The Planning Inspectorate

Prohibition Order Report to the Secretary of State for Communities and Local Government

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an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 7 July 2014

TOWN AND COUNTRY PLANNING ACT 1990

TOWN AND COUNTRY PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT)(ENGLAND AND WALES) REGULATIONS (AS AMENDED) 1999

OXFORDSHIRE COUNTY COUNCIL (THRUPP FARM, RADLEY) PROHIBITION ORDER 2012

Inquiry held between 18 and 21 March 2014 and on 13 and 14 May 2014
Accompanied Inspections were carried out on 20 March 2014.
Land at Thrupp Farm, Radley, Oxfordshire

File Ref: NCPU/PROH/U3100/71261

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ACRONYMS AND ABBREVIATIONS

1999 EIA Regs	The Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999
2000 EIA Regs	The Town and Country Planning (Environmental Impact Assessment)(England and Wales)(Amendment) Regulations 2000
2008 EIA Regs	The Town and Country Planning (Environmental Impact Assessment)(Mineral Permissions and Amendment)(England) Regulations 2008
App	Appendix
BOAT	Byway Open to All Traffic
CLEUD	Certificate of Lawful Existing Use or Development
DKS	Douglas Kean Symes
Doc	Document
EA 1995	Environment Act 1995
EIA	Environmental Impact Assessment
ES	Environmental Statement
Fig	Figure
FRL	Friends of Radley Lakes
ha	hectares
HTSL	H Tuckwell & Sons Ltd
JCSL	J Curtis and Sons Ltd
JES	John Eric Salmon
KB	Kevin Broughton
LWS	Local Wildlife Site
MPA	Minerals Planning Authority
OCC	Oxfordshire County Council
p	page
PFA	Pulverised Fuel Ash
PO	Prohibition Order
PPG	Planning Practice Guidance
QC	Queen's Counsel
RMT	Roger Michael Thomas
ROMP	Review of Mineral Planning Permission
RPC	Radley Parish Council
S	Section
Sch	Schedule

SoS	Secretary of State
TCPA 1990	The Town and Country Planning Act 1990
Vol	Volume

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Land at Thrupp Farm, Radley, Oxfordshire

- The Prohibition Order was made under Section 102(8) and paragraph 3 of Schedule 9 of the Town and Country Planning Act 1990 and Regulation 26(B) of the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 (as amended) by Oxfordshire County Council on 31 October 2012.
- The purpose of the Order is to prohibit the resumption of the winning and working of minerals from land at Thrupp Farm, Radley.
- The main grounds of objection are that the application to review the minerals conditions of the planning permissions to which the Order relates was deemed to be determined in July 2000 and, therefore, there was no power to make the Order. Alternatively, if the application is not deemed to be determined, the working of the site has not permanently ceased and, therefore, the test in paragraph 3(1) of Schedule 9 is not satisfied. Also, the environmental information submitted was an Environmental Statement and, therefore, regulation 26(B) does not apply.
- When the Inquiry opened there were five objections. None of these objections have been withdrawn.

Summary of Recommendation: The Secretary of State does not confirm the Prohibition Order

1 PRELIMINARY MATTERS

1.1 The Inquiry opened on 18 March 2014, adjourned on 21 March 2014, resumed on 13 May 2014 and closed on 14 May 2014. An accompanied site visit was carried out on 20 March 2014.

1.2 The Minerals Planning Authority (MPA), Oxfordshire County Council (OCC), originally sought confirmation of a Prohibition Order (PO) prohibiting the resumption of the winning and working of minerals on land at Thrupp Farm, Radley[1]. This site is covered by several planning permissions that were/are subject to a Review of Mineral Planning Permissions (ROMP) application.

1.3 However, for the reasons set out below in section 4 under the heading *"Common Position of the Main Parties"*, OCC no longer seeks confirmation of the PO. On the understanding that it has no power to withdraw the PO, OCC requests that the PO is not confirmed by the Secretary of State (SoS).

1.4 Nonetheless, there is support for the PO from a number of local residents and interested organisations, some of whom gave supporting oral evidence at the Inquiry and submitted statements and other written evidence[2]. Opposing oral evidence was also given at the Inquiry as well as written objections having been submitted[3].

1.5 The main objector to the PO is a minerals company called J Curtis and Sons Ltd (JCSL), who is described as the "appellant" in some of the papers. JCSL has, for many years, engaged Douglas Kean Symes (DKS) as its agent and advisor with respect to its minerals business. DKS was a key witness at this Inquiry.

[1] CD10
[2] Written evidence largely contained within ID17; see also proofs, and various statements submitted as ID docs
[3] Contained within ID17

1.6 Additionally, JCSL's Counsel called John Eric Salmon (JES) from the consultancy *Land & Mineral Management Limited.* JES is the agent and advisor of another minerals company, H Tuckwell & Sons Ltd (HTSL), who also has an interest in the outcome of this Inquiry. However, in giving evidence and as indicated in some of the papers, JES confirmed that he was actually representing HTSL in its own right as an objector to the PO. Therefore, for the purposes of this report, I have treated both JCSL and HTSL as two separate objectors, albeit with overlapping interests.

1.7 Proceedings have been conducted in the spirit of *The Town and Country Planning (Inquiries Procedure)(England) Rules 2000.* It was confirmed at the Inquiry that the statutory formalities have been complied with.

1.8 A supporter of the PO, namely, The Friends of Radley Lakes (FRL) represented by Mr Roger Thomas, was effectively given the equivalent of Rule 6(6) Party status under those rules prior to the opening of the Inquiry.

1.9 At the Inquiry several applications for costs were made as follows: by JCSL against OCC; by OCC against JCSL; by FRL against both OCC and JCSL; and by Radley Parish Council against OCC and JCSL. These applications are the subject of a separate report.

2 MAIN CONSIDERATIONS

2.1 The SoS set out a list of matters for consideration in an annex to the Inquiry notification letter dated 2 February 2014[4]. In that letter the SoS invited the Inspector, at her discretion, to include other issues that might arise and which would materially impact on the SoS's consideration of the PO. Due to the particular circumstances of this case, such other issues have arisen, which are generally legal in nature.

2.2 Whilst interpretation of the legislation is a matter for the SoS, because of its central role in the context of this case and its effect on determining what the relevant matters for consideration are, I have set out my understanding, from the evidence, of what the pertinent provisions mean. This is addressed in section 4 below.

2.3 The PO was made on the understanding that there was an automatic duty on the MPA to make such an order where, in the case of a stalled ROMP (which this was thought to be), two years' suspension of winning and working the mineral had expired, and there was no Environmental Statement (ES).

2.4 Therefore, the main matter for consideration was, originally, whether the submitted document that was claimed to be an ES, was actually an ES, and whether any defects could be rectified by providing additional information. This is how the Inquiry started out.

2.5 However, during the course of the first few days of the Inquiry, a number of questions were raised, which required further investigation. The Inquiry had not been allocated sufficient time to hear all the evidence and, therefore, it was adjourned part way through, and resumed some weeks later.

[4] Within the case file

2.6 During the adjournment, the main objector sought advice from Queen's Counsel (QC), who provided a written opinion. This was to the effect that the ROMP application was deemed determined by default in July 2000. As a result, there was no stalled ROMP at all and no power to make the PO. The MPA accepted this point. The reasons supporting this conclusion are set out in section 4 below.

2.7 Consequently, the first matter for the SoS to consider is whether the ROMP application to which the PO relates was determined by default in July 2000. If it was, consideration should be given as to whether this means there was no stalled ROMP at all and, in such circumstances, no power for the MPA to make the PO.

2.8 Secondly, if it is determined that the power did exist, the SoS should consider the changing face of the relevant legislative provisions and guidance over the relevant period and how this impacts on the PO. In particular, it appears that there may have been some inconsistencies in the relevant regulations, statute and guidance extant at the time of making the PO.

2.9 This inconsistency affects the consideration of which tests should have been applied before making the PO. In particular, it raises the issue of whether there could have been any automatic duty to make a PO after two years' suspension of operations and no ES, without taking into account permanent cessation of working.

2.10 The old guidance has now been superseded by the Planning Practice Guidance of 6 March 2014 (PPG). How this new guidance impacts on the PO will need to be considered. The PPG advises that the duty to make a PO arises when, as well as there being two years' suspension for not providing an ES or relevant information, the tests for issuing a PO are met. Accordingly, consideration will need to be given as to what these tests are and whether they are satisfied in this case.

2.11 Even if the tests for issuing a PO are satisfied, for an MPA to be under a duty to make a PO, the PPG still requires there to be a failure to provide an ES or relevant information. Therefore, in the absence of a deemed ROMP determination, and where it is found that the tests are satisfied, the matter of whether or not there is a duty to make a PO turns on whether the claimed ES is an ES at all and whether any defects can be cured by additional information. In these circumstances the main consideration turns full circle and is back to where it started.

2.12 Whilst there are also discretionary provisions within the legislation for an MPA to make a PO in the case of permanent cessation, these provisions do not appear to apply under the transitional provisions for stalled ROMPs. In any event, this was not the basis under which the PO Notice was served.

3 BACKGROUND

3.1 As the circumstances of this Inquiry are complex, a summary of unchallenged facts and events is set out at this stage to set the scene and explain the

context of the PO. Fuller background details are contained within the main parties' proofs of evidence[5].

Site, Surroundings and History

3.2 The site is located in the Green Belt on the eastern outskirts of Abingdon within an area of historic gravel extraction with open countryside beyond[6]. To the west is a leisure centre and science park and towards the north east is a wetland centre. A Byway Open to All Traffic (BOAT) runs through the site, and a small group of houses is situated nearby. Access to the site is along Thrupp Lane.

3.3 The Radley area has been worked for sand and gravel since the introduction of the Planning Acts in 1948. The workings have been carried out by two independent minerals companies who are both objectors to the PO, namely JCSL and HTSL. These companies competed with each other to acquire reserves through land purchase or mineral leases. Each company initially operated a processing plant in the area.

3.4 The development area is subject to a number of separate but linked planning permissions[7]. The companies worked overlapping areas known as Thrupp Farm and Thrupp Lane. JCSL is generally associated with Thrupp Farm and HTSL with Thrupp Lane.

Thrupp Farm

3.5 Thrupp Farm is the site area affected by the PO as shown on the PO Plan[8]. The various areas of the Thrupp Farm site are shown on a plan prepared by OCC[9]. Area A contains industrial buildings which had a temporary planning permission that expired in August 2011. An application to retain the buildings is pending[10]. Area B is currently used as a concrete batching plant (Tarmac) and the site was given a Certificate of Lawful Existing Use or Development (CLEUD) in December 2007.

3.6 Area C has been worked and no mineral excavations have taken place since 1979. It is now restored to scrubland. Area D has been partly worked, although no working has taken place since 1979. It has been restored to a lake at the eastern end and on the western end has been naturally vegetated over.

3.7 Area E has been worked out and extraction was completed by 2005. It is now restored to a lake. Area F has only been worked at its very eastern edge. Area G was worked out by 1990 and was being restored with Pulverised Fuel Ash (PFA) from Didcot Power Station. However, the supply of PFA stopped and an application for a revised restoration scheme is pending.

[5] Proofs of DKS, OCC, JES, and FRL
[6] KB Annex 1
[7] DKS Vol 3 Doc 2
[8] Within CD10
[9] KB Annex 2
[10] Under S73 of the TCPA 1990

Thrupp Lane

3.8 Historically HTSL quarried land at Radley on the east side of the Oxford to London railway and in 1982 relocated its operations to Thrupp Lane on the west side of the railway, where a processing plant and a concrete batching plant were erected. In 1995 HTSL ceased quarrying at Thrupp Lane because the mineral was exhausted.

