

Mr C Bartlett, Principal Planner
Planning Services, Highways, Transport and Planning
Directorate,
WSCC,
Ground Floor, Northleigh,
County Hall,
West Street,
Chichester,
PO19 1RQ

Our ref: 10141

10 February 2022

Dear Mr Bartlett

Response to additional information – Objection on behalf of ‘Stop the Clay Pit’ against the planning application WSCC/030/21 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 exploration of clay and restoration using suitable recovered materials from the CMRF to nature conservation interest including woodland, waterbodies and wetland habitats at Pallinghurst Woods, Loxwood Road, Loxwood, West Sussex, RH14 0RW

We submit this letter on behalf of ‘Stop the Clay Pit’ following our review of the additional information submitted by the applicants in relation to planning application WSCC/030/21.

We continue to raise **significant objection** to the planning application, and we set out the reasons for this below. This letter should be read alongside our objection letter dated 26 August 2021.

In addition, appended to this letter is:

- **APPENDIX 1 - Technical Note** prepared by RSK reviewing the additional technical highways information which raises **objection on highways grounds** siting that the grounds for objection remain as the following:
 - The traffic generation information provided by the applicant is not realistic and significantly under-estimates the daily traffic flows,
 - The environmental impact upon amenity of road users along Loxwood Road has not been assessed,



- The proposed site access arrangements are not 'safe and suitable' for the intended purpose,
- Loxwood Road is not suitable to accommodate a significant increase in HGV traffic.
- **APPENDIX 2** - Objection Statement from Stop The Clay Pit campaign group
- **APPENDIX 3** - Independent review of the applicant's HRA has been carried out by Natural Water which identifies that there are **significant shortcomings** in the HRA work completed to date. It concludes that there needs to be more robust assessment of data in an accurate manner because at present it is felt that there is "repeated misuse of source data that leads to misrepresentation of the importance and relevance of that data". It appears from their conclusions that there have been substantial omissions with regard to the assessment to the impact on bats and the importance of the site linking to Mens SAC.
- **APPENDIX 4** - Response from the Parishes Wildlife Group this concludes that "the additional information provided by Protreat has not addressed the fundamental flaws in the original application and, given the detrimental impacts on the woodland and its surrounds, should be **refused**".

Reasons for objection

Previously we clearly identified that the Council **does not need** a new clay extraction at this moment in time. The Council are more than meeting their duties within the NPPF (2021) to ensure they have permitted reserves of at least 25 years with three brickworks having in excess of 25 years of clay reserves and another having 24 years. The additional information submitted by the applicant cannot change these facts. The case remains that the current required need is met.

The applicant references a PINS document within their submission. In our opinion this does not change anything. We are confident that the Council will be aware that they have to ensure there is 25 years of brickmaking clay reserves and that this is a minimum not a maximum requirement. For the points set out in our previous letter and as referenced above, the Council are achieving this at present. As a result, the Council should not feel pressurised into approving this development at this moment in time. **There is no need for it and all duties are being met.** There has been no substantial evidence provided to counter this conclusion for example there has been no information provided to reveal who would buy the clay from this site to demonstrate there is a demand.

The applicant suggests that the Council are interpreting the Policy M5 incorrectly. We are unclear of the level of discussions had between yourself and the applicants, but we are confident that the proposal does



not meet the Policy and as the applicants have suggested the proposal is for brickmaking clay then it should be assessed under (a) of the Policy. In so doing, whilst more extraction sites would continue to maintain a stock of permitted reserves of at least 25 years the Council are well in excess of this at present. The policy test is (i) and (ii). (ii) states that *'the clay requires for appropriate blending for manufacture of bricks is no longer available adjacent to the brick making factory'*. It could be argued that the decisions taken by operators elsewhere within the County to not extract sites adjacent to established brickworks suggests there is not the need for the clay. No robust case has been provided to meet this test therefore as the proposal cannot pass both (i) and (ii) criteria (a) cannot be met.

However, if the Council feel (a) can be passed, then (c) of the Policy should be considered. Whilst (i) can be met we do not believe (ii) can be as it is not an extension to an existing clay pit, nor is it located as close as possible to the site where the clay will be used. The throw away comments about the applicant looking to establish a brickwork in the future are not substantiated by any evidence. (iii) of the Policy requires the proposal to be well-related to the Lorry Route Network and whilst potentially this could be met as the crow flies, the suitability of the highway network to provide access to the Lorry Route is not safe as detailed within the Technical Note appended to this letter.

The headline of this application is that it is for a clay extraction site. However, it should not be forgotten that there is a C,D & E waste CMRF proposed also. Our previous objection letter raised a number of issues in relation to this and the applicant has failed to provide further information to allay any of our concerns. There continues to be insufficient information provided to demonstrate that there is a need for this facility in association with the extraction site. In addition, no further information has been submitted to demonstrate that this is the right location.

We are concerned about the lack of information and believe that the figures provided (throughput and vehicle movements) are not accurate. From our review of the details, it appears that a waste operation will be running alongside the mineral operation with a very minor association between the two. Whilst we acknowledge that inert material will be needed to infill the void should extraction be allowed, this could be sourced from waste sites that are located in accordance with the Waste Local Plan policies. There is no need for the CMRF to be sited in this location.

We note that the applicant no longer proposed to divert footpath 792_1 for 33 years and that the footpaths existing route will remain. Users of this footpath will find themselves very close to the proposed extraction site and waste operation and will experience noise, dust, vibration etc. These factors if not



mitigated appropriately, will all harm the amenity of the users of the Right of Way as they will have a direct impact. Whilst we note additional information has been provided about managing HGV's and walkers at RoW crossing points there is limited information to demonstrate how the barriers will be operated. If reliant on electricity, how are they to be powered and will they require additional ground works which could in turn have an environmental impact (trees / biodiversity).

There are a small number of jobs that would be directly created by the proposed development. The location of the site is within an area of below average unemployment meaning there is not a significant demand for jobs. This suggests that the proposed operation would not serve existing residents. We see that the applicant is placing a great emphasis on the economic benefit of the proposal through job creation etc., we politely remind the Council that to achieve a sustainable development there is a need to ensure the proposal meets the environmental and social objectives also. The economic benefit should not be given such weight in the planning balance that it achieves a planning approval that will have significant environmental and social impacts especially when there is no need for the mineral extraction or waste operation.

We continue to argue that it is not in the right location, and it is not the right time with there being no overriding need at present. We therefore urge you to refuse the planning application.

Yours sincerely,

BELL CORNWELL LLP

[Redacted signature]

KRISTINA WALL
Principal Planner

DD: [Redacted]
[Redacted]



APPENDIX 1

Technical Note



Loxwood Clay Pits, Loxwood, West Sussex Highways and Transport Objection

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Telephone: [REDACTED]
www.rskgroup.com

Our reference: 663204-TN02-Rev0.2

Author: Ian Wickett

Date: 19/01/2022

Reviewed: Jon Hassel

Date: 19/01/2022

This Technical Note has been prepared on behalf of 'Stop the Clay Pit' Action Group to represent their objections against the proposed development of clay extraction and associated facilities within Loxwood Woods, located to the east of Loxwood, West Sussex. This objection is in response to further information submitted as part of the planning application, dated December 2021.

This has been prepared by Ian Wickett, who has 24 years' experience in transport planning and is a Fellow of the Chartered Institution of Highways and Transportation. He has considerable experience of managing and designing for the traffic aspects of development, including numerous waste-related facilities and clay/mineral extraction sites across the UK. He is familiar with the site and its surroundings having visited the site in March 2021 and driven along the local roads as well as gathering evidence such as photographs and measurements of the carriageway.

Grounds for objection

The original grounds for objection, outlined in my Technical Note dated 6th August 2021, remain valid and have not been addressed in the applicant's suite of further information. Having reviewed the additional information submitted by the applicant, I believe the grounds for objection remain as the following:

- The traffic generation information provided by the applicant is not realistic and significantly under-estimates the daily traffic flows
- The environmental impact upon amenity of road users along Loxwood Road has not been assessed
- The proposed site access arrangements are not 'safe and suitable' for the intended purpose
- Loxwood Road is not suitable to accommodate a significant increase in HGV traffic

The additional submitted information reveals further inaccuracies in the highway consultant's appraisal of the proposal, which cover traffic generation and site access arrangements, which are both dealt with below and are in addition to the previous objection as none of those issues have been addressed by the applicant.

Traffic generation

My previous technical note clearly demonstrated that the applicant significantly under-estimated the number of heavy goods vehicles (HGVs) travelling to and from the site, partly due to the recycling rate that the site will be expected to achieve given the incoming waste will not be pre-sorted. Within the applicant's response to community comments, it admits that the recycling and recovery rate will be in excess of 80%. Nationally, this figure is consistently in excess of 90%.



It remains reasonable to expect that a large proportion of construction and demolition waste is recycled without being suitable for placement in the void and my previous conservative assumption of 75% being exported off-site (comprised of recycled and/or unsuitable material for infill) is considered appropriate. On this basis, if only 25% of incoming waste will be used to fill the void then you would immediately need twice the number of incoming HGVs compared to recycling only 50% of waste.

The applicant attempts to address the increased recycling rate by claiming that outgoing empty vehicles will be used to transport recycled materials. This would only be true if the vehicles transporting waste to the site would be operated or contracted by the same company who operates the waste sorting on site. The majority of vehicles are likely to be local skip and grab lorry companies who would not be involved in transporting outgoing bulk waste. Furthermore, recycled materials would typically be transported using bulk containers. Therefore, this would lead to a 60% increase in outgoing HGVs to accommodate the increased recycling rate.

