerals and Waste Plan \[HMWP\] 2013](#). The area is allocated as existing employment land (CP4 - Existing employment land) in the [East Hampshire Local Plan Part 1 \(Joint Core Strategy\) \(2014\)](#).
13. The site is surrounded by industrial and commercial land uses with the remaining operational waste water treatment works to the north-east of the site. Mill Lane Industrial Estate is 100 metres [m] to the north-west, Alton Household Waste Recycling Centre [HWRC] is 40m to the west, and Alton Business Centre and Omni Business Centre are 150m and 90m respectively to the south-west of the site. Kendall Bros, Waterbrook concrete batching site is located on the northern boundary of the site. The site is secured by way of metal palisade fencing along the boundary and gates. Both the Alton HWRC and the Kendall Bros Waterbrook concrete batching site are both safeguarded in the HMWP (2013).
14. The site is located within the Townscape Character area of Alton in the [Hampshire Integrated Character Assessment](#). It sits in the area of ALT03 Industrial Estate and Business Park. This is a large, fragmented industrial area and retail park to the south-eastern edge of the town, following the line of the valley and the railway. There are small-, medium- and large-footprint buildings set on a series of small skewed grids. Buildings are functional, generally offering large blank facades to roads. There is a mix of low-key manufacturing and storage facilities with some retail and a food store.
15. The nearest residential properties to the application site boundary are elevated, over-looking properties 230m west of the site, on Wilsom Road. Lynch Hill Cottage is 260m to the north on Waterbrook Road. This property is set back from the Waterbrook Industrial Estate and is closest to the immediate access route for HGVs travelling to and from the site. There is also a large cluster of housing 500m to the south-west located south of Ashdell Road and west of Wilsom Road.

16. The site lies approximately 1.8 kilometres (km) to the north and west of the South Downs National Park.
17. Caker Stream borders the site from the north-west to the south and is separated from the site by a vegetated bank (in the form of a steep sloped bund of around 4m in height), metal palisade fencing and trees. Caker Stream is a chalk stream and is identified as a Biodiversity Action Plan Priority Habitat. Along the southern boundary of the site is a designated woodland improvement area and beyond this is a priority Habitat of Flood Plain Grazing Marsh. The western edge of the site falls within Flood Zone 2.
18. The site is bordered to the south-east by the A31, categorised in the HMWP (2013) as part of the [Strategic Road Network](#). This road has mature trees along each side. Access to the site is gained from Waterbrook Road, which in turn joins the B3004, Mill Lane. The B3004 runs north-east to join the A31 approximately 800m to the north-east of the site. The B3004 also runs south-west into the residential area around Mill Lane, Ashdell Road and Wilsom Road.
19. The western stretch of the Public Right of Way (PROW) footpath known as Alton, Route Number 40, is 140m to the south of the site. The eastern element which crosses the Caker stream is known as Worldham, Route number 26.
20. The approved working hours for the site are set out in Condition 5 of Planning Permission [51471/003](#). These are Monday to Saturday between 0700 and 1800 with no working on Sundays or recognised Public Holidays. The site currently operates with Condition 20 (Vehicle movements) of Planning Permission 51471/003 limiting HGV movements to and from the site to 612 per week.

Planning History

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

Application no.	Location	Proposal	Decision Date
APP/Q1770/W/3217698	Unit 7 Waterbrook Estate, Waterbrook Road, ALTON GU34 2UD	Appeal of decision 51471/006 for Variation of conditions 5, 11 and 18 of planning permission 51471/003 to allow for importation of road planings and the night-time importation and exportation of waste	Dismissed 29.08.19

51471/006	Unit 7 Waterbrook Estate, Waterbrook Road, ALTON GU34 2UD	Variation of conditions 5, 11 and 18 of planning permission 51471/003 to allow for importation of road planings and the night-time importation and exportation of waste	Refused 31.07.18
51471/005	Unit 7 Waterbrook Estate, Waterbrook Road, Alton GU34 2UD	Variation of condition 5 of planning permission 51471/003 (to extend the operational hours to 24 hours, 7 days per week for HGV movements and associated loading shovel for the importation of road planings)	Withdrawn 19.01.2018
51471/003	Hutchings & Carter Yard, Waterbrook Road, Alton GU34 2UF	Variation of conditions 3 (Site Layout) and 18 (to allow storage of wood) of planning permission 51471/002	Granted 29.09.16
33089/032	Hutchings & Carter Yard, Former Sewage Works, Waterbrook Road, Alton Hampshire GU34 2UD	Change of use (with associated building modifications) from existing builders storage depot to a waste recycling facility to accept and process commercial and industrial waste (including the use of a waste picking station and trommel) on industrial land at the former sewage works off Waterbrook Road, Alton	Granted 23/01/2013
SCR/2011/0226	Alton Recycling Centre, Waterbrook Road, Alton	Waterbrook Road, Alton Screening Opinion: Proposed change of use (with associated building modifications) to skip waste recycling facility to accept and process commercial and industrial skip waste	EIA not required 15/11/2011
51471/002	Former Sewage Works, Waterbrook Road, Alton, Hampshire	Retention of Waste Recycling Centre for construction & demolition waste to include a lightweight structure, landscaped bund, parking and associated plant and machinery	Granted 11/04/2011

22. The site currently has planning permission for the following waste uses:
- [33089/032](#) - Commercial and industrial waste (non-hazardous waste arising from the activities of wholesalers, catering establishments, shops and offices such as metals, plastic, wood, paper, card, black bag waste) processing and transfer, granted by Hampshire County Council as Minerals and Waste Planning Authority [MWPA]; and
 - [51471/003](#) - Construction and demolition waste (non-inert rubble, concrete, soils and stone, and wood waste) processing, crushing, screening and transfer, granted by Hampshire County Council as MWPA.
23. In addition to the above, the application site has a number of existing planning permissions for business uses (B1, B2 and B8) granted by East Hampshire District Council. These are:
- [33089/28](#) – Office facilities used by the WTS; and
 - [33089/24](#) – retained permission for the site security fencing.
24. In accordance with Policy 26 (Safeguarding – waste infrastructure) of the HMWP (2013), the site is safeguarded as a Waste Transfer Station.

The Proposal

25. The proposal is for variations to conditions 5 (Operating times), 11 (Dust and noise management) and 18 (Materials permitted) of Planning Permission [51471/003](#) to allow for the importation of road planings, and the night-time importation and exportation of waste at the site:
- variation of Condition 5 (Operating times) to allow for 12 HGV movements to and from the site, of the existing 612 limit stated by Condition 20 (Vehicle movements), to occur outside the existing operating hours of the site, and therefore, allow for limited night time operations to occur at the site;
 - variation of Condition 11 (Dust and noise management plan) to allow for the approval of a revised Dust and Noise Management Plan for the site reflecting the proposed night-time activities; and
 - variation of Condition 18 (Materials permitted) to allow for the addition of road planings to the list of waste types accepted at the site.
26. These variations are to enable restricted night-time activities at the site comprising two activities:
- Activity 1 - Importation of Road Planings; and
 - Activity 2 - Exportation of construction and demolition waste and importation of hard-core/crushed concrete.
27. These activities are described in detail further below:
- Activity 1 - Importation of Road Planings:
- the delivery of a maximum of five loads of road planings per night, equal to 10 HGV movements;

- each truck would deliver and unload the planings in the bays shown on the Proposed Site Layout drawing, reference 002 rev 3;
- the imported material would then be processed the following day during the permitted site operating hours; and
- no plant other than the HGVs would be used on site outside of the current permitted operating hours (0700-1800, Monday to Saturday).

Activity 2 - Exportation of construction and demolition waste and importation of hard-core/crushed concrete:

- one pre-loaded (during the permitted operating hours) outbound trailer of construction and demolition waste will be parked as shown on the Proposed Site Layout drawing, reference 002 rev 3 (Trailer location 2) ready to be collected;
- one HGV with a trailer loaded with hard-core/crushed concrete to access the site outside of the permitted operating hours. It would then drop off its trailer in the vacant Trailer location 1 space (on Proposed Site Layout drawing, reference 002 rev 3 see dwg 002 Rev3) and would then disconnect from this trailer and connect with the pre-loaded outbound trailer and depart the site outside of the permitted operating hours; and
- the imported trailer would then be emptied the following day during the permitted site operating hours (0700-1800, Monday to Saturday).

28. The proposed activities result in a total of 12 HGV movements per night outside of the permitted site operating hours of 0700-1800, Monday to Saturday. These movements are stated as being included in the site's current limit of 612 movements in any one week as conditioned by Condition 20 (Vehicle movements). The following mitigation measures and operational restrictions are proposed to address residential amenity:

- no fixed plant will be operating during the evening. There will be no loading shovel operations between 1800 and 0700;
- all vehicles entering and egressing the site will be in "night mode", as described in the revised Dust and Noise Management Plan submitted as part of this application;
- the amount of vehicle trips to and from the site will continue to be in accordance with Condition 20 (Vehicle movements) of planning permission 51471-002; and
- agreement to enter into a legal agreement (S106) with the MWPA to define the routing of the out of hours HGV movements to and from the site associated with the development hereby considered. This is to oblige the HGVs to travel from the site north up Waterbrook Road, north up the B3004 Mill Lane, and then to turn right directly onto the A31 during the out of hours period. This is to ensure no out of hours HGV movements through the residential area to the south of the Waterbrook Road/Mill Lane junction.

29. This application includes the following supporting documents:

- Planning Supporting Statement (Appendix 1 of the application);

- Proposed Site Layout drawing, reference 002 rev 3 see dwg 002 Rev3 (Appendix 2 of the application);
 - Noise Assessment, dated January 2018, (Appendix 3 of the application). This assesses the proposed night-time site activities;
 - an Additional noise assessment was submitted by the applicant on 27 January 2020, assessing the potential impact of the HGV movements travelling to and from the site as part of the proposed night-time activities;
 - a copy of the Noise Assessment Scope sent by the agent to East Hampshire District Council in 2017 (Appendix 4 of the application);
 - a revised Noise and Dust Management Plan dated 12 February 2020 was submitted by the applicant on 13 February 2020. This updates the Updated Noise and Dust Management Plan dated January 2018 (Appendix 6 of the application), submitted as part of the original application, by adding noise management details for the proposed night time operations; and
 - Heads of Terms and Guidance for a Section 106 agreement for HGV routing including HM Land Registry Deed for the site (Appendix 8 of the application).
30. The proposed development has been assessed under [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). The development is classified as a Schedule 2 development as it falls within Category 13 (Changes and extensions), section (b) as it is a change to a installation falling within Category 11(b) (ii) and (iii) (Installations for the disposal of waste (unless included in Schedule 1)). However, whilst being identified under the Regulations, it is not deemed an EIA development requiring an Environmental Statement.

Development Plan and Guidance

31. The following plans and associated policies are considered to be relevant to the proposal:

National Planning Policy Framework (2019) (NPPF)

- Paragraph 11: Presumption in favour of sustainable development;
- Paragraph 47: Determination in accordance with the development plan unless material considerations indicate otherwise;
- Paragraph 54: making unacceptable development acceptable through conditions or planning obligations;
- Paragraph 80: Support of sustainable economic growth;
- Paragraph 82: Recognise the specific locational requirements of different sectors;
- Section 8: Promoting healthy and safe communities;
- Paragraph 107: recognise the **importance** of providing adequate overnight lorry parking facilities;

- Paragraph 108: promoting sustainable transport, safe access and mitigating impacts;
- Paragraphs 109 and 110: Only refuse development or significant highway impacts;
- Paragraph 111: provision of a travel plan and transport statement;
- Paragraph 117: promoting effective land use whilst safeguarding and improving the environment and ensuring safe and healthy living conditions;
- Paragraph 127: Good design;
- Paragraph 130: refuse poor quality design;
- Paragraph 150: Planning for climate change;
- Paragraph 175: Conserving and enhancing the natural environment; and
- Paragraph 180: Appropriate development taking into account pollution on health, living conditions and the natural environment.

National Planning Policy for Waste (2014) (NPPW)

The following paragraphs are relevant to the proposal:

- Paragraph 1: Delivery of sustainable development and resource efficiency;
- Paragraph 5: Suitability criteria for new or enhanced waste management facilities; and
- Paragraph 7: Determining planning applications.

National Waste Planning Practice Guidance (NWPPG) (last updated 15/04/2015)

The following paragraphs are relevant to the proposal:

- Paragraph 007 (Self-sufficient and proximity principle);
- Paragraph 0046 (Need);
- Paragraph 047 (Expanding existing waste facilities); and
- Paragraph 0050: (Planning and regulation).

Hampshire Minerals & Waste Plan (2013) (HMWP)

The following policies are relevant to the proposal:

- Policy 1 (Sustainable minerals and waste development);
- Policy 3 (Protection of habitats and species);
- Policy 8 (Protection of soils);
- Policy 10 (Protecting public health, safety and amenity);
- Policy 12 (Managing traffic);
- Policy 13 (High-quality design of minerals and waste development);
- Policy 17 (Aggregate supply – capacity and source);
- Policy 18 (Recycled and secondary aggregates development);
- Policy 25 (Sustainable waste management); and
- Policy 27 (Capacity for waste management development).

[East Hampshire and South Downs Joint Core Strategy \(2014\) \(EHCS \(2014\)\)](#)

The following policies are relevant to the proposal:

- Policy CP20 – Landscape.

Consultations

32. **County Councillor Joy:** Was notified.
33. **County Councillor Kemp-Gee:** Was notified.
34. **East Hampshire District Council:** Raises no objection to the proposed variation of conditions, subject to the Local Planning Authority (Hampshire County Council) considering the development acceptable in all other regards.
35. **East Hampshire District Council Environmental Health Officer (EHO):** Has no objection subject to the proposed varied conditions.
36. **Alton Town Council:** Has an objection due to inaccuracies in the Noise assessment, the unacceptable adverse noise impacts of night-time operations on local residents and the precedent of permitting 24 hour, 7 day a week operations in the area. The council also highlights concerns that the operator fails to comply with existing site planning conditions with regards to stockpile heights, light pollution and air quality.
37. **Worldham Parish Council:** Was notified.
38. **Binsted Parish Council:** Was notified.
39. **Kingsley Parish Council:** Has no objection subject to a condition that bans access via the B3004 (Sleaford traffic lights to Alton) for HGVs between 1800-0700 daily.
40. **Environment Agency:** Was notified.
41. **Local Highway Authority:** Has no objection subject to a legal agreement being in place to control the access route for HGVs and conditions to limit the number of HGV movements and ensure vehicles are cleaned to prevent mud and spoil from being deposited on the public highway.
42. **County Ecologist (HCC):** Was notified.
43. **Planning Policy (HCC):** Provided information on the planning context for the proposed development.
44. **Public Health (HCC):** Was notified.

Representations

45. Hampshire County Council's [Statement of Community Involvement \(2017\)](#) (SCI) sets out the adopted consultation and publicity procedures associated with determining planning applications.
46. In complying with the requirements of the SCI, Hampshire County Council:
 - published a notice of the application in the [Hampshire Independent](#);
 - placed a total of 5 notices of the application at the application site and at key locations in the local area, and extended the period of neighbour consultation;
 - 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 properties within 100 metres of the boundary of the site, as well as key residential properties in a wider area.
47. As of 14 February 2020, a total of 23 representations to the proposal have been received, including from the local district ward councillor, the Alton Ashdell Ward Residents Association and The Alton Society. There were 22 objections and one representation raising concerns. The main areas of concern raised in the objections are listed below. This list also includes concerns raised about the existing operations at the site:
 - concern over the address of the site being correct in the application. (This was checked with the agent and a copy of the Land Registry document for the site was submitted with the application – the application was re-advertised to clarify the change of address);
 - impact of noise and light pollution from night time operations on local residents;
 - inappropriate development in a mixed use area with residential and commercial/industrial uses;
 - a view that the original permission for the waste site at this location was a mistake - a view that current operation causes unacceptable noise, dust, lighting and vibration, and that the proposal would add further impacts;
 - concern over the method of the night time operations, including significant noises from banging tail plates, mechanical wheel cleaners, the noise of materials sliding down the back of HGVs;
 - concern of disturbed sleep at night from the proposed development resulting from being woken up by loud, sudden noises a number of times every night leading to sleep deprivation - citing the control of pollution act 1974 legal obligation on a local authority to protect persons in the locality from the effects of noise, and the World Health Organisation's right to a good night's sleep;
 - detrimental impact on the health of children;
 - the concern of the operation of mobile plant during the evening, in reference to the application 'No fixed plant will be operated during the evening';

- concern that this would set a precedent for 24 hour working at the Waterbrook Industrial Estate;
- the proposed location for the unloading of the road planings is at the closest point to residents on Wilsom Road, with no screening, sound or visual (single line of trees with no leaves October-May);
- suggesting conditions to have no tipping between 1800-0700, only the deposition of loaded trailers, and out of hours operations conditioned to individual campaigns with notification to local residents and EHO with noise monitoring taking place in each case;
- no benefit for the town of Alton;
- the view that this application is no different to that refused with respect to noise;
- suggestion of a trial period – temporary permission to test the proposal;
- request for a condition that the weighbridge is not used at night;
- concerns of HGV routing;
- detrimental impact to climate change;
- adverse impact of mud and spoil on the public highways from the site and this increasing with HGV traffic;
- concern that the site is a public health problem due to dust, noise and vehicle pollution, as well as amenity and mental health impacts;
- stockpile heights;
- daytime noise of concrete crushing;
- daytime noise of the weighbridge;
- that the noise assessment is misleading, as it does not consider the proposed night time operations, but only the existing operations, that it does not take into account a number of local factors, such as elevated sensitive receptors on Wilsom Road, with inappropriately located sound monitoring devices, the amphitheatre of the location, the form of the potential noises, such as banging tailgate, speed bumps, weigh bridges, wheel cleaners, etc;
- impact of pollution from increased HGV movements;
- concerns with respect to the ongoing operation of the site and that the approved noise and dust management plans are not followed. That the current site is not acceptable and so further development is also. No improvement from historic complaints about the operation of the site which continues to fail to comply with existing site planning conditions with regards to stockpile heights, light pollution and air quality;
- concern of the impact of noise and air pollution in Kingsley from night time HGV movements; and
- HGVs not being sheeted when transporting waste to and from the site.

The above issues will be addressed within the following commentary.

Habitats Regulation Assessment [HRA]

48. The [Conservation of Species and Habitats Regulations 2017](#) (otherwise known as the 'Habitats Regulations') transpose European Directives into UK law.

49. 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
 - RAMSARs.
50. 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.
51. It is acknowledged that the proposed development includes environmental mitigation essential for the delivery of the proposed development regardless of any effect they may have on impacts on European designated sites.
52. The HRA screening hereby carried out by the MWPA considers the proposed development to have **no likely significant effect** on the identified European designated sites due to it is not located at a distance to be considered to have proximity to directly impact on the European designated sites; 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.

Climate Change

53. Hampshire County Council declared a climate change emergency on 17 June 2019. This proposal has been considered against Policy 2 (Climate change – mitigation and adaption) of the HMWP (2013) and Paragraph 148 (supporting the transition to a low carbon future) of the NPPF (2019).
54. The application does not contain a climate change assessment and makes no specific proposals to demonstrate how its impact on the causes of climate change are minimised or how it supports the transition to a low carbon future or considers minimising energy consumption. However, considering the existing lawful activity and the minimal nature of the proposed changes the proposed scheme is considered to not have a significant contributing impact on climate change and is considered to have acceptable resilience to climate change.

Commentary

Current Site Operations

55. Public representations and Alton Town Council cite past complaints about the adverse impacts of the site's existing operations. In particular adverse

health and amenity impacts from noise and dust. Particular mention is made to the contributions by excessive stockpile heights, concrete crushing, the weigh bridge, mud and spoil on the road, sheeting on HGVs, as well as light pollution when operating during hours of darkness during the approved operating times. The current planning permission for the site, 51471/003, includes limits to stockpile heights, Conditions 4 (Site levels), 16 (Stockpile heights), 17 (Measuring poles); prevention of mud and spoil on the public highway, Condition 21 (Mud and spoil); a requirement to sheet HGVs carrying material to or from the site, Condition 13 (Sheeting of HGVs); and Condition 11 (Noise and dust management plan) states the activities shall follow the approved Noise and Dust Management Plan, dated 20 October 2016.

56. Typically, the current operation of the site is not material to the consideration for planning applications and site monitoring and enforcement action has been taken where necessary. However, in this case, firstly, cumulative impact needs to be considered and, secondly, Paragraph 6.161 of the HMWP (2013) states that *'Proposals to extend existing waste sites will only be supported where there is a good past performance of the existing operations'*.

Planning appeal decision for previous application 51471/006

57. In 2018, planning application 51471/006 for similar development was refused by Hampshire County Council Regulatory Committee for the reason that the Minerals and Waste Planning Authority considered that, on the basis of the information submitted, the proposed night time operations will result in unacceptable noise impacts to occupiers of residential property in the surrounding area, contrary to Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals and Waste Plan 2013 and paragraph 180 of the National Planning Policy Framework 2018.
58. The applicant appealed this decision and the appeal was dismissed by the Planning Inspectorate on 31 August 2019 in appeal decision [APP/Q1770/W/18/3217698](#). The Inspector's decision can be found at Appendix D.
59. The Inspector found the main issue to be the impact of the proposal on the living conditions of neighbouring residents, in terms of noise and disturbance. The Inspector dismissed the appeal on the grounds that that they considered *'that there would be an adverse effect from night-time HGV movements without a routing agreement in place'* and that this would be harmful to the living conditions of neighbouring occupiers, contrary to Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013).
60. The Inspector considered that *'the noise assessments are conservative in their assessment of the impacts of the proposal.'* and *'On the basis of the modelling and noise assessment carried out, which I consider to be satisfactory, ...there would not be an adverse effect in terms of noise from the proposed night time use of the site.'* The inspector took the view that the

proposal would comply with Paragraph 180 (appropriate development taking into account pollution on health, living conditions and the natural environment) of the NPPF (2019).

61. Therefore, the Inspector found the principle of the development acceptable, subject to conditions and the establishment of a legal agreement to restrict the routing of Heavy Goods Vehicles travelling to and from the site, in order to avoid the most noise sensitive locations.

Principle of the development

62. NPPW paragraph 7 states that WPAs should ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located.
63. Paragraph 47 of the [National Waste Planning Practice Guidance](#) [NWPPG] states that a WPA should not assume that because a waste disposal facility is present in a particular area, that is appropriate to add to these facilities. It is important to consider the cumulative effect of waste facilities on a community's wellbeing.
64. The Waste Recycling operations on this site have planning permissions that condition limitations to their operating times. Consultation with East Hampshire District Council confirms that the other commercial, industrial and retail activities (except for a limited number of 'live-work' units) on the Waterbrook estate do not have limitations placed on operating times by the planning system. It is established that there are no sites in the industrial estate with specific permission to carry out night time operations, however, there are no restrictions to other land uses on the industrial estate to prevent night time operations either. There are other industrial and commercial operations within the estate that carry out activities during the night-time.
65. The concept of precedent (i.e. how the grant of any individual planning permission will impact upon the grant or refusal of any future planning permissions) is not a material consideration in the determination of a planning application. Rather, each application for a proposed development should be considered on its own merits and not in view of previous permissions, nor its anticipated impact or otherwise on any future application. In this case, the applicant is required to provide sufficient information to demonstrate that their proposal for night time operations would not have unacceptable adverse impacts in accordance with the HMWP (2013). Any future planning applications on this site or in the area for night time operations would need to be determined on their own merits in accordance with the policy and material considerations relevant to those applications, for which cumulative impact and existing night time operations could be relevant.

66. It is considered that the applicant has provided sufficient information to demonstrate that the proposal is sustainable in accordance with Policy 1 (Sustainable minerals and waste development) of the HMWP (2013).

Demonstration of need and capacity for waste management

67. Policies 17 (Aggregate supply – capacity and source) and 18 (Recycled and secondary aggregates development) of the HMWP (2013) support development of infrastructure to provide supply of recycled and secondary aggregates.
68. Policy 25 (Sustainable waste management) of the HMWP (2013) supports the co-location of activities with existing operations where considered appropriate and commensurate with the operational life of the site. It states provision will be made for the management of non-hazardous waste arising that achieve at least 60% recycling and 95% diversion from landfill by 2020.
69. Policy 27 (Capacity for waste management development) of the HMWP (2013) states the need for additional waste infrastructure capacity was for non-hazardous recycling and recovery capacity in Hampshire. The policy supports proposals where they provide additional capacity for non-hazardous recycling and recovery through the use of existing waste management sites.
70. The [National Planning Policy for Waste \(2014\)](#) (NPPW) sets out the Government's ambition to work towards a more sustainable and efficient approach to resource use and management. Policy 7 of the NPPW states that when determining waste planning applications, Waste Planning Authorities should only expect applicants to demonstrate the quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan. In this case, the proposed development is considered consistent with the HMWP (2013) and so the applicant is not required to demonstrate market need. The site is located close to a junction of the A31, part of the Strategic Road Network as identified in the HMWP and is therefore considered to be in proximity to the waste sources and markets of Hampshire.
71. The applicant has provided information upon the benefit of the storage and transfer of road planings at the site and proposed timings of such. The applicant states that highway work typically occurs at night and on a campaign basis (a campaign refers to intense, but usually short lived, projects). A proportion of the road planings generated need to be deposited at a suitably licensed waste facility. Allowing for the night time storage of road planings at the Waterbrook Road site would enable safe, secure and licenced storage providing operational flexibility to benefit highways projects in Hampshire.
72. It is therefore considered that the proposed development is in accordance with Policies 17, 18, 25 and 27 of the HMWP (2013).

Potential pollution associated with the development

73. 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](#)).
74. The Environment Agency has confirmed that the site's environmental permit includes bituminous mixtures such as road planings as acceptable waste, with the exception of certain road planings, such as those containing coal tar, as these are hazardous waste. Therefore, the operator holds a permit for the importation and processing of non-hazardous road planings. The area set out for the storage of road planings, as shown on the Proposed Site Layout plan, drawing 002 rev 3, includes concrete hardstanding, physical wall containment and drainage as per the requirements for the entire site in accordance with Conditions 7 (Solids to watercourses) and 8 (Hardstanding) of the existing site planning permission [51471/003](#).
75. The site's environmental permit will control the suitability of the waste material imported to the site. Therefore, the proposal is considered in accordance with Policies 8 (Protection of soils) and 10 (Protecting public health, safety and amenity) of the HMWP (2013) with respect to ground and water pollution.