3.9 Planning permissions for plant and machinery at Thrupp Lane stem from 1979. In about 1999 the concrete plant at Thrupp Lane was renewed and workshops were constructed. Since 1995 the processing plant did not process any indigenous materials.

3.10 HTSL obtained the right to extract sand and gravel from land adjoining Barton Lane, which it referred to as "Barton Lane Quarry" and which is land also covered by the PO[11]. Extraction continued here until 2004. Since 2004 all materials processed at Thrupp Lane and used to produce concrete have been imported from other quarries primarily in Oxfordshire.

3.11 In 2009 HTSL applied for a CLEUD as, in effect, due to the lack of indigenous material and the reliance placed on importing materials from off site, the processing plant had become a stand alone operation. The CLUED was refused but a second CLEUD application was made in February 2010.

3.12 On condition the CLEUD application was withdrawn, OCC granted planning permission in July 2012 for new plant and machinery at Thrupp Lane to treat sand and gravel worked from the adjacent land at Thrupp Farm south of Barton Lane[12], which area is currently subject to the Thrupp Farm PO (Area F).

Overlapping Thrupp Farm and Thrupp Lane ROMPS

3.13 The PO covers a site, part of which is subject to two separate ROMP applications, the "Thrupp Farm" ROMP and the "Thrupp Lane" ROMP. The PO, however, only relates to the Thrupp Farm application, the Thrupp Lane application, it is seemingly accepted, having been determined by default. The two ROMP applications both relate to Phase II active sites[13].

3.14 The Thrupp Farm ROMP[14], dated 28 April 2000, was applied for by JCSL and covers the area set out in plan reference LN2179t[15], which is the same area as is covered by the PO. The Thrupp Lane ROMP[16], dated 22 December 1999, was applied for by HTSL and covers an area set out in plan reference LN2179u[17], which also includes parts of the area covered by the PO. From the plans it can be seen that there are two overlapping areas, common to each ROMP[18].

[11] Part of planning permission ABG R129/71 (also given the ref P/369/71)
[12] DKS Vol 3 Doc 33A
[13] Within the meaning of the EA 1995 Sch 13, ¶2
[14] CD1
[15] Within CD1
[16] JES Doc 10
[17] JES Doc 5
[18] DKS Vol 3 Doc 13A

3.15 The Thrupp Farm ROMP relates to several planning permissions[19] dated from 21 April 1954 to 6 December 1971, which authorise the extraction of sand and gravel over a total area of approximately 77 ha[20]. The Thrupp Farm ROMP states that about 31 ha are still to be excavated and 15 ha are to be used for the depositing of mineral waste.

3.16 The Thrupp Lane ROMP relates to three planning permissions dated from 6 December 1971 to 11 June 1991 covering about 64 ha[21], which authorise the extraction of sand and gravel[22].

3.17 From the plans[23] it can be seen that it is the areas covered by the planning permission of 6 December 1971 (ABG R129/71 edged yellow), which are the overlapping areas common to both ROMPs. Consequently, for the Thrupp Farm ROMP, this area is subject to the PO under consideration, but for the Thrupp Lane ROMP, there is no corresponding PO.

Events leading up to the Thrupp Farm PO

3.18 Chronological summaries are contained within the proofs of DKS[24] and Kevin Broughton (KB)[25], the dates and factual events of which are unchallenged.

The main points are:

3.19 In November 1995 OCC served a Planning Contravention Notice[26] in respect of Conditions 2 (working scheme) and 4 (landscaping scheme) of Planning Permission ABG R129/71, both of which needed to be submitted prior to working taking place. This led to an Enforcement Notice being served on 6 March 1996[27]. The western sector of this area is where the remaining reserves of mineral are and where working is yet to be carried out.

3.20 Detailed schemes were submitted to OCC on 12 July 1996[28]. Following discussions, OCC confirmed on 7 May 1998 that the submitted scheme as amended complied with the requirements of the Enforcement Notice[29]. Six months later on 8 November 1999 OCC advised JCSL that the Radley site was an Active Phase II ROMP that required new conditions to be submitted[30].

3.21 On 27 April 2000 DKS submitted on behalf of JCSL an "Initial Scheme of Conditions" for the Thrupp Farm ROMP area[31]. On 5 June 2000 OCC wrote to DKS advising that the development came under Schedule 1 of the *Town and*

[19] CD1 p52, S1.7. Note M/1/69 is not listed although it is included in plan LN2179t and is included in the PO
[20] ID6 contains the original planning permissions and a location plan but note that the permission on p1 is not within the ROMP area
[21] JES Doc 10 ROMP application form
[22] JES Doc 10 Explanatory Statement
[23] DKS Vol 3 Doc 13A
[24] DKS Vol 2
[25] KB S3
[26] DKS Vol 3 Doc 1
[27] DKS Vol 3 Doc 4
[28] DKS Vol 3 Doc 5
[29] DKS Vol 3 Doc 9A
[30] DKS Vol 3 Doc 11
[31] DKS Vol 3 Doc 17; CD4 ES App 5

Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999 (1999 EIA Regs), and accordingly OCC requested an ES[32].

3.22 On 7 June 2000 DKS wrote to OCC asking for the issue of the overlapping Thrupp Farm and Thrupp Lane ROMP areas to be resolved before dealing with any ES[33]. JCSL was not working Thrupp Farm at this time and had informed OCC that there was no intention to work these mineral reserves until those at its Sutton Wick site became exhausted[34]. No ES was submitted at this time.

3.23 On 20 April 2006 the Office of the Deputy Prime Minister wrote to JCSL indicating that OCC had reported that Thrupp Farm was operating under old minerals permissions and was now the subject of a stalled ROMP[35]. It stated that the *Town and Country Planning (Environmental Impact Assessment)(England and Wales)(Amendment) Regulations 2000* (2000 EIA Regs) had come into force on 15 November 2000 applying the Environmental Impact Assessment (EIA) Directives to ROMPs[36].

3.24 Consequently, it indicated that where the remaining permitted development was considered as likely to have significant environmental effects, conditions could not be determined without an ES. Whilst the 2000 EIA Regs were not retrospective, operations could be suspended if an ES was not produced.

3.25 The letter went on to quote from OCC's description of progress with the Thrupp Farm ROMP. This referred to the site's overlap with Thrupp Lane but indicated that the Thrupp Lane site's permission had since lapsed, and there had been no reply to the request for an ES for Thrupp Farm. The letter asked voluntarily for the necessary environmental information but indicated that Ministers believed that there should be a sanction where requested information was not forthcoming within a reasonable period and, with that in mind, they would be consulting on the making of an order to amend the 2000 EIA Regs.

3.26 On 4 May 2006 DKS wrote to the Office of the Deputy Prime Minister (copied to OCC)[37] explaining that if the overlapping areas were separated, this would reduce the Thrupp Farm site to under the mandatory EIA threshold. It also indicated that, if another part of the site was removed which JCSL did not own, together with other areas that were already subject to up-to-date conditions, the size of the ROMP unit would be substantially reduced. It went on to say that one of the principal reasons for the delay was the selection of the planning unit boundaries by OCC. It also stated that there had been material changes since the ROMP List was published and these changes should be taken into consideration.

3.27 Subsequently DKS met with OCC to attempt to agree the areas to be covered by an ES and to seek a way forward. Letters dated 6 and 9 June 2006 between DKS and OCC indicate that only un-worked areas of the site would need to be included in an ES and on this basis JCSL was willing to carry out an

[32] DKS Vol 3 Doc 18-2
[33] DKS Vol 3 Doc 18-1
[34] DKS Vol 3 Doc 8-2 ¶2.6.1
[35] DKS Vol 3 Doc 20-4 to 20-6
[36] Regulation 26(A)(2) amending regulation 3(1)(a) of Sch 9 TCPA 1990
[37] DKS Vol 3 Doc 20-1 to 20-3

EIA. At the time of these discussions JCSL was considering erecting a processing plant on the part of the worked out land north of the disused railway (hatched green on the plan) [38].

3.28 On 22 July 2008 *The Town and Country Planning (Environmental Impact Assessment)(Mineral Permissions and Amendment)(England) Regulations 2008* (the 2008 EIA Regs) came into force, thereby effectively treating undetermined ROMP applications as if they were received by the MPA on or after 15 November 2000, (when the 2000 EIA Regs came into force) and applying to them the 1999 EIA Regs, subject to modifications.

3.29 The effect of the 2000 and 2008 amendments meant that regulation 26(A)(17)(b) of the 1999 EIA Regs required a ROMP applicant to submit an ES within the time period specified by the MPA, and regulation 26(A)(18) imposed an automatic suspension if the ES was not submitted within the stated time period.

3.30 Regulation 26(B) of the 1999 EIA Regs[39] imposed a duty on the MPA to issue a PO for the resumption of the winning and working or the depositing of minerals when two years had expired from the date the suspension was imposed if the steps under regulation 26(A)(17) had not been taken.

3.31 On 24 September 2008 OCC served a Notice and Screening Opinion[40] advising that the proposal was EIA development and requiring confirmation within three weeks of the date of the notice that an ES would be provided. DKS replied on 8 October 2008 confirming that an ES would be provided[41]. A scoping opinion was sent by OCC to DKS on 11 February 2009[42].

3.32 No ES was submitted by the deadline of 30 September 2010 and, therefore, OCC advised DKS that the site had entered into a period of automatic suspension. It went on to say that if this continued for a two year period OCC would be obliged to issue a PO[43].

3.33 During this period JCSL and HTSL were contemplating a form of joint working, whereby the JCSL mineral reserve at Thrupp Farm would be worked by HTSL on its adjacent Thrupp Lane site and transported by conveyor belt[44]. This culminated in OCC granting planning permission for such working on 7 July 2012[45]. The result of this joint working was that JCSL no longer contemplated erecting its own processing plant at Thrupp Farm. These changes affected JCSL's production of the ES and led to its delay.

[38] DKS Vol 3 Doc 23-1a to 20-4
[39] Whilst regulation 26B was generally revoked by The Town and Country Planning (Environmental Impact Assessment) Regulations 2011, under the transitional provisions of regulation 65(2) it still applies to undermined ROMP applications
[40] DKS Vol 3 Doc 26-3 and 26-4; KB Annex 10
[41] DKS Vol 3 Doc 26-1; KB Annex 12
[42] DKS Vol 3 Doc 28-1 to 28-12
[43] DKS Vol 3 Doc 30-1; KB Annex 11
[44] See for example DKS Vol 3 Doc 25-1 and Doc 31
[45] DKS Vol 3 Doc 33A

3.34 Eventually on 14 September 2012 the claimed ES was submitted to OCC[46] and statutory advertising took place on 27 September 2012. However, OCC's Officer's Report to Committee advised that the claimed ES contained insufficient information to be considered as an ES at all[47]. It went on to advise that, in accordance with Regulation 26(B)(4) of the 1999 EIA Regs, OCC had to, by order, prohibit the resumption of the winning and working of the mineral.

3.35 DKS questioned why any required additional information could not subsequently be provided[48]. OCC indicated that a regulation 19 request[49] would not be appropriate in the circumstances of a ROMP[50]. Consequently, the PO was served on 31 December 2012[51].