The applicant has continued to mis-lead WSCC in terms of the operation of waste facilities and the vehicles used and, despite clarifying that 80% of the incoming waste would be recovered or recycled, they claim that vehicle numbers would remain unchanged. As a reminder, my conservative assumption of 75% of waste being processed and exported off-site as not suitable for infilling, is summarised in the table below.

Vehicles			Traffic Movements (one-way)		
			Clay	Incoming waste	Outgoing waste
Vehicle type	Proportion	Payload (tonnes)	12,500 tonnes	50,000 tonnes	37,500 tonnes (75% of incoming)
Clay extraction					
Tipper truck	100%	18.0	694	-	-
Waste processing					
Grab lorry	27%	11.5	-	1,174	-
Skip lorry	73%	3.0	-	12,167	-
Container truck (consolidated)	100%	20.0	-	-	1,875
Total	-	-	694	13,341	1,875

The above table indicates that a total of 15,910 deliveries or collections of clay and waste will be required every year. This equates to 318 per week and 64 per day, assuming a 52 week operation and 5 days a week. This will lead to a two-way movement of 128 per day, compared to the applicant's claim of 42 per day (a 200% increase). This equates to, on average, around six vehicles will enter and six vehicles will depart the site every hour for ten hours a day. Fluctuations within a typical day are likely to result in 10 vehicles an hour in each direction at peak times.

This volume of traffic will result in a high frequency of HGVs meeting in opposite directions along Loxwood Road, at the site access and along site access tracks within the woodland. No details of how traffic will be managed has been submitted, despite a clear need to manage two-way traffic in each of these locations.

Site access arrangement

The applicant has proposed further changes to the site access arrangements to ensure that an exiting vehicle would not overrun the westbound lane and that two-way movement can occur at the site access. The applicant's highway consultant also provided a response to WSCC comments, addressing revised visibility splays, the Safety Audit and HGV Tracking.

In relation to visibility splays, the applicant is now attempting to address the significant shortfall in visibility by relying on 'absolute minimum' values. These are clearly lower than 'desirable minimum' values and would be expected to be used in limited circumstances. Given the significant increase in traffic flows along Loxwood Road (14% of all traffic, 750% of HGVs) using absolute minimum values, where a high proportion of those vehicles will be HGVs that decelerate slower than cars, is considered to be inappropriate and would compromise highway safety in this location.

Furthermore, the drawing enclosed at Appendix 1, which was also included in the previous objection, highlights that forward visibility to a vehicle waiting to turn right is only 74 metres. This remains significantly below the applicant's own revised absolute minimum visibility requirement of 89 metres. Therefore, the proposals will lead to an increased risk of shunt incidents at the site access with the vast majority of these likely to be a car colliding into the rear of an HGV, which will lead to a higher severity of casualties.

The applicant incorrectly suggests that forward visibility is now not critical as exiting vehicles do not cross the path of westbound vehicles. However, this misses the point of forward visibility in the majority of circumstances where it relates to vehicles waiting to turn right in the same direction as approaching vehicles. Missing such an important point, even when highlighted in my previous objection, leads me to question the validity of the highway consultant's submissions.

Another notable omission is the submission of the Road Safety Audit Designer's Response (appendix 2 of the consultant's response is missing, though apparently submitted separately in Word format). Given that no such submission has been made where it is available for public viewing, nor has the audit responses been agreed with WSCC, it would be premature for the applicant to agree that all highway matters have been agreed and that no safety concerns remain.

Summary and conclusions

I have reviewed the details of the proposed development and additional supporting documentation and have found that, despite changes to the applicant's assumptions around recycling rates, they have inconceivably chosen not to update the traffic flows and therefore the traffic generation calculations continue to significantly under-estimate the potential traffic movements. By their own admission of recycling rates, revised calculations now show a 275% increase in HGV traffic compared to their estimates.

There are a number of aspects of the proposals, many of which are worsened by the predicted higher traffic volumes, that would lead to a **severe** impact in reference to the National Planning Policy Framework (NPPF). These comprise the following, none of which have been addressed in the applicant's additional submission:

- The increase in HGV traffic volumes would have a **severe** environmental impact on existing road users along Loxwood Road.
- The junction and forward visibility at the site access is significantly below the desirable minimum stopping sight distance and is considered to be a **severe** highway safety issue, particularly given

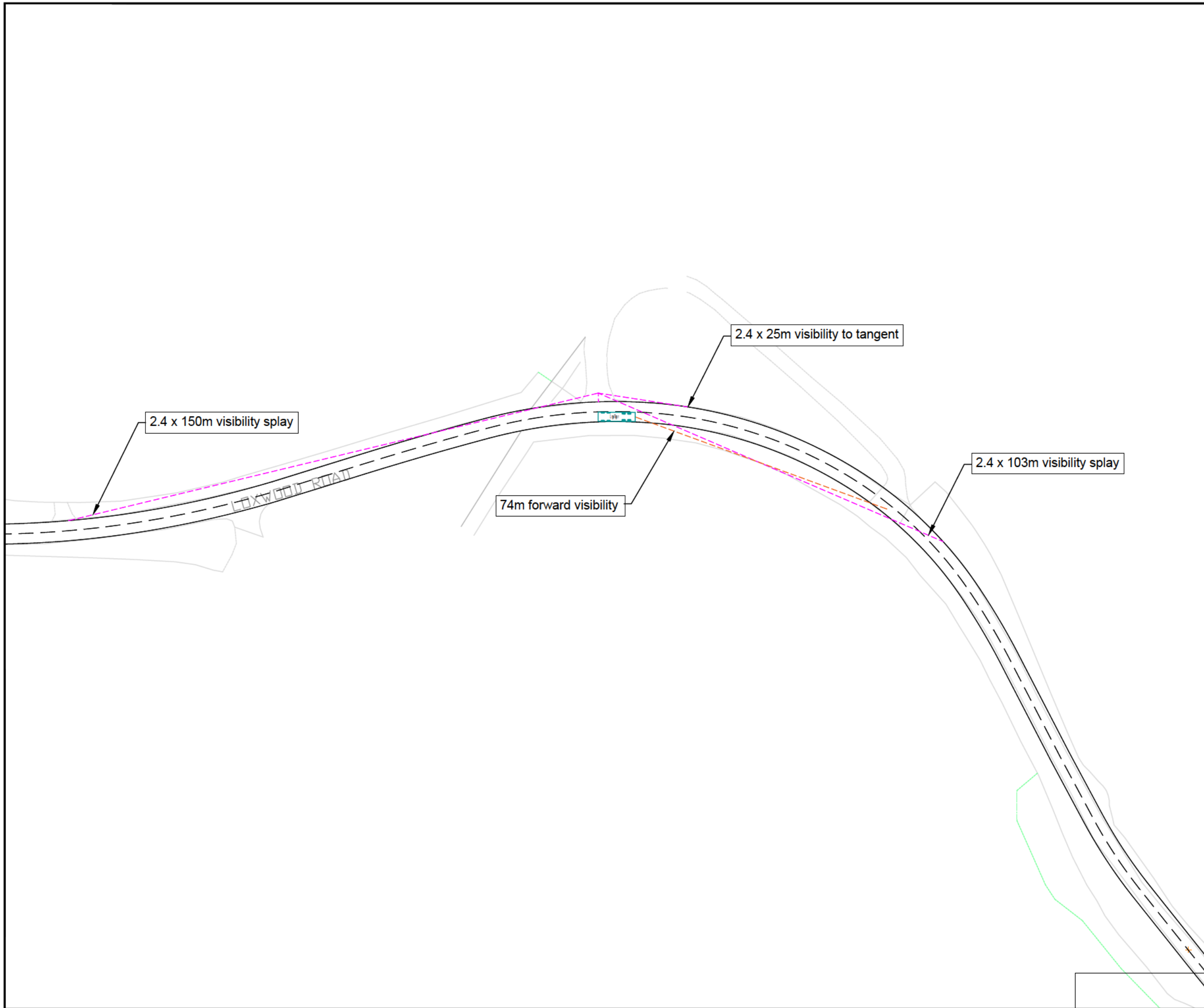
the intensification in use of the access and that slower moving HGVs will be entering and exiting the access.

- Given the calculated 85th percentile vehicle speed of approximately 45 mph in each direction and restricted carriageway width, it is not considered safe for frequent two-way HGV movements along Loxwood Road, resulting in a potential **severe** impact on highway safety.
- An increase in HGVs turning out of the Loxwood Road / A281 junction, averaging at 64 per day, would result in a **severe** highway safety issue.

On the basis of the above, it is recommended that the planning application is refused on the grounds of the traffic impacts, particularly HGVs, on other road users and highway safety. It is also recommended that the severity of these impacts and the shortcomings of the proposals are highlighted to the applicant to indicate that these are not easily addressed by management plans or minor modifications to the highway layout.

APPENDIX 1

SITE ACCESS ARRANGEMENTS



2.4 x 150m visibility splay

2.4 x 25m visibility to tangent

2.4 x 103m visibility splay

74m forward visibility

LOXWOOD RTN

Rev.	Date	Amendment	Drawn	Chkd.	Appd.



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Client

Project Title
**Loxwood Clay Pits
West Sussex**

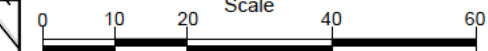
Drawing Title
Visibility splays

Drawn	Date	Checked	Date	Approved	Date
MQ	10.05.2021	IW	10.05.2021		

Scale	Orig Size	Dimensions
1:1000	A3	METRES

Project No. 663204 Drawing File

Drawing No. 663204-10-01 Rev. -





APPENDIX 2



STOP THE CLAY PIT COMMUNITY ACTION GROUP

STATEMENT OF OBJECTION FOLLOWING ADDITIONAL INFORMATION SUBMISSIONS BY THE APPLICANT

Stop the Clay Pit strongly objects to the application by Loxwood Clay Pits Ltd (LCP).