Highways impacts

76. 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.
77. The proposal is for 12 HGV daily movements to and from the site outside of the operating hours of the site as set in Condition 5 (Operating times) of Planning Permission 51471/003 (0700-1800 Monday to Saturday). These would travel to the A31 via Waterbrook Road and the B3004, Mill Lane. It is proposed that these HGV movements would be included in the existing HGV movement limit, 612 weekly, therefore it is proposed to retain Condition 20 (Vehicle movements) of planning permission 51471/003 with no change.
78. The Highway Authority raise no objection subject to retaining Conditions 20 (total HGV movements) and 21 (Road cleaning) of PP 51471/003 and the proposed legal agreement for routing to ensure all night-time HGV movements to and from the site travel directly to the A31 via Waterbrook Road and the B3004, Mill Lane. The applicant has submitted Heads of Terms with the application for this Section 106 legal agreement and confirms their willingness to enter into the agreement prior to the issuing of any decision. The completion of the agreement would address the Inspector's

reason for dismissing the appeal against the refusal of application 51471/006.

79. Therefore, subject to the legal agreement, it is considered that the proposal is in accordance with Policy 12 (Managing traffic) of the HMWP (2013).

Ecology

80. Policy 3 (Protection of habitats and species) of 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. 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.
81. The County Ecologist raises no objection to this application on the basis that the development does not include any lighting. The applicant confirms the proposal includes no lighting on site, other than that on the vehicles. Condition 21 (Lighting) has been added to the proposed conditions in Appendix A of this report to secure this.
82. Therefore, it is considered that the proposed development is in accordance with Policy 3 (Protection of habitats and species) of the HMWP (2013).

Visual impact, light pollution and landscape

83. Policy 13 (High-quality design of minerals and waste development) of the HMWP (2013) requires that waste development should not cause an unacceptable adverse visual impact and should maintain and enhance the distinctive character of the landscape and Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) protects residents from significant adverse visual impact.
84. Paragraph 7 of the NPPW states that Waste Planning Authority should ensure that waste management facilities in themselves are well-designed, so that they contribute positively to the character and quality of the area in which they are located.
85. The consultation response from the Environmental Health Officer [EHO] at East Hampshire Borough Council is for no objection and does not raise concern about light pollution and amenity impacts from lighting. County Ecology have no objection based on the site not being lit at night.
86. A significant number of public representations object on the grounds of the impact from lighting and visual amenity and landscape impact.

87. The site is in an elevated position that overlooks an area to the south east of Alton. It has been established in existing planning permissions that the existing waste use is acceptable in planning terms and has sufficient mitigation to its visual impact. Condition 6 (Landscape) of the existing planning permission 51471/003 requires perimeter planning in accordance with the approved Planting Plan (drawing 286-02 Rev E).
88. It is noted that the site, particularly the area proposed for the storage of road planings to the rear of the site, is clearly visible from the elevated dwellings on Wilsom Road, implying that the existing trees and vegetation on this boundary do not supply sufficient screening to mitigate visual impact and any amenity impact from lighting during night-time activities, particularly when the trees have no leaves.
89. The night-time activities proposed does not include fixed lighting. Only vehicle lighting is to be used for the operations proposed. It is considered that improvements to the existing screening, such as improvements to the planting shown on the Planting Plan (drawing 286-02 Rev E) or fencing, on the boundary of the site facing Wilsom Road would mitigate any night-time impact of lighting on amenity and provide some general improvement to site screening.
90. Therefore, an additional condition (Condition 2 - Additional screening) is recommended to require the submission of a screening scheme to the southern end of the western boundary. Therefore, the proposal is in accordance with Policies 10 (Protecting public health, safety and amenity) of the HMWP (2013) with respect to light impact and 13 (High-quality design of minerals and waste development).

Impact on public amenity and health – noise

91. 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. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.
92. The [National Planning Policy for Waste \(2014\)](#) (NPPW) sets out the Government's ambition to work towards a more sustainable and efficient approach to resource use and management. Policy 5 sets out criteria by which Waste Planning Authorities should assess the suitability of sites for new or enhanced waste management facilities. This includes the criteria that the cumulative impact of existing and proposed waste disposal facilities on the well-being of the local community, including any significant adverse impacts on environmental quality, social cohesion and inclusion or economic potential.
93. The application includes two Noise Assessments; one for the proposed night time activities on the site, and one for the sound generated by night-time

HGV movements to and from the site. Both noise assessments are based upon British Standard BS4142:2014, which is recognised by the MWPA and the EHO as an acceptable standard to consider the impacts of noise for minerals or waste developments.

94. The consultation response of the East Hampshire District Council Environmental Health Officer (EHO) raises no objection. The EHO is satisfied that the noise assessments demonstrate that the proposed development will not have a significant detrimental impact on night-time health and amenity of local residents.
95. Alton Town Council and a number of public representations also raise concern about the robustness of the noise information provided in the application in their objections. The majority of public representations object on the grounds of unacceptable adverse impacts to health and amenity due to noise as a result of the proposed night-time activities.
96. The same noise assessments have been submitted for this application as for the previous application 51471/0006. The Planning Inspector's comments about the noise issue in the appeal decision [APP/Q1770/W/3217698](#) (Appendix D) are:
 - that both noise assessments, for HGV movements to and from the site and the onsite activities are conservative;
 - that the locations of the sensitive receptor locations for the on-site assessment were approved by the Local District Council EHO;
 - the model used is a recognised industry standard one for uses such as that proposed;
 - the assessments take account of the local topography and weather conditions, including wind direction;
 - as required by BS4142:2014, penalties (weightings) were included in the assessments to take into account the specific character of some of the noises which would be expected as part of the proposal and (the Inspector) considers these allowances to be appropriate;
 - the results of the noise survey show that for evening activities the rating level at the receptors is predicted to be below the measured daytime background sound levels;
 - when examined under British Standard BS8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings, the daytime assessment shows that the predicted noise level would be less than 10dB and would not contribute to the overall daytime noise environment at the nearest sensitive receptors;
 - the results of the survey for the night-time activities is -1 dB (A). BS4142:2014 says that this equates to having a low impact, where there would be no observed effect on health or quality of life as a result of the proposal.;
 - the night time assessment for BS8233:2014 uses the World Health Organisation limit for sleeping in a bedroom, of 30dB, with the window open, using the standard 15dB attenuation. The noise levels recorded

were all below 30dB. The Noise Policy Statement for England as referenced in the footnote to paragraph 180 of the NPPF (2019), states that noise is a subjective matter and sets out a framework for assessment based on the perception of noise. Based on the changes shown on BS4142:2014 this would result in there being No Observed Effect Level (NOEL) at the nearest sensitive receptors. Therefore, the proposal would comply with paragraph 180 of the NPPF; and

- on the basis of the modelling and noise assessment carried out, which (the Inspector) considers to be satisfactory, as does the Environmental Health Department of the local District Council, there would not be an adverse effect in terms of noise from the proposed night-time use of the site.

97. The Inspector's conclusions on the merits of the proposal are an important material consideration that should be given significant weight in the determination of this application.
98. The application makes reference to all vehicles operating as part of the proposed night-time activities will be in 'night mode'. A revised Dust and Noise Management Plan, dated 12 February 2020, was submitted by the applicant on the 13 February 2020. This revision from the original submitted as part of this application was to provide the definition of 'night mode' in section 2.1. Night Mode is:
- all HGV drivers will be briefed on night-time working activities which will ensure the following:
 - operators will not slam doors;
 - no trailers are to be 'banged out' to clear remaining material;
 - all tailgates shall be fitted as to not 'bang' upon closing;
 - engines will not be left idling; and
 - drivers will be courteous and diligent in their activities;
 - weighbridge and wheel cleaning equipment will not be used at night (any unexpected mud or debris on the highway will be cleared immediately the following working day); and
 - vehicles are to be switched to night mode – i.e. no audible reversing alarms will be used.
99. Many of the public representations refer to behaviours that are addressed by this definition of night mode. Conditions 12 (Dust and Noise Management Plan) and 13 (Vehicle reversing alarms) proposed in Appendix A of this report condition the proposed development to be carried out in accordance to the Dust and Noise Management Plan and therefore 'night mode'.
100. It is the view of the East Hampshire District Council EHO and the Planning Inspector that the noise information provided to support the application is suitably robust and sufficient to demonstrate the potential impacts of the proposed development. It is therefore considered that the application sufficiently demonstrates that no significant adverse noise impact will occur. It is therefore considered that the proposed development is in accordance

with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013).

Dust and Noise Management

101. The application seeks variation of Condition 11 (Dust and noise management plan) of Planning Permission [51471/003](#) in order to have the submitted Revised Dust and Noise Management Plan, dated 25 January 2018, replace the original Dust and Noise Management Plan by Hutchings and Carter Ltd., dated 20 October 2016. The original Plan was approved by the WPA on 29 September 2016 following submission by the operator for discharge of Condition 11. Through the determination process, it was identified that a definition for 'night mode' was required to be included in the Dust and Noise Management Plan. Therefore, a revised Dust and Noise Management Plan, dated 12 February 2020, was submitted by the applicant on the 13 February 2020 to include this.
102. The proposed revisions to the Dust and Noise Management Plan are therefore solely to include in the Plan the proposed night time activities hereby considered. The proposed operation to pour, store and load road planings is not considered to cause any significant dust issue and would be satisfactorily covered by the proposed Dust and Noise Management Plan. The document clearly highlights the revisions proposed and these raise no issues for the EHO.
103. With respect to odour, the proposed addition of road planings to the waste types imported to the site does not have any odour impacts associated with it.
104. Therefore, it is considered that the Revised Dust and Noise Management Plan is in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) and is recommended for approval.

Conclusions

105. It is considered that the proposal would be in accordance with the relevant policies of the adopted Hampshire Minerals and Waste Plan (2013), in that it provides a suitable location to support highways works in Hampshire through the transfer of road planings to an existing Waste Transfer Facility located on the Strategic Road Network in a central Hampshire location. It is considered that the benefits of providing this facility for road planings outweighs any limited impacts to neighbourhood amenity.
106. It is considered that the proposed development for 12 HGV movements per night, when considered with the proposed mitigation, subject to conditions and the completion of the Section 106 agreement, would not cause an unacceptable adverse impact on public amenity, noise or light pollution, or to highway safety or amenity:
 - the applicant has provided sufficient demonstration to be considered in accordance with Policy 10 (Protecting public health, safety and amenity) of the HMWP (2013) with respect to noise, lighting, dust and odour;

- the proposal is considered in accordance with Policy 12 (Managing traffic), subject to the completion of the Section 106 agreement to control the route of HGV to and from the site out of the conditioned working hours to prevent night time HGV movements through residential areas;
- the application is considered in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the HMWP (2013) with no inclusion of any site lighting as part of the proposed development; and
- the site is on the Strategic Road network, and so in principle, is considered suitable for additional development, such as this, in order to sustainably support Hampshire's provision of waste facilities in accordance with Policies 17 (Aggregate supply – capacity and source), 18 (Recycled and secondary aggregates development), 25 (Sustainable waste management) and 27 (Capacity for waste management development) of the HMWP (2013).

Recommendation

107. That, subject to all parties entering into a Section 106 Agreement with the County Council to secure the routing of out of hours Heavy Good Vehicle movements to and from the site, the Director of Economy, Transport and Environment be authorised to GRANT permission subject to the conditions listed in integral appendix A.

Appendices:

- Appendix A – Conditions
- Appendix B1 and B2 – Site Location Plans
- Appendix C – Proposed Site Layout Plan, drawing 002 rev 3
- Appendix D – Appeal decision report APP/Q1770/W/3217698.

Other documents relating to this application:

<https://planning.hants.gov.uk/ApplicationDetails.aspx?RecNo=20852>

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

51471/007

Hampshire County Council

EH156

Unit 5-6 Waterbrook Estate, Waterbrook Road,
Alton GU34 2UD

(Variation of conditions 5, 11 & 18 of
planning permission 51471/003

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.

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CONDITIONS

Commencement

1. The development hereby permitted shall be begun before the expiration of three years from the date on which this planning permission was granted.

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

Additional Screening

2. Prior to the commencement of the restricted night-time activities hereby granted, a scheme to improve the screening to the southern end of the western boundary of the site adjacent to the road planing storage area shall be submitted to and approved in writing by the Planning Authority. The scheme shall be designed to provide improved screening from the night-time activities on the site to dwellings on Wilsom Road. This scheme shall be implemented prior to commencement of night time activities and maintained thereafter as approved in co-ordination with Condition 6 (Landscape).

Reason: In the interests of local amenity and prevention of light pollution in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013). The condition is a pre-commencement condition as the provision of screening prior to night time activities commencing is considered to be essential.

Perimeter Bunds

3. The perimeter bunds' construction, grading, and top soil shall be maintained in accordance with the approved plan and cross section details as detailed on Drawings 4998 SK/04 Rev G and 286-02 Rev E (and 286-01 Rev C approved under permission 51471/003) for the duration of the development.

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

Layout

4. The site shall be set out in accordance with the Layout Plan 4998 SK/04 Rev G and the Proposed Site Layout Plan 002 rev 3. The 1 metre buffer, as shown on drawing 4998 SK/04 Rev G, shall be maintained for the duration of the development.

Reason: To ensure the site is set out in the manner applied for in order to minimise any adverse impacts on local amenities in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design

of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

Site Levels

5. The site ground levels shall not exceed those shown on plan HCC EH156-Ground Levels survey 2016, with the exception of the approved stockpile areas.

Reason: To ensure that appropriate site levels are maintained in the interests of local amenities in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

Hours of Working

6. No heavy goods vehicles shall enter or leave the site and no plant or machinery shall be operated except between the following hours: 0700-1800 Monday to Saturday. There shall be no working on Sundays or recognised Public Holidays. This is with the exception of the following hereby permitted:
 - No more than 10 HGV movements per day shall enter or leave the site between 1800 and 0700 Monday to Saturday for the delivery of road planings only, as shown on the Proposed Site Layout drawing, 002 rev 3; and
 - No more than 2 HGV movements per day shall enter or leave the site between 1800 and 0700 Monday to Saturday for the delivery and collection of a CDE waste trailer prepared within the site operating hours defined above as shown on the Proposed Site Layout drawing, 002 rev 3.

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

Landscape

7. The landscaping for the perimeter of the site (including construction of the perimeter bunds) shall be maintained as detailed on the approved Planting Plan (drawing 286-02 Rev E). Any trees or shrubs which, within a period of five years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

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

Protection of Water Environment

8. No solid matter shall be deposited so that it passes or is likely to pass into any watercourse.

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

9. Areas where waste is stored, handled or transferred shall be underlain by impervious hard-standing with dedicated drainage to foul sewer or sealed tank.

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

10. 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.

Associated pipework shall be located above ground where possible and protected from accidental damage.

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

Noise, Dust and Odour

11. All vehicles, plant and machinery operated within the site shall be maintained in accordance with the manufacturers' specification at all times and shall be fitted with and use effective silencers.

Reason: To minimise noise disturbance from operations at the site in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

12. The site shall be run in accordance with the submitted and approved Dust and Noise Management Plan, dated February 2020, reference 416.073398.00001. The management plan shall be implemented as approved for the duration of the site's operation.

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

13. All vehicles, operated within the site shall be fitted with white noise type low tonal reversing alarms. Those vehicles operating outside of the operating hours, as set out in Condition 5 (working hours) shall operate in 'night mode' as set out in the Dust and Noise Management Plan, dated February 2020, reference 416.073398.00001. This shall be implemented as approved for the duration of the site's operation.

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

14. All lorries entering and leaving the site carrying waste or recycled material shall be fully sheeted.

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

Buildings and Plant

15. The covered waste structure shall be maintained in accordance with Plan. No. 4998 SK/05 Rev C (as approved under permission 51471/003).

Reason: In the interests of local amenity in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

Restriction of Permitted Development Rights

16. Notwithstanding the provisions of Parts 4, 7 and 16 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) 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 agreement of the Waste Planning Authority in writing;
 - (ii) no telecommunications antenna shall be installed or erected without the prior agreement of the Waste Planning Authority in writing.

Reason: To protect the amenities of the area in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

Storage

17. Stockpiles of waste and recycled material shall not exceed a maximum level of 5 metres in height above the level of the ground on which the stockpile is located for soil/hardcore processing and screened material and 4 metres in height above the level of the ground on which the stockpile is located for product storage and material storage including wood (as indicated on Drawing No 4998 SK/04 and Drawing no 002 rev 3). Stockpile heights shall be measured from the existing ground levels adjacent to the stockpiles as shown on plan HCC EH156- Ground Levels survey 2016.

Reason: To control any adverse visual impact and to control windborne dust in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

18. Measuring poles marked at 4 metre and 5 metre heights, shall be retained on site near the stockpiles to be used as a reference. Within one month of the date of this permission, the location of these measuring poles shall be submitted to the Waste Planning Authority for approval and maintained for the duration of the development as approved.

Reason: To control any adverse visual impact and to control windborne dust in accordance with Policies 10 (Protecting public health, safety and amenity) and 13 (High-quality design of minerals and waste development) of the Hampshire Minerals & Waste Plan (2013).

Types of Materials

19. Material imported to the site shall comprise of inert construction and demolition waste (CDE waste). This shall comprise only of clean, uncontaminated soils, rubble, concrete, wood and road planings.

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

20. There shall be no burning or processing of wood on site.

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

Lighting

21. No additional lighting is to be installed as part of the development hereby permitted, including no lighting for the road planings bay. No lighting is to be used for out of operating hours, as set in Condition 5 (Working hours),

activities on the site other than those attached to HGVs and considered necessary for the safe unloading, trailer drop off and pick up and driving of those HGVs.

Reason: In the interests of biodiversity and local amenities in accordance with Policies 3 (Protection of habitats and species) and 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).

Highways

22. No more than 612 HGV movements shall take place in any one week (Monday- Sunday). A record of all Heavy Goods Vehicles entering and exiting the site shall be kept on site and shall be made available for inspection by the Minerals and Waste Planning Authority upon request.

Reason: To ensure that the level of HGV traffic generated by the site does not have a detrimental impact on the local highway network in accordance with Policy 12 (Managing Traffic) of the Hampshire Minerals & Waste Plan (2013).

23. For the duration of the development measures shall be taken to clean vehicles leaving the site to prevent mud and spoil from being deposited on the public highway. No vehicle shall leave the site unless it has been cleaned sufficiently to prevent mud and spoil being carried on to the public highway. In the event that mud and spoil from vehicles leaving the site are deposited on the public highway, measures shall be taken to clean the highway. In any event at the end of each working day the highway shall be cleaned to the satisfaction of the Minerals and Waste Planning Authority.

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

24. The HGV movements hereby permitted outside of the operating hours of 0700-1800, set out by Condition 5 (Working hours), shall enter and leave the site using the agreed routing plan in the Section 106 agreement.

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

Plans

25. The development hereby permitted shall be carried out in accordance with the following approved plans: **01 (dated December 2017), 002 rev 3, 4998 SK/04 Rev G, 286-02 Rev E, EH156 Ground Levels Survey 2016, WBE/01, 286-01 Rev C, 4998 SK/05 Rev C.**

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

Notes to Applicant

1. In determining this planning application, the Waste Planning Authority has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with the planning application by liaising with consultees, respondents and the 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, as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.
2. For the purposes of matters relating to this decision Heavy Goods Vehicles (HGVs) are defined as vehicles over 3.5 tonne un-laden.
3. The Minerals and Waste Planning Authority, in line with the Hampshire Minerals and Waste Plan (2013), recommends that the site operator should set up and run a regular liaison panel to aid in addressing public complaints about the existing activities on the site, to assist resolution of any possible future issues, and support community relationships.
4. 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.

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LEGEND

 SITE LOCATION



SLR 
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TREENWOOD HOUSE
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 www.slrconsulting.com


**WATERBROOK ROAD, ALTON
 HAMPSHIRE, GU34 2UD**

**S73 PLANNING
 APPLICATION**

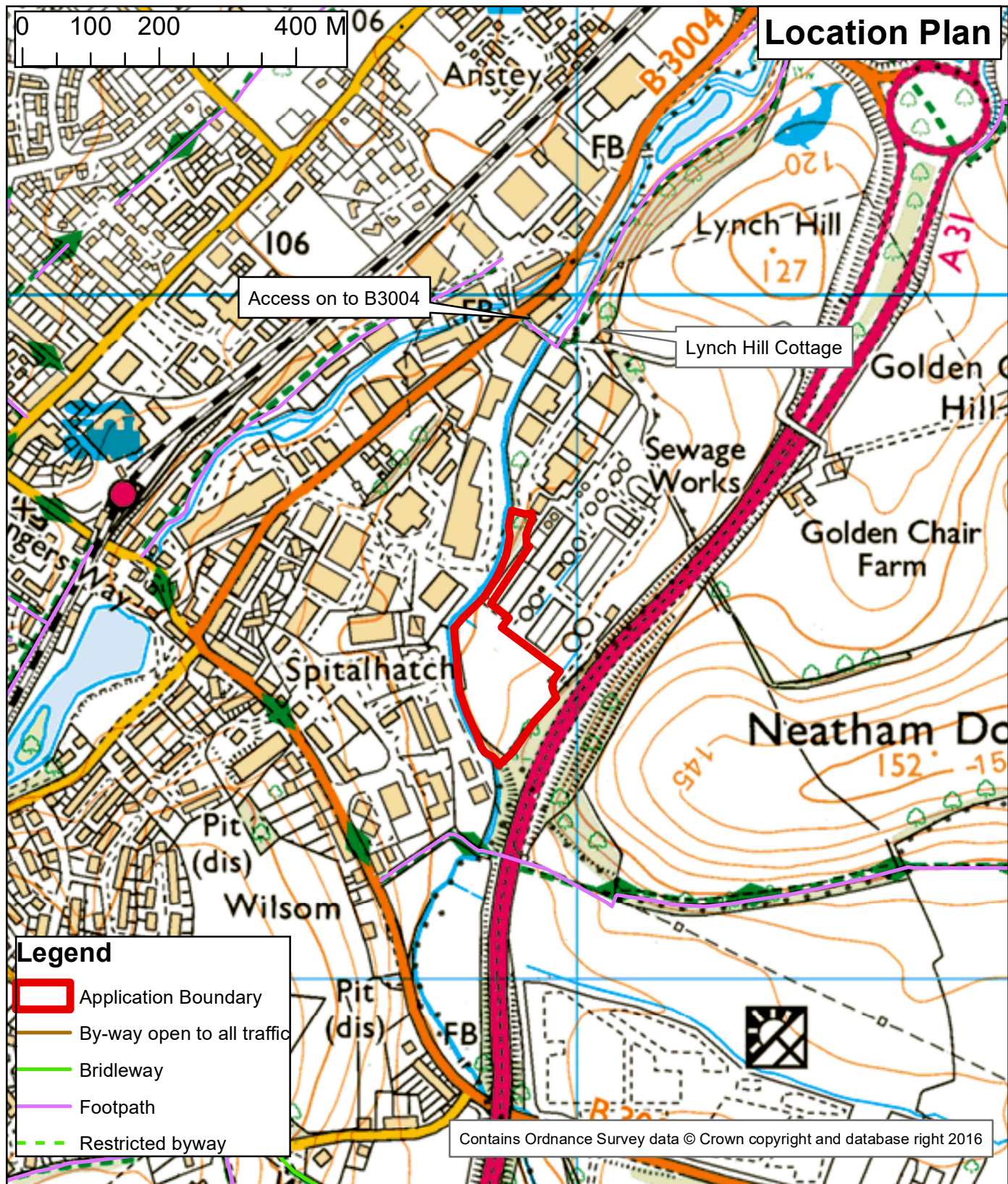
SITE LOCATION PLAN

01

Scale 1:25,000 @ A3 Date DEC 2017

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Variation of conditions 5, 11 & 18 of planning permission 51471/003 to allow for restricted night-time activities including importation of road planings at Unit 5-6 Waterbrook Estate, (formerly referred to as Unit 7), Waterbrook Road, Alton GU34 2UD

Application Number: 51471/007

Site Ref: EH156

Regulatory Committee

Date 18 March 2020

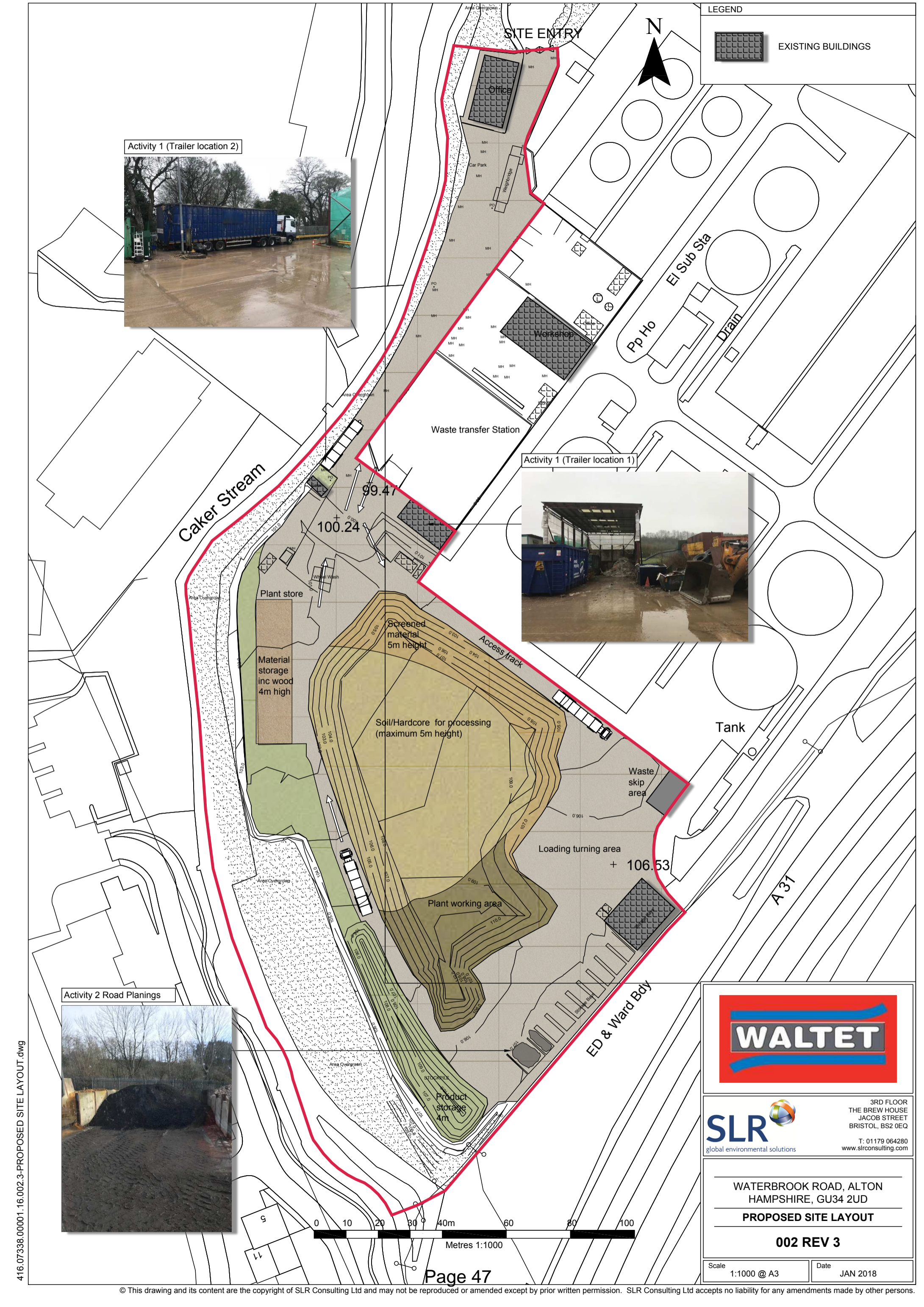


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Hampshire
County Council

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416.07338.00001.16.002.3-PROPOSED SITE LAYOUT.dwg



LEGEND

 EXISTING BUILDINGS



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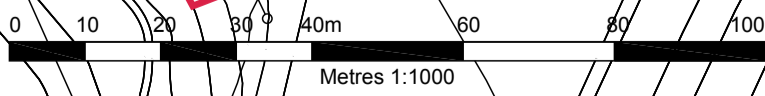
3RD FLOOR
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BRISTOL, BS2 0EQ
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www.slrconsulting.com

WATERBROOK ROAD, ALTON
HAMPSHIRE, GU34 2UD

PROPOSED SITE LAYOUT

002 REV 3

Scale: 1:1000 @ A3
Date: JAN 2018



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Appeal Decision

Site visit made on 6 August 2019

by **Elizabeth Hill BSc(Hons) BPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th August 2019

Appeal Ref: APP/Q1770/W/18/3217698

Unit 7 Waterbrook Estate, Waterbrook Road, Alton, Hampshire, GU34 2UD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Waltet Ltd against the decision of Hampshire County Council.
 - The application Ref 51471/006, dated 29 January 2018, was refused by notice dated 31 July 2018.
 - The application sought planning permission for variation of conditions 3 (Site Layout) and 18 (to allow storage of wood) of planning permission 51471/002, without complying with conditions attached to planning permission Ref 51471/003, dated 29 September 2016.
 - The conditions in dispute are No 5, which states that: No heavy goods vehicles shall enter or leave the site and no plant or machinery shall be operated except between the following hours: 0700-1800 Monday to Saturday. There shall be no working on Sundays or recognised Public Holidays. No 11, which states that: Within three months of the date of this permission, an updated Dust and Noise Management Plan shall be submitted to the Waste Planning Authority for written approval. The scheme shall be implemented as approved for the duration of the site's operation. And no. 18 which states that: Material imported to the site shall comprise of inert construction and demolition waste (i.e. clean, uncontaminated soils, rubble, concrete and wood) only.
 - The reasons given for the conditions are: Nos 5 and 11 - In the interests of local amenity in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013). No 18 - In the interests of pollution control and the amenities of the area in accordance with Policy 10 (Protecting public health, safety and amenity) of the Hampshire Minerals & Waste Plan (2013).
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is: the impact of the proposal on the living conditions of neighbouring residents, in terms of noise and disturbance.