4 LEGAL MATTERS

Scenario 1: Deemed Determination of the Thrupp Farm ROMP

Common Position of the Main Parties (OCC and JCSL)

4.1 Before the resumption of the Inquiry in May 2014 the main parties reached a common position. In short, this position is that the Thrupp Farm ROMP application was deemed as being determined in July 2000 and, therefore, could not be subject to a PO. The full reasons for this are set out within the "Further Advice" from Vincent Fraser QC on behalf of JCSL[52], and the "Written Submissions" of Counsel for OCC[53].

The main points are:

English domestic legislation

4.2 Paragraph 9(9) of Schedule 13 to the Environment Act 1995 (EA 1995) provides that where within three months of receiving a ROMP application (or such longer period as may be agreed in writing) the MPA has not given notice of its decision, it shall be treated as having determined the conditions as being those proposed by the applicant.

4.3 Paragraph 9(9) is subject to paragraph 9(10) which states that where the MPA is of the opinion that it cannot determine the application without further details, it shall within one month of receiving the application give notice specifying the additional information required, and in such case the three month period will run from the time the additional information is received.

4.4 JCSL submitted the Thrupp Farm ROMP application on 27 April 2000 and OCC requested an ES on 5 June 2000. The 1999 EIA Regs did not apply to Schedule 13 applications at that time. There is no evidence of any other request for information being made before this date.

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[46] DKS Vol 3 Doc 36 (letter only)
[47] DKS Vol 3 Doc 38
[48] DKS Vol 3 Doc 39
[49] Under regulation 19(1) of the 1999 EIA Regs; see ID4
[50] DKS Vol 3 Doc 40
[51] DKS Vol 3 Doc 41
[52] ID24
[53] ID28 particularly ¶ 15 onwards

4.5 JCSL did not agree to any extension of time for determining the application. The request for an ES was made after the one month period had expired and, therefore, the three month period expired on 28 July 2000. OCC did not determine the application by 28 July 2000 or at all. Consequently, OCC is treated as having determined the ROMP conditions in accordance with those proposed by JCSL.

4.6 Regulation 26(A) of the 1999 EIA Regs only applies where the MPA is dealing with a ROMP application. In this case OCC was not dealing with a ROMP application when regulation 26(A) came into force because it had already been deemed as determined. Therefore, the suspension provisions in regulation 26(A) do not apply. Regulation 26(B) only applies if the suspension period under regulation 26(A) has expired and the steps specified in regulation 26A(17) have not been taken. Therefore, as regulation 26(A) does not apply, nor does regulation 26(B).

4.7 The question of the overlap between the Thrupp Farm and Thrupp Lane ROMP applications then arises, along with the issue of which conditions affect what site, as the Thrupp Lane ROMP application is also subject to a deemed determination. Paragraph 14(2) of Schedule 13 of the EA 1995 in essence provides that where there are two ROMP applications for the same site they are treated as a single application received on the date of the later application.

4.8 The advice from Vincent Fraser QC is that whilst the two sites contain areas of overlap, they also have areas that are different. Accordingly, Thrupp Farm and Thrupp Lane are two different sites and are subject to different determinations. Accordingly, paragraph 14(2) of Schedule 13 does not apply. He says that even if it did apply, given that JCSL's application was the latest, both applications would be deemed determined on 28 July 2000.

4.9 Counsel for OCC is of the view that "mineral site" in paragraph 14 does not have the same meaning as the entirety of the site for which the ROMP application was made. Therefore, HTSL's deemed determination only applies to the areas of the ROMP which fall outside the areas of overlap. JCSL's application applies to the rest.

4.10 Irrespective of which view is preferred, the parties agree that this does not alter the position vis-à-vis the PO. The Thrupp Farm ROMP is deemed to be determined by default on 28 July 2000 regardless.

4.11 Furthermore, whilst JCSL and OCC did not appreciate that the deemed determination had occurred and proceeded as if the ROMP application were outstanding, there is no place for any estoppel in planning law[54]. Therefore, no reliance may be placed upon the mistaken understanding of the time limits and/or deeming provisions of Schedule 13 of the EA 1995.

European Law

4.12 The deemed determination provisions of Schedule 13 are not compatible with European legislation. Therefore, the question arises as to whether the EIA

[54] *Reprotech (Pebsham) Ltd v East Sussex County Council [2002] UKHL 8 [2003] 1 WLR 348*

Directives[55] have direct effect, thereby directly requiring the production of an ES irrespective of English law.

4.13 It had been held in 1999 that the terms of the Directives should be applied to ROMPs, thereby requiring EIA on such applications[56]. The result was the making of the 2000 and then the 2008 EIA Regs, neither of which were in force before 28 July 2000 when the Thrupp Farm ROMP was deemed determined. Therefore, at this time the only way the ROMP might have been prevented from being deemed as determined would have been if the EIA Directives had direct effect and OCC was able to rely on this.

4.14 The legal authorities indicate that the EIA Directives do indeed have direct effect where relied upon by members of the public. However, because a State may not lawfully take advantage of its own failure to implement a directive, it cannot implement such directive against a private entity. Accordingly, as OCC is an emanation of the State, it cannot rely upon the direct effect of the EIA Directives to stop the deemed determination of the Thrupp Farm ROMP.

Conclusion on PO

4.15 In the absence of a challenge by a private individual, the deemed determination is effective. Therefore, both JCSL and OCC request the SoS not to confirm the PO.

Potential for Judicial Review

4.16 On behalf of OCC, it is pointed out by Counsel that such a deemed determination is in direct conflict with Article 4 of the EIA Directive of June 1985 and there is potential for challenge by way of judicial review. Whilst the Civil Procedure Rules[57] require an application to be made *"promptly and in any event not later than three months after the grounds to make the claim first arose",* the Court has a discretion to extend that limitation period in appropriate cases. A case where a member of the public had no way of knowing that grounds to make the claim had arisen is a potential candidate for the exercise of that discretion.

4.17 On behalf of JCSL, it is argued by Counsel that there was no challenge to the deemed determination of the ROMP application in July 2000. According to the legal authorities[58] it is now far too late for any such challenge.

Scenario 2: No Deemed Determination of the Thrupp Farm ROMP

Apparent inconsistencies in Legislation and Government Guidance

(The emboldening within the body of the text in this section is the Inspector's own emphasis)

[55] Council Directives 85/337/EEC (27 June 1985) and its amending Directive 97/11/EC (3 March 1997)
[56] *R V North Yorkshire County Council ex parte Brown [1999] 2 WLR 969*
[57] Including CPR54 – Judicial Review
[58] See for example *Stancliffe Stone Co Ltd v Peak District NPA [2004] EWHC 1475 [2005] Env L.R. 43* and *EWCA Civ 747 [2006] Env L.R.158* and *Finn-Kelcey v Milton Keynes BC [2008] 1067 [2009] Env L.R.299*

4.18 The PO is made under paragraph 3 of Schedule 9 of *The Town and Country Planning Act 1990* (TCPA 1990) *and Regulation 26B of the* 1999 EIA Regs.

4.19 Paragraph 3(1) of Schedule 9 to the TCPA 1990 states that:

*Where it appears to the mineral planning authority (a) that development of land (i) consisting of the winning and working of minerals or (ii) involving the depositing of mineral waste has occurred but (b) the winning and working or depositing of minerals has permanently ceased, the mineral planning authority **may** by order (i) prohibit the resumption of the winning and working or depositing; and (ii) impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).*

4.20 Paragraph 3(2) states that:

*The mineral planning authority may assume that the winning and working or the depositing has permanently ceased **only** when (a) no winning and working or depositing has occurred to any substantial extent at the site for a period of at least two years; **and** (b) it appears to the mineral planning authority, on the evidence available to them at the time when they make the order, that resumption of the winning and working or the depositing to any substantial extent at the site is unlikely.*

4.21 Regulation 4 of the 2008 EIA Regs introduced a duty on MPAs to make a PO. According to regulation 4(1) the regulation applied after the expiry of two years' suspension of a minerals permission (within the meaning of regulation 26(A)(18) of the 1999 EIA Regs) and where there was a failure to take steps specified in regulation 26(A)(17) of the 1999 EIA Regs (in this case submitting an ES).

4.22 In such circumstances regulation 4(4) amended paragraph 3(1) of Schedule 9 TCPA 1990 so that it had the effect as if for the words from *"the mineral planning authority **may** by order"* to the end there were substituted *"the mineral planning authority (i) **must** by order prohibit the resumption of the winning and working or the depositing: and (ii) may in the order impose, in relation to the site, any such requirement as is specified in sub-paragraph (3).*

4.23 Also regulation 4(5) of the 2008 EIA Regs stated that references to winning and working or depositing in paragraph 3(2)(a) and (b) of Schedule 9 TCPA 1990 were to be read as references to winning and working or depositing for which permission was not suspended by virtue of regulation 26(A)(18).

4.24 This would appear to mean that, where there is a suspension under regulation 26(A)(18), paragraph 3(2) does not apply. If this is correct, the two tests in paragraph 3(2)(a) and (b), otherwise invoked to satisfy the requirement of *"permanently ceased"* in paragraph 3(1)(b), are not applicable for stalled ROMPs. However, these amendments do not appear to affect the fundamental requirement in paragraph 3(1)(b) of demonstrating permanent cessation.

4.25 Although regulation 4 of the 2008 EIA Regs was revoked shortly thereafter, its wording was incorporated into regulation 26(B) of the 1999 Regs[59]. Although

[59] By The Town and Country Planning (Environmental Impact)(Amendment) Regulations SI 2008 No. 2093

regulation 26(B) has also been revoked for most cases, it still applies to undetermined ROMP applications under transitional provisions[60].

4.26 The SoS's view on the meaning of these 2008 amendments was set out in Government Guidance of July 2008[61] which stated:

Under the 2008 Regulations, if automatic suspension continues for two years, the mpa is under a duty to make a prohibition order ceasing the whole or parts of a mineral permission(s) relating to development by the operator failing to provide the necessary information.

4.27 This seems to accord with other provisions made by the 2008 EIA Regs relating to details that MPAs had to notify to parties. These details included information about the MPA's duty to make a PO after two years' suspension.

4.28 Therefore, according to the Guidance, regulation 26(B) imposed an automatic duty to make a PO after two years' suspension and no ES. Consequently, with respect to the Thrupp Farm ROMP application, OCC took regulation 26(B) to mean that, once OCC had decided that the claimed ES was not an ES, thereby resulting in the required information under regulation 26(A)(17) not being submitted, at the end of the two years' suspension period in regulation 26(A)(18), it had no choice but to make the PO.

4.29 In 2013 the Peak District National Park Authority was in the position of having to deal with stalled ROMPs which had been in automatic suspension for more than two years because of the lack of an ES. In considering the 2008 Guidance on the interpretation of regulation 26(B) of the 1999 Regs and comparing it with paragraph 3 of Schedule 9 to the TCPA 1990, it identified an apparent conflict, which resulted in threatened litigation[62].

4.30 In essence, the case put by Robert McCracken QC[63], on behalf of the Peak District, was that there was an inconsistency in the SoS's interpretation of the wording of regulation 26(B) EIA Regs and paragraph 3 of Schedule 9 of the TCPA 1990. Although the Guidance stated that regulation 26(B) imposed a duty to make a PO after two years' suspension and no ES, paragraph 3 of Schedule 9 does not allow for this.

