The countryside charity
CPRE Sussex

Campaign to Protect
Rural England, Sussex Branch CIO
Brownings Farm, Blackboys,
East Sussex, TN22 5HG
Tel 01825 890975
e-mail info@cpresussex.org.uk
www.cpresussex.org.uk

Attn Case Officer: Mr C Bartlett

Planning Services
West Sussex County Council
County Hall
Chichester
PO19 1RH

planning.applications@westsussex.gov.uk

23 August 2021

Representation submitted for and on behalf of CPRE Sussex objecting to:

WSCC/030/21

Pallinghurst Woods, Loxwood Road, Loxwood, West Sussex, RH14 0RW

An application for planning permission for a clay quarry and construction materials recycling facility (CMRF) for CD&E wastes including the use of an existing access from Loxwood Road, the extraction and exportation of clay and restoration using suitable recovered materials from the CMRF to nature conservation interest including woodland, waterbodies, and wetland habitats

CPRE Sussex asks that the application be refused because, in summary:

- The proposed clay quarry does not comply with and is contrary to the West Sussex Joint Minerals Plan (JMLP), July 2018 (Partial Review March 2021) Policy M5: Clay (a).
- Overall, the proposed development, including proposals for habitat retention, creation and enhancement, is predicted to result in a net loss of -35.77Bus, equivalent to -36.59%.
- Ancient woodland is irreplaceable, and there is no evidence to prove that the loss of the Site's ancient woodland/ ancient semi-natural woodland/ plantations on ancient woodland, can be successfully mitigated.
- If permitted, the scheme would result in the loss of irreplaceable ancient woodland habitats.
- There are no wholly exceptional reasons, or benefits, for permitting the scheme.
- The scheme is contrary to NPPF (Revised July 2021), paragraph 180 c) and does not comply with the requirements of JMLP Policy M17: Biodiversity and Geodiversity, stipulations (a) and (b).

Detailed explanations are given below.

1. The application does not comply with JMLP Policy M5 (a), and contrary to the Environment Statement, paragraph 22.33, the Planning Statement has not demonstrated 'that there is an overriding need for the clay from the site for the use in construction materials.'

1.1 The West Sussex Joint Minerals Local Plan (JMLP), July 2018 (Partial Review March 2021) Policy M5: Clay stipulates that:

(a) Proposals will be permitted for the extraction of brick clay provided that:

(i) they would help maintain a stock of permitted reserves of at least 25 years of permitted clay reserves for individual brickworks; and

(ii) the clay required for appropriate blending for manufacture of bricks is no longer available adjacent to the brick making factory.

1.2 The applicant's Planning Statement (June 2021) presumes that the brickworks at West Hoathly (mentioned 35 times in the Statement) could or would use clay extracted from Pallinghurst Woods (paragraphs 1.8, 7.12, 7.14, 35, 36, 8.3, 8.4, 8.5, and 8.6).

1.3 The Planning Statement, paragraph 8.3, states that the West Sussex Join Minerals Local Plan – Duty to Cooperate Statement (issued May 2017), identified the supply of clay to the West Hoathly brickworks as a Strategic Priority.

1.4 The JMLP, July 2018 (Partial review March 2021), however, does not identify the supply of clay to the West Hoathly brickworks as a 'Strategic Priority'.

1.5 Furthermore, the West Sussex Joint Minerals Local Plan and Waste Local Plan: Monitoring Report April 2019 – March 2020 (July 2021), states that

'*Policy M11 of the JMLP allocates an extension to West Hoathly clay pit to provide two to three years of additional supply of Wadhurst clay.* ***However, since the last Monitoring Report, West Hoathly Brickworks permanently ceased production in March 2020***' (paragraph 4.4).

(The applicant's Planning Statement was issued June 2020)

1.6 Although, the applicant's Planning Statement identifies the Pitsham brickworks as a potential user of clay from Pallinghurst Woods (paragraphs 1.8 and 8.6), the JMLP states that

'*The clay MSA will also include Pitsham brickworks, although the Gault formation clay, which supplies Pitsham brickworks, will not be safeguarded in its entirety* ***because it is only extracted in small quantities and not economically significant'*** (paragraph 6.9.10).