Reasons

3. The proposal would allow for 12 of the existing 612 HGV movements, as set in Condition 20 of approval 51471/003, to and from the site to occur outside the existing operating hours of the site and allow limited night time operations at the site. It would also include the need for a revised Dust and Noise Management Plan to be approved and for the addition of road planings to the list of waste types accepted at the site. Of the 12 HGV movements, 10 of

- these would be for the importation and tipping of road planings and 2 for the movements for the drop off and collection of a preloaded trailer.
4. The site is the end of the Waterbrook Industrial Estate, adjacent to the sewage treatment works and bordering the A31. The nearest house is Lynch Hill Cottage, about 262m from the borders of the site, and there is also residential development off Wilsom Road and at Spitalhatch. The current working hours on the site are 0700 to 1800 on Mondays to Saturdays with no working on Sundays and Public Holidays.
 5. The National Planning Policy for Waste (NPPW) states that when determining waste applications decision-makers should only expect the applicants to demonstrate quantitative or market need for new or enhanced waste management facilities where proposals are not consistent with an up-to-date Local Plan (LP). In this case the LP is the Hampshire Minerals and Waste Plan (2013), which supports development of infrastructure to provide supplies of recycled and secondary aggregates (Policies 17 and 18); supports co-location of waste activities to promote recycling and diversion from landfill (Policy 25); and, supports development which helps to meet the need for capacity for non-hazardous recycling and recovery capacity in Hampshire. Since the proposal would help meet these policies, no need assessment is required.

On-site noise

6. The activities on site would include the importation of 5 loads of planings per night on a campaign basis and they would be tipped from an HGV but not consolidated until the next day. No plant, including the loading shovel would need to be used and neither would the weighbridge, which is also a noise source. The other activity would be the export of construction and demolition waste in a trailer, which would be preloaded during the day, following the bringing in of a trailer with hard core and crushed concrete, which would be parked and unloaded the next day. No loading or unloading would take place during the night as the trailers would be parked on the site. This would equate to 12 vehicle movements per day and be part of the total vehicle movements in condition 20 of approval 51471/003.
7. The proposed development has been the subject of a noise survey and modelling for the proposed night-time activities on the site. The proposal was assessed against British Standard BS4142:2014 Methods for Rating and Assessing Industrial and Commercial Sound, using 4 representative properties: Lynch Hill Cottage, Spitalhatch off Mill Lane, Wilsom Road and Golden Chair Cottage. These locations were approved by the local District Council as being appropriate for the measurements to be taken and no alternative sites have been suggested by others. The model used is a recognised industry standard one for uses such as that proposed. It takes account of the local topography and weather conditions, including wind direction. As required by BS4142:2014 penalties were included to take into account the specific character of some of the noises which would be expected as part of the proposal and I consider these allowances to be appropriate.
8. The additional information provided on the sound power level for HGV movements (98.0dB(A)) were well in excess of the actuals measured which gave a sound power level of 88.8dB(A). Similarly, the levels for tipping (104dB(A)) as against actuals of 96.0dB(A) shows that the assessments are conservative in their assessment of the impacts of the proposal. The results of

the survey show that for evening activities the rating level at the receptors is predicted to be below the measured daytime background sound levels, with a minimum margin of -19dB(A). The figure for the night-time activities is -1dB(A). BS4142:2014 says that this equates to having a low impact, where there would be no observed effect on health or quality of life as a result of the proposal.

9. When examined under British Standard BS8233:2014 Guidance on Sound Insulation and Noise Reduction for Buildings, the daytime assessment shows that the predicted noise level would be less than 10dB and would not contribute to the overall daytime noise environment at the nearest sensitive receptors. The night time assessment for BS8233:2014 uses the World Health Organisation limit for sleeping in bedroom, of 30dB, with the window open, using the standard 15dB attenuation. The noise levels recorded were all below 30dB. The Noise Policy Statement for England as referenced in the footnote to paragraph 180 of the National Planning Policy Framework (NPPF), states that noise is a subjective matter and sets out a framework for assessment based on the perception of noise. Based on the changes shown on BS4142:2014 this would result in there being No Observed Effect Level (NOEL) at the nearest sensitive receptors. Therefore, the proposal would comply with paragraph 180 of the NPPF.
10. On the basis of the modelling and noise assessment carried out, which I consider to be satisfactory, as does the Environmental Health Department of the local District Council, there would not be an adverse effect in terms of noise from the proposed night time use of the site. The existing and proposed new conditions and the Noise Management Plan also assist with the mitigation of noise. The use of the site at night would not create a precedent for other development, since each case would be looked at on its merits and any cumulative impact taken into account. Whilst the Council say that this use is not compatible with other uses on the site, waste operations are usually compatible with other employment uses and located on employment land. The Council say that there have been seven complaints over the past 5 years but these have been mainly to do with stockpile height and dust, rather than noise, although night time working would be a new activity on the site.

Off-site noise and HGV movements

11. The number of vehicle movements at night would be low and limited to 12 during night time hours by condition. Nevertheless, there is considerable public concern about night time lorry movements and the Council has agreed a route that HGVs should take when leaving the site. This would ensure that they turned north west onto Mill Lane (B3004) from Waterbrook Road and then turned east onto the A31. This would ensure that the vehicles, which have trackers, did not travel through more residential areas of the town and would protect their occupiers. It would also help to prevent travel along the B3004 through villages like Kingsley.
12. This would need to be secured through a S106 agreement, which would be necessary to prevent noise and disturbance to surrounding occupiers from HGV movements. This routing agreement also has the support of the highway authority. It also needed to be provided with the appeal, so that it could be taken into account. Without the agreement in place, there is no guarantee that

surrounding occupiers would be adequately protected from noise and disturbance by HGVs.

13. Therefore, although on-site noise could be adequately controlled, I consider that there would be an adverse effect from night-time HGV movements without a routing agreement in place. As such, I conclude that the proposal would be harmful to the living conditions of neighbouring occupiers, contrary to Policy 10 of the LP which seeks to protect public health, safety and amenity.

Other matters

14. The site has a permit which the Environment Agency have confirmed would cover the proposed new activities on site. The permit also covers matters like pollution control and the need for an adequate fire plan, which is a concern for some residents. Local residents have also raised the issue of emissions from vehicle movements contributing to poor air quality. However, the vehicle movements which are the subject of this appeal would be part of the overall number of movements allowed by the original consent and would not be additional. Dust would be controlled by condition, the revised Dust Management Plan and the permit. The proposal would have little visual impact, since the bay within which the planings would be tipped is already in place. The appellant has said that there would be no lighting used at night on the site except from the vehicles and this would not give rise to any adverse visual or landscape impact or have an adverse impact on ecology. It has been suggested that each planings campaign should be licenced by the Council but this is not a matter for the town and country planning regime, which can only control issues by condition or planning obligation. There have been complaints about the level of consultation on the application but the Council has shown that it has consulted at the required times on the basis of the Council's Statement of Community Involvement.

Conclusion

15. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeals should be dismissed.

E A Hill

INSPECTOR

HAMPSHIRE COUNTY COUNCIL Decision Report

Decision Maker:	Regulatory Committee
Date:	18 March 2020
Title:	Easterly extension of the existing sand extraction area, extend the end date for quarry operations and restoration and amend the approved restoration schemes at Kingsley Quarry, Bordon, Hampshire (EIA) (No. 51188/003) (Site Ref: EH025)
Report From:	Head of Strategic Planning

Contact name: Sam Dumbrell

Tel: 01962 847981

Email: sam.dumbrell@hants.gov.uk

Recommendation

1. That planning permission be GRANTED subject to the conditions listed in Appendix A.

Executive Summary

2. The planning application covers 3 main areas and seeks:
 - to extend the currently permitted (permission ref: 55450) quarry extraction area at Kingsley Quarry to the east of the existing operations known as 'Rookery Farm';
 - to extend the end date for currently permitted quarry operations and restoration at Kingsley Quarry; and
 - to amend the currently approved restoration schemes at Kingsley Quarry.
3. The easterly extension would allow the extraction of approximately 1 million tonnes of silica sand over a 10 year period plus 1 further year to complete restoration. The concurrent extension to the lifespan of the existing quarry site, for an additional 11 years (including 1 further year for the restoration of the wider site) following the completion of extraction works from the proposed easterly extension, and the amendment of the wider site's currently approved, and incomplete, restoration scheme is also sought.
4. It is considered that the proposal would be in accordance with the relevant policies of the adopted [Hampshire Minerals and Waste Plan \(2013\)](#) (HMWP) as it would provide an additional 1 million tonnes of silica sand mineral resource, according with Policy 17 (Aggregate supply - capacity and source) and Policy 20 (Local land won aggregates).

5. This application is being considered by the Regulatory Committee as it is considered to be a major minerals development and an Environmental Impact Assessment [EIA] development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). It is accompanied by an Environmental Statement (ES).
6. The only statutory consultees to object are East Hampshire District Council and Kingsley Parish Council. A total of 22 representations were received from members of the public.
7. The Regulatory Committee undertook two site visits, the first on 3 September 2018 and the second on 9 March 2020 in advance of the proposal being considered.
8. In summary, it is considered that the proposal would:
 - contribute to maintaining an adequate and steady supply of silica sand for Hampshire through the development of an extension to an existing mineral extraction sites in the adopted Hampshire Minerals and Waste Plan (2013);
 - be a time limited mineral extraction in the countryside which is subject to a requirement for restoration and aftercare and not cause an unacceptable visual impact;
 - protect soils;
 - not adversely affect local archaeology and cultural heritage;
 - not have a significant adverse effect on designated or important ecology and biodiversity;
 - be acceptable in terms of highway capacity and safety;
 - not cause any additional flood risk and protect the quality of groundwater and surface water; and
 - not cause unacceptable adverse amenity impacts.
9. Therefore, it is recommended that permission be granted subject to conditions covering the matters set out in **Appendix A**.

The Site

10. Kingsley Quarry occupies an area of approximately 20 hectares and is located in the countryside approximately 1km to the west of Kingsley village and 6km to the east of Alton in East Hampshire (see **Appendix B - Site Location Plan**).
11. Kingsley Quarry produces high quality silica sand for non-construction use as well as sand for construction use. The silica sand from Kingsley is sold widely in the south of the UK. This 'Kingsley sand' is within specification as a 'recommended sand size' for use on football, rugby and hockey pitches. Kingsley sand is suitable for use in fine turf areas including golf and bowling greens. Construction uses of the sand include ready mixed concrete and concrete products.

12. The existing quarry is split into two distinct areas:
 - **Lode Farm:** The processing site, mineral storage areas, mineral blending areas, silt disposal area, site offices, welfare facilities and vehicle parking and access areas and former mineral workings are located to the north of the B3004 occupying 9 hectares; and
 - **Rookery Farm:** The current extraction area is located approximately 70m south of the B3004 and with a vehicular access from Oakhanger Road occupying 11 hectares.
13. Rookery Farm is where the sand was being extracted from most recently. The footprint of the extraction area is very small in relation to the amount of sand recovered due to the substantial depth of sand. Sand extraction is carried out using a suction dredger which involves sand being extracted to a depth of 24 metres below water level within a lake.
14. The Rookery Farm and Lode Farm areas are connected by a pipeline used to transport sand and water extracted by the dredger within Rookery Farm northward to the plant site within Lode Farm. The pipes are also used for the return of waters from Lode Farm back to the dredging lake.
15. Processing of the mineral extracted from Rookery Farm as well as the creation of the specialist products currently take place at Lode Farm. The site also includes a silt pond.
16. The quarry is served by an existing priority junction at Lode Farm with the B3004 (Forge Road). This road runs between the A325 Farnham Road (east) and the A31 (part of the [Strategic Road Network](#)) at Alton (west).
17. Mineral and mineral blended products are distributed by road by heavy goods vehicles (HGVs) via the main existing access at Lode Farm. Small quantities of soils and materials for blending are also imported into the site by road (HGVs). Vehicles, plant and machinery can access Rookery Farm from Lode Farm by road should it be needed via Oakhanger Lane.
18. The Lode Farm access with the B3004 (Forge Road) also provides vehicular access to the 'Land at Bridges Farm' site and its inert waste/soil recycling facility. This site adjoins Lode Farm's north-eastern boundary and restoration operations are near completion.
19. The closest residential properties to Lode Farm are located on the western boundary of the existing site. The closest properties to Rookery Farm are located on Forge Road approximately 60m to the north and approximately 80m to the south.
20. The existing site (Lode Farm) lies just outside, but adjacent to, the South Downs National Park (SDNP). The National Park boundary runs along

Oakhanger Lane to the west of the existing extraction area at Rookery Farm. The National Park incorporates Shortheath Common to the south and Binswood Common to the west. To the north and west, the land slopes up to the greensand terrace with its 'hanger woodlands' and chalk ridge.

21. The existing Rookery Farm site adjoins the Shortheath Common Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC), located to the south of the quarry site. The existing quarry is designated as Lode Farm Sand Pit Site of Importance for Nature Conservation (SINC).
22. The entirety of the Lode Farm area lies within Flood Risk Zone 1 of the Kingsley Stream (the lowest zone of flood risk from rivers). The Rookery Farm dredging lake resides within FRZ 2 and FRZ 3 of the Kingsley Stream (3 being the highest risk zone).
23. The Folkestone Formation is categorised as a Principal Aquifer by the Environment Agency (EA) because of its importance as a source of water supply to the environment and for potable water use. Groundwater within the aquifer is in hydraulic continuity with the Rookery Farm dredging lake such that the level of this pond correlates with the level of groundwater within the underlying aquifer.

Planning History

24. Kingsley Quarry was first granted permission in 1966 and quarrying has been ongoing since the mid 1970's, initially in Lode Farm. Extraction within Rookery Farm commenced in 1991. The quarry has been operated by the current applicant since 2002.
25. The site had planning permission to extract sand until the end of 2018 and be restored to agriculture (Lode Farm) and to a lake (Rookery Farm) by the end of 2019 (planning permission [F24847/4](#) and Environment Act Review [F24847/014](#)). Permissions F24847/017 and F24847/020 control aggregate recycling and sand blending at Lode Farm too. In accordance with the two principal planning permissions and pending determination of this application sand extraction has ceased at Rookery Farm. Restoration of both areas has not been completed.
26. The quarry's full history is shown in **Table 1** below:

Table 1

Application No	Location	Proposal	Decision	Decision Date
51188/002	Lode Farm	Retrospective application for the installation and use of weighbridge facilities	Granted	25.09.17

SCO/2017/0431	Kingsley Quarry extension	Scoping Opinion - Extend the for operations and amend the restoration scheme for the existing site	Advice	07.08.17
SCR/2017/0347	Kingsley Quarry	Screening Opinion: Section 73 application to vary condition 2 of PP: 24847/031 (extension of time)	Advice	17.07.17
55450	Kingsley Quarry	Variation of condition 3 (working scheme) of planning permission F24847/014	Granted	17.06.14
SCO/2008/0084	Kingsley Quarry	Scoping Opinion: Proposed extension to existing mineral extraction operation and restoration to nature conservation uses	Advice	28.08.08
F24847/020/CMA	Lode Farm	Development of Topsport and merchenting operations	Granted	25.06.04
F24847/017/CMA	Lode Farm	The development of an aggregates recycling facility to facilitate quarry restoration including construction of a new internal roadway and provision of wheel cleaning equipment	Granted	25.06.04
F24847/014/CMA	Kingsley Quarry	Review of Mineral Planning Permissions	Granted	30.05.03
F24847/10C	Lode Farm	Vary conditions 3 & 9 of F24847/7C to extend the period for tipping to 31/12/98, extend hours of work to including Saturday am	Granted	11.12.95
F24847/9	Lode Farm	Application to vary conditions on F24847/3 to enable an extension of time till 31/10/94 to complete restoration	Granted	03.02.94
F24847/7C	Lode Farm	Extraction of building sand & subsequent infilling with inert waste prior to restoration to agriculture	Granted	06.09.93
F24847/8C	Lode Farm	Laying of pipelines for the purpose of transporting excavated minerals from rookery farm to lode farm sandpit	Granted	13.11.92
F24847/6	Lode Farm	Installation of pipeline and conveyor	Granted	02.07.90

F24847/4	Lode Farm	Winning and working of sand and ancillary matters thereto including constructing a vehicular access road to B3004 and laying pipelines to connect to the existing Lode Farm Sandpit, infilling with approved materials and restoration to agriculture, amending Planning Permission F/24847/3 as appropriate	Granted	02.07.90
F24847/5C	Lode Farm	Variation of condition 2 of consent F24847/3 to deepen part of the existing sand pit	Granted	03.04.90
F24847/3	Lode Farm	Deepening of existing sandpit with subsequent restoration to agriculture using imported waste material	Granted	25.02.87
F24847/2	Lode Farm	Deepening of sand pit and importation of fill	Granted	22.03.82
F24847/1	Lode Farm	Variation to conditions 10,18 pp F24847	Granted	22.03.82
F24847	Lode Farm	Sand extraction, construction of conveyor tunnel etc	Granted	08.10.79
ALR12394	Lode Farm	Erection of plant for washing sand	Granted	21.05.73
ALR8846	Lode Farm	Mortar Plant	Refused	19.06.68
ALR8024	Lode Farm	Erection of sandhopper and screening plant, pit ticket office and canteen	Granted	23.12.66
ALR7498	Lode Farm	Sand extraction	Granted	07.06.66

The Proposal

27. The proposal involves:
- i. an easterly extension of the existing sand extraction area (Rookery Farm);
 - ii. an extension of the end date for quarry operations (including associated processing and recycling operations) at both Lode Farm and Rookery Farm; and
 - iii. restoration and amendments to the approved restoration schemes for the quarry and plant site at both Lode Farm and Rookery Farm.
28. The overall extent of the planning application area is 24.8 hectares (ha).

i. Easterly extension area

29. The extension area lies immediately to the east of the existing Rookery Farm extraction area (see **Appendix C - Existing Site Layout with Extension Area Plan**).
30. The proposed site covers 3.4ha of land comprising 2.6ha of Best and Most Versatile (BMV) agricultural land and 0.8 hectares of non-agricultural land. The extension area is reasonably flat, with a very gentle slope.
31. The site comprises a small and recently planted woodland copse and the railway embankment of the disused 'Bordon Light Railway', which closed in 1966. Two rows of mature poplar trees are situated on the crest lines of the embankment, which separates the extension area from the Rookery Farm site.
32. The proposed extension site is bordered to its east by the locally south-southwest to north-northeast flowing Oakhanger Stream. This watercourse meets the Kingsley Stream to the east (downstream) of the quarry.
33. A public footpath (Kingsley 132/5) crosses the proposed extension area running NE to SW across the site where it crosses the disused railway before running along the south-east corner of Rookery Farm towards Shortheath Common.
34. The closest properties are two houses on Forge Road, approximately 150-190 metres to the north-west from the extension area application boundary (red line).
35. The extension area would be worked in three phases over 10 years from north to south, by expanding the existing dredger lake at Rookery Farm. The phases would be as follows:
 - **Phase 1** - Removal of the northern section of the railway embankment and stripping of soils and overburden within the area north of the footpath. Extraction to 12 metres (m) below water level within this area;
 - **Phase 2** - Once the public footpath has been diverted, the remaining portion of the railway embankment would be removed and the remaining soils and overburden stripped from the extension area south of the footpath. Extraction to 12m below water level would then progress within this area;
 - **Phase 3** - With the upper final excavation slopes established and the extension worked out to 12m below water level, the extension would be deepened by removal of a lower bench to the maximum depth of 24m below water level.

36. Prior to **Phase 1** commencing public footpath (Kingsley 132/5) which crosses the proposed extension area running NE to SW, would be securely fenced off. Prior to **Phase 2** commencing the footpath would need to be diverted to ensure the continuing safe use of this right of way by its users. It would be diverted around the eastern boundary of the proposed extension area.
37. The extension area would yield approximately 1Mt of sand. Extraction would take place at a rate of 100,000 tonnes per annum lasting approximately 10 years, extending the life of the site until 2030.
38. Soils and overburden would be stripped from the extended site, including an existing topsoil bund from the Rookery Farm site's eastern margin. Approximately 25,000m³ of the total 45,000m³ of soils and overburden will be retained for use in restoration, initially being used to form a screenbank around the extension area to screen external views and the diverted footpath.
39. The remaining 20,000m³ (30,000 tonnes) would be transported on a campaign basis by road (Oakhanger Lane and Forge Road) using either tractors with trailers and/or HGVs from Rookery Farm to Lode Farm.
40. Campaigns moving c.5000 tonnes would occur six times during the initial three to six years (could be twice yearly over three years or once a year over six years) of extraction operations.
41. Each campaign would last four weeks be resulting in 28 loads or 56 two-way movements per day between Rookery Farm along Oakhanger Lane and Lode Farm via B3004.
42. Exported soils and overburden would be used within restoration and utilised in the blending operation as components for specialist and-based products already produced at Lode Farm. This could reduce the dependency for the historically permitted import of blending materials from further afield by road/HGV (c. 25,000 tonnes per annum in any 12 month calendar period) that comprises peat, soils, sand, grit and aggregates, which is again sought within this application.
43. The applicant's existing dredger would be used in the extension area to extract sand from similar maximum depths, 24m below water level. Extracted sand would also be transported via the underground pipe to Lode Farm.
44. The proposal would not result in any change in the method of extraction, the processing activities or the current operating hours at the Lode Farm and Rookery Farm sites. The existing permission contains a planning condition that controls the working hours. These are:
 - *Monday to Friday - 07:00 to 18:30; and*

- *Saturday - 07:00 to 13:00.*

The long reach excavator shall not be operated at all at any time on a Saturday, Sunday or Bank Holidays.

45. The applicant has advised that reference in the condition to an 18:30 closure time was a clerical error and that 18:00 hours is when operations cease each day.

ii. Extension of the end date for quarry operations (including associated processing and recycling operations)

46. The proposal seeks to extend the life of existing quarrying operations at Rookery Farm to coincide with the proposed easterly extension area's lifespan of 10 years plus 1 year for restoration to be completed. The proposal also seeks to retain the use of the associated plant (processing and recycling) at Lode Farm for the same period to enable the sand from the quarry extension area to be processed, blended and sold.
47. Existing parking, layout, stockyard, weighbridge, office, welfare, associated facilities and lighting at Lode Farm will also remain the same as currently permitted.
48. In terms of the exportation of sand (100,000 tonnes per annum) and blended sand-based products (20,000 tonnes per annum), this would continue to be undertaken by HGV from Lode Farm via the B3004 (Forge Road), running between the A325 (east) and the A31 (west). No increases to previously permitted outputs are proposed.
49. Overall imported materials entering Lode Farm involving soil for sand blending (c.20,000 tonnes per annum) and materials for recycling operations (c.25,000 tonnes per annum) would continue to be undertaken by HGV from Lode Farm via the B3004 (Forge Road), running between the A325 (east) and the A31 (west). No increases to previously permitted imports are proposed.
50. The only change to material transport would be through the daily 28 or 56 two-way road movements between Rookery Farm, travelling along Oakhanger Lane and the B3004 to Lode Farm. These movements carrying soils and overburden through the six, four-weekly campaigns from the eastern extension area (c.30,000 tonnes total) would take place during the initial three to six years.

iii. Restoration and amendments to the approved restoration schemes for the quarry and plant site

51. The currently approved restoration scheme would be amended as part of the proposal. The existing Lode Farm processing plant area would still be restored to agricultural land using existing stockpiles of soils and surplus

soils from the extension area. In addition, areas of biodiversity habitat would be created including wetland, damp grassland, ponds and new hedgerow.