4.31 In Mr McCracken's words, *"The inclusion of the word "only" in the introductory words of TCPA 1990 Sch 9 para 3(2) as amended suggests that this provision is a restriction on the ability to satisfy the fundamental precondition. The relaxation of this restriction (where operations are undertaken in breach of ROMP EIA suspension) is unlikely to be able to remove the fundamental requirement (imposed by TCPA Sch 9 paragraph 3 sub paragraph (1)(a) and (b) that the relevant judgement has been made that working has permanently ceased".*

[60] See regulation 65(2) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2011
[61] See ID18 and in particular ¶3.44
[62] ID12a,b,c & D; ID31
[63] ID13

4.32 If this is correct, despite the requirements of regulation 26(B), paragraph 3 of Schedule 9 would still require the MPA to be satisfied that the winning and working or depositing of minerals at the site had permanently ceased.

4.33 The Peak District's draft "Statement of Facts and Grounds" for the High Court, sought a declaration that *"……Upon the true construction of the Regulations, they do not impose on mineral planning authorities a duty to make a prohibition order after two years suspension unless the conditions of the Town and Country Planning Act Schedule 9(3)(1) as amended are met. These conditions include the requirement that the mineral planning authority judges that mineral operations have permanently ceased."*

4.34 In its letter of 25 March 2013, the Treasury Solicitor's Department agreed with this interpretation saying *"…..we agree with your reading of paragraph 3(1)(b) of Schedule 9, namely that it must appear to a MPA that winning, working or depositing have permanently ceased before it is under a duty to make a prohibition order"*[64]*.*

4.35 The Peak District litigation never proceeded to a High Court declaration, and there seems to be no other guidance from the legal authorities on this apparent conflict.

4.36 However, things have now moved on and the national PPG of 6 March 2014 has repealed the July 2008 Guidance. Nonetheless, the 2008 Guidance was the document OCC was working to when making the PO.

4.37 The new PPG advises[65] that MPAs are under a duty to make a PO where *"a site has been suspended for two years for failure to provide an Environmental Statement or relevant information;* ***and*** *it considers that the tests for issuing a Prohibition Order are met".* The PPG does not appear to advise what those tests might be with respect to stalled ROMPs.

4.38 However, it goes on to state that *"There are unlikely to be many cases in which, after two years' suspension, the mineral planning authority would not be acting rationally in assuming that working had permanently ceased".*

4.39 Whereas such cases may be few in number, this does not mean that they do not exist. Therefore, the possibility of the Thrupp Farm ROMP being suspended for two years but working not having permanently ceased, should be considered. On this basis, in the absence of paragraph 3(2) of Schedule 9 applying, some thought needs to be given as to how to determine permanent cessation.

4.40 It appears to me that to determine permanent cessation pragmatically the same sort of questions would need to be asked as are covered in paragraph 3(2) of Schedule 9. If this is accepted, for all intents and purposes, as with paragraph 3(2)(b), it should still be demonstrated that resumption of the winning and working or the depositing of minerals to any substantial extent at the site is unlikely before confirming the PO.

[64] ID12d p2 1st ¶
[65] ID 11 (¶ ID 27-210-20140306)

5 THE CASE FOR THE ORDER MAKING AUTHORITY

The main points in Counsel's closing submissions[66] are:

[1] Legal Issues arising from the EA 1995

5.1 With respect to the overlap of JCSL's and HTSL's ROMP areas, paragraph 1 of Schedule 13 of the EA 1995 defines minerals site as meaning, where it appears to the MPA expedient to treat as a single site, *"the aggregate of the land to which any two or more relevant planning permissions relate"* and in other cases *"the land to which a relevant planning permission relates"*[67]. It is a matter of judgement for an MPA to decide what land to include in a single site.

5.2 The area of overlap is the subject of the 1971 permission and contains land owned by HTSL and JCSL and either might have wished to work this land. It was not for OCC to prevent them from having the right to influence what conditions should apply to any such work and nor was it open to OCC to split the land within a single permission. Rather it was up to HTSL and JCSL to co-operate with each other.

5.3 Paragraph 14 of Schedule 13 provides that where more than one application is made for the same site, the later application governs the site. When paragraph 14 refers to the "same site" it means the mineral site for which two applications have been made. In other words OCC is not required to give "mineral site" in paragraph 14 the same meaning as the entirety of the site for which the ROMP application was made. If it were otherwise there would be no mechanism for dealing with areas of overlap ie land which genuinely fell within two different planning units, or to put it another way, the planning unit of two different operators.

5.4 The area of overlap is the same mineral site within both the HTSL and the JCSL applications. The two were required to be treated as a single application. Therefore, the JCSL application, which came after the HTSL application, governs the conditions on that area of overlap. If HTSL's ROMP application was deemed determined on 1 July 2000 (which appears likely on the evidence in the Inquiry) it can only have applied to those areas of the HTSL's ROMP application which fell outside the area of overlap.

5.5 Paragraph 3 of Schedule 14 of the EA 1995 defines the first periodic review date as 15 years after the new set of conditions were imposed. Therefore, assuming JCSL's ROMP application was deemed granted on 28 July 2000, it is due for review in 2015. The review process will commence with a notice which is due to be served more than 12 months before the first review date and will require EIA[68]. In the circumstances, OCC is likely to serve a notice of review very shortly.

5.6 With respect to regulation 26(B) of the 1999 Regs, OCC was under a duty to make a PO in the absence of an ES. It would make a nonsense of the

[66] ID34
[67] ¶1(2)(a)&(b)
[68] See in particular ¶¶ 4, 6 and 7 of Sch 14 to the EA 1995, and regulations 2 and 42 of the 2011 EIA Regs

statutory scheme to find that a document which claims to be an ES but which does not meet the legal requirements set out in Schedule 4 of the 1999 Regs can be effective. If the scheme intended that the PO should not be made while a process of securing further information under regulation 19 was undergone, it would have said so. Instead, the applicant's safeguard is the right to argue before the SoS that the PO should not be confirmed.

5.7 Turning to paragraph 3(1) of Schedule 9 of the TCPA 1990, to make a PO, it must appear to the MPA that the development of land (in this case the winning and working of minerals) has permanently ceased. That is a matter for the MPA. KB confirmed that it appeared so to him. The character of the land where there was no working since perhaps 1995, being some 17 years, was a permanent character.

5.8 As the PPG says[69], an authority is likely to be acting rationally if it assumes the two year suspension period demonstrates the permanent cessation of the development.

[2] In the two years prior to the making of the PO, did winning and working of minerals take place "to a substantial extent"?

5.9 There was no winning and working of minerals. The site went into automatic suspension on 30 September 2010. There was no right to win and work minerals since the right under the "undetermined" ROMP application had been lost; and the rights under the "determined" ROMP application had not crystallised in the absence of the approval of a scheme of working.

[3] What is the likelihood of resumption of winning and working "to a substantial extent"?

5.10 There is no likelihood of resumption over Areas A-E or G. Area F is the sole area in which JCSL wishes to resume winning and working. This question need not be addressed where a PO is made under regulation 26(B) of the 1999 EIA Regs.

5.11 In 2006 John Curtis said work was completed in 1990, using a phrase whose natural meaning is that it will not resume (even though the mineral reserve had not been exhausted). However, at the same time he was discussing the scope of an EIA. Clearly, he wishes to have the right to return and work the site and, now that (as the evidence suggests) he has an agreement with HTSL over who will process the mineral, he states that he is keen to proceed with the working of some 850k-1m tonnes of mineral under Area F (including that which lies beneath a shallow lake at the eastern end adjacent to Area G).

[4] Was the Council right to take the view that the claimed ES is not an ES within the meaning of the EIA Regulations 1999?

5.12 The claimed ES is demonstrably deficient in a number of significant respects. It fails to meet the requirements of Schedule 4 as interpreted within the scoping opinion. The legal principles are set out in a number of legal authorities[70].

[69] ID11 (ID 27-210-20140306); see also the Treasury Solicitor's letter at ID12
[70] See in particular pp12 to 15 of Counsel's closing submissions

5.13 The main point to derive from these cases is that, provided it took a correct approach to the law, the judgement whether the claimed ES meets the requirements of the regulations was a matter for the planning authority subject to challenge on public law grounds. The sufficiency of information is a matter for the decision maker.

5.14 All of the cases concerned a challenge to the grant of consent. This has two important consequences for their application to this case: i) the court is being asked to disturb, and not to support, the judgement of the planning authority; ii) the consultation and decision had been concluded and the court was able to apply hindsight. This is not possible in this case and considerable weight needs to be given to the planning officer and what the statutory consultees said should be included in the ES via the process of adopting the scoping opinion.

5.15 The correct interpretation of regulation 19 is that a formal request under that regulation is used where a claimed ES is deficient, and the application process is put into suspension pending provision of the information. KB's response to the claimed ES would normally have been to make a formal regulation 19 request.

5.16 However, since regulation 26(B) of the EIA Regs applied, KB was by then under a duty to make a PO. Had he ignored the duty to make the PO to request further information and that information was not provided, what then? There is no statutory sanction for this approach.

5.17 The PO is made subject to confirmation by the SoS and he, as decision maker, must exercise a judgement by applying Schedule 4 to the facts of the case and reaching a judgement on what information is necessary in order that the likely significant effects of the development can be assessed.

5.18 This requires i) information on the whole site; ii) the significant environmental effects of the conditions proposed over the entire site; iii) a reasoned explanation why reasonable alternatives (eg as to ways of working such as the location of the processing plant, the access to the site) were rejected.

5.19 These submissions should not replace KB's proof which sets out a concise review of the claimed ES against first Schedule 4, and then the scoping opinion.

The main points of KB's proof[71] are:

5.20 An assessment of the claimed ES was made and a report produced[72]. It was clear that it was deficient. Regulation 2 of the 1999 EIA Regs defines an ES as a statement *"that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but that includes at least the information referred to in Part II of Schedule 4"[73].*

[71] KB S4
[72] CD5
[73] Reproduced in KB Annex 13

Assessment against Schedule 4 Part II

5.21 Paragraph 1 says that the EIA must contain information on the site. The development in question is the ROMP that covers the whole site and the ES must cover the whole site. As it stands, the claimed ES says nothing about the restoration of the site outside the extraction area. The ES assesses only area E and not the parts of areas G, D, C and A that would also be affected by the internal haul roads.

5.22 The applicant might consider it acceptable to cover only part of the site based on correspondence with OCC in 2006[74]. However, that correspondence is superseded by the scoping opinion of 11 February 2009[75] which states that the whole site must be covered.

5.23 Paragraph 2 requires a description of measures envisaged to avoid, reduce and, if possible, remedy significant adverse effects. This has only been done for part of the site and the wider impacts have not been properly covered.

5.24 Paragraph 3 says that data needed to assess the main effects should be included. The claimed ES is deficient in that it does not say anything about the temporary industrial uses on the site, nor does it contain a transport assessment.

5.25 Paragraph 4 requires an outline of the main alternatives. Alternative methods of digging, transporting and processing the material are not considered.

Assessment against Schedule 4 Part I

5.26 The physical characteristics of the whole development are not covered because the development refers only to the extraction area and some internal haul roads. The assessment of the effects on the environment is limited to only part of the site.

5.27 No Traffic Assessment has been included, despite the fact that traffic on Thrupp Lane is a particularly important local issue.

5.28 The document says that OCC has effectively decided that the mineral should be processed through HTSL's site because it granted planning permission for the HTSL processing plant. The HTSL application was granted approval on its own merits and is a method by which the material could be processed as an alternative to having a plant on the ROMP area itself.

5.29 No alternatives were considered despite the need for an assessment of alternative methods of working being specifically mentioned in an e-mail from OCC's case officer[76].