As set out in the Group's objection submitted in August 2021 there are many reasons for rejecting the application. The additional information provided by LCP, leading to the re-opening of the objections window of time, does not address the fundamental policy concerns. Much of the new information is irrelevant.

In summary, the application seems to be seeking an excuse to dig a series of pits in an unspoiled woodland location, in order to use the quarry so created to justify a landfill operation that benefits from a tax advantage of avoiding landfill tax. The application fails to conform with policy at the national and local levels. In particular:

- As established in the WSCC monitoring report, there is no need, in Sussex, for any additional supply of clay for brickmaking, as the county already has over 25 years' supply. The proposed operation would produce only a very small quantity of clay for a market that the applicant does not prove exists. The references made by the applicant to setting up their own artisan brickworks are vague and the applicant provides no new information to address the many objections concerning extant policies. These are more fully set out in our consultants' report to which this statement is an appendix.
- The same report demonstrates that there is enough construction and demolition waste recycling capacity in Sussex to deal with current and expected future demand. The applicant does not provide any factual information to address the many objections raised previously.
- The transportation consequences of the proposal are totally unacceptable. As set out in the report by consultants RSK, it is highly likely that many more than the stated HGV movements would be required to achieve the recovery levels indicated. The applicant glosses over the fact that the HGV bringing material to the site would be unsuitable for transporting recycled and waste material away from the site – with the result being increased HGV activity.
- Notwithstanding the proposed re-shaping of the lay-by entrance to the site, the applicant overlooks the fact that there would be less than the minimum required forward visibility between a vehicle travelling west along the Loxwood Road and the back of an HGV waiting to turn right into the site entrance. The resulting risk of accidents is unacceptable.
- The HGV travelling along the access track will create huge danger for human and animal users of a number of footpaths and bridleways.



- The New Highway Code, effective from 29 January 2022, provides increased protection for non-vehicle users of roads (which term generally includes footpaths and bridleways) which the applicant ignores. The applicant refers to barriers automatically triggered by approaching HGV, which, by definition, would take no account of any other users close by, and which would be operated by an unspecified source of power. These barriers will create significant levels of danger.
- The applicant no longer wishes to close footpath 792_1 for 33 years, which is to be welcomed – but completely ignores how footpath users would be protected from the operational site, with its 15,000 sq. ft. building, and from the dangers caused by deep clay pits and industrial extraction vehicles. This would create significant negative visual impact on the area as well as light pollution where there is currently none, very close to the footpath.
- The applicant focuses on the economic benefits of the proposed operation. If these are at all relevant, they should be supported by a robust and detailed business plan that sets out how they can realistically be achieved. The applicant provides no such information.
- The water supply to this area of Sussex is currently stretched to breaking point, as identified by Southern Water and this is of concern to Natural England and its important wildlife site on the River Arun. The applicant does not provide any evidence that the proposed operation will be water-neutral and does not supply figures setting out the amount of water which would be needed for staff including drinking, washing and toilets nor that required for the wheel washing.
- The ecological and environmental consequences of an approved operation will be enormous and devastating – with a huge number of trees and animal habitats destroyed over the course of 33 years. The initial application documents confirmed that a net loss of biodiversity is expected by the applicant – however, nothing in the new submission information addresses this issue. As set out in our own objection and that from the Parishes Wildlife Group, The Habitat Regulations Assessment submitted by the applicant is inadequate, failing to address the issues it should be tackling.

1,500 people objected to this application, with, we understand, the vast majority living in locations that will be impacted by the proposed operation.

Stop The Clay Pit urges West Sussex County Council planning committee to reject the application.



APPENDIX 3



Independent Review of the Habitats Regulations Assessment for Loxwood Clay Pits Planning Application, at Pallinghurst Woods, Loxwood



February 2022
Gillian Branson



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1. Introduction

Loxwood Clay Pits Limited has been established to pursue the opportunity to create and operate a clay pit extraction business and construction materials recycling facility within the Pallinghurst Woods for a period of approximately 35 years, to include the decommissioning and reinstatement of the site. Protreat Limited are acting as their agent and have submitted a planning application (WSCC/030/21) to West Sussex County Council to remove clay from Pallinghurst Woods, Loxwood and to operate the materials recycling facility.

However, there is notable opposition to the scheme due to concerns over access routes, lorry movements, public amenity of the site and the potential effects on water and nature from the scheme. Objections have been raised and a collaborative group of objectors to the scheme, known as the Stop the Clay Pits group, has been formed to focus and gather information to support and investigate their objections and options. Upon inspection, it was felt by the Stop the Clay Pits group that they could benefit from an independent review of the supporting environmental assessments and Habitats Regulations Assessment (HRA) to better understand if it is suitable and sufficient as it stands and to enable a confident and informed response by residents to the planning application consultation.

2. Considerations and scope of review

This section (2.1) describes the scope of the review of the planning application by Loxwood Clay Pits Ltd and outlines the experience of the reviewer. The environmental assessments and HRA components will be referred to within this review as either 'the HRA' or the 'environmental assessment' and both refer to whole environmental considerations of the planning application and underlying development, but are considered separately due to specific legal requirements for each assessment type. The following section (2.2) then addresses the legal requirement for HRA, how that relates to the planning application as put forward and the legal process that underpins the assessment.

2.1. Independent review

This review is specific to the assessment and scientific case-making presented within the planning application for the Loxwood Clay Pits in Pallinghurst Woods and its accompanying documentation. It aims to review the suitability and effectiveness of assessments, judgements and evidence with reasoning and support.

The following main documents have been considered as part of the environmental assessments and HRA within this review:

- The Environmental Statement (June 2021, referenced as UEEC, 2021b);
- The report to inform a Habitats Regulations Assessment (December 2021, referenced as UEEC, 2021c)
- All planning application documents and submission by Protreat Ltd found on the Planning Portal using reference WSCC/030/21, last checked on 31st January 2022;
- All relevant statutory responses for application WSCC/030/21, last checked on 31st



January 2022; and

- The latest information on HRA features.

The review is independent and does not seek to provide information required by those investing in the review. As a professional and chartered environmentalist (C.Env) this review remains professional and specific and is offered with recommendations for potential routes for improvement or resolution where deemed helpful.

The reviewer, Gillian Branson, is an independent chartered environmental consultant (BSc (Hons), MSc, M.IFM, C.Env) with 24 years experience in environmental investigation and impact assessment across the UK and Ireland¹. Through 17 years of this period she has been key to delivering a range of HRAs from the review of consents process for abstraction licences within Environment Agency Wales, to leading the HRA in support of an application for the Development Consent Order of a nationally significant infrastructure project, and as Government advisor for the impacts of an offshore wind farm on species protected under the Habitats Regulations. She has delivered and managed a team to undertake many HRAs protecting river systems, terrestrial, coastal and marine habitats threatened by a variety of development types and has made scientific case-making a key skill, including experience as an expert witness.

2.2. Habitats Regulations Assessment

2.2.1. Legal requirement

The requirement for an HRA is laid down within the 'Habitats' Regulations 2017 as amended² which enacts the European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora also known as the 'Habitats' Directive. The regulations also enact the Birds Directive 2009/147/EC. The Habitats Regulations combine these two Directives to establish the Natura 2000 network of protected sites for internationally rare and important habitats and species.

Following the UK leaving the European Union through Brexit, the responsibility and duties of the Habitats Regulations have been recently re-enacted in UK law through the 'Exit Regulations'³. These Exit Regulations allow the transfer of responsibilities to bodies wholly within the UK and as such permit the continuation of the Habitats Regulations 2017, as amended, to continue within the UK.

¹ 9 years within Environment Agency, 14 years in a large international engineering consultancy from senior ecologist to technical director, 2 years in a local councils partnership team as environmental project engineer, before becoming an independent consultant with additional experience as a trustee, manager of the Arun and Rother Rivers Trust, Executive member of the Sussex Nature Partnership and previous Chair of the Arun and Western Streams Catchment Partnership, with additional training and experience in 'nature-based solutions for water and land management' and 'river condition assessment' for Biodiversity Metric 2.0 to analyse biodiversity net gain.

² Conservation of Habitats and Species Regulations (2017) (as amended) (Part 6 - Assessment of Plans and Projects)

³ The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.



Part 6 of the Habitats Regulations defines the process and requirements for the assessment of plans and projects that require assessment under these regulations. The following extract presents the key provisions.

“63. -(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which -
(a) is likely to have a significant effect on a European site ... (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives.
(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.
(5) In light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site ...”⁴

from Part 6, Chapter 1, regulation 63 of Conservation of Habitats and Species Regulations (2017) (as amended).

2.2.2. HRA procedure

The systematic assessment within the HRA process is outlined below. This is drawn from the legislation itself (Habitats Directive, 1992; Habitats Regulations, 2017 as amended) and official guidance (including European Commission, 2000).

Stage 1 - Screening

To determine if there is likely to be a significant effect on a national network site from a plan or project (alone or in combination with other plans or projects).

- If it can be shown that there are no likely significant effects, then once this determination is received from the competent authority, the plan or project may progress.
- If such significant effects cannot be ruled out, the plan or project cannot continue without first undergoing an appropriate assessment.

Stage 2 - Appropriate assessment.

To determine whether or not there are adverse impacts on integrity of the national network site arising from the plan or project (alone or in combination with other plans or projects).