1.7 The application does not comply with JMLP Policy M5 (a), and contrary to the Environment Statement, paragraph 22.3, the Planning Statement has not demonstrated 'that there is an overriding need for the clay from the site for the use in construction materials.'

2. ‘***Overall, the proposed development, including proposals for habitat retention, creation and enhancement, is predicted to result in a net loss of -35.77Bus, equivalent to -36.59%*’ **(Biodiversity Net Gain Assessment, June 2021, paragraphs 0.51 and 5.1.1).**

2.1 Whether the restoration scheme for the proposed development would, as stated in the applicant’s Planning Statement’ (page 72), ‘*ensure overall Biodiversity Net Gain, thereby safeguarding the sites biodiversity value*’ is a major consideration in the deciding of this application.

2.2 This is acknowledged in the applicant’s Environment Statement, which states, under the heading ‘Overall Conclusion’, that

> ‘*There are biodiversity and landscape benefits providing a net gain from the restoration scheme for the site and it is therefore concluded that planning permission should be granted’* (paragraph 22.62).

2.2.1 The Ecological Impact Assessment states that ‘*Measures to secure biodiversity net gain in line with national and local planning policy and guidance are proposed in an accompanying Biodiversity Net Gain Assessment*’ (paragraph 0.1.6).

2.2.2 The applicant’s Planning Statement states that

> ‘*In relation to the restoration project, it is clear that the ecology and biodiversity of the area will be increased by the plans for the development site, both during the operation through the Biodiversity Net Gain plan and following the cessation of mineral excavation*’ (page 72).

2.3 It is therefore of major concern and considerable consequence that the applicant’s Biodiversity Net Gain Assessment found that

> ‘*Overall this assessment has shown that* ***the majority of baseline area habitats within the Site will be lost****, with small areas of woodland along the access route corner being retained. Areas of new habitats will be created as part of Site restoration, and a large extent of off-site habitat will be enhanced. However,* ***these interventions are outweighed by the impact of development on semi-natural broadleaved woodland which is a Habitat of Principal Importance****, resulting in an overall net loss of* ***-36.59%*** *in area habitats* (paragraph 5.1.1).

2.4 Note, too, the findings of the applicant’s ‘Results of Surveys for Flora and Fauna’ under the heading ‘Replaceability’ at the following paragraphs:

> ‘*The deciduous woodland needing to be removed for the Proposed Development (primarily DW1 and DW3) would be the most difficult to replace,* ***due to the presence of frequent mature trees and their associated features, as well as the distinctive character and richness of the field layer such woodlands support, including the relatively high number, frequency and abundance of AWIs. This makes such woodland difficult to reproduce, even in the relatively long term, and increases its importance****’’* (paragraph 3.4.4).

'*Some of the woodland surveyed is identified as Ancient Woodland and hence is irreplaceable; these areas are proposed to be retained.* ***However, as noted the other areas of deciduous woodland could not be easily distinguished from the Ancient Woodland in terms of structure or species composition and contained many species and features characteristics of Ancient Woodland'*** (paragraph 3.4.5).

2.5 The Environment Statement's generalised description of the Site's woodland, at paragraph 22.23, as 'mixed woodland and scrubland' and its loss in consequence of the proposed scheme 'temporary', is therefore misleading.

3. The areas of woodland that '*could not be easily distinguished from the Ancient Woodland in terms of structure or species composition and contained many species and features characteristics of Ancient Woodland'*, is therefore likely to be regenerating 'ancient semi-natural woodland' and/or 'plantations on ancient woodland' and should therefore be regarded and treated as such.

3.1 Forestry Commission/Natural England Guidance 'Ancient woodland, ancient trees and veteran trees: protecting them from development' advises that ancient woodland is '*any area that's been wooded continuously since at least 1600 AD. It includes:*

- ***ancient semi-natural woodland*** *mainly made up of trees and shrubs native to the site, usually arising from natural regeneration*
- ***plantations on ancient woodland sites*** *- replanted with conifer or broadleaved trees that retain ancient woodland features, such as undisturbed soil, ground flora and fungi'*

And that **'*Wooded continuously' does not mean there's been a continuous tree cover across the whole site. Not all trees in the woodland have to be old. Open space, both temporary and permanent, is an important component of ancient woodlands'***.