5.30 The development is considered in isolation and does not consider the cumulative, indirect or secondary effects of the development. It does not consider the other uses of Thrupp Lane, such as the two permanent concrete batching plants, one of which is located on area B and the industrial development on area A.

[74] KB Annex 14
[75] CD3
[76] KB Annex 15

Assessment against the scoping opinion

5.31 There are specific issues in the scoping opinion that are not addressed in the ES. Those issues are: the whole site is not covered; The Vale of White Horse Local Character Assessment was not used; the traffic chapter contains only minimal information; there is no transport assessment; there is no contamination investigation; the area does not cover the area of the temporary industrial permissions; there is no assessment of the method of internally hauling the material; non-invasive archaeological techniques have been dismissed as impractical but archaeological field evaluation has not been undertaken; site security has not been evaluated; site access by the workforce and site accommodation for the workforce has not been assessed.

[5] Were the PO's requirements appropriate or should they be modified?

5.32 They were appropriate and there is no evidence to support modification.

Conclusion

5.33 Were it not for the new point on deemed determination, it is submitted, the PO should be confirmed.

6 SUBMISSIONS OPPOSING THE PO

Cases of those who gave oral evidence at the Inquiry

The Case for J Curtis and Sons Ltd (JCSL)

Overlap

The main points in Counsel's closing submissions[77] are:

6.1 OCC's approach to the JCSL and HTSL applications was to consider them as two applications on the same site[78]. They are, however, different overlapping sites. The definition of mineral site is contained in paragraph 1 of Schedule 13 of the EA 1995, namely, where it appears to the MPA expedient to treat as a single site, it is *"the aggregate of the land to which any two or more relevant planning permissions relate"* and in other cases *"the land to which a relevant planning permission relates"*[79].

6.2 Therefore, the smallest area of land that could ever be designated as a "mineral site" would be a single planning permission. Here there were two mineral sites in play, namely the 2179t site and the 2179u site as elected by OCC. However, the same permission should not have been contained in two ROMP notices and this has caused confusion.

[77] Submissions set out in ID38a
[78] ID21
[79] ¶1(2)(a)&(b)

Permanent Cessation and Resumption of Working

The main points of DKS's proof[80] are:

6.3 Working ceased before 1995 due to the Enforcement Notice. At this time JCSL had transferred production to its Sutton Wick Quarry. It was always made clear to OCC that the Thrupp Farm site would re-open once the reserves at Sutton Wick were exhausted. This was set out in the letter amending the working scheme which was subject to enforcement[81], and is also recorded in the Report to Committee of 25 November 1996[82].

6.4 Subject to resolving the PO, it is certain that minerals will be worked at Thrupp Farm as agreement has been reached with the adjacent operator, HTSL, who has a recent planning permission (July 2012) to import and process the Radley mineral[83]. The estimated remaining quantity of mineral is between 0.85 to 1.0 million tonnes. There are no known constraints on working.

6.5 HTSL has an immediate market for aggregates, both through its on-site concrete batching plant as well as its existing customer base for aggregates. Currently, this day-to-day need is being met by importing unprocessed sand and gravel from elsewhere in the country for processing at its Thrupp Lane site. The switch to using the Thrupp Farm mineral would avoid the need to import unprocessed material with a consequent reduction in traffic. Generally the construction market is experiencing good levels of growth.

The main points in Counsel's closing submissions[84] are:

6.6 OCC has always refused to consider this important issue. The provisions of regulation 26(B) of the 1999 EIA Regs did not apply and OCC appears to have made the PO on a legally flawed basis.

6.7 OCC had a discretion under paragraph 3 of Schedule 9 of the TCPA 1990 whether or not to make a PO, but only if it appeared to OCC that the winning and working or depositing of minerals had permanently ceased. OCC has not exercised this discretion.

6.8 A PO is intended to be the last resort. Government's 2008 guidance[85] envisaged that the timetable requirements were intended to be a sanction to get things moving again and only in the rarest of circumstances would a PO be imposed.

6.9 OCC's argument on permanent cessation/no resumption, as developed in the Inquiry appears to be two-fold. Firstly, OCC has misinterpreted a line in the statutory declaration of John Curtis[86] despite all the ample contrary evidence in the papers proving beyond any doubt JCSL's intention to return to this site to continue to work it[87].

[80] DKS Vol 1 S5; Vol 2 S2
[81] DKS Vol 3 Doc 8 ¶2.6.1
[82] DKS Vol 3 Doc 9 ¶8
[83] DKS Vol 3 Doc 33A
[84] ID38b
[85] ID18
[86] KB Proof Annex 5 ¶13
[87] See for example DKS Proof Docs 6-2; 8-2; 9-2; and 9-8

6.10 The purpose of the Statutory Declaration was to demonstrate that minerals from the ROMP site had not been dug to supply the Tarmac concrete plant for over 10 years. It was not to establish whether the reserves had been exhausted in the ROMP site. The date of the Statutory Declaration is 4 April 2006. At the same time OCC was corresponding with the Office of the Deputy Prime Minister regarding stalled ROMPs confirming minerals remained at JCSL's Radley site[88]. This led to detailed discussions between DKS and OCC (Mr John Duncalfe) to agree the area to be covered by the ES[89].

6.11 Everyone was aware at the time that there were reserves left that JCSL had every intention of working. It was not questioned until this Inquiry. There was also JCSL's relationship with HTSL, and the intention to jointly work the Radley site. This was the entire basis of HTSL's planning permission, overtly and plainly set out in its application.

6.12 The second argument is that OCC did not give consideration to permanent cessation because it did not have to, due to the automatic legal provisions. OCC takes support for its position in the wording of the Government's new PPG[90] which states *"There are unlikely to be many cases in which, after two years' suspension, the mineral planning authority would not be acting rationally in assuming that working had permanently ceased."*

6.13 This wording is lifted directly from the Peak District correspondence[91], which was back-covering to defend the badly worded 2008 guidance and to avoid a Judicial Review. It is highly regrettable that this wording has ended up in the PPG as it is highly misleading. In any event, it does not entitle OCC to automatically make the assumption.

Regulation 19 and the ES

The main points of DKS's proof[92] are:

6.14 For ROMP applications the principle of the mineral permission is established and the ES should cover the effectiveness of the conditions that control the mineral extraction. The details of the development upon which OCC's scoping opinion[93] was prepared are not known and it is unclear what description of development was sent to consultees.

6.15 At the time JCSL was keeping its options open on re-establishing a processing plant. That element of the development has now been dropped, which addresses a number of the impacts identified in the scoping opinion.

6.16 The DETR Guidance Note[94] made clear that for ROMP applications the ES should cover that part of the project that remained to be carried out. The position agreed with OCC in June 2006 was that the ES should cover only those areas yet to be worked, and the worked and restored plant area only if it

[88] DKS Vol 3 Doc 20-4
[89] DKS Vol 3 Doc 23-1a to 23-4
[90] ID11 (PPG ¶27-210-20140306)
[91] ID12d
[92] DKS Vol 1 Ss 3&4
[93] DKS Vol 3 Doc 28
[94] DKS Vol 3 Doc 18

was to be used for processing[95]. It is not clear whether this agreed position was advised to consultees.

6.17 The ES[96] was prepared to address the topics set out in the scoping opinion[97], but paying due regard to the changes in the baseline position, namely, the absence of a second processing plant, and the recent consent issued to JTSL. The details in the ES make clear that all minerals are to be processed through HTSL's site. The scoping opinion of February 2009 was never updated to reflect this change.

6.18 The Committee Report[98] sets out where OCC considers the ES to be lacking. Despite the DETR Guidance Note and the agreed position of June 2006, it refers to the whole site not being covered. JCSL maintain that the area covered by the ES is correct. OCC also points to the *White Horse Local Character Assessment* not being considered. However, despite searching for such a document it has not been found. The ES' landscape impact assessment is, however, based on the most recent landscape character type study, namely *The Oxfordshire Wildlife and Landscape Study of Landscape Types (OWLS),* updated in 2004.

6.19 The lack of traffic and transport information is also criticized. However, traffic was recently assessed as part of the HTSL's planning application and found by OCC to be acceptable. Whilst the comment that Barrow Fen SSSI and Sugworth SSSI are not mentioned is in part correct as they are not addressed specifically, they are referred to in the Landscape Report and Ecology Phase 1 Survey, which note they are over 500 metres from the site and impacts would be negligible. In the Hydrological and Hydrogeological Report the potential impact is considered remote. Also there was no specific request in the scoping opinion for the impact on the SSSIs to be addressed.

6.20 OCC raised the concern that there is no water contamination investigation. However, the Hydrological and Hydrogeological Report notes that there are significant barriers to the potential movement of dilute leachate that might be caused by working the site. A further comment is that the area covered by temporary industrial permissions has not been addressed. This is the area where the plant would have gone, but no development is now proposed here.

6.21 With respect to alternatives, only those that are considered need to be included in the ES. No alternative working methods were considered. As for the criticized desk based approach taken towards archaeology, this was accepted by OCC in its letter of 12 January 2009[99]. OCC changed its position in its letter of 25 February 2010 to request invasive field evaluations[100], but the ES confirms that an appropriate archaeological condition requiring a watching brief to an agreed written scheme of investigation would be acceptable.

[95] DKS Vol 3 Doc 23
[96] CD4
[97] CD3
[98] DKS Vol 3 Doc 38
[99] DKS Vol 3 Doc 28A
[100] DKS Vol 3 Doc 28A

6.22 Whilst OCC also comment on site security, this is not considered relevant to an ES. With respect to impacts generated by site operatives assessing the land, this would be negligible, and there would be no requirement for any permanent on-site accommodation. Although OCC states that cumulative effects were not considered, this is not so. The ES draws attention to the avoidance of cumulative effects by developing the site in association with HTSL.

The main points in Counsel's closing submissions[101] and Vincent Fraser QC's advice[102] are:

6.23 The ES was served on OCC on 17 September 2012. Whilst a number of points are taken by OCC with respect to its content, essentially there are two complaints (i) that the ES only covers part of the ROMP site, and (ii) that no alternatives were discussed in terms of digging, transporting and processing the material.

6.24 Regulation 2(1) of the 1999 EIA Regs provides that an ES means a statement:

(a) that includes such of the information referred to in Part I of Schedule 4 as is reasonably required to assess the environmental effects of the development and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile, but

(b) that includes at least the information referred to in Part II of the Schedule 4.

6.25 The material in Part II is a minimum requirement whereas a judgement is required as to what (if any) material may be required under Part I.

6.26 Part II states that an ES should contain:

1. A description of the development comprising information on the site, design and size of the development.

2. A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects.

3. The data required to identify and assess the main effects which the development is likely to have on the environment.

4. An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects.

6.27 Regulation 19(1) provides power for the determining authority to require an applicant to submit *"further information"* where the authority is of the opinion that *"the statement should contain additional information in order to be an environmental statement".*

[101] ID38c
[102] ID7

6.28 Regulation 3(2) prohibits the grant of planning permission or subsequent consent unless the authority has first taken the *"environmental information"* into consideration. The term *"environmental information"* is defined as *"the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development".*

6.29 This emphasises the fact the EIA is a process. It also distinguishes between the ES, which is the document that has been submitted as an ES, and the additional information which may have been required or submitted to supplement the ES because of alleged deficiencies in the submitted ES.

6.30 The legal authorities also recognise that a submitted ES may be deficient in the sense that it does not contain all of the information which is required but that this does not result in the document failing to amount to an ES[103].