- If it can be shown that no adverse impacts will arise from the plan or project, then once this determination is received from the competent authority, the plan or project may progress.
- If such adverse impacts cannot be ruled out, the plan or project cannot continue in its current form.

⁴ from Part 6, Chapter 1, regulation 63 of Conservation of Habitats and Species Regulations (2017) (as amended) The original enactment of these Regulations was in 2010.

Stage 3 - Assessment of alternative solutions

Where the appropriate assessment shows adverse impacts remain, even following the implementation of guaranteed mitigation measures, the plan or project must seek to find alternative solutions for delivery, such as a different location to avoid adverse impacts, or amending the scale or method of plan or project delivery to avoid adverse impacts.

Stage 4a - Imperative Reasons of Overriding Public Interest (IROPI)

In cases where adverse impacts remain from the appropriate assessment stage, despite the implementation of guaranteed mitigation, and no alternative solutions exist, the main derogation process for Part 6 is IROPI. This is a stage in which the competent authority may approve the plan or project even with adverse impacts by establishing whether the plan or project is necessary for overarching social or economic reasons. Such reasons are listed in the Directive and might include human health, public safety or primarily environmental benefit. The Secretary of State would be the ultimate decision maker in this scenario. The IROPI stage is incomplete without Stage 4b.

Stage 4b - Compensation measures

In order for the competent authority and Secretary of State to authorise a plan or project under the IROPI process, the plan or project must include guaranteed compensatory measures to ensure that the overall coherence of the national site network is protected (regulation 68).

3. Review comments

The review herein focusses on the functionally-linked land and bat features of The Mens SAC. The issue of water neutrality in relation to this proposed development is not addressed specifically in this version as CDC will be taking the issue into account after advice from Natural England, although further review comments may be forthcoming.

3.1. Bats and proximity to The Mens SAC

3.1.1. Bats at the proposed Site

Barbastelle bat were recorded on site by the Urban Edge Environmental Consulting (UEEC, 2021a) survey report provided by Protreat Ltd on behalf of Loxwood Clay Pits Ltd. This monitoring has shown that barbastelle bat are using the Pallinghurst woods and 38 mature trees were identified to offer suitable roost features. Remote monitoring carried out from April to October 2020 (UEEC, 2021a) identified barbastelle bat presence mostly recorded in April to September. This included the proposed excavation site and the access route, which demonstrates a clear value attached by bats to these areas, most likely due to the foraging habitat provided by the woodland edges created by the current design of these two areas. Alongside the other 8 or more bat species observed, this suggests the proportion of older trees and insect life within the Pallinghurst woods are suitable for a diverse assemblage of bats, some of which are rare and vulnerable.

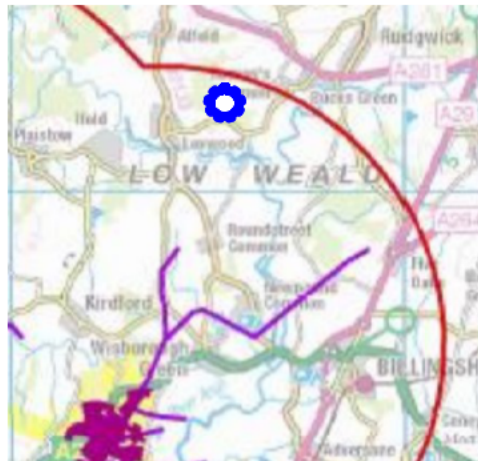


It is however unclear why the surveys were only carried out on the narrow strip of land along the access route and within the rectangular patch of land allocated to the excavation site itself. Whilst challenges that may have been associated with access to land not under the same ownership are recognised, there is a large area of woodland and boundary woodland/field edges to the south and west that were not included at all. The information provided is therefore hard to use to interpret the ecology of bats using and entering the woodland and from where they come and go. Data collected claims whether the bat was commuting or foraging, but not whether it was commuting into the woodland or along the rides. A substantial evidence base was excluded through this omission and would have helped address some of the later discussion points found in this review and raised in section 3.1.3 below.

3.1.2. The Mens SAC

The Mens SAC is a stronghold for the rare barbastelle bat, particularly as it offers good sized maternity roosts. Functionally-linked habitats are vital to maintain a healthy population, these include flightlines and foraging habitats, plus opportunities for the population to expand and remain resilient. Natural England & SDNPA (2018) established key assessment protocol in which a zone of 12km from a designated site should be assessed for impact on the foraging and commuting routes of bats. A closer zone, deemed *critical* for sustaining their bat populations, is the area up to 6.5km away in which all impacts *must* be considered.

Figure 1: Extract from bat flightline map (Natural England & SDNPA, 2018).



The Mens SAC boundary is however 6km away from the proposed site in Pallinghurst woods. Given records supplied to support the planning application show use of both the excavation site and the access route, it is likely that the bats at Pallinghurst woods are also using, or have come from, roosts at the Mens SAC.

This likely connection is also supported by flightline tracking carried out by Greenaway in 2008 (Figure 1, left) which shows a purple flightline heading north from Wisborough Green along the remaining hedge and tree lines and bending towards Bucks Green and the Arun valley (to the east of the proposed

site). The Pallinghurst woods are shown as a blue cog.

3.1.3. Review of the assessment of bats in the HRA and Environmental Statement

Whilst the Environmental Statement (UEEC, 2021b) considers the interruption of foraging and commuting bats an 'important ecological feature' it then dismisses the ecological link and relevance to the designated site. The Environmental Statement claims that the Ebernoe Common SAC and The Mens SAC (both designated for bats)



are “evaluated as not being of importance in the context of this assessment, meaning either than they are not considered of conservation importance or they do not have the potential to be affected by the proposed development” and are subsequently “scoped out of the assessment”.

The creation of a ‘report to inform a Habitats Regulations Assessment’ was stimulated by advice from Natural England and echoed by the Parishes Wildlife Group and Chichester District Council that the potential impacts from the proposed development on the bat features of nearby designated sites needed to be examined with evidence and in more specific detail than was presented in the Environmental Statement (UEEC, 2021b). However, the report to inform Habitats Regulations Assessment produced in December 2021 (UEEC, 2021c) approaches such justification with exactly the same points and evidence as used in the Environmental Statement some 6 months earlier, all of which remain misleading or incorrect, and these are listed and addressed below in points 1 to 6.

1. HRA para 5.2.6 “According to Natural England (2019), the barbastelle’s foraging range extends up to 5km from the roost...”

This extracted statement fails to continue the sentence that was carefully provided within Table 2 (page 15) of the Natural England (2019) report which continues ... “though some individuals in less favourable habitat may forage further to reach suitable feeding grounds (Greenaway, 2001)”. The Greenaway report (2001⁵) on which the statement was based was one of the earliest reports to point out the importance of functionally-linked habitat for the sustenance of bats from a designated roost site and used the minimal information available at the time. The same table in the Natural England (2019) report states that “Barbastelle bats can forage 10-15 kilometres from the roosting sites” which uses the more recent 2015 and updated 2018 Sussex Bat Protocol (Natural England & SDNPA, 2018) which in turn uses more contemporary tracking and survey data to determine more realistic understanding of barbastelle bat foraging and commuting in the area around both SACs. A general statement is also provided within the Natural England (2019) report to clarify the importance of the local area for bats which states “The land within the West Weald which encompasses Ebernoe Common SAC, The Mens SAC and Singleton & Cocking Tunnels SAC should be regarded as a single landscape utilised by bats from all three SACs”.

Focus on the 5km distance within both the HRA and Environmental Statement is therefore misleading and cannot be upheld as justification for excluding the designated sites from further assessment, especially given the following associated comments.

2. HRA para 5.2.6 states “and when foraging they prefer wet meadow and riparian habitats which are not present on site”.

In correcting the distance at which the proposed Site lies from the Mens SAC, the report to inform HRA has tagged on another qualifying statement of “and when foraging they prefer wet meadow and riparian habitats which are not present on site”, which refers only to the majority of female breeding barbastelle bats requiring high concentration of

⁵ GREENAWAY, F. 2001. The Barbastelle in Britain. British Wildlife, 12, p327-334.



high energy prey items provided by wetland and river valley environments, but does not account for all sub-optimal foraging needs required in resource partitioning for the wider population currently not in breeding status. The addition of this secondary statement misconstrues the evidence-based statement made by Natural England (2019) and should be correctly interpreted here. For instance, the actual sentence stating the benefits of wet meadow and riparian habitat has been misrepresented and was actually stated in full as “Barbastelle bats can forage 10-15 kilometres from the roosting sites and they prefer wet meadows and riparian habitats”, rather than the stated 5km used within the report to inform HRA for this proposed development.

Elsewhere in the same table of supporting habitat descriptions (Natural England, 2019), under the attribute ‘Supporting habitat: structure/function: Flightlines from roost into surrounding habitat and foraging areas’ there is a clear statement that other habitats are required, such as “*Generally forages within woodland canopy and margins, though will feed in more open areas i.e. orchards, suburban parks. Commutes along linear landscape features such as woodland edge, hedgerows etc, though will cross extensive open areas (i.e. arable fields) to reach foraging grounds and may feed to a certain extent within these more open areas*” and “*Unbroken dense strips of mature woodland with a shaded central track or ride (along which bats can fly) provide ideal flightlines*” and “*Typical flightlines used by these species include linear hedgerows, waterways, blocks of scrub, wooded rides and tracks*”.

Surveys for bats were only restricted to the access track and particular excavation site and did not explore use of the woodland around it and through the proposed Site to use the habitat surrounding and within it. This suggests the ecology of bat foraging and commuting behaviour was not fully explored. Figure 2a below shows a clip extracted from the UEEC survey report (UEEC, 2021a) showing the spatial presentation of bat surveys being specifically within only the excavation and access site areas. Figure 2b shows the same area but for surveys for nightingale which would have included access and survey around the woodland, suggesting this was indeed possible.