52. The restoration of Rookery Farm and the easterly extension site would be carried out on a phased basis once sand extraction is completed. The site would be restored to a variety of nature conservation habitats surrounding landscaped lakes together with agricultural land. A variety of different restoration habitats will be provided, and the scheme has been designed to provide biodiversity enhancement and a significant net increase in habitat. The habitats proposed include the following elements:
- Lake -11.6ha;
 - Native woodland - 4.1ha;
 - Native scrub - 0.45ha;
 - Native hedgerow - 165.5m;
 - Agricultural grassland - 4.8ha;
 - Neutral grassland - 3.4ha;
 - Damp grassland - 1.4ha; and
 - Ponds - 0.19ha.
53. The applicant advises that the proposed restoration scheme would result in a significant net increase in habitat extent for legally protected Habitats and Species of Principal Importance, and Local Biodiversity Action Plan Priority Habitats and Species benefitting both the restored mineral workings and the local area. Additional land under the control of the applicant to the west of the Rookery Farm site is also to be used for mitigation purposes.
54. There will be a further 1 year period for the overall restoration to be completed following the completion of operations meaning the end date would be in 2031. Following restoration, the site will go into aftercare for a defined period (a minimum of five years) to ensure the successful establishment of habitats.
55. The proposed development is classified as an Environmental Impact Assessment (EIA) development under the [Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#). Therefore, an Environmental Statement (ES) has been submitted with the planning application, considering the following planning issues:
- Agriculture and Soils;
 - Air Quality;
 - Cultural Heritage;
 - Ecology;
 - Geotechnical Stability;
 - Highways;
 - Landscape Character and Visual Appraisal;
 - Noise;

- Water;
- Public Rights of Way;
- Cumulative Impacts;
- Public Health and Climate Change; and
- Socio-Economic.

56. In October 2019, under Regulation 25 of the above EIA Regulations (2017), the County Council formally requested the submission of further information to supplement that included within the ES. It concerned ecology and biodiversity, the water regime and community and stakeholder engagement. Other information was also requested to provided clarification on several matters.

57. The required Regulation 25 information was provided in October 2019 by the applicant and was subsequently sent out for full public consultation by the County Council in November 2019. The responses received were all considered within the decision-making process and the completion of this report.

Development Plan and Guidance

58. The following plans and associated policies are relevant to the proposal:

National Planning Policy Framework (2019) (NPPF)

59. The following paragraphs are relevant to this proposal:

- Paragraph 11: Presumption in favour of sustainable development;
- Paragraphs 54 - 58: Use of conditions, obligations and enforcement;
- Paragraph 80: Support of sustainable economic growth;
- Paragraph 98: Protect and enhance public rights of way and access,
- Paragraphs 102 & 108 - 109: Assessing traffic impact and sustainable transport;
- Paragraph 118: Effective use of land;
- Paragraphs 149 - 150, 155 & 163: Planning for climate change and flood risk;
- Paragraphs 170, 174, 175 & 177: Conserving and enhancing the natural environment;
- Paragraphs 180 & 183: Ground conditions and pollution;
- Paragraphs 184, 189, 192 - 193 & 196 (Conserving and enhancing the historic environment); and
- Paragraphs 203 - 205 & 207: Facilitating the sustainable use of minerals and maintaining their supply.

National Planning Practice Guidance (NPPG)

60. Elements of National Planning Practice Guidance NPPG (Live) are also relevant, those being:

- Air quality (1 November 2019);
- Appropriate Assessment (22 July 2019);
- Climate change (15 March 2019);
- Environmental Impact Assessment (15 March 2019);
- Flood risk and coastal change (6 March 2014);
- Healthy and safe communities (1 November 2019);
- Historic environment (23 July 2019);
- Light pollution (1 November 2019);
- Natural environment (21 July 2019);
- Minerals (17 October 2014);
- Noise (22 July 2019);
- Open space, sports and recreation facilities, public rights of way and local green space (6 March 2014);
- Planning obligations (1 September 2019);
- Travel plans, transport assessments and statements (6 March 2014);
- Use of planning conditions (23 July 2019); and
- Water supply, wastewater and water quality (22 July 2019).

61. The section on Minerals (17 October 2014) is particularly relevant to the proposal, with the pertinent sections being:

- What are mineral resources and why is planning permission required? (Paragraph: 001 Reference ID: 27-001-20140306 - Revision date: 06 03 2014);
- Under what circumstances would it be preferable to focus on extensions to existing sites rather than plan for new sites? (Paragraph: 010 Reference ID: 27-010-20140306 - Revision date: 06 03 2014);
- How and when are the details of any significant environmental impacts best addressed? (Paragraph: 011 Reference ID: 27-011-20140306 - Revision date: 06 03 2014);
- What is the relationship between planning and other regulatory regimes? (Paragraph: 012 Reference ID: 27-012-20140306 - Revision date: 06 03 2014);
- How should mineral operators seek to minimise the impact of development upon properties and the local environment in close proximity to mineral workings? (Paragraph: 015 Reference ID: 27-015-20140306 - Revision date: 06 03 2014);
- How should minerals operators seek to control noise emissions? (Paragraph: 019 Reference ID: 27-019-20140306 - Revision date: 06 03 2014);
- What are the appropriate noise standards for mineral operators for normal operations? (Paragraph: 021 Reference ID: 27-021-20140306 - Revision date: 06 03 2014)

- How should mineral operators seek to minimise dust emissions? (Paragraph: 023 Reference ID: 27-023-20140306 - Revision date: 06 03 2014); and
- How much detail on restoration and aftercare should be provided with the planning application? (Paragraph: 040 Reference ID: 27-040-20140306- Revision date: 06 03 2014); and
- Is a landbank above the minimum level justification to refuse planning permission? (Paragraph: 084 Reference ID: 27-084-20140306 - Revision date: 06 03 2014).

Hampshire Minerals & Waste Plan (2013) (HMWP)

62. 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 4 (Protection of the designated landscape);
- 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);
- Policy 20 (Local land-won aggregates); and
- Policy 21 (Silica sand development).

East Hampshire and South Downs Joint Core Strategy - Part 1 (2014) (EHCS (2014))

63. The following policies are relevant to the proposal:

- Policy CP1 (Presumption in favour of sustainable development);
- Policy CP19 (Development in the countryside);
- Policy CP20 (Landscape);
- Policy CP21 (Biodiversity);
- Policy CP25 (Flood risk);
- Policy CP26 (Water resources/water quality);
- Policy CP27 (Pollution);

- Policy CP29 (Design);
- Policy CP30 (Historic environment); and
- Policy CP31 (Transport and access).

Draft East Hampshire Local Plan 2017 - 2036

65. This emerging plan that would supersede the adopted Joint Core Strategy (2014) is not yet at the examination stage. Accordingly, it can only be given little weight for decision-making purposes. The following policies are relevant to the proposal:

- Policy S3 (Sustainable and viable development);
- Policy S4 (Health and well-being);
- Policy DM5 (Amenity);
- Policy S13 (Planning for economic development);
- Policy DM15 (Protection of tourism uses);
- Policy S15 (Rural economy);
- Policy S17 (Development in the countryside);
- Policy S18 (Landscape);
- Policy S19 (Biodiversity, geodiversity and nature conservation);
- Policy DM25 (The local ecological network);
- Policy DM26 (Trees, hedgerows and woodland);
- Policy S24 (Planning for climate change);
- Policy S25 (Managing flood risk);
- Policy S26 (Protection of natural resources);
- Policy DM29 (Water quality and water supply);
- Policy S27 (Design and local character);
- Policy S28 (Heritage assets and the historic environment);
- Policy DM38 (Archaeology and ancient monuments); and
- Policy S30 (Transport).

Consultations

66. **County Councillor Kemp-Gee:** Commented as to whether further quarrying here is needed instead of increased recycling of suitable wastes/materials? Has concerns over the impacts of continuing and more widespread quarrying on the local community, and the lack of mitigation and community engagement on the part of the applicant. Impacts of concern include through traffic/HGV movements through Kingsley village and through noise and air quality emissions. Liaison meetings between the applicant and the local community have not been taking place and should have been.
67. **East Hampshire District Council:** Objection as the proposal would result in the loss of an avenue of mature poplar trees along the route of a former railway line/embankment. These are important landscape features of high amenity value, the loss of which would have an adverse visual impact within the landscape.

68. **East Hampshire District Council Environmental Health:** No objection subject to the imposition of conditions controlling potential impacts on the local population and area arising via operational noise and dust impacts and including the applicant's own mitigation measures including hours of use and the usage of plant and machinery within quarrying operations.
69. **South Downs National Park Authority:** Comments that If the disused railway line/embankment is not to be retained, they recommend that the whole length of the diverted footpath should be established as a multi-user path (bridleway) and at a minimum of 4m width. The surfacing should be to a high specification to promote opportunities for a wide range of users to enjoy the restored lakeside views, whilst taking account of the need to protect the existing trees and vegetation. It is considered that this should be a minimum requirement.
70. **Kingsley Parish Council:** Objection to a further 10 years of quarrying in this location as the local community and countryside location have suffered enough. Can't this proposal be located elsewhere or be met by increased use of aggregate recycling and concrete recycling. Historic impacts on this rural and tranquil area would continue to affect local residents and the local environment.
71. Specific impacts would include from HGV movements through the village, not just to road safety and disturbance, but to air quality and through noise. Continuing impacts on the local landscape due to delays in the completion of approved restoration, from further quarrying and through the use of lighting would adversely affect the locality and local designations including the nearby National Park and ecological/biodiversity sites too.
72. Should planning permission be recommended, conditions controlling the import of construction waste (25,000 tonnes per annum) and the export of recycled aggregates (20,000 tonnes per annum), associated HGV movements (16 per day) and days where concrete crushing is undertaken (36 per annum) should be imposed. Conditions to ensure the control of noise from quarrying operations, to control light pollution, reduced hours of working should all be imposed.
73. Lastly, the Parish Council state that a lack of community benefit has been delivered by the applicant since they acquired the quarry in 2002. This conflicts with the County Council's Policy 14 'Community benefits' in ensuring that community benefits are negotiated and where agreed are provided to 'the locality' to offset the impact/s of a development on the population living/working/visiting within that environment.
74. **Environment Agency:** No objection subject to the imposition of conditions concerning ecology and biodiversity and flood risk. These relate to **1)** the provision and management of an 8m wide buffer zone along both the Kingsley and Oakhanger Streams, **2)** the provision of a landscape and ecological restoration management plan, **3)** advance

approval of the design and location of any required crossings (bridges not culverts), **4)** no construction until a Construction Environmental Management Plan (CEMP), which includes long-term aftercare and management of all works, has been approved, **5)** no land raising of access tracks and footpath within flood zones 2 and 3, **6)** the retention of openings within the screening bunds throughout quarrying operations, **7)** no excavation work within 8m of the top of any watercourse channels and **8)** any fencing erected within flood zones 2 and 3 must be flood compatible in design.

76. **Natural England:** No objection over potential impacts to local designated ecological and biodiversity sites (Kingsley Common SPA) subject to the applicant's mitigation measures relating to the control of dust and emissions to air being imposed.
77. **Defence Infrastructure Organisation:** No objection.
78. **Local Highway Authority:** No objection subject to the imposition of conditions requiring HGV records to be retained on site, visibility at the Lode Farm access with the B3004 to be maintained, all HGVs carrying materials to be covered and all wheels on HGVs exiting the site to be clean.
79. **Rights of Way:** No objection to the application and diversion of the public footpath subject to securing or safeguarding the proposed multi-user railway line link or a route of similar recreational value as recommended by the South Downs National Park Authority.
80. **Lead Local Flood Authority:** Proposals for surface water drainage meet the current standards/best practice in relation to surface water drainage.
81. **County Archaeologist:** No objection subject to a written scheme of archaeological investigation being required and imposed by condition.
82. **County Landscape Architect:** No objection subject to **1)** a detailed landscape management plan showing contouring of screen bunding, the planting, seeding and a 5 year maintenance plan being approved, **2)** details of the exact line of proposed protective fencing on the eastern boundary (and the valuable trees/hedgebank along the woodland boundary) being approved and erected prior to any works commencing, and retained intact until quarrying ceases and **3)** a detailed drawing showing the route and construction method for the service road and the diverted path be submitted and approved before construction adjacent the eastern woodland commences to ensure protection to the valuable trees/hedgebank along the woodland boundary all being required and imposed by conditions.
83. **County Ecologist:** No objection subject to the imposition of a pre-commencement condition that covers the submission, approval and

implementation of the finalised version of the applicant's Ecological Management Plan, with reference to the draft version (v.2 August 2019). It should take account of the EA's requirements for the provision and management of 8m buffer strips around the edge of the quarry and the long-term ongoing management of affected watercourses.

84. **County Arboriculturalist:** Concerns raised over number of trees to be removed from woodland belt along former railway embankment. Mitigation of this loss and protection of remaining trees/planting close to extraction area must be provided by condition/s.
85. **County Public Health:** Was notified.
86. **County Planning Policy:** The proposal would contribute to the County's requirement to ensure the adequate and steady supply of aggregates until 2030 as required by Policy 17 of the HMWP (2013). Based on current provision, the County is below its required seven year landbank for sand and gravel as well as its silica sand landbank, the latter being quarried at Kingsley up until the end of 2018. This extension would provide approximately 1Mt of silica sand over a period of 10 years and would be supported under both Policy 20 'Additional sites' and Policy 21 'Silica sand developments' within the HMWP (2013).

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.
88. In complying with the requirements of the SCI, Hampshire County Council:
- Published a notice of the application in the Hampshire Independent;
 - Posted 4 site notices around the site
 - Consulted all statutory and non-statutory consultees in accordance with [The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#); and
 - Notified all residential properties (by letter) within 300 metres from the site boundary.
89. As of 01 March 2020, a total of 22 representations, including from the Ashdell Residents Association and the Alton Group of Ramblers, to the proposal have been received. 21 were objecting to or raising concerns about the proposal with 1 making comments on ensuring that the public footpath would be diverted properly and maintained for continuing use should planning permission be granted. The main areas of concern raised in the objections relate to the following areas:

- Another 10 years of quarrying and restoration operations will cause disturbance to residents when quarrying should have ceased;
- Noise disturbance to residents and the rural setting from quarrying operations;
- Dust and air quality impacts from quarrying operations;
- Removal of large number of mature trees;
- Adverse impacts on local ecology and biodiversity;
- Adverse visual impacts through quarrying operations adding to existing impacts caused through incomplete restoration;
- Continuing traffic and quarry plant/machinery noise and vibration disturbances;
- Continuing light pollution;
- Hours of use are unsociable and impacts on local residents' health and well-being;
- Restoration works incomplete and remain poor in appearance;
- HGVs travelling to and from the quarry already cause road safety problems (specifically to the B3004) contributing to cumulative traffic impacts from the volume of vehicles driving through Kingsley Village and the proposal will exacerbate this; and
- Lack of community benefits provided by applicant.

90. The above issues will be addressed within the following commentary (except where identified as not being relevant to the decision).

Commentary

Principle of the development and demonstration of need

91. The use of land at Kingsley Quarry (i.e. at Lode Farm and Rookery Farm) for mineral extraction, ancillary operations and restoration has been long-established through the granting of several mineral-related planning permissions since the late 1960s. The extension area has not been used for mineral-related uses and so requires full consideration.
92. Kingsley Quarry produces high quality silica sand for non-construction use as well as sand for construction use. The suitability for use in each market is defined by the particular characteristics of the sand, namely their physical, chemical and mineralogical properties:
- Non-construction use 'silica' sands are high-purity, well sorted with a limited grain size distribution with the majority of grains falling between 0.125mm to 1mm in diameter; and
 - Construction use sands have fewer specific requirements being dependent on the project/development they are being used for. The grading of sand particles as well as their composition and shape of the particles dictate this.

93. Within the existing site the majority (70%) of extracted sand was used for specialist, non-construction purposes. This includes for use on golf courses, sports pitches, specific landscaping and recreational uses which requires silica sand to be blended with imported soils. The silica sand from Kingsley is sold widely in the south of the UK. The Kingsley silica sands meet the specification of the Sports Turf Research Institute for modification and top dressing of winter games pitches and fine turfs within golf and bowling greens.
93. Sands used for construction can be used for ready mixed concrete, concrete products, plastering, mortar or asphalt uses depending on specifications. Construction sands are only suitable for specialist non-construction uses in exceptional circumstances.
94. Geological information submitted with the application identified the geological and hydrogeological regime at the application site and the quality and the volume of the available silica sand mineral reserve present.
95. As already stated, the most recent planning permissions for sand extraction, restoration and mineral processing and blending expired at the end of 2018 with restoration set to be completed by the end of 2019. The extraction deadline was set to tie in with the extraction rate of available mineral reserves at Rookery Farm. These are now exhausted, and restoration of both areas remains incomplete pending determination of this application.
96. Policy 20 (Local land-won aggregates) of the adopted Hampshire Minerals and Waste Plan (2013) (HMWP) is supportive of sites that can contribute to the '*adequate and steady supply of locally extracted sand and gravel*' that the County have to maintain sufficient reserves of through their landbank for at least seven years (a nationally set requirement).
97. Whilst preference is given to the extraction of remaining reserves at permitted sites (20 (1) (i-xiii)), extension to allocated sites (20 (2) (i-ii)) and new allocated sites (20 (3) (i-v)) within the County, under (20) (4) proposals for new sites outside those identified areas will be supported where:
- a. monitoring indicates that the sites identified in Policy 20 (1), (2) or (3) are unlikely to be delivered to meet Hampshire's landbank requirements and / or the proposal maximises the use of existing plant and infrastructure and available mineral resources at an existing associated quarry; or*
 - b. the development is for the extraction of minerals prior to a planned development; or*
 - c. the development is part of a proposal for another beneficial use, or*
 - d. the development is for a specific local requirement.*

98. Looking at a. above, and permitted sites that are actively producing soft sand, current monitoring is indicating that these sites (*Policy 20 (1)*), extensions to existing sites (*Policy 20 (2)*), and new sand and gravel extraction sites (*Policy 20 (3)*), are individually/collectively not meeting demand or the landbank requirements.
99. Paragraph 6.83 of the HMWP seeks to maximise the sustainable use of existing plant and / or infrastructure either at or associated with an existing quarry to meet Hampshire's landbank requirements. The processing equipment already in place at Lode Farm demonstrates the ability to do this according with a. above.
100. As with permitted and allocated sites, Policy 20 still requires any new proposed mineral development to be considered against the development plan (HMWP) and all material development considerations within it at the planning application stage. These are considered in later sections of the **Commentary** section.
101. Policy 17 (Aggregate supply - capacity and source) of the HMWP seeks 'to provide for an adequate and steady supply of aggregates up to 2030 for Hampshire and surrounding areas'. This can be through land-won provision as well as through provision at safeguarded minerals infrastructure, recycled and secondary aggregates, marine-won aggregates and the importation of minerals from outside of Hampshire.
102. The proposed development would provide silica sand totalling approximately 1Mt over a period of 10 years at an extraction rate of 100,000 tpa.
103. A number of interested parties have asked why secondary aggregate production or aggregate recycling can't be accelerated rather than the continuation of quarrying for another 10 years. In response, the applicant advises that the production of secondary aggregates would not provide the required physical, chemical and mineralogical properties that silica sand and its uses need.
104. The HMWP sets out a provision rate of 1.56 Mtpa for sand and gravel for the period ending 2030. The NPPF requires the production of an annual Local Aggregate Assessment (LAA) to review the supply of aggregates. In 2019, the South East Aggregate Working Party agreed a methodology for undertaking the assessments using economic and construction forecasts. The 2019 Hampshire LAA rate for sand and gravel was assessed as 1.15 Mtpa.
105. The NPPF requires a minimum landbank of seven years for sand and gravel. Based on the HMWP provision rate of 1.56 Mtpa the landbank for sand and gravel in 2018 is 5.81 years. If the 2018 LAA Rate is applied, the landbank is 7.88 years. Whilst, using the LAA rate meets the seven-year

requirement, this is only a minimum and sand and gravel supply issues remain.

106. Notwithstanding differences in provision rates and excluding other sand and gravels within 'aggregate supply', soft sand resources remain scarce and concentrated to a small number of areas of Hampshire such as at Kingsley and a few miles away at Frith End Sandpit. Often these areas are constrained, such as by the National Parks and other environmental sensitivities. This has led to an issue not just for Hampshire but for the wider south-east region when assessed against Plan provision rates and /or the recently produced LAA provision rate.
107. The scarcity of soft sand in Hampshire is reflected in its individual landbank, which sits at 2.76 years (LAA rate) or just 2.26 years (Plan rate). This is far below the NPPF requirement for a minimum of seven years. This proposal would help bridge this deficit, both in the short-term and longer term.
108. Permission was approved in 2019 (subject to s106 completion) for the extraction of 3Mt of sharp sand and gravel at Roeshot, an allocated site in the HMWP. This is not included in the above figures as the LAA reports on the previous year, so the LAA 2019 contains 2018 data. The inclusion of this quarry in the reserves for Hampshire increases the landbank from 7.88 to 10.36 years based on the LAA rate.
109. There is no 'maximum' landbank figure that could justify refusal of planning permission, particularly where *a continuing need for its use within a distinct and separate market has been demonstrated* and in the case of the Quarry's productivity an urgent need. Factors such as extraction rate/s and sales at existing sites and permitted sites throughout the Plan period must also be included and are subject to the proposed LAA annual review.
110. Therefore, the application meets the expectations of the HMWP (2013) in terms of extractable reserves in accordance with Para 80: Support of sustainable economic growth, of the National Planning Policy Framework (NPPF) 2019.
111. The proposed development is identified as a new site that can contribute significantly to the supply of land-won aggregates in the form of soft sand (silica sand), in line with paragraph 10 of the NPPG (Live) and Policies 17 (Aggregate supply - capacity and source) and 20 (Local land-won aggregates) of the HMWP (2013).

Development in the Countryside, Landscape & Visual Impact

112. Kingsley Quarry is situated within the countryside. It occupies a relatively low-lying position adjacent to the Kingsley Stream and Oakhanger Stream between 70 and 80mAOD either side of the B3004 (Forge Road). Heading southward from the B3004 (Forge Road), the topography levels out more

and is characterised by the ancient commons of Kingsley, Binswood and Shortheath.

113. This area supports a mixture of heathland, arable land and woodland. Isolated residential and commercial properties are situated within the vicinity and the western margin of Kingsley village adjoins the quarry's eastern boundaries (**see Appendix B - Site Location Plan**).
114. The existing site (Lode Farm) lies just outside, but adjacent to, the South Downs National Park (SDNP). The National Park boundary runs along Oakhanger Lane to the west of the existing extraction area at Rookery Farm. The south-western corner of the proposed easterly extension area lies approximately 200m to the north of the.
115. The National Park incorporates Shortheath Common (Site of Special Scientific Interest (SSSI) and Special Area of Conservation (SAC)), to the south and Binswood Common to the west of the Rookery Farm extraction site. To the north and north-west of Lode Farm, the land slopes up to the greensand terrace with its 'hanger woodlands' and chalk ridge, again within the National Park, and an important local feature.
116. Concerns were raised by representees and by some consultees, including the County's Arboriculturalist and Landscape Advisor, the South Downs National Park and East Hampshire District Council, over the proposed development's impact on the local landscape, particularly over a further 10-11 years of mineral extraction and delays to approved restoration.
117. A Landscape and Visual Impact Assessment (LVIA) was submitted with the application. It fully assesses the potential landscape and visual impacts arising from proposals to extend the dredging area, and to consequently extend the previously permitted operational period and restoration scheme.
118. An assessment of the impacts on Landscape Character was also submitted within the LVIA. The nearest Landscape Character Area (LCA) to the easterly extension area, and which includes Shortheath Common within the National Park, is 'The Kingsley/Blackmoor Mixed Farmland and Woodland Landscape Character Area'. It acknowledges the presence of the quarry and how its increases in size and evolution over the last 50+ years has resulted in the creation of a new landform, that being functional processing and material storage areas at Lode Farm and a water-filled void at the extraction area at Rookery Farm, within the local landscape.
119. Policy 5 (Protection of the countryside) of the HMWP (2013) states that minerals and waste development in the open countryside, outside the National Parks and Areas of Outstanding Natural Beauty, will not be permitted unless one (or more) of the criteria set out in the policy are met. Those being:

a. it is a time-limited mineral extraction or related development; or

b. the nature of the development is related to countryside activities, meets local needs or requires a countryside or isolated location; or

c. the development provides a suitable reuse of previously developed land, including redundant farm or forestry buildings and their curtilages or hard standings.

120. In this case, the proposal meets criteria *a.*, being a *time-limited mineral extraction*, albeit one that would exist for around 10 - 11 years. Furthermore, due to the applicant's permitted processing and blending facilities situated at Lode Farm, which are easily accessed by road (Oakhanger Lane and B3004), it could be demonstrated that the proposal also meets *b.*, with the nature of the proposed development being *related to countryside activities, meeting a local need and/or requiring a countryside location.*
121. Policy 5 also requires, where appropriate and applicable, *development in the countryside to meet highest standards of design, operation and restoration and should be subject to restoration in the event it is no longer needed for minerals use.* Supporting this are Policies 9 (Restoration of quarries and waste developments), 10 (Protecting public health, safety and amenity) and 13 (High quality design of minerals and waste development) of the HMWP (2013). These all require temporary minerals development to be restored in a phased manner to beneficial after-uses that are in keeping with the character and setting of the local area, and which contribute to the delivery of local objectives for habitats, biodiversity or community use where applicable.
123. The proposal includes a programme of phased extraction and restoration, using site-derived materials (i.e. soils and overburden), to provide agricultural land, areas of woodland, heathland and grassland whilst conserving and enhancing existing local ecology and biodiversity and the landscape character of the locality. The proposal would meet the criteria of Policy 5 and that of Policies 9, 10 and 13 of the HMWP (2013) with the delivery of essentially the same level of restoration with improved levels of habitat and biodiversity net gain being included (refer to **ecology** section below).
124. Soils and overburden stripped within **Phases 1 and 2**, would initially be used to form a screenbank around the extension area to screen external views and the diverted footpath, thus minimising the visual impacts from additional quarrying operations. Policy 8 (Protection of soils) of the HMWP (2013) should be adhered to in *requiring that minerals development ensures that extracted soils are protected during quarrying and when appropriate, recover and enhance soil resources*, within the phased restoration scheme. The applicant has undertaken to do this acknowledging that the use of local soils is always preferable to the importation of soils, as native material contains locally derived soil type/s that benefit the local flora and fauna.