6.31 It is important to keep in mind that this is a ROMP application to determine conditions and the principle of the development is not in issue. Furthermore, much of the originally permitted development has already been completed.

6.32 OCC's objection appears to be that the ES should have addressed all of the area covered by the original permissions even though no development would take place in the wider area. There is no practical merit in this point and it is incorrect.

6.33 The legal authorities confirm that for the purposes of the EIA Directive and the 1999 EIA Regs *"the development"* (i.e. the project) which is to be considered by any EIA is limited to the actual development for which planning permission is sought[104]. In the context of a ROMP application the development proposed is that which remains to be undertaken.

6.34 The contention that an ES should consider alternatives is a common mistake. The actual requirement is that *"if"* the developer has considered alternatives the ES must outline and address those alternatives. OCC is wrong in its assertion that the ES is deficient in this respect.

6.35 The case law consistently and clearly says that ESs are to be rejected as ESs only in the most extreme of circumstances. *Tew*[105]is the only example of an ES that failed the test, and that was because it was an ES that was based upon a hypothetical scheme. The Court found that it was not tied to a site or a development at all, so there could be no assessment at all of it.

6.36 For the reasons set out above the ES was not deficient, but even if it were to be considered deficient it satisfies the legal requirements for an ES.

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[103] See *R Blewett v Derbyshire CC [2003] EWHC 2775 Admin [2004] Env L.R.569,* the approach of which was confirmed in The House of Lords in *R (Edwards) v Environment Agency [2008] UKHL 22 [2008] Env L.R. 705*

[104] See *R (Candlish) v Hastings BC [2005] EWHC 1539 (Admin) [2006] 1 P&CR 337 @ ¶¶58-61* and *R v Swales BC Ex p Royal Society for the Protection of Birds [1991] JPL 39 @ 47*

[105] ID22 - *R v Rochdale MBC, Ex p Tew and Others QBD May 7, 1999*

Accordingly the suspension under regulation 26(A)(18) no longer applied once the ES was submitted.

General Remarks

The main points of DKS's proof[106] are:

6.37 JCSL and HTSL would be severely adversely affected by confirmation of the PO as it would prevent the recovery of around 1.0 million tonnes of high quality sand and gravel that is needed locally owing to the lack of alternative supplies. This would result in the early closure of HTSL's site with the consequent loss of employment, would result in the market being met by minerals from further away (increasing road miles) and would increase the price of aggregates for the concrete plant.

6.38 Additionally, there are a number of businesses based in buildings on the site, who would need to find new premises, which would put their economic viability at risk.

6.39 Should the PO be confirmed, it should be made clear that the removal of plant and machinery does not relate to the concrete plant and ancillary hardstanding, buildings etc. as these have a CLEUD. Also roadways need to be retained and more time is needed for businesses occupying buildings to find alternative premises before their removal (five years minimum). The future uses of the site should not be stipulated in the PO.

The main points in Counsel's closing remarks[107] are:

6.40 The issue of the non-confirmation of the PO is unanimously presented to this Inquiry as a matter of law and not of merit. OCC should never have served the PO as a matter of law. A finding to the contrary would not be reasonable.

The Case for H Tuckwell & Sons Ltd (HTSL)

6.41 The representations are contained within the proof of evidence of JES.

The main points are:

6.42 Relevant points are made relating to site, surroundings and history as set out within the corresponding "Background" section above[108]. Additional points are as follows:

6.43 On 18 January 1996 OCC forwarded a plan, reference LN2179u[109], to HTSL setting out HTSL's mineral interests. This plan showed land owned and operated by HTSL (RAD/3963 31.07.79); land owned by Mrs Peggy Dockar-Drysdale and operated by HTSL (RAD/5948/5 11.06.91; land owned by JCSL and Dick Frearson/HTSL (ABG R129/71 Area A 06.12.71); and land owned by JCSL (ABG R129/71 Area B 06.12.71). On 28 April 1998 OCC asked HTSL to provide details of land and minerals ownership, which it did on 3 May 1998[110].

[106] DKS Vol 1 S5
[107] ID38d
[108] ¶¶3.2 to 3.12
[109] JES Doc 5
[110] JES Doc 6

6.44 On 19 October 1998 OCC served notice on HTSL of the Thrupp Farm ROMP[111] and requested an application for determination of conditions by 3 January 2000. On the same date OCC served notice on HTSL of the Thrupp Lane ROMP[112] and requested an application for determination of conditions by 1 April 2000. The plan had not been corrected in accordance with the information provided on 3 May. The land shown on the two ROMP plans substantially overlapped in area.

6.45 The Thrupp Lane ROMP application was made on 22 December 1999[113]. In response to a request from OCC the determination date was extended to 1 July 2000. On 5 June 2000 OCC requested an ES[114]. On 26 August 2000 HTSL responded[115] explaining that the time limit for the Council to request further details had expired on 22 January, that it had been agreed to extend the time to deal with the application to 1 July 2000, and that the submitted conditions for HTSL had taken effect from that date. HTSL did not receive any further response from OCC thereafter and the view was taken that HTSL's ROMP was determined by default on 1 July 2000.

6.46 In August 2011 a meeting was held with OCC whereat OCC was told that HTSL and JCSL intended that the sand and gravel from JCSL's "ROMP Field" (part of Thrupp Farm) be processed through HTSL's plant. On 13 December 2011 HTSL submitted a planning application to OCC for such a scheme[116]. Only sand and gravel from this adjacent land[117] was to be processed and would be moved to the processing site by conveyor. This would reduce vehicle movements.

6.47 On 16 April 2012 OCC resolved to grant permission subject to four pre-conditions including the taking down and removal of the existing processing plant and the withdrawal of the CLEUD application. The conditions were discharged and planning permission was granted on 9 July 2012. OCC imposed a condition which prevents mineral processing on site and requires restoration if the development is not commenced before 5 July 2017.

6.48 Discussions have continued between HTSL and JCSL to bring about the transfer of the mineral underlying Thrupp Farm subject to the resolution of the PO.

Opposing written submissions[118]

Roger Cherry on behalf of R P Cherry & Son Ltd

6.49 The business in Thrupp Lane has been operating for approximately 35 years[119] and one of the buildings is leased from JCSL. Concern is expressed against

[111] JES Doc 7
[112] JES Doc 8
[113] JES Doc 10
[114] JES Doc 12
[115] JES Doc 13
[116] JES Doc 14
[117] The subject of planning permission ABG R129/71 (also referenced P/369/71)
[118] Within brown folder ID17
[119] As at 27 November 2012 when the representation was made

the PO that is being proposed because it is the objector's livelihood and other peoples' jobs that are at stake.

6.50 The objector employs 16 local people and his business has been established for over 35 years supporting the local community and other businesses within the area. The local post office and shop within Radley village are used by all his staff, and the local public house (Bowyers Arms) is used for entertaining customers and for holding social activities.

6.51 If this PO is passed, this will impact not only on the objector's business, but on all local businesses and the Radley Village community. The objector's truck engineering business is very dependent on the DAF dealership that has been awarded to him and relocating his business could result in the loss of this dealership because location is one of the criteria for the award.

A. O'Donoghue, Managing Director of Tubes Scaffoldings (Oxford) Ltd

6.52 The objector operates his company from the land affected by the PO. He is a local man (born in Radley). He has been in business serving Oxford and the surrounding areas for 34 years[120]. He works closely with companies such as BMW and has an excellent working relationship with the University of Oxford.

6.53 The business employs 16 staff, most of who are born and bred in the Radley area. It has an excellent reputation for employing young unemployed people and bringing them on into a stable work environment.

6.54 The objector cannot stress enough the seriousness of the consequences of any decisions made regarding this PO on his business. It has been the most difficult time over the recent years to stay in business. He is very proud of his business and of the local men and women that work alongside him.

Earth Trust

6.55 The Radley Lakes area is in private (business) ownership and apart from a circular walk around Thrupp Lake and access along the BOAT and Sustrans route, people access the land without the need for express permission. The Earth Trust has been facilitating discussions with the aim of agreeing a shared vision, the "Radley Wetlands Vision". The PO has very bluntly stopped discussions with landowners and with this, long term plans to create a wetland nature reserve.

6.56 Thrupp Lake is owned by RWE npower and Earth Trust manages it on their behalf. Thrupp Lake is a wildlife haven that could be a tremendous resource for the local community. Earth Trust has been working to facilitate the Radley Wetlands Vision by holding discussions with the three major land owners, namely, JCSL, HTSL and RWE npower, together with Thrupp Lane Residents Association, FRL and Radley Parish Council.

6.57 The PO has prevented Earth Trust from commenting on the ES. It would have commented to the effect that the digging of gravel has potential to ultimately enhance the diversity of habitats in the area. Profiling the banks of the gravel

[120] As at 28 November 2012 when the representation was made

pits, removing steep sides in some areas and adding shallow pools will all benefit biodiversity.

6.58 The PO is a blunt tool that dis-empowers those directly concerned, making them uncertain of their future and unlikely to want to work together towards common aims.

7 SUBMISSIONS SUPPORTING THE PO

Cases of those who gave supporting oral evidence at the Inquiry:

The Case for Friends of Radley Lakes (FRL)

7.1 The chairman of FRL, Roger Michael Thomas, represented FRL at the Inquiry and produced a proof of evidence and closing submissions[121].

The main points are:

7.2 Radley Lakes is the local name for the area of past gravel workings between Abington and Radley and includes the area which is the subject of the PO. FRL is not opposed in principle to some further mineral extraction in the area in question.

7.3 Adopting KB's lettering for the different areas of the site[122], FRL is not opposed in principle to the long-term retention of the JCSL industrial site at Thrupp Lane (Area A), but is concerned that, should extraction take place in Area F, the far eastern area of shallow water known as Orchard Lake be excluded from the extraction area for ecological reasons.

7.4 When the permissions for Area F were granted in 1969 and 1971, Area F lay well out into open countryside. Now the built up area of Abingdon has extended much closer to the boundary of Area F[123].

7.5 Because of its rich ecology, the Radley Lakes area was designated a County Wildlife Site, now referred to as a Local Wildlife Site (LWS), in 2006. A significant feature of this LWS is "Orchard Lake", which lies at the eastern edge of Area F. It is described in the claimed ES (10.2) as a "wetland habitat" of "great interest".

7.6 The Radley Lakes area has become increasingly popular as a place for informal recreational pursuits. The Thames Path, a BOAT and a Sustrans cycle-track pass through the area. Thrupp Lake has been dedicated as an area for nature conservation and quiet public recreation. Many visitors now reach the Lake via Thrupp Lane.

7.7 The claimed ES offers no evidence to support the statement that there is 0.850 to 1.0 million tonnes of recoverable mineral reserve and this figure should be approached with considerable caution. The proposed extraction area (within Area F) may be crossed by former river channels filled with silts and peats, such as that which was discovered when Barton Land quarry (Area E) was

[121] ID33
[122] KB Annex 2
[123] RMT Fig 5

excavated in around 2000. The area is also covered by an unknown depth of alluvial overburden.

7.8 Both of these factors will affect the amount of mineral present and could affect the economic viability of extraction. The permission for extraction from The Bull Field (Area D) was recommended for revocation due to overburden and clay content in the soil making it uneconomical to work[124].

7.9 For the purposes of the 1999 EIA Regs[125] information about the amount of mineral thought to be present and the amount of overburden and waste material expected is fundamental to any description of the development and to assessing its environmental effects. The failure to compile this information reinforces the argument that the claimed ES does not meet the requirements of the 1999 EIA Regs.