One wonders why the surveys do not consider the use of the woodland as a whole as important information to gather when investigating evidence of the use of the ‘site’ or ‘woodland’ by bats, into which the proposed development would sit. There is no information provided on direction of bat flight, especially useful in relation to access from the south or east areas with known flightline habitat. The habitat type and the presence of moderate and high suitability trees might suggest greater evidence is available on how linked the site is to bats foraging from the known flightline routes and habitats. The narrow access road strip is a commuting and possibly foraging habitat of its own but given the ‘commuting’ badge attached to many of the bat encounters during surveys, it might be prudent to be able to interpret this information more widely and ecologically with respect to the protection of bat habitat and resilience in the core conservation area. This is relevant to the proposed development as it is not an island that is disconnected from the land around it (see section 3.2 In-combination assessment).



Figure 2a: Bat transects



Figure 2b: Nightingale surveys



Contrary to the statement in the report to inform HRA, the habitat features required by commuting and foraging bats are indeed present across the proposed site and its immediate surroundings and are more relevant to the assessment than has been considered in the HRA or Environmental Statement.

3. *HRA para 5.2.7 states “The access route would partially fall within the CSZ⁶ [of 6km] for barbastelle at the Mens SAC” given the SAC is 5.87km from the proposed Site. But goes on to claim “However, this currently comprises an aggregate surfaced track and is suboptimal foraging habitat for barbastelle...Changes to the access track...are limited to the formation of two passing places within plantation woodland along the access route, are unlikely to result in any significant habitat damage, and will avoid impacts on mature trees or habitat used by invertebrates ... no artificial lighting along the access track” and “accordingly, the main excavation site would be a more appropriate boundary to consider for effects on FLL, and this **lies 6.53km from The Mens SAC**”. It then goes on in para 5.2.8 to state “The draft Sussex Bat SAC Planning Protocol .. states that the key conservation area for the qualifying species is **6.5km (which falls short of the excavation site)**...”*

The Protocol does indeed clarify the critical 6.5km core conservation area around an SAC, but the assertion here that the proposed Site is not within 6.5km is incorrect and is fundamental to how the assessment should progress. Measurement on Google Maps, Google Earth and Magic Map all confirm the proposed Site is near to, but within, that 6.5km boundary zone and it can also be seen in the Bat Protocol document in Map 2: Consultation Zones as the inner orange/yellow zone. Given the importance of foraging and commuting functionally-linked habitat around the SAC and given the proposed Site lies between 5.87km (at its closest as specified by the HRA itself) and 6.5km (at its furthest) away from the SAC boundary, it would be professional and appropriate to include the designated sites within the assessment, rather than trying to exclude part of

⁶ Core Sustainance Zone



the site for assessment even though it is within the site boundary and should be considered as a single application.

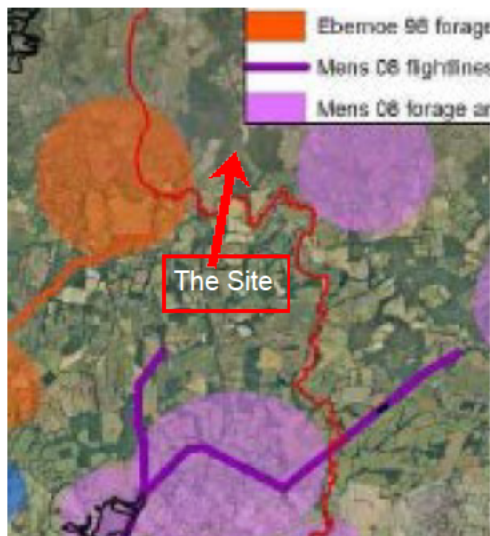
The use of this distance as justification to avoid further assessment on the proposed Site as a whole cannot be substantiated.

4. *HRA Para 5.2.8 “Greenaway (2008) shows that the MCP for barbastelles from The Mens are falling just short of Bucks Green (east of the Site) but mainly following the Arun valley to the south, while the MCP for Ebernoe Common does not extend further north-east than Plaistow (west of the Site) These data suggest the Site is not within the core migratory range of barbastelles forming part of the SAC populations”.*

This statement refers to the supplementary guidance document for the management of The Mens SAC produced by Natural England (2019). An extract from the map of surveyed flightlines and foraging areas in relation to the Ebernoe Common SAC and The Mens SAC is presented below to aid in the explanation of why this justification approach is also inappropriate.

The use of these flightline and foraging area maps as justification for bats from the SAC not using the Pallinghurst woods within their core area fails to understand that the woods were simply not part of the particular bats radio-tracked in the survey presented in the maps. Absence of positive does not mean a negative if they are not surveyed at all.

Figure 3: Extract of flightline and foraging map in the West Weald (Annex 1, Natural England, 2019)



Greenaway (2008) stated that 18 bats were tracked to provide this data from the whole of the Mens SAC (18 females and one juvenile, with one tag failing early) and just a few of those were from the northern extent of the Mens, closest to the proposed Site. The map is not therefore meant to be an accurate reflection of all bat foraging and flightline areas, but a partial representation of the distance and type of habitats reached by a small subset of commuting and foraging bats known to arise from the Mens SAC roosts that were successfully tagged and tracked. The tracked bat data from the Ebernoe Common SAC show this well as in the 1998 survey (shown in orange in Figure 3) there is a flightline and foraging area near and to the west of the

Pallinghurst woods but when the survey was repeated in 2008 the tagged bat was different and did not come to the same area. The radio tracking study shown in Figure 3 also tracked just female bats from The Mens colony, but it is known that resource partitioning is prevalent between males and females as described by Greenaway



(2004): “A few males may be found within the area of prime habitat used by a maternity colony, but the majority of males are spread far and wide in sub-optimal habitats. There is no discernible sex difference in the echolocation calls of barbastelles. This means that bat detector records of barbastelle calls may represent males who may be several tens of kilometres away from the nearest nursery colony”. There is simply not sufficient information from just that survey of a few female bats to determine conclusively either way if the Pallinghurst woods plays an important part in the foraging and commuting routes important to the SAC, but it is very clear that neighbouring habitats do and that all suitable foraging habitats in the core conservation area should be assessed.

It is therefore unlikely that the assertion in the HRA of “These data suggest the Site is not within the core migratory range of barbastelles forming part of the SAC populations” can be upheld using the presented information.

5. HRA para 5.2.8 states “The EIA scoping opinion for the proposed development confirmed that ‘the Site is not within or near any known flightlines for bats from Ebernoe Common SAC or The Mens SAC’ ”.

To clarify, the WSCC Scoping opinion was provided based on information available to WSCC in January 2020 upon request from Protreat Ltd and reported by WSCC in April 2020. The reference is from para 4.21 of the scoping opinion.

“As noted in the response from Chichester District Council (CDC), their records indicate the site has suitable habitats for bats and dormice, and it is within 200m of ponds, potentially providing habitat for Great Crested Newts. They also confirm that the site is not within or near any known flightlines for bats from Ebernoe Common SAC or the Mens SAC”.

The statement itself is correct, the woods are not shown in any existing or ‘known’ flightline plots, but as discussed in the sections above, this does not make a statement about the importance or prevalence of flightlines in the woods at the proposed Site, it simply states that none of the few, actually-tracked, bats travelled into the wood to forage during the survey period.

CDC updated their response in September 2021 in direct response to an official consultation invitation from WSCC in July 2021.

“With regard to ecological issues, it is a matter of concern that the proposals will result in the loss of a significant area of woodland, and that there will also be impacts in respect of invertebrates and bats. With regard to bats it is recommended that the need for HRAs in respect of the designated species of interest at The Mens and Ebernoe Common SACs is considered”.

6. HRA para 5.2.9 states “As such, there is no evidence of the qualifying populations of bats within The Mens SAC or Ebernoe Common SAC utilising the application site, and its use as FLL to the designated sites can be ruled out”.

The burden within the HRA process is to show with evidence that the population of bats from the Mens SAC are *not* using it, that there is *no* link or pathway by which the qualifying features and SAC could be impacted by a scheme. The extracted statement



from the HRA seems to claim lack of evidence as a reason why they do not consider the site as functionally-linked land. Without evidence, there remains a risk of impact (as a development emitting noise, removing trees, increasing vehicle movements, potential for water contamination, affecting an area known to be used by bats from within the sites core conservation area) the likelihood of impact therefore remains.

Although designated sites have distinct boundaries, they sit within a diverse and interconnected complex or mosaic of habitats and species that underpin the health and integrity of a designated site. Functionally-linked habitats play an important role in the required maintenance and restoration of favourable conservation status and effects on functionally-linked land must be considered fully in a Habitats Regulation Assessment (Chapman & Tyldesley, 2016). Many different bats will use the same flightline initially and will peel off to different foraging areas along the way making a flightline habitat critical to many bats feeding in a range of areas, not just those travelling a long distance (Greenaway, 2004). Choice of flightline exit point will depend on a number of factors including the season, weather, remaining length of night and the metabolic state of each individual (Greenaway, 2004). Future opportunities need to be maintained and targeted to provide alternative tree roosts when current ones become unsuitable as the population should be allowed to move into new woodland areas to maintain population integrity (Greenaway, 2008).