3.1.1 The NPPF, page 63, states that 'Ancient Woodland' includes ancient semi-natural woodland and plantations on ancient woodland sites.'

3.2 The Guidance also advises that

'Ancient woodland takes hundreds of years to establish and is defined as an irreplaceable habitat. It's important for its:

- wildlife (which include rare and threatened species)
- soils
- recreational value
- cultural, historical and landscape value'

4. There is no evidence to prove that the loss of ancient woodland can be successfully mitigated.

4.1 Whether measures, especially 'translocation', proposed by the applicant for the replacement/restoration/recreation of these important-for-biodiversity ancient woodland habitats would be effective are therefore important considerations in the deciding of the application.

4.2 The Ecological Impact Assessment, states that

> '*Prior to extracting the clay, each phase will be felled of trees and stripped of topsoil and subsoil. Wherever possible, topsoil including younger trees and shrubs, the ground flora and seedbank will be translocated to a restoration cell to maintain the character and composition of vegetation over the long term. In the earliest phases or when a restoration cell is not available, soil, ground flora, seedbank and deadwood will be translocated to woodland compartments …. outside of the Site*' (paragraph 5.5.2).
>
> '*Restoration will comprise infilling with inert waste, compaction and levelling, initially seeded with a wildflower grass mix to prevent erosion by wind or surface water. Subsequently each cell will be restored to woodland cover using materials (topsoil, seedbank, field layer and small trees/shrubs) translocated from elsewhere on the site, supplemented by native trees and shrubs as required'* (paragraph 5.5.4).

4.3 The Natural England commissioned 'Literature review and analysis of the effectiveness of mitigation measures to address environmental impacts of linear transport infrastructure on protected species and habitats' (Natural England Commissioned Report NECR132), which examines the effectiveness of mitigation measures, states that

> '*It is important to note that while soil translocation and the translocation of coppiced hazel stools appear to be successful in establishing ancient woodland indicator species and tree re-growth, they do not claim to successfully mitigate the loss of ancient woodland habitats and require the loss of ancient woodland in order to proceed. As noted above, ancient woodlands are complex and diverse systems which can only be achieved through centuries of growth and development. There is no evidence to suggest that the loss of ancient woodland can be successfully mitigated*' (page 64).

5. The scheme is contrary to NPPF (Revised July 2021), paragraph 180 c, because if permitted it would result in the loss of irreplaceable ancient woodland habitats, for which there is no evidence that the loss can be successfully mitigated, and there are no wholly exceptional reasons, or benefits, for permitting the scheme.

5.1 For those reasons, too, the scheme would not comply with the requirements of JMLP Policy M17 Biodiversity and Geodiversity, stipulations (a) and (b).

6. The evaluation that the Ebernoe Common SSSI/SAC and The Mens SAC are '*of no importance in the context of the ecological impact assessment'* (Ecological Impact Assessment, paragraph 4.9.2) should, in view of the relatively high level of barbastelle activity detected and recorded at the Site in April 2020 (Results of Surveys for Flora and Fauna paragraph 4.8.4), be reconsidered in the context of JMLP Policy M17: Biodiversity and Geodiversity, which stipulates that '*Proposals for minerals development will be permitted provided that:*

> *(b) there are no unacceptable impacts on areas or sites of national biodiversity or geological conservation importance unless the benefits of the development clearly outweigh both the impact on the features of interest, and on the wider network of such designated areas or sites,*
>
> *(c) there are no unacceptable impacts on areas, sites or features of regional or local biodiversity or geological conservation importance unless the benefits of the development clearly outweigh both the impact on the features of interest and on the wider network of such designated areas or sites,*

6.1 Ebernoe Common SSSI/SAC and The Mens SAC are located respectively 7.95 km and 6.5 km south of the Site (Results of Surveys for Flora and Fauna, paragraph 4.1.1).

6.1.1 Ebernoe Common SSSI is of national importance for colonies of barbastelle *Barbastella barbastellus* and Bechstein's *Myotis bechsteinii* bats (Results of Surveys for Flora and Fauna, paragraph 4.1.1).

6.1.2 Ebernoe Common SAC is designated under article 4(4) of the Habitats Directive (92/43/EEC) as it supports barbastelle *Barbastella barbastellus* and Bechstein's *Myotis bechsteinii* bats, listed in Annex II (Results of Surveys for Flora and Fauna, paragraph 4.1.1).