7.10 The claimed ES (7.2) states that the existing permission is for Thrupp Lane to be used as a transport route, although the old permissions are silent on routes. It is likely that Barton Lane was previously used as a route for exporting minerals. The Ordnance Survey map of about 1975 shows a track running from a gravel processing plant on JCSL's land towards Barton Lane[126], and there is a large gate which is approached from tracks on JCSL's land and opens on to Barton Lane[127].

7.11 At a meeting in August 2012 arrangements for processing the minerals were discussed. FRL and local residents felt that it would be better for processing to take place on JCSL's industrial site rather than on HTSL's site, and for it to be linked to the creation of a new access route onto Audlett Drive. Using HTSL's site would generate further lorry traffic on Thrupp Lane.

7.12 Thrupp Lane carries a potentially hazardous mixture of traffic including pedestrians, cyclists, private cars, HGVs and other traffic connected with the JCSL and HTSL sites. The nature of the traffic hazards is shown by an incident in January 2014 in which an articulated lorry slid off the road in icy conditions[128]. Concerns over the traffic in Thrupp Lane also resulted in lengthy delays in obtaining planning permission for a proposed visitor centre at Thrupp Lake.

7.13 HTSL's original permission was conditional upon restoration being completed on the site by the end of 1993. If extraction goes ahead, restoration of HTSL's site will be further delayed.

7.14 With respect to archaeology, a significant aspect of the Thames valley is that, on the floodplain, important prehistoric remains are often found buried underneath a blanket of later alluvium. This has covered preserved fragile earlier remains, which are often found on islands of sand and gravel, surrounded by in-filled former river channels (palaeochannels) that may contain preserved objects of organic material.

[124] CD2 p6
[125] Sch 4, Part 1, 1(a)&(c)
[126] RMT Fig 1
[127] RMT Fig 5
[128] RMT Fig 4

7.15 This situation was found in Area E in about 2000 where Iron Age causeways heading towards an island of gravel in Area F were discovered[129]. There is every likelihood that important archaeological remains lie hidden beneath alluvium in Area F.

7.16 In February 2010 OCC's Deputy County Archaeological Officer recommended that the applicants be asked to undertake an archaeological field evaluation of the site as part of the EIA, but this was not done. The applicants have, therefore, failed to provide information which was reasonably required and which they could reasonably have been expected to provide for the ES.

7.17 Overall, the non-determination of this ROMP application for so many years, in which time circumstances have changed considerably, has resulted in a great deal of uncertainty for the area and the local community. It seems difficult to see, if the PO is not confirmed, how matters can be prevented from dragging on almost indefinitely. However, with both JCSL and OCC arguing that the PO should not be upheld, FRL is not hopeful.

7.18 It has been said that, as nearly 15 years have passed since the ROMP application, another review is imminent. If that is to happen FRL makes a plea to OCC to keep a firm grip on the procedures so that the awful muddle that has just been endured does not recur. To JCSL, FRL says that the ES must be taken seriously and dealt with properly. The local community and the local environment need to be respected.

The Case for Radley Parish Council (RPC)

7.19 RPC was represented at the Inquiry by its Vice Chair, Professor Basil Crowley. Its written representations are set out in a letter from Marrons dated 5 December 2012[130].

The main points are:

7.20 RPC notes the delay in the submission of the ES and takes the view that it is not fit for purpose for the reasons given by OCC. The ES fails to address many of the requirements set out in the scoping opinion and fails to provide mitigation for many of the undesirable consequences of minerals extraction in an area of high conservation value in close proximity to an urban area. The deficiencies identified by OCC are so extensive that the ES could not be treated as an ES within the meaning of the EIA Regulations.

7.21 Gravel extraction has been taking place since the mid/late 1940s and old dormant permissions have created a planning blight affecting an extensive area with attendant problems due to a lack of modern enforceable conditions. Ending these old permissions now would bring considerable benefits. A new vision could be carried forward creating opportunities for nature conservation and community recreation coexisting with business and agricultural use.

7.22 The affected area lies partly within the Radley Gravel Pits Local Wildlife Site (59103). The proposed extraction would destroy a lake formed by natural restoration of previous extraction, which took place over 20 years ago. In

[129] RMT Figs 2&3
[130] ID23

2006 JCSL's managing director stated in a Statutory Declaration that gravel extraction in the area had ceased in 1990 and that the remaining reserves were exhausted.

7.23 RPC therefore asks the SoS to confirm the PO and end the existing planning uncertainty.

The Case for Dr Peter Cannon-Brookes

7.24 Dr Cannon-Brookes' representations are set out in his written statement[131].

The main points are:

7.25 Thrupp was historically a medieval village on an "island" in the River Thames flood plain and is archaeologically rich. The Cannon-Brookes family arrived in 1986, having purchased Thrupp House and some four acres of the remains of Thrupp Farm. Thereafter, infill of the worked-out gravel pits with waste took place without planning permissions.

7.26 Working of the land covered by the ROMP will draw contaminated groundwater through the landfill. Manganese in the groundwater at Thrupp, ascertained from laboratory sampling obtained from a piezometer at the Cannon-Brookes property, remains 6-7 times the European Drinking Water approved standards. The Environment Agency has advised that this pollution stems from JCSL's yard. The residents of Thrupp are concerned about the migration of potentially polluted groundwater.

7.27 At the time of the original planning permissions Barton Lane was a farm access road to Thrupp, which was single lane, and remains as such to this day. The Sustrans Route has been established along the former Abingdon Spur railway line, which cannot be widened significantly. Access in this area by heavy lorries is totally impractical.

The Case for Mr Andrew Coker

7.28 Mr Coker's representations are set out in his written statement[132].

The main points are:

7.29 Most winters the Thames floods into these fields, which form part of the natural flood plain. If bunds are constructed there would be nowhere to go except historic Abingdon. The situation is made worse by the overfilling of the pits to the east of the site with ash from Dicot Power Station, which has set as hard as concrete and therefore lacks permeability. This ash contains a high percentage of arsenic, which has further polluted the local environment.

7.30 The land to the north of Mr Coker's property, which has been quarried, was illegally filled with material that has contaminated the water table to such an extent that the water is no longer potable. The track records of JCSL and HTSL show little regard for residents and the environment. Local ditches are the habitat of endangered water voles, which have a protection order on them. They would not survive extraction of gravel from this field.

[131] ID5
[132] Within ID17

7.31 Local residents have been blighted by the actions of the gravel extractors for the past fifty years. Mr Coker hopes that the SoS will uphold OCC's decision in the spirit of the coalition Government's localism agenda but more importantly because it is the right decision.

The Case for Dr Bob Eeles

7.32 The representations of Dr Eeles are contained within his statement and supplemented by his summary of research[133].

The main points are:

7.33 *Ecology:* On matters of ecology the ES is wholly inadequate. It pays little regard to legally protected species and gives scant consideration to how the loss of significant habitats to these species can be mitigated against.

7.34 *Archaeology:* The proposed archaeological works will prove to be inadequate as much will be lost rather than protected and/or recovered. The loss to the culture of the locality is potentially significant.

7.35 *Palaeontology:* Palaeochannels containing nationally important remains such as pristine condition fossils are not considered in the ES. There should be plans to preserve and protect these remains.

7.36 *Hydrology:* The proposals in the ES give little regard to the impact of dewatering on a range of adjacent sites. These are of significant importance to wildlife and archaeology. The matter of drawing toxins from sub-areas H and I is not addressed in the ES.

The Case for Thrupp Lane Residents' Association

7.37 The Association was represented at the Inquiry by Ms Alexandra Holroyd. Her representations are contained within her statement[134]. Her colleague, Mike Wilson, has also submitted written representations[135].

The main points are:

7.38 Thrupp Lane is a single track cul-de-sac with blind bends. There is no pavement, lighting or proper drainage. These factors have an impact not only on road users, but also on residents whose driveways and footpaths are used by HGVs as unofficial passing places. Thrupp Lane is also part of Sustrans cycle route 5 and is widely used by pedestrians, cyclists and horse riders. The risks associated with such heavy industrial traffic are obvious.

7.39 Residents are regularly subjected to noise, large quantities of dust and debris generated by the lorries, fumes, and regular hazardous traffic hold-ups. There are accidents on the lane, and any incident quickly results in traffic jams or gridlock as there is no alternative access/exit.

7.40 Section 14 of the ES is named "Community and Social Effects". However, the report states nothing about the impact of consistent heavy-goods traffic on the

[133] ID14 & 15
[134] ID19
[135] Within ID17

local community. The ES does not provide a Traffic Impact Assessment. The ES is inadequate and the only option was to serve the PO.

Supporting written representations[136]

CPRE

7.41 As the claimed ES does not meet the requirements of the regulations, the PO was mandatory. The claimed ES is inadequate and CPRE wishes to amplify OCC's arguments with respect to transport. Thrupp Lane is a narrow tarmac road passing close to several houses. It has two tight right angle turns and has for many years been inadequate for the volume of HGVs using it. It will also carry traffic from the Earth Trust's recently approved Wetland Centre at Radley Lakes.

7.42 Existing HGV traffic causes substantial harm to the carriageway and nuisance to residents, and is detrimental to the Green Belt and to the rural nature of the Thames Valley. The claimed ES does not deal with the incremental environmental harm that will be caused by the use of Thrupp Lane for quarried material.

[136] Within ID17

8 INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer to the source paragraph in the report

Whether the Thrupp Farm ROMP application was determined by default

8.1 It would appear, as a matter of law, that the Thrupp Farm ROMP application was deemed determined on 28 July 2000 with the conditions proposed in the application. Therefore, at the time of making the PO there was no stalled ROMP and, therefore, no power for the MPA to make the PO. Whilst the area of overlap might have implications for the ROMP conditions, it does not affect the position vis-à-vis the PO. Furthermore, regardless of what the parties' previous understanding was on the status of the ROMP, there is no place for estoppel in planning law.

[4.2 to 4.11]

8.2 A deemed determination such as this without an ES is not compatible with the EIA Directives. However, whilst these directives have direct effect when relied upon by private individuals/organisations, the principle cannot be used by a State against a private entity. Consequently, OCC cannot use the concept of direct effects to avoid the deeming provisions within the UK domestic legislation. Therefore, in the absence of a challenge by a private entity, the deemed determination is effective. On this basis, my conclusion is that the PO may not be confirmed.

[4.12 to 4.15]

8.3 Although some time has passed since the deemed determination in 2000, I do not accept the contention that it is far too late for a challenge. I prefer OCC's submission that the Court does have the discretion to extend the limitation period in appropriate circumstances, which might include the situation where a member of the public previously had no way of knowing that the grounds for a claim existed. However, any such risk of judicial review would be to the determination of the ROMP in the absence of an ES, rather than to any finding with respect to the PO.

[4.16, 4.17]

8.4 Moreover, provided that the ROMP was deemed determined in July 2000, any threatened judicial review might be rendered less likely by the fact that the Thrupp Farm site would be due shortly for its 15 year periodic review. In those circumstances OCC would have the opportunity in 2015 to review the deemed conditions, and the ability to impose suitable modern conditions would not be lost.

[5.5; 7.18]

The tests for making a PO if there were no determination by default

8.5 In the event that the SoS disagrees with the conclusion that the ROMP was determined by defaut, I have proceeded to consider the situation with respect to the stalled ROMP with no deemed determination. Taking account of the change in guidance since the PO was made, my interpretation of the legal

provisions is that they impose a duty to make a PO after two years' suspension and no ES, where the winning/working/depositing of minerals has permanently ceased.