The burden within an HRA is to demonstrate with evidence that there is *no* functional linkage, but it is near impossible to claim that there is no functional linkage likely to exist between the habitat in the woods and the designated sites when all the provided information is considered together:

- The proposed Site is *within* the core conservation area in which all impacts *must* be considered;
- The woods are sandwiched between two surveyed foraging areas of certain tagged individual female bats and are only 1.5km from the Arun valley where prime foraging habitat is available;
- Contemporary surveys recorded use across the whole of the proposed Site and encircling woods by barbastelle bats for commuting/foraging
- The presence of mature trees with a range of low to high suitability for roosts;
- The presence of features in a number of trees that are likely to support individual or small groups of bats over the winter months;
- The known but unstudied use of sub-optimal habitat by male barbastelle and non-breeding females; and
- the Natural England statement that all areas around these SACs are interlinked and that flightlines can vary temporally.

It is therefore inappropriate to evaluate the designated sites as “not being of importance in the context of this assessment” or that they are either “*not considered of conservation importance or they do not have the potential to be affected by the proposed development*” and are subsequently “*scoped out of the assessment*” in the EIA.

There is insufficient evidence provided or discussed to make the statement that “use [of



the proposed Site] as *FLL to the designated sites can be ruled out*".

3.2. In-combination effects and assessment

There is no mention in the HRA of any exploration into cumulative or in-combination effects. Despite there being a chapter entitled '2.5 In-combination effects' there is only a paragraph extolling why in-combination assessment would be relevant to the designated sites and to this HRA, but then simply states "*There are no other known projects, planned or ongoing, in the area surrounding the Proposed Development site which could lead to collectively significant impacts on the European sites within the scope of assessment in combination with the Proposed Development*".

No evidence is provided to support research into this statement or that any projects or plans are relevant in the area at all. The initial plan to consider examining might be the woodland management plan for the very wood in which the development site is placed; Pallinghurst and neighbouring woods. Usually, there is great visible consideration of local plans and policies, local development projects and schemes, that would together be assessed for their potential timing, impact pathways and a reasoned and evidential statement made about those projects and plans in-combination. But this has not been attempted here.

4. Conclusion

This review brings out the following elements which require further examination or amendment.

4.1.1. The report to inform Habitats Regulations Assessment produced in December 2021 approaches what should be rigorous scientific justification with exactly the same points and evidence as used in the Environmental Statement some 6 months earlier, all of which remain misleading or incorrect.

4.1.2. The link between barbastelle bat foraging and commuting routes within the Pallinghurst woods (the proposed Site) and the functionally-linked land supporting the local SACs designated for bats should be reinstated and a more thorough and scientific Habitats Regulations Assessment completed. Whilst there may not be significant impacts upon the Mens SAC identified as a result, there is currently insufficient data to warrant exclusion of this feature from the assessment as it stands.

4.1.3. There is repeated misuse of source data that leads to misrepresentation of the importance and relevance of that data. Rigid use of distances assigned in any scientific documentation is used to avoid assessing the development site as a potentially integrated part of the core conservation area for the Mens SAC (including the statement that a position within the site that is 6.53km from the Mens SAC boundary is therefore 'outside' of the core area defined at 6.5km). Selection and misinterpretation of data to suggest that habitats within, and in close proximity to, the proposed development area are not part of the habitats required for functionally-linked foraging and commuting routes for bats from the Mens SAC. The close proximity of one tracked flightline being used to suggest bats would not peel off the flightline to enter the Pallinghurst woods.



Surveys are an inexact science and must always be interpreted carefully but with ecological and sound scientific skills. Above all, where there is insufficient proof to the contrary, the precautionary approach should prevail. Such skewed focus on data use, within both the HRA and Environmental Statement, is misleading and cannot be upheld as justification for excluding the designated sites from further assessment.

4.1.4. Bat surveys in Pallinghurst wood are not wholly representative of the value of the woodland as a whole for bats as surveys were only carried out within the restrictive red line boundary. Substantial supporting habitat and its use by (barbastelle) bats should have been collected in land outside of the red line boundary as a substantial evidence base was excluded through this omission which would have helped assess how the bats were entering the woodland and help to confirm or deny the link to the Mens SAC commuting population.

4.1.5. There is insufficient scientific and evidence based assessment to suggest the Site is not within the core migratory range of barbastelles forming part of the SAC populations and such a claim cannot be upheld using the presented information and cannot therefore be screened out of the assessment using the assessment presented.

4.1.6. There is no substantiated in-combination assessment made or presented within the report, despite a section claiming there are no in-combination impacts.

5. References

BCT (2016). Core Sustainance Zones: Determining zone size. Bat Conservation Trust, 4th February 2016.

Chapman, C & Tyldesley, D (2016). Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects - a review of authoritative decisions. Natural England Commissioned Report NECR207. February 2016.

European Commission (2000). Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC.

Greenaway, F. (2004) Advice for the management of flightlines and foraging habitats of the barbastelle bat *Barbastella barbastellus*. English Nature Research Report, Number 657

Greenaway, F. (2008) Barbastelle bats in the Sussex West Weald 1997 - 2008

Natural England (2015). The Mens SAC Site Improvement Plan. v1.0, Natural England.

Natural England & SDNPA (2018). Sussex Bat Special Area of Conservation: Planning and Landscape Scale Enhancement Protocol. Natural England and South Downs National Park Authority.



Natural England (2019). European Site Conservation Objectives: Supplementary advice - The Mens Special Area of Conservation (SAC)

Natural England (2019a). European Site Conservation Objectives: Supplementary advice on conserving and restoring site features - Arun Valley Special Protection Area (SPA). Site code UK9020281.

UEEC (2021a). Land North of Loxwood Road, Billingshurst, West Sussex - Results of surveys for flora and fauna. Forming Appendix U to the Environmental Statement (UEEC, 2021b).

UEEC (2021b). Land North of Loxwood Road, Billingshurst, West Sussex - Environmental Statement.

UEEC (2021c). Land North of Loxwood Road, Billingshurst, West Sussex - Report to Inform a Habitats Regulations Assessment.

Legislation and case law

'Habitats' Directive (1992)

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31992L0043>

'Habitats' Regulations (2017)

Conservation of Habitats and Species Regulations (2017) (as amended) .

<https://www.legislation.gov.uk/ukxi/2017/1012/contents/made>

Planning Amendment Regulations (2018)

The Conservation of Habitats and Species and Planning (Various Amendments) (England and Wales) Regulations 2018

<https://www.legislation.gov.uk/ukxi/2018/1307/contents/made>

'Exit' Regulations 2019

The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019

<https://www.legislation.gov.uk/ukdsi/2019/9780111176573>

CJEU (2018). Case C-461/17; *Holohan and others v. An Bord Pleanála*. Court of Justice of the European Union. Judgement of the Court (Second Chamber), 7th November 2018 (<https://curia.europa.eu/juris/document/document.jsf?text=&docid=207428&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=7898121>).



APPENDIX 4

**The Parishes Wildlife Group
Involves the 4 Parishes located in the North East Area of
Chichester District, Kirdford, Loxwood, Plaistow and Ifold,
and, Wisborough Green. The area contains exceptional
wildlife, the Mens SAC, Local Wildlife Sites and Parish
Neighbourhood plans.**



**Response to additional information provided by Protreat
with reference to their application to remove clay from
Pallinghurst Woods, Loxwood. This submission follows that
made by the Parishes Wildlife Group as part of the SCP
residents group objection submitted on August 30th, 2021.**

NATURAL ENGLAND has NO OBJECTION July was replaced on November 11th, 2021

- At the Loxwood Parish Council Planning meeting held on Monday September 6th an application to obtain clay from Pallinghurst Woods was presented in detail and discussed. The PC decided unanimously on policy grounds – national and local – to unanimously object.
- 2. The documents (70 of them amounting to over 2,500 +pages) include a record for Barbastelle Bat found during the survey of the proposed site.
- 3. The Legal position was obtained from the JNCC former legal advisor who stated:

3.1 LEGAL POSITION

Not surprisingly the Barbastelle bat population at the Mens SAC have been shown to forage outside the SAC (Greenway survey, 2008). More up to date survey data would be helpful.

- 3.2. Given the reference to Barbastelle bat found and recorded during survey on the site as well as the close proximity of the Mens (6.5 kms) SAC a HRA must be undertaken.
- 3.3. A survey is required to ensure that the Mens Barbastelle bat population would *not* be affected.
- 3.4. The application must be subject to a HRA and the South Downs National Park/Natural England protocol applicable to SAC sites be followed.
- 3.5. The relevant legal references are The Conservation of Habitats and Species Regulations 2017 (Part 6 Regulation 63 etc.), and the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Remember that the precautionary principle applies that a competent authority must ascertain **no** adverse effect on the integrity of the site.
- 3.6. The Mens SAC is underpinned by SSSI and therefore technically the provisions of section 28 Wildlife Countryside Act 1981, as replaced by Schedule 9 Countryside and Rights of Way Act 2000, must be satisfied.
- 3.7. In the unlikely situation it cannot be ascertained that the population at the site is not affected, then species protection provisions of the Habitats Regulations (Part 3 Regulation 43 etc.,) and section 9 Wildlife and Countryside Act 1981 as amended, need to be satisfied.

This information was submitted as part of the Stop the Claypit objection to the original application and the requirements have still not been met. The original response by the Parishes Wildlife Group is based on scientific evidence and remains as submitted.