6.1.3 The Mens SAC is designated under article 4(4) of the Habitats Directive (92/43/EEC) as it supports barbastelle bat *Barbastella barbastellus*, listed in Annex II of the Directive (Results of Surveys for Flora and Fauna, paragraph 4.1.1).

6.2 Notwithstanding their proximity to the Site, the Ebernoe Common SSSI/SAC and The Mens SAC are evaluated by the 'Ecological Impact Assessment' as not being of importance in the context of the assessment because:

- According to Natural England (2019) 'the barbastelle's foraging range extends up to 5km from the roost. While for the Bechstein's the foraging range is 1- 2.5km.

- The draft Sussex Bat SAC Planning Protocol states that 'the key conservation area for these species is 6.5km (which falls short of the Site) but creates a wider consultation zone of 12km'.

- 'Greenway (2008) derived core sustenance zones for barbastelle around the two SAC using minimum convex polygons (MCP) from radio tracking studies. This shows the MCP for barbastelles from the Mens as falling just short of Bucks Green (east of the Site). These data suggest the Site is not within the core migratory range of barbastelles forming part of the SAC/SSSI populations.

- The EIA scoping opinion for the proposed development advised that the Site is not within or near and known flight lines for bats from Ebernoe Common SAC or The Mens SAC.

(Ecological Impact Assessment, paragraph 4.9.2)

6.3 **However, the evaluation should be reconsidered because**

- The relatively high level of barbastelle activity detected and recorded the Site in April 2020 (Results of Surveys for Flora and Fauna, paragraph 4.8.4).

- A study of foraging and habitat selection of barbastelle bats (*Barbastella barbastellus*) at two breeding colonies in southern England, in which 28 adult female bats were radiotracked to determine home range use, habitat preferences, and patterns of nocturnal activity, found that individual home ranges varied considerably, **with bats traveling between 1 and 20 km to reach foraging areas**. Individual bats foraged independently from one another and were highly faithful to their respective core foraging areas, which formed just a small fraction of home ranges. Conservation efforts for *B. barbastellus* **should target the protection and enhancement of preferred foraging habitats within 7 km of roost sites** (Home range use and habitat selection by barbastelle bats (*Barbastella barbastellus*): implications for conservation. Matt R. K. Zeale, Ian Davidson Watts, and Gareth Jones, Journal of Mammalogy, 93(4):1110–1118, 2012).

- The Mens SAC is located 6.5 km from the Site.

- Barbastelle 'Bats need a range of habitats during the year in response to the annual cycle the bats feed at a number of locations through the **night and will select different feeding areas through the year linked to the seasonal availability of their insect prey; of mating, hibernating, giving birth and raising youn**g' (Barbastelle Bats Exmoor and Quantocks Oak Woodlands Special Area of Conservation (SAC) Guidance on Development. Larry Burrows, Ecologist, Somerset Ecology Services, Planning Control, Somerset County Council working in partnership with Natural England, April 2018).

To conclude, CPRE Sussex asks that the proposed scheme be refused because, in summary:

- The proposed clay quarry does not comply with and is contrary to the

  West Sussex Joint Minerals Plan (JMLP), July 2018 (Partial Review March 2021) Policy M5: Clay (a).

- Overall, the proposed development, including proposals for habitat retention, creation and enhancement, is predicted to result in a net loss of -35.77Bus, equivalent to -36.59%.

- Ancient woodland is irreplaceable, and there is no evidence to prove that the loss of the Site's ancient woodland/ ancient semi-natural woodland/ plantations on ancient woodland, can be successfully mitigated.

- If permitted, the scheme would result in the loss of irreplaceable ancient woodland habitats.

- There are no wholly exceptional reasons, or benefits, for permitting the scheme.

- The scheme is contrary to NPPF (Revised July 2021), paragraph 180 c) and does not comply with the requirements of JMLP Policy M17: Biodiversity and Geodiversity, stipulations (a) and (b).

Yours faithfully,

Dr R F Smith, DPhil, BA (Hons), FRGS
Trustee CPRE Sussex

Copy to:

Chair CPRE Sussex