[4.36]

8.6 The PPG advises that, besides the two years' suspension and lack of an ES, it must appear to the MPA that the *"tests for issuing a Prohibition Order"* are met. I interpret this as meaning the tests for permanent cessation. Although the provisions of regulation 26(B) of the 1999 EIA Regs disapply paragraph 3(2)(a) and (b) of Schedule 9 of the TCPA for permissions suspended by regulation 26(A)(18), in practise, in order to show permanent cessation, there will need to be similar considerations to those set out in paragraph 3(2)(a) and (b). Therefore, for all intents and purposes it will need to appear to an MPA that the winning/working/depositing of minerals to any substantial extent at the site is unlikely to resume. When considering confirmation of a PO, this issue becomes a matter for the SoS to decide.

[4.18 to 4.40]

8.7 Whilst the PPG advises that there are unlikely to be many cases in which, after two years' suspension, the MPA could not be considered to be acting rationally in assuming permanent cessation, this does not mean there can be no cases of this kind. Therefore, despite the two years' suspension of permissions, it needs to be considered whether the working of minerals at Thrupp Farm is likely to resume.

[4.38; 5.8; 6.12; 6.13]

8.8 Although the Thrupp Farm mineral has not been worked since the Enforcement Notice in 1995, once the enforcement issue was resolved, JCSL consistently made clear that it would resume work at Thrupp Farm, after the mineral reserves at Sutton Wick were worked out. The arrangement for the remaining reserves (Area F) to be worked by HTSL and processed at HTSL's Thrupp Lane plant demonstrates an intention to work Thrupp Farm. HTSL obtained planning permission in 2012 for this development and, in consideration, forwent its claim to a CLEUD and demolished existing plant on its site. HTSL has a reasonable expectation that it will be allowed to work the estimated 0.85 to 1 million tonnes of remaining reserves. A PO would put this in doubt.

[3.12; 3.22; 3.33; 5.7; 6.3 to 6.5; 6.46 to 6.48]

8.9 Whilst Mr John Curtis made a Statutory Declaration in 2006 suggesting that work had been completed in 1990, I accept that this was a reference to the minerals dug to supply the Tarmac concrete plant and not a reference to all reserves within the ROMP site having been worked out. If there were no viable remaining reserves worthy of working, HTSL would not have gone to the expense and trouble of obtaining the 2012 planning permission.

[5.11; 6.9 to 6.11]

8.10 Therefore, for the reasons given, I conclude that the winning/working/depositing of minerals at the Thrupp Farm ROMP site has not permanently ceased. Consequently, for the purposes of considering whether

to confirm the PO, the tests have not been met and the PO should not be confirmed.

Whether the claimed ES may be classed as an ES and whether any defects may be cured by additional information

8.11 On the basis of the above analysis, it may seem that the question of whether the claimed ES should be classed as an ES at all is somewhat academic. However, for completeness, I will briefly deal with this matter.

8.12 There is a wealth of conflicting evidence submitted to this Inquiry on the alleged inadequacy/adequacy of the ES and whether it meets the requirements of Schedule 4 of the 1999 EIA Regs and the scoping opinion. Whatever views on adequacy are preferred on the facts, the legislation and case law do not depart from the position that the initial judgement on sufficiency of information is for the MPA, subject to challenge on public law grounds. On this basis, it would appear that it was for OCC to decide whether the claimed ES should be classed as an ES, with its conclusion being subject to judicial review at the time, if thought appropriate. No such challenge was ever made.

[5.12 to 5.14; 5.20 to 5.31; 6.14 to 6.22;

8.13 Although somewhat of a moot point, it seems to me that, whilst any deficiency of information could have been resolved through a regulation 19 request, this information would have to have been submitted before the two year deadline imposed by regulation 26(B) of the 1999 EIA Regs, otherwise this would render regulation 26(B) ineffective. In fact the PPG refers to the MPA's duty to make a PO when, after two years' suspension, there is a *"failure to provide an ES or relevant information".* In this case, the ES was submitted very close to the deadline leaving no time to process a regulation 19 request. Therefore, subject to a finding of permanent cessation, OCC would have had no choice but to make the PO.

[5.6; 5.15 & 5.16; 6.27 to 6.29]

8.14 Whilst the SoS has the opportunity to revisit the ES in considering whether to confirm the PO, it has been some years since the scoping opinion was issued and matters have moved on since then. Consequently, in the particular circumstances of this case and because of the above mentioned conclusions on deemed determination and permanent cessation, I take the view that little would be achieved by analysing the ES in this report. In any event, the ES would not be the only and conclusive environmental information which can be taken into consideration when coming to a decision; the ES can be augmented by other environmental information (that is, not the subject of a Regulation 19 request) if it deals with relevant matters in a cogent manner.

[3.31]

8.15 There is, nonetheless, one other point to consider. That is, if the PO were to be confirmed, the Thrupp Farm and Thrupp Lane overlap might create further issues, the nature and extent of which would turn on the definition of a "site". If the whole of the two ROMP areas were each found to meet the definition of a "site", there would be two different, overlapping sites, each with its own provisions. In that case the Thrupp Farm PO would prevent the working of minerals on Area F, whilst the Thrupp Lane ROMP would simultaneously

impose conditions, apparently determined by default in 2000, on minerals working in Area F.

[3.13 to 3.17; 4.8; 6.1 and 6.2]

8.16 Alternatively, if Area F were considered to be a site in its own right, then there would be one site subject to two ROMP applications. As Thrupp Farm was the later ROMP application, it would only be the Thrupp Farm provisions, namely the PO, which applied, thereby prohibiting the working of minerals. The Thrupp Lane conditions, in those circumstances, would not take effect in Area F. Whichever way the definition of "site" is determined, if the PO is confirmed, there would be a conflict which would be likely to raise issues of natural justice, particularly in view of the 2012 Thrupp Lane planning permission.

[4.9; 5.2 to 5.4]

Other Matters

8.17 If the PO is confirmed, it is likely to have a significant adverse impact on existing businesses which, in turn, would impact on the local economy. Also, confirmation could put in jeopardy progress with the "Radley Wetlands Vision".

[6.49 to 6.54; 6.55 to 6.58]

8.18 Supporters of the PO have set out a number of reasons why they believe the ES is inadequate, and have commented on what they perceive as the most detrimental adverse impacts of mineral workings in the area. Any future EIA relating to the review of minerals conditions at Thrupp Farm might well consider these matters.

[7.1 to 7.42]

Overall Conclusion

8.19 In conclusion, taking all matters into consideration, for the reasons given, I am of the opinion that the PO should not be confirmed.

9 RECOMMENDATION

9.1 I recommend that the Thrupp Farm PO is not confirmed.

Elizabeth C. Ord

Inspector

ANNEX A – APPEARANCES

FOR THE MINERALS PLANNING AUTHORITY:

Mrs Harriet Townsend of Counsel	Instructed by Jennifer Crouch, legal advisor to Oxfordshire County Council
She called:	
Kevin Broughton,	Senior Planning Officer with Oxfordshire County Council

FOR THE MAIN OBJECTOR (J CURTIS & SONS LTD):

Ms Sarah Clover of Counsel	Instructed by Mr Douglas Symes, Principal of DK Symes Associates
She called:	
Mr Douglas Symes	Principal of DK Symes Associates
Mr John Salmon	Director of Land and Mineral Management Ltd
Mr John Curtis	Managing Director of J Curtis & Sons Ltd

INTERESTED PERSONS:

Mr Roger Michael Thomas	On behalf of Friends of Radley Lake
Professor Basil Crowley	Vice Chairman of Radley Parish Council
Dr Peter Cannon-Brookes	Resident of Thrupp Farm
Mr Andrew Coker	Resident of Thrupp House
Dr Bob Eeles	Researcher and Local resident
Ms Alexandra Holroyd	On behalf of Thrupp Lane Residents' Association

ANNEX B – CORE DOCUMENTS AND PROOFS

CORE DOCUMENTS

CD 1 ROMP Application
CD 2 Original Planning Permissions
CD 3 Screening and Scoping Opinions
CD 4 Document Submitted as an Environmental Statement
CD 5 Assessment of the Claimed Environmental Statement
CD 6 Tuckwell Application Committee Report
CD 7 Tuckwell Planning Permission
CD 8 Relevant Statutes
CD 9 Case Law
CD 10 Prohibition Notice
CD 11 National Planning Policy Framework

PARTIES' PROOFS OF EVIDENCE

1 Kevin Broughton (for Oxfordshire County Council)
2 Douglas Kean Symes - 3 Volumes (for J Curtis and Sons Ltd)
3 John Eric Salmon (for H Tuckwell & Sons Ltd)
4 Roger Michael Thomas (for Friends of Radley Lakes)

ANNEX C - INQUIRY DOCUMENTS

ID 1	Opening on behalf of J Curtis and Sons Ltd
ID 2	Opening on behalf of Oxfordshire County Council
ID 3	Photographs of ROMP Site from February 2014
ID 4	Regulation 19 of the Town and Country Planning (EIA) Regulations 1999
ID 5	Statement by Peter Cannon-Brookes
ID 6	Original planning permissions with coloured plan showing areas
ID 7	Advice from Vincent Fraser QC
ID 8	Costs application on behalf of J Curtis and Sons Ltd
ID 9	Extract from Planning Practice Guidance
ID 10	Extract from Planning Practice Guidance
ID 11	Extract from Planning Practice Guidance
ID 12a-d	Correspondence between the Peak District National Park Authority and the Treasury Solicitor
ID 13	Peak District National Park Authority draft statement of facts and grounds
ID 14	Statement of Bob Eeles
ID 15	Summary of research RMG Eeles BSc(hons) PhD
ID 16	Derbyshire Waste Ltd v Blewett
ID 17	Bundle of Third Party representations
ID 18	Government Guidance dated July 2008 on Environmental Impact Assessment and Reviews of Mineral Planning Permissions
ID 19	Statement of Alexandra Holroyd
ID 20	Documents relating to H Tuckwell and Sons Processing Plant application
ID 21	Letters from Oxfordshire County Council and extract from the Environment Act 1995
ID 22	R v Rochdale MBC, Ex p. Tew and others
ID 23	Radley Parish Council submission to the Inquiry
ID 24	Further Advice from Vincent Fraser QC
ID 25	Letter from Oxfordshire County Council
ID 26	Letter from DK Symes Associates
ID 27	Request for 2nd opinion
ID 28	Written Submissions Oxfordshire County Council
ID 29	Bundle of legislation
ID 30	Bundle of case law
ID 31	Peak District Planning Committee Report

ID 32	e-mail Broughton to Symes
ID 33	Friends of Radley Lakes closing submission
ID 34	Closing submissions Oxfordshire County Council
ID 35	Application for costs Oxfordshire County Council
ID 36	Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment
ID 37	R v Cornwall County Council, ex p. Hardy
ID 38a	Submissions J Curtis & Sons Ltd - Overlap
ID 38b	Submissions J Curtis & Sons Ltd - Cessation/Resumpton
ID 38c	Submissions J Curtis & Sons Ltd – Regulation 19 and ES
ID 38d	J Curtis & Sons Ltd Closing Remarks General and Costs
ID 39	Response to application for costs Oxfordshire County Council
ID 40	Friends of Radley Lakes costs application
ID 41	Claim for costs by Radley Parish Council