1. Addressing the additional points made in Protreat submission concerning ecology/environment which are contained in Section A7:
 - **A.** Response to Natural England, letter 11th November 2021 pages 182 – 184
 - **B.** New Appendix ESX to the Environmental Statement pages 185-212
 - **C.** New Appendix ESY to the Statement pages 215-260
2. One of the key elements missing in their application made by Protreat was a Habitats Regulations Assessment, HRA, points made by both Natural England, a local resident and the Parishes Wildlife Group, the latter objection submitted as part of the submission made by the Stop the Claypit Local residents objection group.
3. The key point of an HRA is to assess any potential damage which might occur as a result of an application within distance of an internationally important site to its habitats and/or to its important wildlife species. The populations of bats supported by the Mens Special Area of Conservation, SAC, are of international importance and thus afforded high levels of protection. Significant legal duties are placed on decision-makers to prevent damage to bat roosts, to feeding areas and to the routes used by bats to travel between these locations.
4. Barbastelle bat species were recorded in the Flora and Fauna report submitted by Protreat. They are European Protected Species requiring a very high level of protection.
5. So what is required is to follow a specified method and to demonstrate points made by evidence. It is no answer to follow the prescribed method and to assert all will be well if the evidence supporting such statements is not forthcoming.
6. Please see submission by independent consultant, Gillian Branson, Natural Water below where the HRA in the new Appendix ESY is shown to be flawed as it does **not** present evidence on which to base its assurances that the Protected Species won't be damaged.
7. Before that is outlined in detail, there are some corrections required.

- a. This *is* a water stressed area – see NRW/NE 2013 document confirming this statement;
- b. The Met Office¹ states: Water stress and drought ☒ Global- and national-scale studies included here project that the vulnerability to water stress with climate change is mainly focussed in the south and south-east of the UK. These regions are projected to experience an increase in the frequency of droughts and **water stress** with climate change.
- c. Southern Water, our local water company states on its website: “*in the South East, water resources are under pressure and the region is classed as an 'area of serious water stress'* by the government.
- d. The section contained within the Report² Appendix !!: *Legislation and Planning Context*, places Pallinghurst Woods in the wrong District. Loxwood Parish is located in Chichester District rather than Horsham and thus the Local Plan and updated plan should be referenced and the right policies outlined regarding the Environment, Ecology and Green Infrastructure. The section does not mention the Duty conferred on the District (NERC 2006) to have regard to biodiversity, and, does not mention the status/legal position of the European Protected Species as updated since leaving the European Union, ie Barbastelle Bat.
- e. Domestic Habs Regs 2019 - the protection of all European Protected Species will continue to apply and are also covered by the NERC act 2006; <https://www.gov.uk/government/publications/changes-to-the-habitats-regulations-2017/changes-to-the-habitats-regulations-2017>
- f. Chichester District Council policies relevant policies on: environment, ecology and green infrastructure are shown in App 2. Clearly the application to remove clay from Pallinghurst Woods does **not** conform with CDC policy.
- g. The caveats and recommendations included in the Protreat report need to be taken into account ie extra survey and the importance and the potential for providing suitable conditions for hibernating bats. These recommendations indicate that insufficient information is available to indicate the flightlines and foraging areas being used. See section 5.4
- h. **Overview:** In the UK, around 41% of species have declined in abundance since 1970 due to environmental pressures like habitat loss. A Biodiversity Emergency was declared in 2019 by the IPBES

8. Habitats Regulations Assessment, HRA

¹ Climate: Observations, projections and impacts, the Met Office

² Land north of Loxwood Road, Billingshurst, West Sussex, Aerial Tree Inspection for Roosting Bats, Dec 2021,

Following the UK leaving the European Union through Brexit, the responsibility and duties of the Habitats Regulations have been recently re-enacted in UK law through the 'Exit Regulations'. These Exit Regulations allow the transfer of responsibilities to bodies wholly within the UK and as such permit the continuation of the Habitats Regulations 2017, as amended, to continue within the UK.

- 8.1** Pallinghurst Woods is situated with 6.5km of the Mens Special Area of Conservation and within range of Ebernoe Common which is also a SAC, and also the Upper Arun Special Protection Area, SPA. These internationally important sites and their protected species bring additional legal protection. Special Areas of Conservation (SAC) are areas which have been given special protection. They provide increased protection to a variety of wild animals, plants and habitats. They require an HRA to be carried out which was missing from the original application.
- 8.2** Aside from the importance of the HRA on an inter/national level Sussex also has a Protocol which it applies, *Sussex Bat Special Area of Conservation Planning and Landscape Scale Enhancement Protocol* co-written by South Downs National , SDNP, and Natural England, NE, and un-dated.

This requires ALL impacts to be assessed up to 12 km from a proposed site. Key sites under consideration include:

8.3 The Mens

The European Protected Species, EPS, of Barbastelle bats *Barbastella barbastellus* - which favour ancient woodland - breed in the Mens because it provides the nesting and feeding habitats they require. Barbastelles commute into the surrounding countryside using the woodland corridors which branch out from the site.

8.4 Ebernoe Common

Contains both EPS species of bats, both Bechstein and Barbastelle which rely on ancient woodland. However, the Bechstein bat feeds exclusively in the woodland rather than commuting.

- 8.5 Site Improvement Plans** were drawn up in 2015 for both sites note that there is a lack of information about bat requirements, movements, foraging and commuting routes. The report recommends further

investigations of bat movements and requirements including their foraging and commuting routes (IPENS, Improvement Programme for England's Natura 2000 Sites) Planning for the Future ie the information required for an HRA does not yet fully exist.

8.6 For the Bat protocol, in Sussex, this requires an analysis *of ALL* impacts to be done within 12km and this has not been done.

8.7 Thus, the company is not in a position to assert that there will be NO impacts on the EPS as claimed in its report. The relevant information does not exist or is insufficient where only some is available and the Precautionary Principle would apply in this event.

8.8 See table 1 below for scientific peer reviewed literature which includes distances which Barbastelle bats have been shown to fly to forage.

Table 1: Comparison of Home Ranges of Barbastelle Bats Derived from Radio-Tracking Studies

Home range distance	Minimum Distance	Average Distance	Maximum Distance	Home range area	Reference
On average, bats travelled 8.4 km +/- 4.9 SD (range 1.1–20.4 km) from roosts to foraging areas.	1.1	8.4	13.3	Females were highly faithful to more or less "private" foraging areas which constituted a small fraction ($X^2 = 10.1\% \pm 8.8\text{ SD}$) of home ranges.	Zeale, M. R. K. 2011. <i>Conservation biology of the barbastelle (Barbastella barbastellus): applications of spatial modelling, ecology and molecular analysis of diet</i> . PhD Thesis. University of Bristol, Bristol, UK.
The foraging areas ranged from 0.75km up to 10.2km away from the roosting site.	0.75		10.2	The bats multi-lateral polygon range (MLP) was over a distance of 9.8km (east/ west and using an area of 31.6km ² . This is a more accurate method compared to the commonly used academic analysis method of multi convex polygon, which would exaggerate the area by 34.2% to 48km ² .	Rush, T. & Billington, G. 2013. <i>Report on a radio tracking study of Barbastelle bats at Hinkley Point C. Witham Friary: Greena Ecological Consultancy.</i>
Bats ranged 3.5km northwest, 4.5km north, 6km northeast, 6km east, 9km southeast and 6 km south			9		Billington, G. 2000. <i>Horner Woods Barbastelle Bat: radio tracking study.</i> The National Trust.

In October and November 2001 Barbastelle bats ranged up to 3km from their roosts compared to at least 9km in summer, there was one in November a radio tagged male bat was briefly recorded moving around 16km west of Horner Wood at Hillsford Bridge, near Lynmouth, Devon			3		Billington, G. 2012. <i>Further research on the Barbastelle Bat Holnicote National Trust Estate, Exmoor, North Somerset</i> . Natural England Research Report. Witham Friary: Greena Ecological Consultancy
Ebemore roosts – 1.17km to 10.46km,mean 5.2km (lactating 5.09km)	1.17	5.2	10.46	Ebernoe roosts – 50% kernel 20.88 – 368.25 ha,mean 178.15ha.	Greenaway, F. 2008. <i>Barbastelle Bats In The Sussex West Weald 1997 – 2008</i>. Sussex Wildlife Trust/West Weald Landscape Partnership
The Mens roosts – 2.64km to 11.98km, mean 7.11km (lactating 7.67km)	2.64	7.11	11.98	The Mens roosts – 50% kernel 61.33 – 1152.24ha,mean 379.75	
				Individual 95% kernel, 125 - 2551ha, median 403ha. Individual 50% kernel 5-285 ha, median 67 ha.	Hillen, J., Kiefer, A., Veith, M., 2009. Foraging site fidelity shapes the spatial organisation of a population of female western barbastelle bats. <i>Biological Conservation</i> 142: 817-823.
				Individual MCP mean 222ha ± 88.5, individual 50% kernel 16ha ± 10.	Kerth, G., Melber, M., 2009. Species-specific barrier effects of a motorway on the habitat use of two threatened forest-living bat species. <i>Biological Conservation</i> 142: 270-279.
Home range distance	Minimum Distance	Average Distance	Maximum Distance	Home range area	Reference
Mean maximum distance from roost to furthest edge of core foraging area (80% cluster cores) 6.8km ± 4.8. Per colony the mean maximum distances were 8.5km (5.6-11.3km) and 5.2km (2.7-7.7km).	2	8.5 5.2	11.3 7.7	Colony MCPs 10,660ha and 14,804 ha.	Zeale, M., Davidson-Watts, I., Jones, G., 2012. Home range use and habitat selection by barbastelle bats (<i>Barbastella barbastellus</i>): implications for conservation. <i>Journal of Mammalogy</i> 93: 1110-1118.
				95% kernel 183 ha and 50% kernel 27 ha.	Hillen, J., Kiefer, A., Veith, M., 2010. Interannual fidelity to roosting habitat and flight paths by female western barbastelle bats. <i>Acta Chiropterologica</i> 12: 187-195
Maximum home range was 5km. The distance between roosts in the forest to foraging sites was less than 1km for males and between 3km and 4.5km for females.		(3.75)	(5)	Core regions (calculated using harmonic means) are 100-500m in diameter. Nine tracked animals used a total area of 35km ²	Steinhauser, D., Burger, F., Hoffmeister, U., Matez, G., Teige, T., Steinhauser, P., Wolz, I., 2002. Untersuchungen zur Ökologie der Mopsfledermaus, <i>Barbastella barbastellus</i> (Schreber, 1774), und der Bechsteinfledermaus, <i>Myotis bechsteinii</i> (Kuhl, 1817) im Süden des Landes Brandenburg. <i>Schriftenr. Landschaftspflege. Naturschutz</i> 71: 81–98.

