

CASE REF: APP/U3100/V/23/3326625

**Corridor between the A34 Milton Interchange and the B4015
north of Clifton Hampden.**

on behalf of the

NEIGHBOURING PARISH COUNCILS - JOINT COMMITTEE (NPC-JC)

PROOF OF EVIDENCE ON LANDSCAPE

ALAN JAMES BSc MA MLI (RETIRED)

SUPPLEMENTARY PROOF MARCH 2024

1. NPC-JC have forwarded a document to me¹, which is not referenced but clearly genuine, which has drawn my attention to the fact that Bridge Farm gravel workings were subject to a Planning Condition for the site to be restored for nature conservation and leisure purposes, the latter requiring a s106 agreement to ensure public access to the restored site for a minimum of 20 years. The details of this are confirmed in the AECOM HIF1 document 'Minerals and Waste Safeguarding Preliminary Assessment' September 2021, section 4.3. All references below are to this document unless otherwise stated.
2. This is relevant to my landscape evidence, as I have argued that OCC have not given sufficient weight to landscape impact on the gravel lakes, having lumped them into LLCA 9 which is described as of very low landscape value as degraded mineral workings. The status of site as an area of restoration necessary to fulfil a planning condition, without which the development would not have been acceptable, adds weight to my case.
3. The Approved restoration plan for Bridge Farm is shown in AECOM Figure 5 (pdf p20). The following paragraph (4.3.6) acknowledges that HIF1 passes through the restoration area, and OCC advise that this requires a Section 73 (TCPA 1990) application to vary the Condition. It is then stated that *"This is an approach that is accepted; therefore, it is considered that the issue of conflict with restoration plans can be remedied by means of a Section 73 planning application to vary the condition for the restoration of the site"*
4. With respect, whilst the s73 provides a way of handling the disconnect between the restoration scheme and HIF1, it does not remedy the conflict between the two. It merely provides a planning mechanism to circumvent the inconvenient truth that the two are incompatible.
5. HIF1 has a large adverse landscape impact on the recovering landscape of the mineral workings. More than this, it has a large adverse impact on a programme of landscape and biodiversity

¹ The document is included for information as Appendix 1, but is not otherwise used in the supplementary proof

restoration, and on public access, which were essential to the acceptability of the development, without which it could not have received planning permission.

6. The AECOM document gives the impression that the s73 application will be a routine matter once permission for HIF1 has been granted. However, guidance on s73 applications (Appendix 2²) indicate that they are regarded as a new application under the terms of the 2017 EIA Regulations and require a new screening exercise if falling under Schedule 2, or a mandatory new EIA if under Schedule 1. Mineral workings of over 25ha are defined a Schedule 1, so a new EIA is required.
7. The LPA may consider the extent of further information requirements for the purposes of the s73 application, and OCC may seek to argue that the EIA carried out for HIF1 provides adequate updated information. In my view, this is not acceptable for three reasons:
 - The landscape EIA was deeply flawed, as it failed to recognise the distinctive landscape character of the recovering gravel lakes in the otherwise low grade landscape of LLCA 9.
 - Although a biodiversity assessment was made and reported in ES chapter 9 (and concluded that the 'Culham Finger Lakes' were an asset of at least District value with several uncommon species), this was done four years ago at a time when restoration was (as reported) only just under way. A considerable increase in species diversity is to be expected as the transition for raw mineral workings to mature aquatic landscape progresses
 - The AECOM landscape EIA was conducted without there being public access to the site area, whereas the restoration requires guaranteed public access, so a greater degree of visual impact assessment is necessary.
8. The indication that the s73 would follow the grant of planning permission to HIF1 is also questionable. As things stand, the restoration Condition on the Bridge Farm mineral workings is a barrier to proceeding with HIF1. It would therefore be more logical to remove the barrier first. It would also arguably be prejudicial to the outcome of the s73 application if the HIF1 permission were already in place.

Alan James

March 2024

² The appended text is the relevant section (3) on s73 applications, copied from Gov.UK web page <https://www.gov.uk/guidance/flexible-options-for-planning-permissions>

APPENDIX 1

First draft 13/02/21

The Threat to the Bridge Farm Nature Reserve

A splendid nature reserve is at an advanced stage of development in the area west of the railway line and north of the road between Appleford and Sutton Courtenay. It has already become a valuable haven for birds and other wildlife, one of the few of its kind in the county. However, the alignment proposed by the OCC for the Didcot to Culham river crossing road means that the road would pass straight through the western part of the reserve, seriously degrading it.

The Bridge Farm Reserve has been created by Hanson – at the behest of OCC – from their former gravel pits. This has involved a great deal of very expert planning followed by a large amount of work. The land and water bodies have been sculpted, and aquatic and terrestrial vegetation planted, to create a set of habitats suitable for a wide variety of species.