125. 'The Kingsley/Blackmoor Mixed Farmland and Woodland Landscape Character Area' (LCA) notes in its assessment that *'the high degree of tree cover in this area limits the visual sensitivity of this landscape, and therefore increases its ability to accommodate development without creating adverse landscape effects'*. This combination of natural tree screening and local topography around the periphery of both Lode Farm and Rookery Farm and the latter's easterly extension, would provide a substantial screen between the them and the National Park to the south, west and north.
126. The effects of further quarrying and the continuing use of the dredger and pipeline from that currently used at Rookery Farm, would remain visually and audibly unobtrusive, as opposed to the use of mechanical excavators and HGV movements within a land-won sand quarry. The use of an excavator and HGVs during the six, four-week long soil and overburden stripping and movement to Lode farm would be discernible but not unacceptable and controlled and monitored within conditioned Nationally approved, short-term noise levels for quarries. Any impacts would only create minor and non-significant effects that would become minor to negligible once the site is restored to a lake with nature conservation features around its margins.
127. Continuing the approved processing, recycling, sand handling and incomplete restoration operations within Lode Farm would also be insignificant and unobtrusive in terms of impacting and effects on the local landscape. Lode Farm and its operations already form part of the wider landscape and the higher ground surrounding the sites, coupled with boundary planting works undertaken as part of the previously approved restoration works would ensure only minor and non-significant effects that would become minor to negligible once the site is restored to agricultural and wetland/heathland uses.
128. The County Landscape Advisor and Arboriculture's along with East Hampshire District Council raise concerns and object to the loss of the two rows of mature poplar trees that stand along the length of the former railway embankment.
129. Without removing the embankment, to join the existing Rookery Farm dredging lake with the eastern extension area, less than 200,000 tonnes of the 1Mt of sand available could be recovered. This, coupled with the poor quality and worsening health of the poplar trees and the proposed compensatory tree planting and landscaping to be controlled by conditions are satisfactory in ensuring that this loss on balance can be supported against the requirements of Policies 5 (Protection of the countryside) and 9 (Restoration of quarries and waste development) of the HMWP (2013).

130. Based on the assessments undertaken and the provisions put in place for what is a time-limited proposal, the proposed development is identified as a site that can demonstrate it requires a countryside location, that it would not cause an unacceptable adverse visual impact on and that it would maintain and enhance the distinctive character of the landscape in line with Policies 5 (Protection of the countryside), 8 (Protection of soils), 9 (Restoration of quarries and waste development), 10 (Protecting public health, safety and amenity) and 13 (High quality design of minerals and waste development) of the HMWP (2013).

Soil Protection

131. Policy 8 (Protection of soils) of the HMWP (2013) requires minerals and waste development to protect and, wherever possible, enhance soils. It also states that development should not result in the net loss of best and most versatile agricultural land and gives provisions for the protection of soils during construction. The Agricultural Land Classification (ACL) system classifies land into five grades, with Grade 3 subdivided into Subgrades 3a and 3b. The best and most versatile (BMV) land is defined as Grades 1, 2 and 3a.
132. It is noted that the current use of the land within the proposed easterly extension area is for grazing. The proposed site covers 3.4ha with 2.6ha of Best and Most Versatile (BMV) agricultural land and 0.8 hectares of non-agricultural land.
133. As stated previously, soils and overburden stripped within **Phases 1 and 2** of the extension area would initially be used to form a screenbank around the area to screen external views and the diverted footpath.
134. With Policy 8 (Protection of soils) of the HMWP (2013) requiring *that minerals development ensures that extracted soils are protected during quarrying and when appropriate, recover and enhance soil resources*, the applicant has undertaken to do this acknowledging that the use of local soils is always preferable to the importation of soils.
135. With the restoration at Lode Farm providing around 6ha of agricultural land, and using the extracted soils from the extension area, the loss of the agricultural land would be off-set and an overall net gain delivered. Therefore, the proposed development is considered as being acceptable and in accordance with Policy 8 (Protection of soils) of the HMWP (2013).

Cultural and Archaeological Heritage

136. Policy 7 (Conserving the historic environment and heritage assets) 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.

137. An Archaeological Impact Assessment was submitted with the application. It fully assesses the potential impacts on archaeology and cultural heritage arising from proposals to extend the dredging area. No investigations were undertaken at Lode Farm or within Rookery Farm's existing dredging lake as any areas of interest are no longer present but would've been investigated following decades of mineral extraction and ancillary operations.
138. The County Archaeologist concurs with the conclusions of the Assessment stating "*Paragraph 4.1 acknowledges that based on archaeological discoveries in the immediate vicinity the site has an archaeological potential (that is it is likely that archaeological sites which are as yet undiscovered will be encountered during development) and that this impact should be mitigated by some provision. Paragraph 5.1 promotes a mitigation strategy whereby the relevant stages of development (topsoil and subsoil stripping) will be subject to archaeological monitoring and that provision will be made for archaeological excavation of evidence as it is encountered, that post excavation analysis of the evidence (as appropriate) will be undertaken in due course and that the results will be published/disseminated.*"
139. The County Archaeologist further agrees that the above approach, understanding that although the monitoring is described as a watching brief, will ensure that the archaeological excavation of the remains encountered will be appropriate and proportionate as required to be.
140. Paragraph 5.2 of the archaeological assessment recommends that imposition of an archaeological condition to secure the archaeological monitoring of the relevant stages of development, to recognise and record (by excavation where appropriate) archaeological remains encountered and to secure the post-excavation analysis and publication of the results should be imposed. This is supported by the County Archaeologist.
141. With the imposition of this condition the proposed development is considered as being acceptable and in accordance with Policy 7 (Conserving the historic environment and heritage assets) of the HMWP (2013).

Ecology and biodiversity

142. Policy 3 (Protection of habitats and species) of 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. 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.

143. The ecology information provided includes a suite of different Phase I and Protected Species survey reports, and those setting out numerous ecological impact assessments.
144. The HMWP (2013) clearly states that development cannot be permitted if it may negatively affect the integrity of European protected sites and where development considerations relate to the requirements for maintaining this integrity are identified these must be addressed.
145. The application was supported by an Ecological Impact Assessment, including surveys of local flora and fauna populations, how the proposed development could affect them and proposed mitigation to offset these impacts and effects. These covered the ecological issues set out in the development considerations for the site.
146. The assessment acknowledges that the site contains or could 'have a reasonable likelihood of containing or hosting' a range of protected species including invertebrates, bats, common reptiles and badger sets. Subject to mitigation measures which are proposed adverse impacts will be avoided.
147. Potential impacts to European designated sites have been addressed within the ecological documents. It has been concluded that the proposal will not result in likely significant effects to any European designated site. Natural England has not raised concerns regarding impacts to European Designated sites.
148. Any planning permission will be subject to the requirement of a detailed Ecological Management Plan setting out mitigation, compensation and enhancement measures, prior to, during and after the extraction (during both aftercare and long term future management periods). The final restored site should be ecologically enhanced along with the proposed receptor location area on land recently acquired by the applicant to the west of Oakhanger Lane and south of the B3004. The land is also accessed from the B3004.
149. The Ecological Management Plan would result in a significant net increase in habitat for legally protected Priority Habitats and Species within Kingsley Quarry, the proposed easterly extension and the wider locality i.e. a net gain in biodiversity provision.
150. The management plan will aim to provide a flexible practical approach that sets out the overall aims of the site that also accounts for the phasing of

the extraction. This approach is supported by Natural England and the Environment Agency.

151. In the light of the above the County Ecologist is satisfied, subject to submission and approval of a detailed restoration scheme and an Ecological Management Plan, that the proposed development would be acceptable.
152. Based on the provisions proposed and associated conditions the proposal is in accordance with Policy 3 (Protection of habitats and species) and the relevant development considerations of the HMWP (2013).

Highways impact

153. 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.
154. According to the submitted Traffic Assessments, there are no proposals to increase output from the site or HGV movements as a consequence of the proposed extension. Output and HGV movements would simply continue at recent levels, 140,000 tonnes per annum (100,000 tonnes of sand, 20,000 tonnes of soil blended products and 20,000 recycled aggregates).
155. Imports by road/by HGV would also remain at 20,000 tonnes of soil and 25,000 tonnes of inert materials for soil blending and recycling purposes per annum respectively.
156. These equate to a combined total of 185,000 tonnes of “material movements” per annum. Payloads of HGVs do vary, from 7.5 tonnes to 28 tonnes but generally they are between 15 and 20 tonnes. If the average HGV payload was 20 tonnes then 185,000 tonnes of “material movements” this would equate to 9,250 loads per annum or 18,500 two-way HGV movements. If the average HGV payload was 15 tonnes then 185,000 tonnes of “movements” would equate to 12,333 loads per annum or 24,666 two-way HGV movements.
157. The site can operate on 6 days of the week, but most of the activity and HGV movements are undertaken between Monday to Friday. The proposed daily average two-way HGV movements would be 99 per day based on 12,333 two-way movements over a 250-day year on average when spread over a year.
158. These HGV movements have been raised as problematic and unsafe by objectors living locally. The B3004 connects the A31 to the west and the

A325 to the east and forms part of the Strategic Road Network. It is a well-used road although only 4% of the submitted traffic surveys comprised HGVs and not all of those were entering Lode Farm.

159. The Highway Authority raise no concerns over HGV numbers using the B3004 to continue accessing the site subject to the imposition of conditions requiring HGV records to be retained on site, visibility at the Lode Farm access with the B3004 to be maintained, all HGVs carrying materials to be covered and all wheels on HGVs exiting the site to be clean.
160. It is worth noting, that the current proposals would be a substantial reduction on the levels assessed in the 2003 ROMP which were 250,000 tonnes per annum. This level was acceptable and there were no highway concerns or conditions limiting HGV numbers. The current recycling activity was additional (subsequent) to the ROMP level of activity and effectively increased the overall HGV tonnage to almost 300,000 tonnes per annum.
161. The only change to material transport would be through the daily 28 or 56 two-way road movements between Rookery Farm, travelling the short distance along Oakhanger Lane and the B3004 to Lode Farm. These movements carrying soils and overburden through the six, four-weekly campaigns from the eastern extension area (c.30,000 tonnes total) would take place during the initial three to six years.
162. No objection to these short-lived movements have been raised by the Highway Authority. They would be limited to within the site's permitted operating hours and controlled by condition that requires the applicant to notify the County Council in advance of these campaigns commencing.
163. With the imposition of the above conditions the proposed development is considered as being acceptable and in accordance with Policy 12 (Managing traffic) of the HMWP (2013).

Flood risk and protection of groundwater and surface water quality

164. Policy 10 (Protection of public health, safety and amenity) of the adopted 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.
165. In addition, Policy 11 (Flood risk and prevention) 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.
166. The application was accompanied by a [Hydrological and Hydrogeological Assessment](#) identifying the impact of the development on the surface and sub-surface water environment.

167. Mineral extraction can present risks to groundwater and surface water bodies. This can be because of changes to groundwater flows and aquifer saturation caused by the physical disturbance of strata, increased vulnerability of groundwater to contamination and the management of storm water run-off to manage on and off-site flood risk and water quality.
168. The assessment concludes that the development will not have any significant effects on surface water, groundwater or flood risk. Excavation of sand is by dredger and requires no dewatering or artificial control. Water piped to Lode Farm is returned to Rookery Farm once removed from the extracted sand.
169. Potential impacts during and post mineral extraction has been assessed and the overall catchment sensitivity, including on nearby ecology and biodiversity, is assessed as 'low'.
170. The Environment Agency, who is the national regulator responsible for water quality and protection of water resources, initially raised concerns about the application on the following areas:
- Adequacy of the Flood Risk Assessment for Main River fluvial flood risk;
 - Need for a technical hydraulic assessment for all phases of the development;
 - Requirement for more information on the means of disposal of surface water; and
 - Requirement for more information on sources, nature, volumes and mechanism for works relating to perimeter bunding in flood zones 2 and 3.
171. As a result, there has been detailed discussions between the Environment Agency and the developer on the issues of flood risk and modelling as part of the planning application. These discussions were, along with ecology and biodiversity, the main reasons for the delay in determining the application. The applicant has provided further information, including additional modelling and sought clarification from the Environment Agency on their methodologies for assessing applications such as this one based on its location. As a result of this additional information being provided, all initial concerns have now been addressed and the Environment Agency is raising no objection to the proposal subject to several conditions.
172. The Lead Local Flood Authority does not raise objection to the application but advises that any works to watercourses or culverting would likely require advance permission or a separate consent from them or the Environment Agency.

173. The proposal is therefore in accordance with Policies 10 (Protecting public health, safety and amenity) and 11 (Flood risk and prevention) and the relevant development considerations set out in the site allocation in the adopted HMWP (2013) in relation to the protection of the water environment.

Impact on health, safety and amenity

174. Concerns were raised in representations about potential impacts on residential amenity from noise, dust and vibrations from large vehicles.
175. 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 or unacceptable adverse amenity impacts. Also, any proposal should not cause an unacceptable cumulative impact arising from the interactions between waste developments and other forms of development.
176. The HMWP (2013) also includes a development consideration on the protection of the amenity of nearby residential properties as noted in the following sections.

Air Quality (Dust)

177. Concerns were raised in representations relating to potential impacts on air quality and dust. Impacts on air quality can arise because of the release of dust from site operations and from exhaust emissions from traffic generated by the development. The [Air Quality Assessment](#) assessed the potential for impacts from these sources.
178. The assessment identified the existing background concentration of PM10 in the locality and then calculated the estimated contribution as a result of the development. With the site extracting wet sand and piping it to Lode Farm the risk of dust and particulate generation is negligible to zero. Activities such as soil-stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance are specifically mentioned in terms of air quality/dust generation and impacts.
179. The assessment also concluded that in accordance with [Environmental Protection UK \(EPUK\)](#) and [IAQM 'Land-Use Planning and Development Control: Planning for Air Quality' \(2015\)](#) guidance, impacts on air quality as a result of vehicle exhaust emissions will be insignificant.
180. The assessment has been reviewed by the Environmental Health Officer who subsequently raises no objection in relation to air quality impacts, subject to conditions requiring the submission of a site-specific Dust Management Plan (DMP). A restriction on the processing of waste or

minerals is considered to meet the concerns of the Parish Council in preventing these types of activities from taking place on site. The Dust Management Plan will be required to be formulated in accordance with Appendix 6 of [The Institute of Air Quality Management \(IAQM\) guidance](#) on the [Assessment of Mineral Dust Impacts for Planning \(2016\)](#) and would incorporate appropriate mitigation measures as identified in section 7 of the guidance. These conditions are included within Appendix A of this report. Impacts to ecological receptors have also been considered in line with Policy 3 and considered to be acceptable.

181. The proposal is therefore considered to be in accordance with Policies 3 (Protection of habitats and species) & 10 (Protection of public health, safety and amenity) of the adopted HMWP (2013) in relation to air quality.

Noise and vibration

182. Concerns were received in representations about potential noise impacts from the development. The [Noise Impact Assessment](#) submitted with the application assessed the worst-case predicted noise levels that will be generated by the development.
183. NPPF (2019) sets out guidance for the determination of planning applications for mineral extraction and identifies noise limits for such developments. Paragraph 204 and 205 set out the quantitative guidance on acceptable noise levels in relation to mineral and landfill sites. It recognises that activities in the early stages of such developments may give rise to particularly noisy short-term operations. Paragraph 205 sets out noise limits for normal day to day operations following completion of such short-term works. Paragraphs 021 and 022 of the [NPPG \(2014\)](#) sets out the appropriate noise standards for mineral operators for normal operations; what type of operations may give rise to particularly noisy short-term activities and what noise limits may be appropriate. Activities such as soil-stripping, the construction and removal of baffle mounds, soil storage mounds and spoil heaps, construction of new permanent landforms and aspects of site road construction and maintenance are specifically mentioned.
184. A [Noise Survey](#) was undertaken at a number of representative locations in the community local to the application site to establish the existing baseline ambient and background noise levels and hence to quantify the relevant NPPF noise criteria applicable for the proposed working of the site. In accordance with the NPPF guidance, the potential noise impact in the community has been minimised by proposed noise mitigation measures including strategic siting of the processing and concrete plant, access/haul roads and environmental bunding together with sequential phasing of the extraction/restoration areas. The cumulative noise level contributions associated with the mineral working have been predicted using standard methodology in accordance with BS 5228 and based on reliable source data. It has been demonstrated that the cumulative noise levels in the

community associated with the development would readily comply, with a margin to spare, with the appropriately derived NPPF noise criteria.

185. The Noise Impact Assessment concludes that based on the predicted change in overall ambient noise levels due to the proposed development i.e. the easterly extension, the noise impact on the local community would, in the main be classed as a 'slight impact'. Only during infill activities closest to Burton Common (Phase 6), could the noise impact exceed the 'slight impact' range albeit still within permitted maximum noise levels for short-term operations within an active mineral extraction site.
186. Concerns have been received from both residents and the Parish Council to the proposed operating hours of the development, specifically the start time of 07:00 and the finish time of 18:30. Regarding the latter, the applicant only wishes to work until 18:00 hours Monday to Friday. In accordance with BS5228-Part 1:2009 +A1:2014 (Code of practice for noise and vibration control on construction and open sites – Part 1: Noise), 07:00 is classified as the start of the daytime period. The Environmental Health Officer advises that the operating hours will therefore be in accordance with accepted daytime working hours on open sites. The proposed hours of working are and remain acceptable in planning terms.
187. The Noise Impact Assessment has been reviewed by the Environmental Health Officer who has subsequently raised no objection in relation to noise, subject to conditions relating to hours of working and noise limits to ensure that the total noise from the site shall not exceed 10dB above the Background Noise Level (LA90) with an upper limit of 55dB LAeq 1 hour, at the noise sensitive receptors shown in the submitted Noise Impact Assessment's acoustic report. These measured locations can and will be monitored should substantiated complaints be raised.
188. A further condition will be imposed enabling increased temporary daytime noise limits of up to 70dB LAeq 1 hour (free field) at the boundary of the nearest noise sensitive premises for a period of up to eight weeks a year to facilitate essential site preparations. Lastly, the applicant's acoustic mitigation measures proposed within the Assessment concerning silencing measures and other mitigation used on plant and machinery will also be controlled by condition.
189. The proposal is in accordance with Policy 10 (Protection of public health, safety and amenity), the relevant development considerations set out in the site allocation in the adopted HMWP (2013) in relation to noise as well as paragraphs 21 and 22 of the NPPG (2014) and paragraph 205 of the NPPF 2019.

Light pollution

190. Concerns were received in representations to the potential light impacts of the development and some complaints made over lighting left on after the

site has closed. These complaints were not always substantiated although when site lighting has malfunctioned the applicant has fixed it within a short period of time following receipt of the complaint.

191. The few existing lighting columns on site will only be used at limited periods at both ends of the working day. The lights will only be on when needed within the operating hours and will not be on after 1800 hours. However, the excavator and dump trucks have fixed headlights which will be needed if working takes place in the dark, as will lorries using the internal road when working outside daylight hours.
192. Given the measures put in place to prevent off site light spillage, the proposal is in accordance with Policies 3 (Protection of habitats and species) & 10 (Protection of public health, safety and amenity) and the relevant development considerations set out in the site allocation in the adopted HMWP (2013) in relation to the potential for light pollution.

Public Access

193. Prior to **Phase 1 of the easterly extension area** commencing, public footpath (Kingsley 132/5) which crosses the proposed extension area running NE to SW, would be securely fenced off. Prior to **Phase 2** commencing the footpath would need to be diverted to ensure the continuing safe use of this right of way by its users. It would be diverted around the eastern boundary of the proposed extension area.
194. Concerns have been raised in representations about the potential loss of amenity through impacts on the rights of way and bridleways. The area is well served by public rights of way.
195. To protect the users of the rights of way, fencing, signage and long-term maintenance will be put in place in accordance with Policy 10 (Protecting public health, safety and amenity) throughout the life of the quarry and post-restoration works to ensure the safety of its users.
196. Whist HCC Rights of Way team has raised no objection to the proposal, both they and the South Downs National Park Authority were hoping to retain the former railway embankment for a potential future recreational link. The landowner has always maintained that he will not allow this and as the land is not within the National Park and only an aspirational desire it is highly unlikely to ever happen. Subject to an appropriate diversion and an agreed Repair and Maintenance Scheme, which will be delivered via Highways-related legislation under the Town and Country Planning Act 1990, the proposals for the rights of way are considered to be acceptable.
197. Based on the provisions proposed, 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 adopted HMWP (2013).

Cumulative impacts

198. 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.
199. The measures put in place to offset the potential impacts of the proposed development, on nearby and proposed residential areas are noted and indicate that potential cumulative impacts have been considered when preparing the application. The potential cumulative impacts of the development on the highway were considered as noted earlier in this commentary. 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.

Potential pollution associated with the development

200. Paragraph 50 of the [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. Planning and permitting are two separate systems but are closely linked. The Environment Agency (EA) has a role to play in both. The need for an environmental permit is separate to the need for planning permission. The granting of planning permission does not necessarily lead to the granting of an Environmental Permit.
201. Planning permission determines if a development is an acceptable use of the land. EA permitting determines if an operation can be managed on an ongoing basis to prevent or minimise pollution.
202. The waste importation element of the development will require an Environmental Permit or other approval from the Environment Agency.
203. 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.

204. The proposed facility is acceptable in terms of planning. Should a permit be granted for the operation, it will be monitored and enforced in the same manner as any other regulated site by the Environment Agency. Several mechanisms are put in place to ensure compliance such as audits, site visits, data analysis and compliance checks.

Community benefits and engagement

205. 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.
206. 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 resident's 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.
207. The applicant does run a National Community Benefit Fund, which they say has been well used across the UK and well publicised locally. The fund has not been well used here at Kingsley with the local community stating that they were unaware of its existence.
208. In addition to the above, paragraph 5.59 of the HMWP (2013) states that there is an expectation that all 'major' minerals and waste development will be accompanied by a site Liaison Panel. A Panel was established at this site but has not taken place for some time. The applicant has indicated that they are intending to re-establish it and has recently held a meeting with Kingsley Parish Council and the local County Councillor to discuss this amongst other planning-related matters.
209. An informative note to applicant is recommended on the re-establishment of a liaison panel for the site if permission were to be granted in the interests of promoting communication between the site operator and local community.

Other matters

210. In addition to fencing the location and size of the environmental bunds are designed to provide a physical barrier to deter unauthorised entry and will remain until taken down as part of the final restoration works.
211. Appropriate signage will be erected especially where there are public rights of way or close to public open space.

Conclusions

212. It is considered that the proposal would:

- contribute to maintaining an adequate and steady supply of silica sand for Hampshire through the development of an extension to an existing mineral extraction sites in the adopted Hampshire Minerals and Waste Plan (2013);
- be a time limited mineral extraction in the countryside which is subject to a requirement for restoration and aftercare and not cause an unacceptable visual impact;
- protect soils;
- not adversely affect local archaeology and cultural heritage;
- not have a significant adverse effect on designated or important ecology and biodiversity;
- be acceptable in terms of highway capacity and safety;
- not cause any additional flood risk and protect the quality of groundwater and surface water; and
- not cause unacceptable adverse amenity impacts.

Recommendation

That planning permission be GRANTED subject to the conditions in Appendix A.

Appendices:

Appendix A – Conditions

Appendix B - Committee Plan

Appendix C – Existing Site Layout with Extension Area Plan

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

51188/003

Hampshire County Council

EH025

Kingsley Quarry, Bordon, Hampshire (EIA)
 (Easterly extension of the existing sand extraction area, extend the end date for quarry operations and restoration and amend the approved restoration schemes)

EQUALITIES IMPACT ASSESSMENTS:

3. 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 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.

CONDITIONS

Conditions are recommended relating to the following matters:

- Commencement of Sand Extraction
- Duration of Permission
- Archaeology
- Protecting and Diverting Footpath (Kingsley 132/5)
- Ecology and Biodiversity
- Hours of use
- Operational Noise Limits
- Noise Management Plan
- Highways
- Non-Native Imported Materials

- Restoration
- Tree Protection
- Approved Plans

Full details of all conditions will be provided in advance of the meeting.

Notes to Applicant

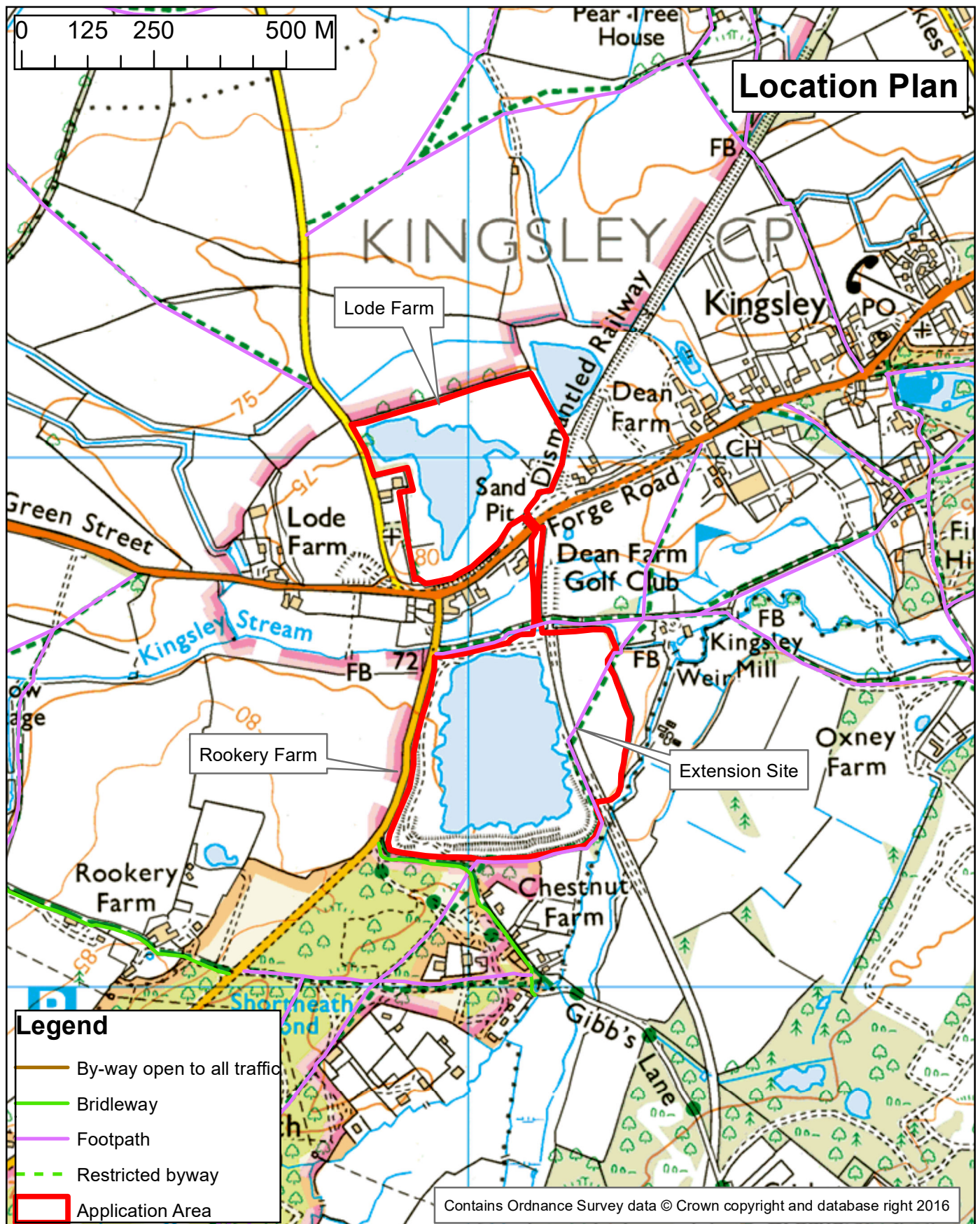
1. In determining this planning application, the Mineral Planning Authority has worked with the applicant in a positive and proactive manner in accordance with the requirement in the National Planning Policy Framework (2019), as set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015.