The reserve has proved to be remarkably successful, even at this early stage. Ian Lewington, the Oxfordshire County Bird Recorder for the British Trust for Ornithology (and an internationally renowned bird expert) has been monitoring the reserve at the request of Hanson and the site restoration manager. He advises that few other sites in Oxfordshire – possibly none – can boast such a variety of breeding or visiting birds. There are a host of notable rare, scarce or uncommon species, as shown in the Table below.

Notable rare, scarce or uncommon species.

Waders	Ducks and Geese	Other Wetland Birds	Land Birds
Great White Egret	Pochard	Little Grebe	Bar Owl
Little Egret	Teal	Common Tern	Raven
Pectoral Sandpiper	Gadwall	Mediterranean Gull	Peregrine Falcon
Green Sandpiper	Shoveler	Great Black-Backed Gull	Hobby
Common Sandpiper	Wigeon	Caspian Gull	Grey Partridge
Wood Sandpiper	Red-Crested Pochard	Yellow-Legged Gull	House Martin
Knot	Garganey	Iceland Gull	Swallow
Dunlin	Common Scoter	Oystercatcher	Swift
Redshank	Shelduck	Water Rail	Stonechat
Ruff	Egyptian Goose	Kingfisher	Whinchat
Ringed Plover	Greylag Goose		Wheatear
Little Ringed Plover			Yellow Wagtail
Lapwing			Reed Bunting
Snipe			Yellowhammer
Bar-Tailed Godwit			Lesser Redpoll
Black-Tailed Godwit			Sedge Warbler
Greenshank			Garden Warbler
			Whitethroat

There is also an abundance of more common birds and other wildlife.

Construction of the road, if this were to be through the Reserve on the indicative alignment proposed by OCC, would destroy the value of the Reserve in the short run and severely degrade its value in the medium and long term, owing to the effects of habitat destruction, disturbance and fragmentation.

However, these disastrous outcomes would be avoided if the road were moved about 250 metres further west, for example along the alignments proposed in Section ?? of the Position Paper.....

APPENDIX 2

Guidance

Flexible options for planning permissions

Options for amending proposals that have planning permission.

From:

[Department for Levelling Up, Housing and Communities](#) and [Ministry of Housing, Communities & Local Government](#)

Published

6 March 2014

Last updated

26 July 2023 — [See all updates](#)

Contents

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Amending the conditions attached to a permission (application under Section 73 TCPA 1990)

How are the conditions attached to a planning permission amended?

In contrast to section 96A, an application made under [section 73 of the Town and Country Planning Act 1990](#) can be used to make a material amendment by varying or removing conditions associated with a planning permission. There is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.

Provisions relating to statutory consultation and publicity do not apply. However, local planning authorities have discretion to consider whether the scale or nature of the change warrants consultation, in which case the authority can choose how to inform interested parties.

Paragraph: 013 Reference ID: 17a-013-20230726

Revision date: 26 07 2023 See [previous version](#)

Are there any restrictions on what section 73 can be used for?

Planning permission cannot be granted under section 73 to extend the time limit within which a development must be started or an application for approval of reserved matters must be made. Section 73 cannot be used to change the description of the development.

Paragraph: 014 Reference ID: 17a-014-20140306

Revision date: 06 03 2014

What is the effect of a grant of permission under section 73?

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect. Further information about conditions can be found in the [guidance for use of planning conditions](#).

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

Paragraph: 015 Reference ID: 17a-015-20140306

Revision date: 06 03 2014

Do the Environmental Impact Assessment Regulations apply?

A section 73 application is considered to be a new application for planning permission under the 2017 Environmental Impact Assessment (EIA) Regulations. Where the development is of a type listed under Schedule 2 to the 2017 EIA Regulations, and satisfies the criteria or thresholds set, a local planning authority must carry out a new screening exercise and issue a screening opinion as to whether EIA is necessary. Where the development is of a type listed under Schedule 1 of the 2017 EIA regulations an EIA will always need to be carried out.

Where an EIA was carried out on the original application, the planning authority will need to consider if further information needs to be added to the original Environmental Statement to satisfy the requirements of the Regulations. Whether changes to the original Environmental Statement are required or not, an Environmental Statement must be submitted with a section 73 application for an [EIA development](#). Further information about the process of applying for development without compliance with original conditions can be found at [Annex A: summary comparison table](#).

Paragraph: 016 Reference ID: 17a-016-20140306

Revision date: 06 03 2014

Paragraph removed

Paragraph: 017 Reference ID: 17a-017-20230726

Revision date: 26 07 2023 See [previous version](#)

Can section 73 be used if there is no relevant condition in the permission listing approved plans?

Section 73 cannot be used if there is no relevant condition in the permission listing the originally approved plans.

It is possible to seek the addition of a condition listing plans using an application under [section 96A of the Town and Country Planning Act 1990](#). This would then enable the use of a section 73 application to make minor material amendments.

Paragraph: 018 Reference ID: 17a-018-20230726

Revision date: 26 07 2023 See [previous version](#)