2. For the purposes of matters relating to this decision Heavy Goods Vehicles (HGVs) are defined as vehicles over 3.5 tonnes un-laden.

3. The County Council supports the re-establishment of the Liaison Panel between the site operator, Minerals Planning Authority and community representatives at a suitable frequency to facilitate effective engagement with stakeholders in the interests of promoting communication between the site operator

and local community. Guidance on the establishment of liaison panels is available: <http://documents.hants.gov.uk/planning-strategic/LiaisonPanelProtocolforHCCsites-November2016.pdf>

4. 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.



Easterly extension of the existing sand extraction area, extend the end date for quarry operations and restoration and amend the approved restoration schemes at Kingsley Quarry, Bordon, Hampshire

Regulatory Committee

Date: 18 March 2020

1:10,000



Application No: 51188/003

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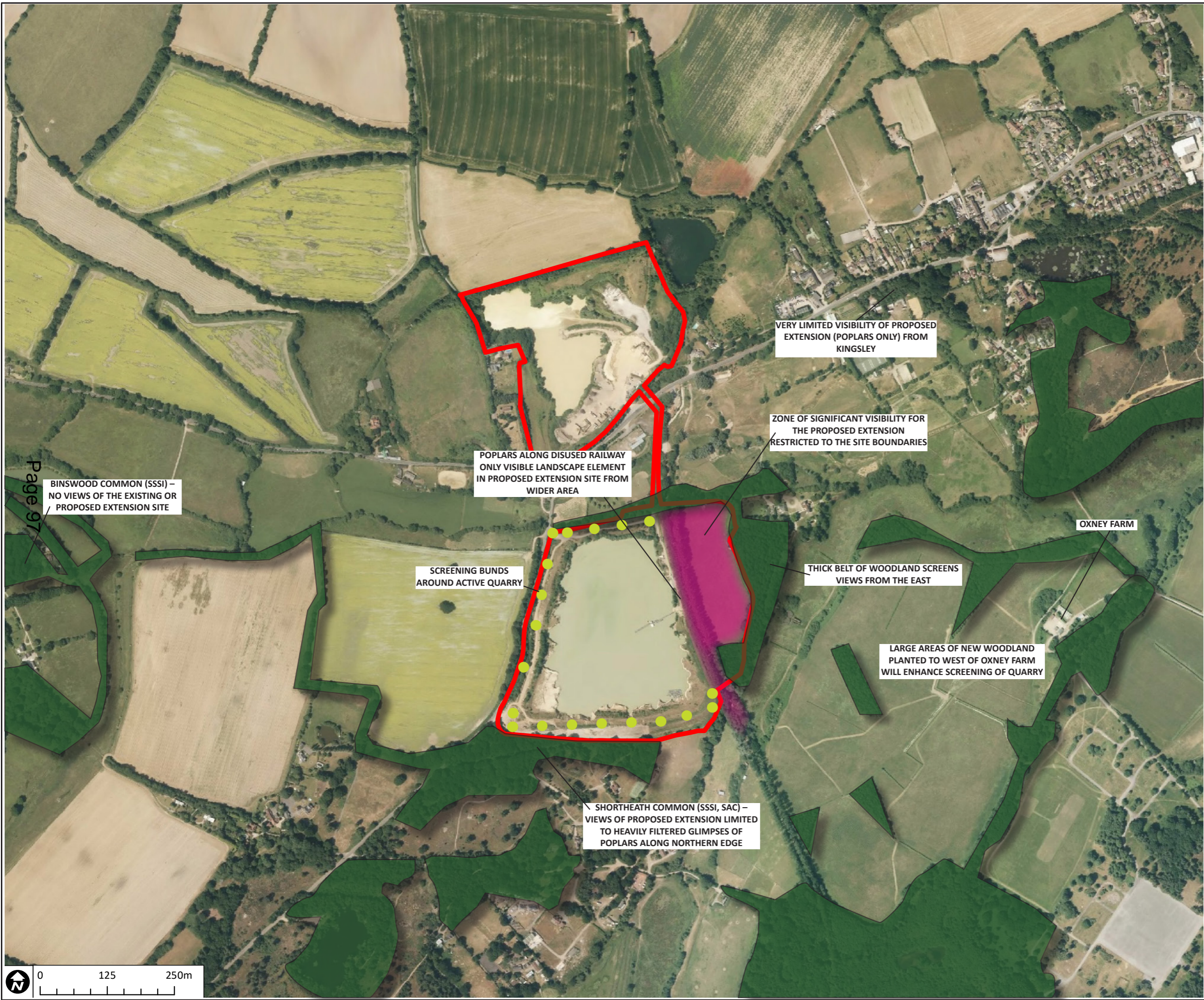
**Hampshire
County Council**

Ref No: EH025

Drawn by: Strategic Planning

Economy, Transport and Environment

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KEY

- Site Boundary
- Tree/Woodland with Strong Function in Screening/Filtering Views of Quarry
- Zones of Significant Visibility for Proposed Extension
- Screening Bunds Around Active Quarry

BINSWOOD COMMON (SSSI) – NO VIEWS OF THE EXISTING OR PROPOSED EXTENSION SITE

POPLARS ALONG DISUSED RAILWAY ONLY VISIBLE LANDSCAPE ELEMENT IN PROPOSED EXTENSION SITE FROM WIDER AREA

SCREENING BUNDS AROUND ACTIVE QUARRY

VERY LIMITED VISIBILITY OF PROPOSED EXTENSION (POPLARS ONLY) FROM KINGSLEY

ZONE OF SIGNIFICANT VISIBILITY FOR THE PROPOSED EXTENSION RESTRICTED TO THE SITE BOUNDARIES

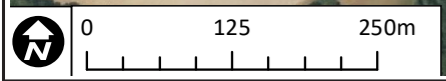
OXNEY FARM

THICK BELT OF WOODLAND SCREENS VIEWS FROM THE EAST

LARGE AREAS OF NEW WOODLAND PLANTED TO WEST OF OXNEY FARM WILL ENHANCE SCREENING OF QUARRY

SHORHEATH COMMON (SSSI, SAC) – VIEWS OF PROPOSED EXTENSION LIMITED TO HEAVILY FILTERED GLIMPSES OF POPLARS ALONG NORTHERN EDGE

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Location
KINGSLEY, HAMPSHIRE

Project
KINGSLEY

Drawing Title
SITE SETTING PLAN

Scale	Sheet Size	Date
AS SHOWN	A3	MAR 2018
Client Ref:	Drawing Ref:	Drawing No:
-	2607-4-1	PA-0004
Status		
S4-P1		

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HAMPSHIRE COUNTY COUNCIL

Decision Report

Decision Maker:	Regulatory Committee
Date:	18 March 2020
Title:	Application for a Definitive Map Modification Order to record a bridleway at Irongate, Ossemsley Parish of New Milton
Report From:	Director of Culture, Communities and Business Services

Contact name: Sylvia Seeliger

Tel: 01962 846349

Email: sylvia.seeliger@hants.gov.uk

Purpose of this Report

1. The purpose of this report is to present Members with evidence relating to a claim for a public bridleway at Irongate, Ossemsley, in the parish of New Milton, so that they may determine whether or not to authorise a Definitive Map Modification Order for the application route, either under the provisions of section 31 of the Highways Act 1981, or through a dedication at common law.

Recommendation

2. It is recommended that this application be refused.

Executive Summary

3. The matter before Members consists of an application, made by a local resident in New Milton, and supported by a number of user evidence forms.
4. Having considered the evidence in tandem with current guidance and relevant case law, it is considered that there is not sufficient evidence of public use on horseback on the claimed route, on the balance of probabilities, to authorise the making of a Definitive Map Modification Order for this route, and two other routes forming extensions to public highways giving access to the claimed route. The application should be refused.

Legal framework for the decision

WILDLIFE AND COUNTRYSIDE ACT 1981 - Section 53: Duty to keep definitive map and statement under continuous review

- (2) As regards every definitive map and statement, the surveying authority shall:
- b) keep the map and statement under continuous review and as soon as reasonably practicable after the occurrence.... of any of [the events specified in sub-section (3)] by order make such modifications to the map and statement as appear to them to be requisite in consequence of that event.
- (3) The events referred to in sub-section (2) are as follows: -
- c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows...
 - ii) that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates...

PRESUMED DEDICATION AT COMMON LAW:

Use of a way by the public without secrecy, force or permission of the landowner may give rise to an inference that the landowner intended to dedicate that way as a highway appropriate to that use, unless there is sufficient evidence to the contrary. Unlike dedication under S.31 Highways Act 1980, there is no automatic presumption of dedication after 20 years of public use, and the burden of proving that the inference arises lies on the claimant. There is no minimum period of use, and the amount of user which is sufficient to imply the intention to dedicate will vary according to the particular circumstances of the case. Any inference rests on the assumption that the landowner knew of, and acquiesced in, public use.

HIGHWAYS ACT 1980 s.31:

Dedication of way as highway presumed after public use of 20 years.

- (1) Where a way over any land...has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it.
- (2) The period of 20 years...is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice...or otherwise.

Applicant

5. The application was made by **User 5** of New Milton, on 2 November 2005, and consists of a short section of path, starting just south of the edge of the open part of the New Forest, at the northern boundary of the property known as Irongate. From this point, it runs south, as shown on the Committee Plan attached to this report, between points A and B, and as described below. What is shown by the applicant on the consultation plan for this application (see **Appendix 1**) does not directly connect two public highways. The northern end is what is known as 'a place of public resort', that is effectively a cul-de-sac at

a location such as a beach, a viewpoint, or public land. In order to allow wider access to the claimed route, the evidence has been examined for the level of use of a route running from point A to point C on the Committee Plan, providing access to the B3058, Holmsley Road. Another route has been taken into consideration, running in a south-easterly direction from the claimed route, to the Road B3058, Bashley Common Road. Therefore, the remainder of Green Lane (B-D-E on the Committee Plan) and Ossemsley South Drive (E-F) have been assessed for public use, as the most likely means of accessing the claimed route by those members of the public living to the south of it. A revised Committee Plan, showing the actual numbers for each section of the route C-A-B-D-E-F is also attached to this report (**Appendix 4**).

Landowners

6. The current landowners of the claimed route A to B are **Mr. Wilson** and **Mrs. Crow** of London and Ossemsley, and are represented by **Moore Blatch LLP** of Chandlers Ford. The freeholders of the route from D to E (Green Lane), **Mr. A. Knight** (for the period 1985-2005), and **BCS Dorset Limited** have also been consulted as current landowners, as have the **Forestry Commission**, for the section A-C.

Description of the Claimed Route, and two extension routes (please refer to the map attached to this report)

7. The application route is shown, by means of a red pecked line between points A and B, on the Committee Plan attached to this report. This is the actual route claimed, as shown in the plan accompanying the application. On the original, User 5 shows a section of the path from the property Irongate, running south to the location of a gate, in green and describes it as '*actual section of track where there is dispute (green)*'. A further section going south along the track has been shaded with pink highlighter, and then covered with a white masking fluid, and then a pecked line in blue biro has been added. A gate is also shown to the west of the property 'Irongate', with a horizontal blue biro line, also marked 'gate', a little distance south of where this track meets the track from the Holmsley Road, close to point A on the Committee Plan. The length of this section of path is 353 metres.
8. While it is acceptable for the northern end of this claimed route to terminate at the New Forest (the 'Forest', a place of public resort), it is not possible to record on the Definitive Map and Statement a route that terminates at a point three-quarters of the way down a section of track. The second termination point needs to be a place providing public access, such as a public highway. The nearest is at the junction of the track giving access to Irongate with Holmsley Road (the B3058), at point C on the Plan. Another termination point is at the junction of Ossemsley Drive South, New Lane (the road U124) and Bashley Common Road (the road B3058). This junction is shown on the amended Committee Plan, marked 'F'. The evidence of the majority of users is that they predominantly used the section A-B-D, with about half going on to use Green

Lane, down to its junction with Ossemsley South Drive and North Drive, at point E on the Committee Plan – a total length of 1,045 metres. Seven users provide evidence of continuing to the public highway at point F, the whole route measuring 1,835 metres.

9. The width of the route varies between 3 and 5 metres.

Background to the Application

10. This application was received on 29th November 2005, accompanied by the required notices, plan, eleven completed user evidence forms, and photographs of a notice that was said to have been put up on the claimed route. To date, 28 forms have been received, with 4 witnesses submitting further forms in 2013 and 2014 (User 1, User 8, User 11, and User 23). One form of only one page and an unsigned map, that cannot contribute to the evidence being considered, because it is incomplete and not confirmed by a signature. Another, completed by User 12, details use on horseback between the years 2010 and 2013, years which do not fall within the relevant period under consideration (see paragraph 28). Three users demonstrated use on foot only in their forms. Where a witness has submitted two forms, only the use demonstrated up to 2005 has been considered. Officers are conscious that the application was made in 2005 and has only been fully investigated in 2019, and apologise for this delay.
11. Before considering the available relevant evidence in detail, there are some aspects of this application that should be clarified. For a claimed route to be eligible for inclusion on the Definitive Map and Statement as a public right of way, there should be a place for public access at both ends, normally another public highway. There are, however, circumstances when this does not apply, and the route that is the subject of this application is said by witnesses to have been used to gain access directly to the New Forest, without having to use the busy local roads. As can be seen on the Committee Plan, the termination point of the route shown with a red pecked line at point A, the route drawn on the application plan by the applicant, was the point of entry to the Forest cited in many of the user evidence forms. There is no public right of way or general purpose highway at this point. However, the Forest itself can be described as a 'place of public resort', a term which includes features such as beaches, a viewpoint, or woodland to which the public has access. Case law has confirmed this. In the case of *Roberts v Webster and others*¹, Widgery J. said *'the authorities clearly show that there is no rule of law which compels a conclusion that a country cul-de-sac can never be a highway. The principle stated in the authorities is not a rule of law but one of common sense based on the fact that the public do not claim to use a path as of right unless there is some point in their doing so, and to walk down a country cul-de-sac for the privilege of walking back again is a pointless activity. However, if there is some kind of attraction at the far end which might cause the public to wish to use the*

¹ *Roberts v. Webster and others*, 8 December 1967

road, it is clear that that may be sufficient to justify the conclusion that a public highway was created'. It is entirely reasonable that local horse riders should wish to ride freely in the New Forest, and to seek to reach an entry point avoiding the busy roads in the area.

12. Allowing that point A is the entrance to a place of public resort that would justify the claimed route being added to the Definitive Map and Statement, if the evidence substantiates this, the next question to be answered is where is the public highway that provides public access to the claimed route. Taking the route shown on the actual application, it runs south from point A, to a point level with the northern boundary of the Poultry Houses (see Appendix 1). As drawn, the claimed route is an isolated section of track. The nearest exits onto public highways are at point C, onto Holmsley Road (the B3058), which is a matter of 492 metres. A second exit onto the B3058 (here called Bashley Common Road) is found at point F, 1,453 metres from point A. If the evidence for the route A-C, or the route B-D-E-F, along with the actual claimed route A-B, demonstrates sufficient use by the public for that use to come to the attention of the landowner(s), and the affected landowner(s) have done nothing to demonstrate that they do not intend to dedicate public rights, then the application should be approved.
13. As noted in paragraph 10, there are 20 complete evidence forms recording the use of witnesses relevant to the 20-year period under consideration. Each form has been examined for qualifying use, and to see what parts of the routes now identified, to provide a route that can be recorded on the Definitive Map, have actually been used on horseback
14. The issue of qualifying use is particularly important in this application, since some of the users have indicated on their forms that they did have, or thought they may have had, private rights along parts of the route, particularly along Green Lane. Use of a private right is not qualifying use. For the avoidance of doubt, a private right is one that exists between two specific points, for example points x and y, and must be used within the parameters set out for that right. The user may be specified, such as on foot, with a bicycle, with a vehicle. User other than that specified is not with a private right. The private right will exist between two freeholds, and can be used only by the freeholder of the deed in which the right is recorded in the way specified in that deed. If a user who already has a right to go along a path recorded in their deeds, uses any part of a claimed path, or a connecting path, this will not count towards the acquisition of a public right. Some users have rented land from a landowner who has a private right along some or all of the route being considered. Therefore, those people renting fields for their horses cannot be said to be using the private right extended to the freeholder they are renting from. The use of the route in a way not specified in the private right, such as someone riding a horse over a private right of way on foot, would be qualifying use for a public right of way.
15. The private right of way recorded in the deeds of four of the witnesses dates from 1938 and is for all purposes, or for use with or without vehicles and animals.

Issues to be decided

16. The issue to be decided is whether there is evidence to show, on the balance of probabilities, that the public has acquired public bridleway rights over the two routes from point A on the Committee Plan, and described above at paragraph 12.
17. Case law has decided that the burden of proof associated with Map Modification Orders is 'on the balance of probabilities', so it is not necessary for evidence to be conclusive or 'beyond reasonable doubt' before a change to the Definitive Map can be made.
18. Any changes to the Definitive Map must reflect public rights that already exist, through periods of unchallenged use. It follows that decisions as to whether to amend the Definitive Map must not be taken for reasons of desirability or suitability. Therefore, before an Order changing the Definitive Map is made, the County Council must be satisfied that the requested modification is supported by the evidence.

Documentary Evidence

19. The early small-scale maps of this area do not show any route that would approximate to A-F.
20. The claimed route A-B, and its extensions A-C and B-F are shown on the Milton Tithe Map (1840) and Apportionment (1843). The route A-B-D is shown between solid lines (indicating a feature such as a hedge) and runs along a very similar route as on the current OS mapping. A double pecked line, braced into the fields on the west, runs alongside this, on a slightly straighter route. The track that corresponds to the claimed route is plot '1499' and is designated as 'Droeway'. The Droeway has a solid line across it at its northern end, indicating a gate, and then a narrower track between solid boundaries feeds into an open area, where the route A-C is shown between pecked lines. This lies within plot '1646', recorded as '*Part of the New Forest*'. The Droeway continues as a track between pecked lines on the same route as today, and continues south-east to pass through 'Ossemsley Gate' and then towards the junction with what is now Bashley Common Road. Shortly after passing Ossemsley Gate, the plot number '1353' appears, and this is designated as 'waste', with an area of 29 perches, whereas the area of the Droeway is 1 acre, 1 rood and 4 perches, suggesting it is the name for the track from Irongate to Ossemsley Gate, now north of Arreton Farm. The name 'Droeway' is suggestive of a route along which animals were driven to and from the Forest. It was in the ownership of Colonel Roberts and tenant by Isaac Hurst in 1843.
21. The route A-F is shown on the Handover Map of 1929, which records the routes considered to be publicly maintainable when the Rural District Councils handed over maintenance responsibility to the County Surveyor. No part of the claimed route is shown as publicly maintainable, though it should be remembered that the compilation of this series of maps was not open to public consultation and

it is not known what documents relating to inclosure and the tithe were consulted, if any.

22. The Ordnance Survey County Series map at the scale of 1:2,500 for this area of New Milton, dated 1871 (first edition) shows the route A-B-D running south from a little north of the building now known as Irongate, and it carries the plot number '91'. The book of reference shows this as an '*occupational road*', and thus not publicly maintainable. The plot has solid boundaries, indicating a boundary more than one foot high, and there are two parallel pecked lines denoting a track between these two boundaries. The width of this wider route is 16 metres, with the section within the pecked lines being 3 metres wide. This double pecked line turns to the south east at point D and follows the line of the current Green Lane. This is also about 3 metres wide, and runs on very much the same line as the route D-E-F. Most of this linear route is part of Ossemsley Brake, an area of mainly woodland, carrying the plot number '210', which is given in the book of reference as '*wood, pasture, etc.*'. Where it meets the present day Bashley Common Road towards point F, it is marked as having plot number '231', which is recorded as a '*public road*'. Plot 231 is the section of the route from point F, going north-west to a turning south and down to Arreton Farm.
23. The depiction of this area on the second edition of the County Series (1895) is very similar to that in the first edition, and both maps show a solid line across the route at point D, in connection with the notation for a bench mark. The third edition, of 1909 shows the same solid line, but there is no bench mark indication, giving weight to the suggestion that there was a gate across the route here. There is also a similar bench mark and line at point A on the 1871 and 1895 maps though, on the latter, the depiction of the line has the appearance of being part of the boundary of the adjoining plot of land, rather than a straight line. The line looks straight and deliberate on the 1909 map, whereas the pecked line path appears to run straight into the forest on the 1930s fourth edition. The OS 1:10,000 map, spanning the years 1905 to 1945, also shows a solid line across the path at points A and D, with the continuation from D to Bashley Common Road shown in a similar way to the previous maps.
24. A National Grid map at the scale of 1:10,000, dated 1972, shows the claimed route with a line across it at point A. By this time, three large poultry houses have been built to the west of this part, near point D, being large structures parallel to each other. The path from point D south-eastwards starts with double pecked lines, but then continues where a number of houses have been built between solid boundaries. The path then continues in a similar way to the current mapping, joining Bashley Common Road at point F.
25. The existing aerial photography of this route adds little information because there is consistent tree cover on both sides of the route A-F, obscuring any detail.
26. The applicant supplied a photograph of a notice that appeared in September 2005. This sign was also photographed by a now retired member of staff, on

1 December 2005, and these photographs appear in **Appendix 2**. The first photograph shows the general location with the gate tied with rope, and copies of the notice on the posts at each end of that gate. The second is a close up to show the wording. He took a number of photographs, some from junction of Holmsley Road with North Drive, and some from the junction of Ossemsley South Drive with Bashley Common Road (point F).

27. The sign that features in Appendix 2 reads '*Private Property. This path is not a statutory right of way. Permission to ride or walk through the property is solely at the discretion of the owner. Please stay on the path whilst crossing the property. Note that the path may be closed at any time without notice. Please do not cross the property at any time between the 24th & 26th December. Thank you for your co-operation*'. The placing of these notices by the current owners when they acquired the property Irongate is a bringing into question of the public's right to use the section of path under their control. This particular sign should be considered in the context of other signs that this member of staff photographed. One at the end of Ossemsley South Drive shows the name of the route with the words '*Private Drive*' in brackets underneath. A further sign under the name of the route reads '*Private Estate Residents maintain these drives. Access only at under 12 mph max please. Speed Ramps.*'. At the northern end of North Drive, a sign indicates '*North Drive*' with the word '*(Private)*' underneath. One photograph shows another sign further down the drive, but it is impossible to discern what it shows. A sign further down the drive to Irongate says that access is to '*Private Properties Only*'. For any sign disclaiming public rights to be effective, it must unequivocally state what rights are being denied. Signs saying 'Private Property' have been held to be inadequate. The specific rights must be stated with wording such as 'No public right of way', and the contrast is shown with these photographs. Users of the entrance at Irongate have been left in no doubt that the current owner considers the land to be not only private property, but that there is no statutory right of way there, that is no public footpath or bridleway.
28. The current owners of Irongate brought the public's use of the section of track from A-B into question by posting this notice in or around September 2005. The application for a Map Modification Order was made shortly after, in November 2005. This gives a 'relevant period', during which the public must demonstrate qualifying use of 1985-2005. This investigation must consider past use with an end-date of the bringing into question. The difficulty for the current owners is that this is a period when they may have had no connection with the property or the land surrounding it, no control over the previous owner's actions, or necessarily any knowledge of what those actions were in relation to the management of the track in relation to public access.

User Evidence

29. The applicant supplied 27 user evidence forms in total to support this claim. The information contained in the forms was extracted to produce a 'User Evidence Chart' (**Appendix 3**), from a list of the users who provided information about actual dates of use on horseback (19) in alphabetical order. It shows the

period of use by means of horizontal bars, with the 'relevant period' shown by a blue tint on the chart. This denotes the period in which 20 years of unchallenged use must be demonstrated. Of the 27 forms, one user gave no dates for any type of use, and 3 witnesses gave dates for use on foot only, which user does not contribute to the acquisition of public bridleway rights. The graph at Appendix 3 shows 19 users on horseback, and the earliest use of any part of the route was in 1950, with 5 users providing information about use after 2005. Of the users providing evidence, 8 say they were using the route in 1965, though the bulk of the use occurred from the late 1970s. Ten witnesses had used the path on horseback for 20 years between 1985 and 2005. The modified Committee Plan at **Appendix 4** shows the 2 additional paths that are being considered in this report. This plan contains information on the number of users for the individual sections of the two paths. It is not necessary that every user has twenty years of use, but there should be consistent use by the public in all years, with no interruptions to use. There appears, from the witness evidence, to have been no interruption to use before 2005. There are 6 references to tree trunks and a cable across the route in the forms, in response to the question regarding obstructions. The majority of users on horseback said in 2005 that the path had never been obstructed. However, all the users who say that the path was obstructed by these logs had completed forms dated 2012 or 2013, indicating that this obstruction post-dates the relevant period.

30. Having set out the presentation of the recorded user in visual form, the actual content of the forms needs to be considered. While the user evidence charts are, of necessity, a generalisation, they can give a feel for the extent of the use claimed. Detail is provided in the written accounts submitted. Twenty-two of the twenty-seven users completed their forms in 2005 (**User 16** submitted his in 2014, though it is dated 2012 and **User 12** in 2013), with four other users completing an additional form in 2013 (**User 1**, **User 8**, **User 11**, and **User 23**). Four users put in dates of use for foot use only (**User 2**, **User 5**, **User 12** and **User 16**), and such use only, without any horseback use indicated, does not contribute to qualifying bridleway use. One person, **User 17**, indicated use on foot and on horseback, but gave both no dates or frequency of use, only a last date of use on 20th October 2005, so does not appear on the user evidence chart. **User 2** gave dates only for use on foot, but has indicated on her form that she did ride her horse. She did confirm in a telephone call that she had ridden for over 60 years, keeps her horse in a rented field at New Lane, Bashley, and rides in summer 3 times a week, also using an access at Milton Grange. However, without actual dates for this, it is not possible to include her in the chart. The frequency of all the reported use varies from once a fortnight, to weekly to twice weekly, to four times a week.
31. All witnesses reported seeing others whilst using the claimed route, with all identifying users on horseback. **User 10** and **User 9** identified '*locals and landowners on horseback*'. This indicates that there was identifiable use on the claimed path, and therefore any Order made as a result of this investigation should be for public bridleway rights.

32. No witnesses reported seeing stiles and, while all users reported the presence of gates, they were invariably described as '*unlocked*'. All 20 recorded horse riders indicated, whether their use is qualifying or not, that they passed through an unlocked gate, or gates. The plan accompanying the application (see paragraph 7) shows two gates, drawn in by the applicant, one slightly to the west of Irongate house itself, on the track, and the second some metres south of the southern boundary of the property. Current OS mapping does show a line across the track at this location. Looked at in conjunction with the question about obstructions on the route, where opinion is divided, it seems more probable than not that these two gates were not locked before 2005. There are four references to obstructions across the route, and they are found on the forms completed by users in 2013. In 2005 when **User 1** completed his first form, he noted that the path had never been obstructed, whereas on his form of 2013 he referred to '*big tree stumps scattered along the path*', but said they were no longer there. It is a similar case with the evidence of **User 8**, whose 2005 form indicated no obstructions on the route, but said in 2013 that there were tree stumps between the '*gates and electric cable*'. This obstruction was still in place at the time of the completion of the form, and User 8 added that '*it is possible to walk or ride around tree stumps but a pony and trap would not*'. She indicated on her 2013 plan that the obstruction were between the two gates that the applicant had shown on the plan accompanying the application. **User 11** indicated no obstructions were in place in 2005, but spoke in 2013 of '*large tree stumps between the two gates. Until recently there was a power cable across the track*'. She added that the obstruction was still in place in 2013, but that it was possible to '*ride around the tree stumps but vehicle & pony & trap access would be restricted*'. She placed the two tree stumps in a similar position to that indicated by User 8, south of Irongate, and north of the second gate. The 2005 form completed by **User 23** indicated no obstructions on the route, while by 2013 when she completed a second form the route was obstructed by '*tree stumps/logs in the track. Passable on horseback/walking*'. User 23 has marked her two crosses in a slightly more northerly position than User 8 and User 11. The other users say, in 2005, that the path had never been obstructed.
33. None of the witnesses for this application report being stopped while using the claimed route, and no-one had any connection with the landowner. **User 20** and **User 24** do report that they were told by the owner [the freeholder in the period up to 2005] that the path was not public, but they report that they '*told them we have right of way from our property*'. The Land Registry document for User 20 and User 24 does not specify a private right along Green Lane and, unless they can provide another document illustrating a private right there, their use of the route on horseback is qualifying.
34. Most of the users said they were not using a private right on any part of the claimed route or the connections to public highways (A-C and B-F). However, eight witnesses did answer this question. **User 1** acknowledges that he uses a private right to reach Green Lane and to access his field, which lies on a spur track to the west of Portnalls Farm and south-west of Irongate. In these circumstances, when User 1 rides from point E, the junction with New Lane,

Green Lane, North Drive and Ossemsley South Drive, and then north west to point D and beyond, that use is eligible for the acquisition of a public right. However, when he rides from point D along to the entry point to the Forest at point A, that use does not qualify, as it is with a private right. The form he completed in 2005 shows only a used route that does not go south to point F. Mr. Adams' use of a private right from A-B (to get to one termination point of a route that can be recorded on the Definitive Map) only affects that section of the route, and his use of D-E to reach his property without a private right can contribute to qualifying use over that section. **User 6** states that she used private rights to get rear access to her property, but her deeds do not show any private right specified. **User 7** says she used private rights to reach the land where her horses were kept. She lives to the south west of A-B, and her deeds do not demonstrate a private right over the claimed route. Therefore, the use she has recorded is qualifying towards a public right. **User 8** had visited a previous owner at Irongate as a small child and teenager. She shows her use of her horse from her property in Green Lane on both of her forms. Her horse was kept in User 1's field and his private right cannot be transferred to her, as discussed in paragraph 14 above. However, her own deeds grant on 19 October 1937 her '*a right for all purposes... over Green Lane and over the road or way leading therefrom to the main road from Lyndhurst to Brockenhurst*'. All the use shown on her forms, from her own house to the Forest is therefore not qualifying. The deeds of **User 20** and **User 24** do not set out a right to pass and repass along the access drive to their property in Green Lane, as described in the previous paragraph. **User 18** said she had visited previous owners and **User 19** also visited owners, and make work-related visits, so this use is not likely to contribute towards public bridleway rights. However, there is nothing to suggest their use on horseback of the route A-B-D-E-F was in the exercise of a private right. **User 21** admits that he has a private right to travel from his property and field to the Forest, so his use of that private right cannot be counted, **User 22** is in a similar position to User 21, living close to him on the same lane. It is always difficult in such investigations to quantify the exact nature of the private use disclosed on a form of this nature, and this would normally be best addressed in cross-examination at a public inquiry, since users often do not elaborate on this despite being asked to give details. Copies of Land Registry details for the properties of witnesses have been examined. There are four users (User 1, User 8, User 21, and User 22) who were exercising private rights over some or all of the claimed path.

35. Users are invited to put forward any other information which would assist in determining the application. Several users (User 3, User 13, User 17, User 18, and User 21) commented that they used the claimed route A-B to gain safe access to the Forest, by avoiding the busy roads, the closest ones being Holmsley Road and Bashley Common Road, both the B3058. **User 5** comments that the route is used '*by local horseriders to access the NForest. It avoids Bashley Common Road which has a continuous flow of traffic including a large number of heavy lorries and there is no pavement only narrow grass verge*'. These comments are echoed by **User 6** on her form. **User 10** writes that he has met '*innumerable [sic] local riders on this path over the years using it to reach the forest from their own fields*'. Any user by horse riders reaching

the Forest from their own land and using a private right, is not qualifying use. The Land Registry documents examined in relation to the completed user evidence forms indicate the granting of private rights for all purposes in an area where there is a limited number of public footpaths and bridleways. **User 11** took the view that, keeping her horse on Green Lane because she lived some distance away, *'landowners or people who rent land in Ossemsley have the right to use the track'*. In this, she was mistaken, because any private right granted to the owner of the land where the horse was kept, or of the field she rented, cannot be transferred to the renter. **User 13** commented that the gate at Irongate *'has never been locked'* for the 28 years that she lived in Ossemsley Drive. **User 16**, though not a horse rider, stated that there was *'regular vehicle access'* and that his *'clients had access, as did riders and ramblers'*.

The Landowners

36. The owners of Irongate, Mr. Wilson and Mrs. Crow, are represented in this matter by Moore Blatch LLP, who has responded to the County Council's consultation letter. They set out, in a letter dated 29 November 2019 that their clients are investigating the content of this consultation letter and taking advice on it. They are trying to locate contact details for the former owners, who were responsible for the management of the claimed route prior to the bringing of the public's right into question in 2005.
37. The owners of the extension south of the claimed route to point F and the path to Holmsley Road (A-C) have also been consulted.
38. At the time of writing this report, the only landowner that has responded to the County Council's letter of consultation has been the representative of the owners of Irongate. During an interview and site visit with Mrs. Crow on 3 February 2020, she provided the following information:
 - She and her husband put up the current signs disclaiming any public right of way over the section A-B to replace existing paper/laminated signs and confirmed that a notice was in place prior to their purchase and was replaced by them with a sturdier sign (the previous sign was laminated paper / card) after they exchanged contracts for the purchase of the property.
 - Mr. Wilson and Mrs. Crow were told that the sign they replaced was put up by the previous owner (potentially replacing a previous sign). The previous owner had owned the property for 7 years.
 - Mrs. Crow says that she knew that *'the people using it were neighbours'*, and is of the opinion that the use on horseback of the claimed route was predominantly private use.
 - The claimed route is still being used by those people with private rights.
39. During a site visit on 3 February 2020, which involved walking the claimed route, the most northerly of the two gates at point A was shown to have a drawing pin, attached to a small piece of paper in plastic (for weather-proofing) on the northern side of the gate. Photographic evidence was secured of this. The presence of a remnant of what appears to be a previous notice gives weight to the suggestion made by the present owners of Irongate that there

were signs in place prior to 2005, though the remnant cannot provide evidence of the wording on that notice.

Analysis of the evidence

40. For section 31(1) of the Highways Act 1980 to operate and give rise to a presumption of dedication, the following criteria must be satisfied:

- the physical nature of the path must be such as is capable of being a right of way at common law
- the use must be 'brought into question', i.e. challenged or disputed in some way
- use must have taken place without interruption over a period of twenty years before the date on which the right is brought into question
- use must be as *of right*, i.e. without force, without stealth and without permission
- use must be by the public at large
- there must be insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed.

41. Physical nature of the route

Taking the first requirement of section 31(1), all parts of the paths that are the subject of this report are of a physical nature that they are capable of being public rights of way at law.

42. The bringing into question of the public's right to use the paths

The bringing into question for this application is the putting up of the sign indicating to the public using the claimed route that the path was not '*statutory*' and that it was due to be temporarily closed over Christmas 2005, in order to provide an interruption for use, which would defeat any claim. The wording used is described in paragraph 27 above. The response to the appearance of that notice was this application. The notice was first seen in September 2005 according to witnesses, and the application was made two months later in November. The resulting 'relevant period' is 1985 to 2005, during which unchallenged and uninterrupted use must be demonstrated to meet the legal test. This relevant period is shown graphically in relation to the user in the chart at Appendix 3 by the use of a blue tint.

43. Officers understand that the new owners of Irongate erected the notice that shows that there was no intention to dedicate public rights of way over the claimed route, when they exchanged contracts on the property in 2005. Of the 23 witnesses completing forms, 16 gave evidence that they saw the signs that brought the public's right to ride on the claimed route into question in September 2005. Two users had apparently attached a photograph of the notice, and a photograph of the wording was found in the file. The retired

officer's 2005 photographs also show this sign. The effectiveness of this notice is that it is worded so as not to limit the types of public rights that it seeks to protect the freeholder against. Unlike some of the notices described in paragraph 27 above, referring to 'Private Property' or indicating the estate to be private, this notice addresses the public and is specific. The claimed path is said to be 'Private Property', but the notice explicitly states that it is not a 'statutory right of way', that is, it is not legally a right of way. It is not recorded on the Definitive Map and Statement of Public Rights of Way for Hampshire, and has not been through any legal process. This investigation is the legal process to determine whether there is a public right of way on the claimed route. The notice then renders any use by the public void, because it will be with permission – '*Permission to ride or walk through the property is solely at the discretion of the owner*', and that permission will be withdrawn at specified date. The dates on which such permission will be withdrawn are set out, namely between Christmas Eve and Boxing Day, when the public is asked to '*not cross the property at any time*'. This is a classic time of year to cause an annual interruption to public use on paths, and so engineer the failure of any claim for such rights. However, the effect of the notice cannot be retrospective, and the period during which management practices over this land with regard to public access must be examined is the 20 years prior to 2005, when the notice was put up. There is evidence has been put forward by Mrs. Crow, backed by physical evidence, that there had been signs of some kind in place on one of the gates prior to her occupation of Irongate in October 2005. Twenty-one witnesses said that they were not stopped or turned back up to the time they signed their forms. Of those users who rode the route, the majority filled in their forms in October and November of 2005, and most said they saw this particular sign in September of that year. None refer to notices being seen prior to September 2005. Since many witnesses had evidently photographed or copied down the words, the notice put up by the present owners of Irongate made an impression on them. The use that the public is expected to be making of any route while the right is being acquired must be capable of coming to the attention of any reasonable landowner, which it did to the new owners in 2005. At the same time, that use must be unremarkable in its nature, and have the appearance of people exercising a right that they feel they already have. Case law² does not demand that people are consciously thinking that they are exercising a right. This type of unremarkable use is use that is not noted down; it is people using the countryside for the purposes for which they wish to be there. To walk, to relax, to chat with friends and exercise their dogs or horses. This is the reason for the standard of proof to be 'on balance' rather than 'beyond all reasonable doubt'.

² The Planning Inspectorate, Advice Note 6 – 'The House of Lords held that evidence as to the status or reputation of a way is admissible, but evidence as to the state of mind of the users is not part of the test of user as of right. If it emerges that users did not consider that they were exercising public rights that does not mean that the evidence of use is to be discounted. On the contrary, user "as of right" does not require that the public believe they are using a way as of right.

1. R-v-Oxfordshire County Council and Another ex parte Sunningwell Parish Council [1999] 3 WLR 160'

44. Twenty years' use without interruption

Turning to the evidence submitted to this investigation, questions are asked on the user form to identify any obstructions or actions that might interrupt use of paths. Witnesses are asked for details of gates and obstructions, or whether they were stopped from using the claimed path. All the witnesses mention the presence of gates on the claimed route, but these gates are characterised by all of them as open. None of the witnesses say that they were ever stopped from using the paths, though User 20 and User 24 were told that the path was not public, to which they replied by stating they had a private right up the track. No-one reports being stopped, and the obstructions that occur in four forms are mentioned only in those completed in 2013. Critically, the forms completed by the same witnesses in 2005, when the relevant period ends, say there were no obstructions. Therefore, it seems more likely than not that there was a period of uninterrupted use during that relevant period of 1985 to 2005, and this test is met.

45. 'Without force, stealth or permission'

Force – to be 'as of right', use must not be as the result of the use of force.

To qualify for inclusion on the Definitive Map and Statement, the users must demonstrate that their use of the paths must be 'as of right', that is without force, stealth or permission. Taking the issue of force first, the witness did not encounter any stiles on the claimed route that would need to be jumped over on horseback, and the gates referred to in all the forms completed by horse riders are, without exception, described as open. Therefore, there would have been no need to use force, and this test is met.

46. The use of signs placed by the freeholder of the land to indicate to the public that there is no intention to dedicate any public rights of way can make any such use 'contentious', and thus not qualifying to be as of right. There were signs placed on the claimed route in 2005, when the ownership of Irongate changed, declaring that the route was not a public right of way, that it was subject to permission and that this permission could be withdrawn, and would be withdrawn, over the Christmas period in 2005. This action, in itself, brought the public's right to ride there into question, triggering a relevant period of 1985 to 2005, as discussed above at paragraph 28. There is some evidence of other signage prior to 2005, but not of its wording. It is therefore possible that the use on horseback of the claimed route was in contention during the relevant period. This investigation must also consider extensions of the route A-B to provide one termination of the claimed public bridleway to reach a place of public access, in this case the road B3058, meaning that there are other signs to consider. Appendix 2, discussed in paragraphs 26 and 27, includes photographs with words such as '*Private Drive*', '*Private Estate*' and '*Private Properties Only*', and such phrases are not considered to be sufficiently exact in relation to the rights that are being denied to render any use of the paths contentious. Without actual evidence of the wording of the signs along the claimed route to assess their effectiveness in denying public rights of way in the 20-year period prior to 2005, this test is met, on the balance of probabilities.

47. *Stealth – to be ‘as of right’, use must be open and of the kind that any reasonable landowner would be aware of, if he or she had chosen to look.*

Any qualifying user must be ‘without stealth’. It should be open and capable of coming to the attention of a reasonable landowner. There are 20 witnesses who have completed user evidence forms that they have ridden over the claimed route from A-B. Twelve of those users have used the path for over 20 years on horseback, and one user comments that he had seen innumerable riders reaching the Forest along it, and User 17 says the path had been used by riders for the previous 20 years. When the new owners of Irongate and its surrounding land arrived, they immediately noticed the traffic along Green Lane past their property and took action to show a clear intention that they did not intend that public rights should be dedicated over it. This suggests that the use was not stealthy in nature, and therefore this test is met.

48. *Permission – users ‘as of right’ will not have used the way with any kind of licence or permission.*

Finally, all qualifying user must be without permission. None of the horse riders giving evidence in relation to this claim said that they had sought permission to use it. As there is no evidence of how this route was managed in relation to public access prior to 2005, this test is met. Any use of the route since the notice described in paragraph 42, and over the period that it has been maintained would not meet this test. Those users who have a private right for some, or all, of the routes being considered, have had that private use disqualified from consideration in this investigation.

49. Use by the public

Use must be by the public, and that should be reflected in its volume and the breadth of the type of users.

The use must be of a volume that is capable of coming to the attention of a landowner. It should consist of sufficient users, and that number may reflect the setting of a path, such as whether it is in a rural or urban area, and the type of use being claimed.

In the consideration of any claim involving multiple routes with possible usage it may be complex to assign that use to individual routes, given that user is always in the past and users may not have been giving their full attention to exactly what they were doing when walking the routes, or have full recall of any particular use. However, the requirement for each user to show on a map the routes he or she has used reduces the possibility that an ostensible ‘high volume’ of use on one route might be wrongly ascribed to another which, in reality, may have been used much less frequently. In this case, use of the route A-C and the route B-D-E-F must be considered in order to arrive at any public right of way reaching a public highway, to be eligible for inclusion on the Definitive Map. The information on the forms must be taken at face value, unless there is any reason to question whether the use is accurately and honestly recalled. Officers have sought to reflect the volume of use on each

route as accurately as possible, as shown by the numbering next to each route on the amended Committee Plan (**Appendix 4**). These numbers have been obtained by scrutinising the routes drawn on these maps. It is also considered that all user on the parts that must be considered in this application can be said to have been representative of 'the public', since none of those giving evidence said that they were member of the family of, an employee of, or a tenant of, the landowner. The issue of private rights has been addressed in paragraph 34 above. The map at Appendix 4 shows that all four parts of the complete route running between points C and F have been used. The heaviest use on horseback was that section A-B-D, running south from Irongate to the poultry houses at Portnalls Farm, where all 20 witnesses rode, with numbers of users of the whole of the section D-E decreasing to 11, as some riders turned off to Portnalls Farm or to their own land. While the 20 users filling in forms inevitably represent some fraction of the total user on this part of the route, it is difficult to estimate what that fraction might be. User 10 spoke of innumerable horse riders from the local area reaching the Forest using the route, and User 5, User 17 and User 16 refer to riders reaching the Forest by this means. User 23 comments that the new owners put up the sign indicating no statutory right of way when they arrived in 2005, so the level of user illustrated by the evidence given to the investigation was enough to bring that use to the owners' attention. It is clear from the maps provided with the forms that nine users did not use the whole of the section D-E and so did not reach a place of public access. While this use of part of the route D-E can count towards public bridleway rights, the number carrying on beyond point E to a place of public access is actually eleven.

50. Given that some of the users have terminated their riding either at Portnalls Farm, or at one of the properties towards the southern end of section D-E, it is not unreasonable that the diminished use might not come to the attention of any landowner at the southern end of Green Lane. The number of riders continuing south east towards Bashley Common Road, on the section E-F, has further decreased, with 8 riders using the whole section to the junction with the B3058. Given that this is an area where many people keep and exercise horses, and the B3058 gives access in at least two places to a large area containing routes that lead out onto the Forest, 8 riders are unlikely to represent a volume of use that is capable of coming to the attention of any landowner affected by that use. The land to the north of the claimed route may be open forest, but to the south is a relatively densely populated area, including Christchurch, New Milton, Milford on Sea and Lymington. Five witnesses, both walkers and riders, came to the claimed route from some distance away.
51. It is necessary to return to the subject of private rights at this stage of the investigation. Four users have a private right to ride along part, or all of, Green Lane, so their use must be deducted from the total shown in Appendix 4, as this use is not qualifying. The effect of this is illustrated in **Appendix 5**. As has been shown, User 10 talked of innumerable local horse riders reaching the Forest using the claimed route. According to User 10, these users were coming from their own land, and he thought it likely they were using a private right, which would not be qualifying use. As has been demonstrated, of those horse

riders giving evidence, four were using private rights. When looking at rights of way claims, particularly for footpath rights, any admitted private right use is likely to be much less than the public use (for occasional visits to friends, delivering items, for example) and it is customary to note the private use but not try to quantify it. Because of the circumstances in this application, the private right usage has had to be quantified, and it has removed a proportion of the use on the section A-B-D, where the number of users has been reduced from 20 to 16. User 1's exercise of a private right down to point D on Green Lane cannot be counted towards public bridleway rights. The number of users of the route D-E riding without private rights is reduced from 11 to 8 (removing the use by User 8, User 11 and User 21), and for E-F, there are 7 users. As the tendency of horse riders using only part of a route is to reach their land, and some of those who do are doing so with a private right on D-E, this has the effect of diminishing the public user of that route. In the setting of this claimed route, the diminution in numbers of riders towards the B3058 results in the documented usage being less likely to come to the attention of an absentee landowner, and therefore, this test is not met.

52. *Use of a way should not consist solely of a particular class of person, such as the employees of a particular employer, tenants of a particular landlord, or customers of a particular business, if it is to be recorded as public.*

There is no evidence in this application that the users are of any one particular class of individual, given that all replied in the negative about connections with the landowner.

53. The volume of user by the public for each individual section of the claimed route and its extensions to places of public access varies, as is shown by the plans at Appendix 4 and Appendix 5. The path from C to A has received negligible use as set forth in the available evidence. The section from A-B-D was the most heavily used by horse riders, with 20 users, though 4 must be discounted because of private rights, bringing the final total to 16 users. In Order to reach a place of public access, the B3058 being the nearest and most convenient (and ironically what most witnesses were clear they were trying to avoid as it is seen as unsafe for horses), section D-E and E-F must be considered. The use on horseback declines from point D, with 16 users, but not all are using the whole of the section. Nine riders were using part of the route to get to their own property. Once the private use is deducted there are 11 riders using the whole section, but only six riders using it without a private right to reach a destination along that section. From E to F, there are 7 users continuing down to Bashley Common Road. This number of users is unlikely to come to the attention of any landowner, especially a landowner residing some distance away, as is the case here. It does not reflect the numbers of people keeping horses in this area, and wanting to reach the Forest by the more rural setting of the claimed route A-B, rather than busy roads. Therefore, it is unlikely that, on balance, the volume achieved reflects the potential public users of the area, when this particular volume of use is considered in the context of this part of the required test.

54 . Insufficient evidence that the landowner did not intend to dedicate a right of the type being claimed

There must be insufficient evidence that the landowner took steps to stop public use of the claimed routes, such as challenging users, preventing access by physical means or the use of correctly worded signage, or the making of a CA16 deposit.

The actions of landowners in such applications as these are crucial to their determination. Under section 31 of the Highways Act 1980, the public must demonstrate twenty years of unchallenged use on linear routes, and that use must be as of right and uninterrupted. This legislation fixed the period after which, without action from the freeholder of the land, a 'deemed dedication' will be held to have taken place, and the public rights so acquired can be recorded on the Definitive Map and Statement of public rights of way. In effect, it is for the freeholder to manage her or his land for public access, and to make it clear when he or she does not intend to dedicate such rights, clearly and unequivocally to the users. The critical questions are what is a 'reasonable' land owner to take from what the public is doing on the land? What rights are the public asserting by their use?

55. The evidence currently before this investigation does indicate that the use on horseback of the claimed route and its extensions to the access to the road B3058 has come to the attention of the landowner of the actual claimed route, that is between points A and B. This use resulted in the placing of signs in 2005 which brought home to equestrian users that the route they were riding was not a public right of way, and not intended to be one, and led to this application. There is some evidence that there were previous signs at this location of a similar nature to the 2005 signs, but the wording is unknown. As is not uncommon in the matter of claims for public rights of way, when land changes owner, public use that was tolerated by the vendor of the land becomes evident to the new freeholder, who wishes to stop the public entering on their newly-purchased land. This is entirely reasonable, but the circumstances are not favourable, particularly if the previous landowner has never done anything to manage public access over the land, has moved a distance away or wants no further involvement with it. This is not a clear-cut matter in this investigation. The current owner of Irongate states that the previous owner had similar signs in place, and that these were a renewal of other similar signs, but there is no direct evidence from that landowner. It may be that the present landowners will be able to find more evidence of management for public access of the route prior to 2005. There is no Highways Act 1980 section 31(6) deposit (or its later equivalent, a CA16 declaration) over the land encompassing Irongate and its surrounding fields. Such declarations serve to show that the freeholder does not wish to dedicate any further public rights than already exist over that land, and may be more effective than maintaining fencing, locked gates and notices. The signs put up by the present landowners are effective, direct and address the problem of public access, but were put up at end of the relevant period for this application, which is 1985-2005. In this particular investigation, no direct evidence has been put forward from landowners relating to the period 1985-2005. A challenge to what appears to have been public use of the claimed route took place in late 2005, and the

challenge mounted then was the bringing into question of the public's right to use the way. The evidence, as it stands, is insufficient to demonstrate a lack of intention to dedicate on the part of the landowner between 1985-2005. It is difficult to say whether or not the test is met without direct evidence from the relevant period but, on balance and considering what evidence there is, officers are led to say that the legal test of insufficient evidence is met.

Summary of the available evidence

56. Taking all the available evidence to this investigation at the time of writing, it is considered that the requirements of section 31 have not been satisfied in this case, on the balance of probabilities, for the claimed path and the necessary extensions to reach a place of public access for those members of the public wishing to reach the open Forest avoiding busy roads. The nature of the setting of the route actually claimed is in an area largely devoid of public rights of way. The fact that it reaches a place of public resort at its northern end, but not at its southern end (even with an extension), and that there has been use with private rights, has rendered the final figures for horse riders on the longer of the two routes A-B-D-E-F not of a volume capable coming to the attention of a landowner as being public use during the years 1985-2005. The section that is actually the subject of this application is not able to stand alone in terms of the Definitive Map. The use shown in the user evidence chart at Appendix 3 indicates the route has been in use for many years, with a reasonable number of users from 1950 onwards, but the witnesses have not demonstrated the volume of public horse use that might be expected in an area of open access countryside and forest on the fringe of wider settlement.

Conclusions under Section 31, Highways Act 1980

57. **Route A-B-D** (20 users, earliest evidence of use – 1950)

This is the actual subject of this application to modify the Definitive Map and Statement, and the most heavily used part of the longer route that connects to a place of public access, the B3058, Bashley Common Road. Users say that the claimed route was not obstructed before 2005, though there have been obstructions since. Four users have been shown to have a private right for all purposes along this section of the wider route, so this use is not qualifying, and the actual number of public users on horseback is 16. The claimed path does not qualify to be a public bridleway on its own, and examination of the evidence for linking routes indicates that the level of use on each of them is not sufficient to come to the attention of a landowner. The relevant period is **1985 to 2005** and, while there has been no clear evidence put forward to suggest how the land was managed, there is some evidence of previous signage prior to the 2005 challenge. While there may not be any evidence that the claimed route A-B may have been the subject of any action by the landowner to show no intention to dedicate, and public bridleway rights may have been acquired over that section only, it is not able to be recorded on the Definitive Map as a public bridleway as it stands. The law requires that a right of way has fixed start and end points and follows a defined route. Case law has held that a path terminating at a feature such as the sea shore could be a public right of way, but, it is necessary that there be a point that allows the public access to what

may otherwise be a cul-de-sac. As has been pointed out by the Area Countryside Manager in paragraph 60, in response to consultation, the question here is how would the public gain access to the section A-B? This is the reason that the other three sections must also be considered, as below. As a stand-alone route, A-B may theoretically have met the legal tests for recording on the Definitive Map, but without the means necessary to allow the public to reach it, given that there are no public rights of way from the B3058 to the start point at B, there would be no purpose in recording it there.

Route C-A (3 users, 1 whole and 2 part, earliest evidence of use – 1996)

This route is also open and available for use, and does not appear to have been obstructed in the past, but the level of recorded use is so low that it would not be likely to come to the attention of the landowner, and the legal test is not met.

Route D-E (20 users, 11 whole and 9 part, earliest evidence of use – 1950)

The route is open and available for use. This section, along Green Lane, is a necessary component of a public bridleway that could be recorded on the Definitive Map. Although there are 11 horse riders who have shown that they have ridden on this section on the plans attached to their user forms without exercising a private right, 6 have only used a part of it without a private right, with three users having exercised private rights over part of the section. The use illustrated on five of these user forms is to Portnalls Farm only, some way short of the junction of Green Lane with Ossemsley Drive South. Given that this part of the route has been owned by a non-resident landowner for many years, it is unlikely that this number of users constitute a volume capable of coming to that landowner's attention. Therefore, this legal test is not met.

Route E-F (8 users, 7 whole and 1 part, earliest evidence of use – 1950)

The route is open and available for use. It runs from the junction with Green Lane, where it meets North Drive, and is known as Ossemsley Drive South. During the 20-year period up to the bringing into question of the public's right to use the claimed route in 2005, this route was also owned by an absentee freeholder and, on balance, it is not likely that the volume of 8 horse riders who have provided evidence to this investigation is likely to come to the attention of such a landowner. In relation to this section of the longer route, the legal test regarding volume of use is also not met.

Common Law

58. As there is little information on how this route was actually managed for public use during the period 1985-2005, it is difficult to consider this matter under common law.

Consultations with other bodies

59. The following persons and bodies have been consulted about the application: New Forest District Council, New Milton Town Council, the local Member, the Open Spaces Society, The Ramblers, the British Horse Society, Cycling UK,

Hampshire Highways and the Area Countryside Access Manager (South). At the time of writing, the following responses have been received.

60. The County Council's **Area Countryside Access Manager South** has responded to say that, on checking the GIS mapping, it is '*difficult to ascertain whether there is any public access from the south end of this route*'. None of the routes in the area where the claimed route lies are recorded on the List of publicly maintainable streets [known as CHALIST]. The Manager appreciates that the northern end of the route goes onto the open forest, but then comments that '*however without any public access to the south I'm unsure what use this route may have received in isolation*', thereby identifying precisely the reason why sections C-A, D-E and E-F have had to be considered.
61. The Assistant Parish Clerk to **New Milton Town Council** responded that she had raised this matter at a meeting of the Council's Planning Committee on 5 December 2019, and the matter was detailed in the minutes of that meeting. The Clerk says that '*to date no comments have been forthcoming and I am not expecting this to change*'.

Comments by the Landowners

62. The affected landowners have been consulted on this application. Their legal representative has been in contact and expects to put forward a representation, but at the date of writing this has not been received. However, any material that is received between the submission of this report and the Committee meeting will be forwarded to Members for consideration and to aid the determination. Some information has been put forward by the current owner of Irongate and this is discussed at paragraph 38. Contact has also been made by a representative of the Forestry Commission, who may also wish to put forward evidence or comments. Any material that is put forward after the date of publication will be provided in advance of the Committee meeting, if possible, to allow Members to take all relevant evidence into consideration in making their determination of this application. An Assistant Land Agent for the Forestry Commission has contacted officers in relation to the route A-C. She points out that the Forest is land that is open to the public, and that there is no need to '*upgrade the route*'. She also says that the Commission has not actively stopped riders using it. It should be noted that, as crown land, the Forestry Commission is not bound by the provisions of the Highways Act 1980, under section 31 of which this claim will be determined, unless an agreement has been made under section 327 of the Highways Act 1980 that it will be so bound.

Conclusions

63. The intention of this report is to provide the Regulatory Committee with information and advice on this application. Officers again apologise for the length of the delay in investigating it.
64. The evidence available to the investigation indicates that the claimed route and other routes examined to ascertain whether there is a route to the Forest that

connects to a place of public access at the road B3058, have been in use by the public during the relevant period 1985 to 2005. The issue before Members is whether the volume of public use is sufficient to come to the attention of the landowner, and what the landowner has done during that 20-year period once aware that a public right, here on horseback, was being asserted.

65. None of the users who have ridden the route on horseback from the Forest to Bashley Common Road (A-B-D-E-F on Appendix 1), or any part of it, report being challenged or stopped during the period 1985-2005. While the horse riders used the route without stealth or force, four did ride parts of the route in the exercise of private rights, and that use does not contribute to the acquisition of public bridleway rights over this route. Only with a change of ownership of the land over which the route actually claimed (A-B) runs was there any direct challenge to the use of the path by the public for horse riding, and to access the Forest, that came to the attention of users, sufficient to mount a claim to have the route recorded on the Definitive Map. This is not an uncommon occurrence in rights of way claims.
66. As the Area Countryside Access Manager correctly identified, the question is whether there can have been sufficient access from the south to the route A-B claimed as a public bridleway, to allow the public use occurring there to be recorded on the Definitive Map. As has been set out in the analysis, taking each section of the route from the Forest to the B3058, for the necessary legal tests to be met, and for the Definitive Map to be amended to show a public bridleway, the issue is the volume. The use captured on user evidence forms can only ever be a fraction of what has taken place on a route, particularly one in a rural setting or open countryside. It is not possible to know just how many riders have used this route over the 20-year period under consideration, though witnesses say, or imply, that many local riders rode there. From the evidence put before officers, and when any use with private rights is discounted, the total of 16 riders for A-B, the claimed path, reducing to 11 riders over the whole of the section B-D-E and then to 7 over the whole of the final section E-F is a low volume for the setting of this route in an area with few public rights of way bordered by extensive settlement to the south. The route A-C has received negligible public use. The only resident landowner over the 20-year period, when unchallenged public use must be demonstrated, was for the section A-B, and no substantive evidence is available to show how that section was managed with regard to public access. Taking what evidence there is, officers are of the opinion that the volume of use on the linking extensions is not sufficient to allow for a deemed dedication of a route suitable for inclusion on the Definitive Map.
67. If Members agree with these conclusions and consider that, on the balance of probabilities, it cannot be reasonably alleged that the public have acquired a right of way on horseback on the routes as set out in the previous paragraphs, then they should direct that the application be refused.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

Hampshire maintains strong and sustainable economic growth and prosperity:	
People in Hampshire live safe, healthy and independent lives:	
People in Hampshire enjoy a rich and diverse environment:	
People in Hampshire enjoy being part of strong, inclusive communities:	
OR	
This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because: the County Council, in its capacity as ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.	

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.)	
<u>Document</u>	<u>Location</u>
Claim Reference – case file CR/887	Countryside Access Team Castle Avenue Winchester SO23 8UL

IMPACT ASSESSMENTS:

1 Equalities Impact Assessment: N/A

2. Impact on Crime and Disorder: N/A

3. Climate Change:

How does what is being proposed impact on our carbon footprint / energy consumption? N/A

How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts? N/A

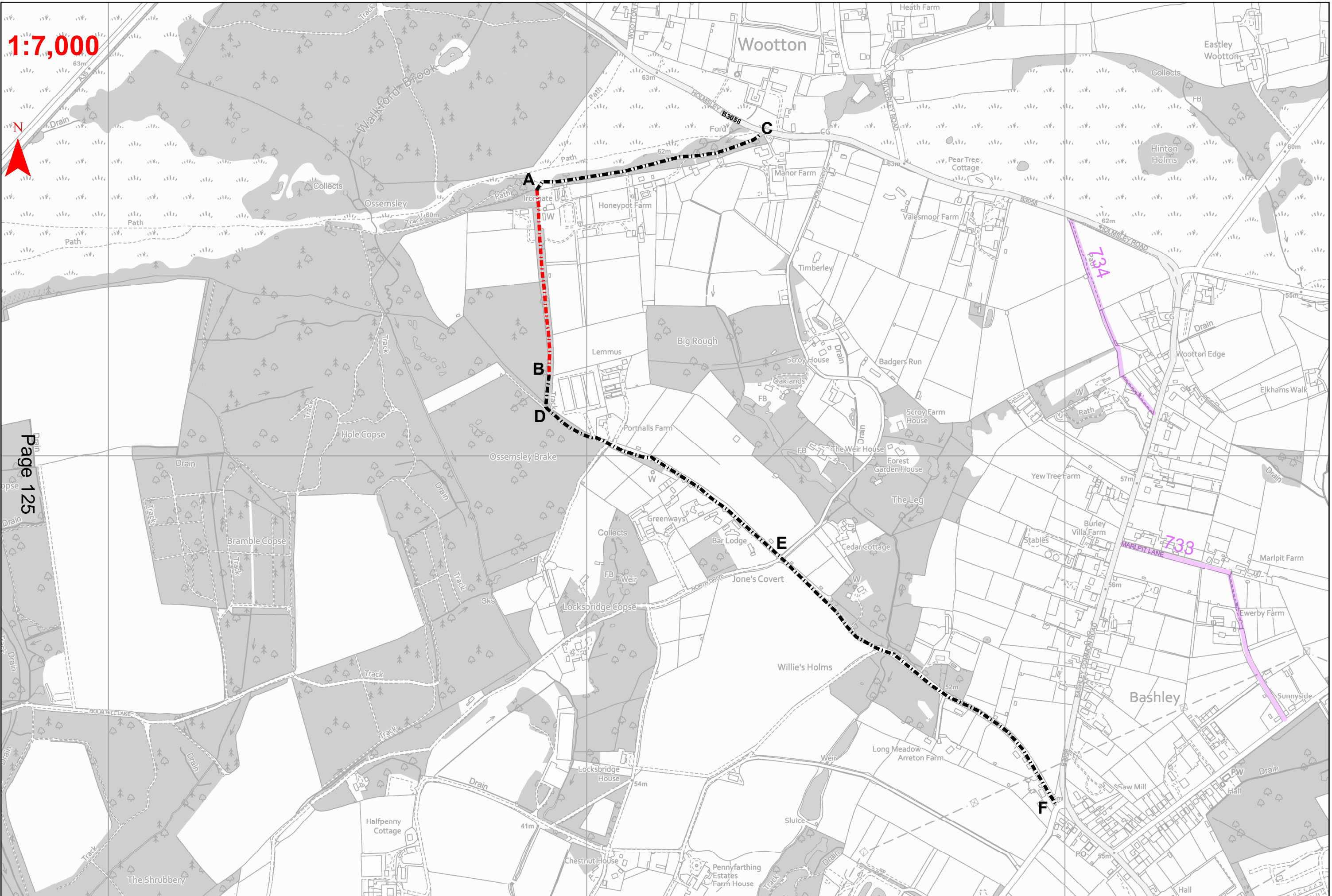
This report does not require impact assessment but, nevertheless, requires a decision because the County Council, in its capacity as the ‘surveying authority’, has a legal duty to determine applications for Definitive Map Modification Orders made under s.53 Wildlife and Countryside Act 1981.

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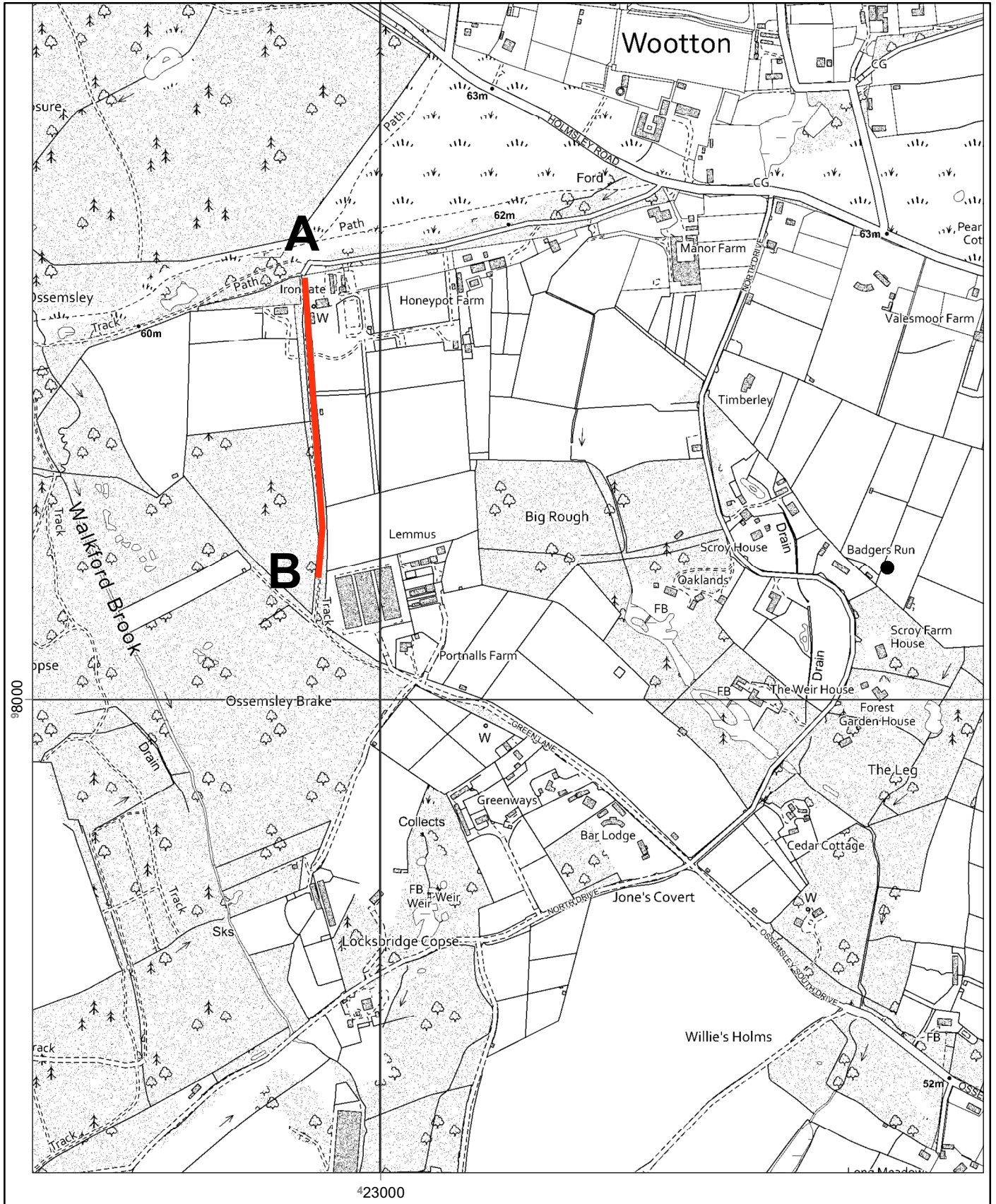


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423000



423000



Ossemsley, New Milton



Claimed Route

Countryside Access Team
 Castle Avenue
 High Street
 Winchester
 SO23 8UL

Application to record bridleway
 from Irongate to Poultry Houses

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 DRAWN SS
 DATE Page 127

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c Looking south 01/12/2005



c close up of notice 01/12/2005

Private Property

**This path is not a statutory right of way
Permission to ride or walk through the property is
solely at the discretion of the owner.**

Please stay on the path whilst crossing the property.

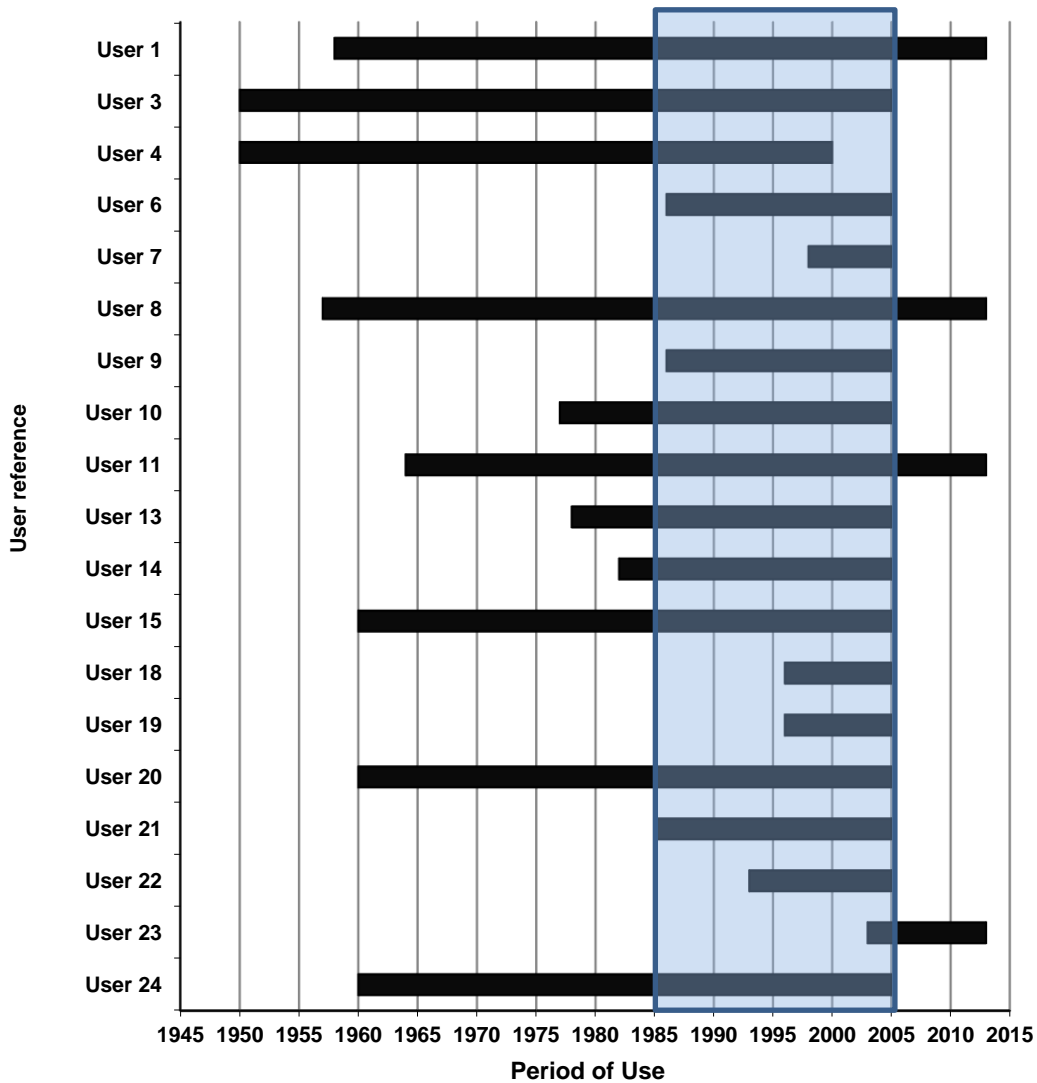
**Note that the path may be closed at any time
without notice.**

**Please do not cross the property at any time
between the 24th & 26th December.**

Thank you for your co-operation

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Bridleway at Irongate, Ossemsley, New Milton DMMO 887 User Evidence (horse back)

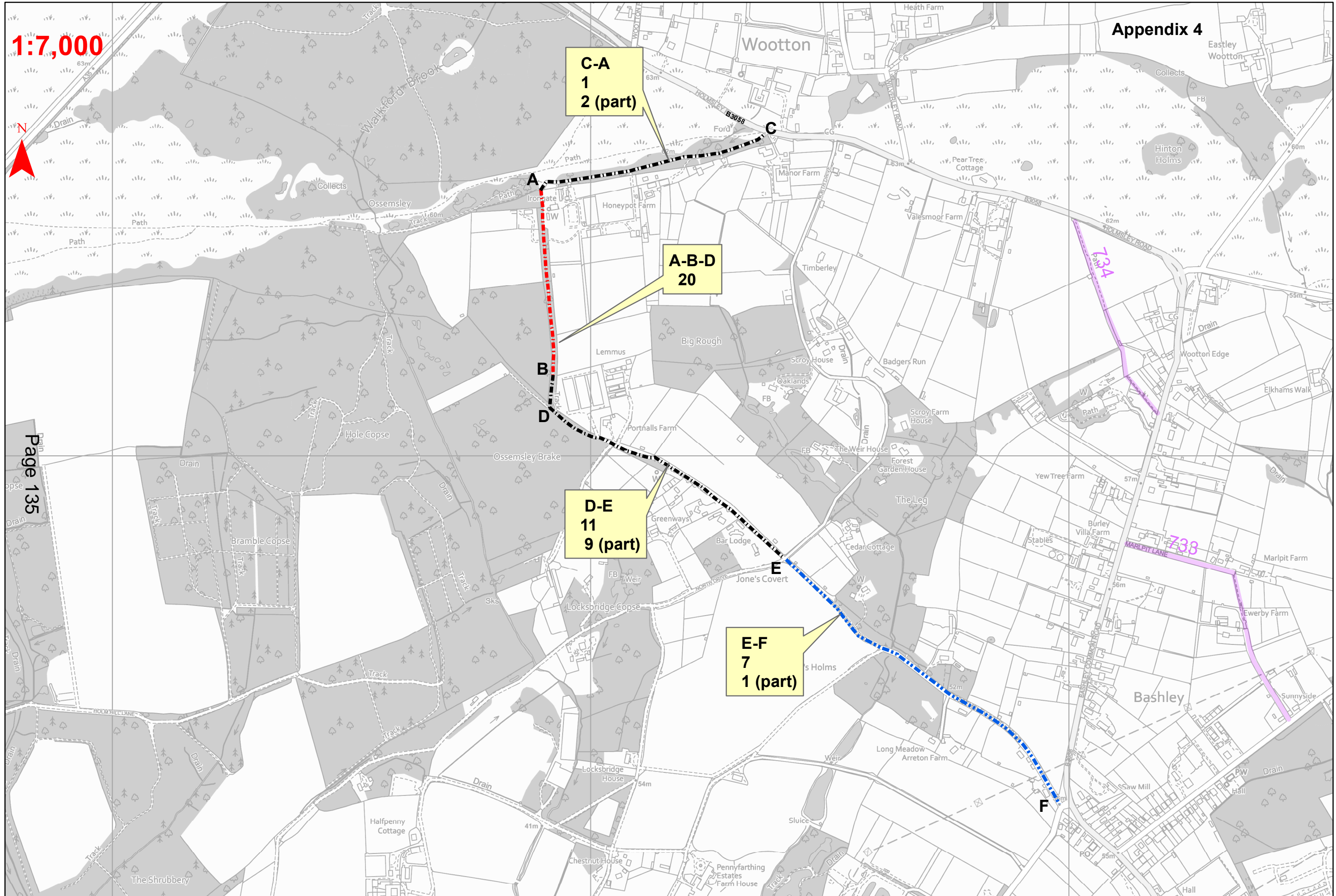


 Relevant Period

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Appendix 4

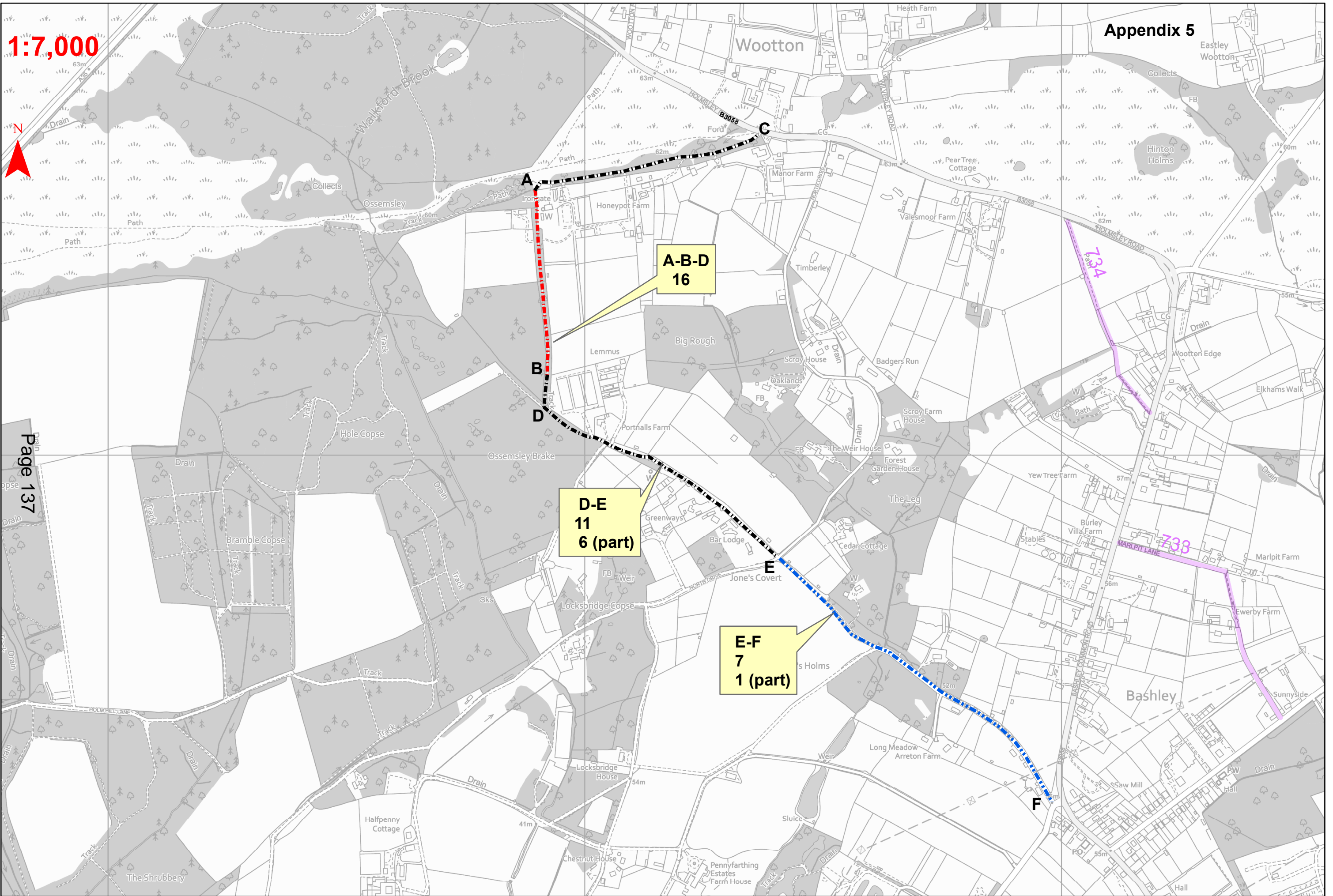


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Appendix 5



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