				Mean individual home range 8.8 ha \pm 5.8 SD	Sierro, A., 1999. Habitat selection by barbastelle bats (<i>Barbastella barbastellus</i>) in the Swiss Alps (Valais). <i>Journal of Zoology</i> 248: 429-432.
				Home range approximately 1000 ha	Greenaway, F., 2001. The barbastelle in Britain. <i>British Wildlife</i> 12: 327-334.
Distance between roost and foraging sites was between 0.8km and 8.2 km (average 3.9km)	0.8	3.9	8.2	Seven Barbastelle radio tracked had a total of 24 distinct foraging sites, sizes between 2ha and 48ha. Each individual bat visiting between 1 and 7 sites.	Simon, M., Hüttenbügel, S. & Smit-Viergutz, J. 2004. <i>Ecology and Conservation of Bats in Villages and Towns</i> . Bonn: Bundesamt für Naturschutz
Mean Distances	1.41	6.385	10.1		

***Barbastelle Bats, Exmoor and Quantocks Oak Woodlands Special Area of Conservation (SAC),
Guidance on Development, Version 1.2 – April 2018***

9. Application of the Habitats Regulations³

The Habitats Regulations protect habitat which is important for the Favourable Conservation Status of the species. Achieving Favourable Conservation Status of a site's features '*... will rely largely on maintaining, or indeed restoring where it is necessary, the critical components or elements which underpin the integrity of an individual site. These will comprise the extent and distribution of the qualifying features within the site and the underlying structure, functions and supporting physical, chemical or biological processes associated with that site and which help to support and sustain its qualifying features*'.

9.1 The landscapes around the SAC itself are thus also important in providing foraging habitat needed to maintain in particular the favourable conservation status of Barbastelle bats

9.2 Regulation 63 Habitats Regulations states that:
A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which:

- is likely to have a significant effect on a European Site (either alone or in combination with other plans or projects), and

³NB: **A Review of the HRA** submitted concerning Pallinghurst Woods by Gillian Bransom of Natural Water has also been submitted which is focussed specifically on this aspect, the HRA.

- is not directly connected with or necessary to the management of that site must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

- 9.3** Ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:
- The extent and distribution of qualifying natural habitats and habitats of qualifying species;
 - The structure and function (including typical species) of qualifying natural habitats;
 - The structure and function of the habitats of qualifying species;
 - The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely;
 - The populations of qualifying species; and,
 - The distribution of qualifying species within the site.

Planners and prospective developers need to be aware that the habitats and features which support the populations of SAC bats outside the designated site are a **material consideration** in ensuring the integrity of the designated site. These aspects remain unknown.

- 9.4** Surveys should determine the use being made of the site by Barbastelle bats, whether the site is being used as a commuting route or contains hunting territories or both. Consideration should be given to the site within the wider landscape. It is essential to note that bat surveys are seasonally constrained. For proposals which have the potential to impact on the SAC, a full season (April to August inclusive plus October) will be required

Examples of habitats:

- **Hunting habitat** such as grassland; hedgerows; woodland; scrub; riparian vegetation; tree lines; arable margins; and ponds. They also need water to drink from.
- **Connecting habitat:** important to ensure continued functionality of commuting habitats including both sides of a track where it occurs. (Proposals must seek to retain existing linear commuting features as replacement of hedgerows is likely to require a significant period to establish). Strategic or key flyways are important to barbastelle bats and are used by several members of a colony whilst dispersing to individual feeding areas

- Seek to **maintain the quality of all semi-natural habitats** and design the development around enhancing existing habitats to replace the value of that lost making sure that they remain accessible to the affected bats. As Greenaway, stated 2008, *“Effective flightlines and good local foraging are a prerequisite to a successful barbastelle bat colony.”*

9.5 To determine whether a proposal is likely to have a significant effect on the SAC need to provide evidence about proposals which involve or may involve:

- the destruction of a Barbastelle or Bechstein’s bat roost (maternity, hibernation or subsidiary roost); the aerial tree search has answered this possibility but not the ones below:
- loss of foraging habitat for SAC bats
- fragmentation of commuting habitat for SAC bats
- increase in luminance in close proximity to a roost and/or increase in luminance to foraging or commuting habitat
- impacts on foraging or commuting habitat which supports the SAC bat populations structurally or functionally both within and around the site.

10. The current lack of knowledge concerning the use that the Barbastelle Bat makes of Pallinghurst Woods, as outlined by Natural England in their SIPS and highlighted in this additional submission provided by the Parishes Wildlife Group, means that in light of insufficient information being available the Precautionary Principle should be relied on and thus the application should be **REFUSED**.

Bechstein Bat, Local Wildlife Site,
Northup and Dunhurst Copse



© Jonathan Stokes

Barbastelle Bat, The Mens SAC



11. Natural England has just updated the advice for local planning authorities on protected species and development. I should especially like to draw your attention to **Section 2. 'Assess the information provided with the planning application,'** where it states that ***"You can refuse planning permission if surveys:***

- are carried out at the wrong time of year
- are not up to date
- do not follow standard survey guidelines without appropriate justification
- do not provide enough evidence to assess the likely negative effects on protected species

12. Biodiversity Emergency

In 2019, IPBES⁴ issued a report declaring a Biodiversity Emergency:

"nature is declining globally at rates unprecedented in human history — and the rate of species extinctions is accelerating, with grave impacts on people around the world now likely," warns a landmark new report from the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), the summary of which was approved at the 7th session of the IPBES Plenary, meeting last week (29 April – 4 May), 2019 in Paris.

12.1 *"The overwhelming evidence of the IPBES Global Assessment, from a wide range of different fields of knowledge, presents an ominous picture,"* said IPBES Chair, Sir Robert Watson. *"The health of ecosystems on which we and all other species depend is deteriorating more rapidly than ever. We are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide."*

13. Rare Species

Natural England's former Invertebrate specialist, Dr Roger Key, writes about the Wood White butterfly. *"The species is particularly rare in SE England and I can't believe that such an application is even being considered on a site for this species."*

13.1 **"Butterfly** Conservation's priority statement and highlight the most relevant bits from their species data sheet: on their website <https://butterfly-conservation.org/butterflies/wood-white> - see also

⁴ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES),

<https://butterfly-conservation.org/our-work/conservation-projects/england/saving-the-wood-white-butterfly-in-the-south-east>

13.2 “Threat I can confirm that Lorry access along woodland rides is highly likely to be detrimental to the species.

<https://butterfly-conservation.org/butterflies/wood-white> Wood White

11.3 “Distribution: Rare in south England and the Burren region of western Ireland, this small butterfly with a slow flight is usually encountered in sheltered situations, such as woodland glades or scrub.

11.4 “Conservation Status

“Butterfly Conservation priority: High ; Section 41 species of principal importance under the NERC Act 2006 in England; Listed on Section 7 of the Environment (Wales) Act 2016; UK BAP status: Priority Species Protected under Schedule 5 of the 1981 Wildlife and Countryside Act (for sale only)

“Caterpillar Foodplants: Various legumes are used, commonly Meadow Vetchling (*Lathyrus pratensis*), Bitter-vetch (*L. linifolius*), Tufted Vetch (*Vicia cracca*), Common Bird’s-foot-trefoil (*Lotus corniculatus*) and Greater Bird’s-foot-trefoil (*L. pedunculatus*). (Note that some vetches are not used, notably Bush Vetch, *V. sepium*, and Common Vetch, *V. sativa*).

11.5 “Lifecycle

Habitat

The Wood White breeds in tall grassland or light scrub, in partially shaded or edge habitats. In Britain, most colonies breed in woodland rides and clearings, though a few large colonies occur on coastal undercliffs. A few smaller colonies occur on disused railway lines and around rough, overgrown field edges (for example in north Devon).

11.6 “Distribution

This rapidly declining species used to be found across much of southern England and into eastern Wales. Its strongholds are now the woods of the West Midlands and Northamptonshire and the coastline of East Devon. **“Distribution trend in Britain since the 1970s = -89% ie almost lost 90%**

12. Fauna: Birds

In the words of the Results of surveys for Flora and Fauna *“there is quite a rich breeding and wintering bird assemblage”* with 6 red/Amber breeding species and 4 section 41 species, and in winter 8 Red/Amber species, 4 Section 41 species and 2 Schedule 1 species.”

- 12.1 Birds: Richard Cawser , Conservation Officer of the SOS reported** “One of the species that will be affected is the Red listed Common Nightingale, of which we have a record from 2021 which the applicants will not have seen. This record is from right beside the access road at TQ048324 where one bird was heard singing on 24 April 2021 (SOS record number 6396893) .”
- 12.2** “Whilst we realise that the proposal is to restore the site in a way that could provide biodiversity gains, including a small pond, this will not happen for 33 years, so there will be a 33 years of biodiversity loss during the time the site is being worked. It is our view that because of this time lapse the loss of biodiversity from say 2022 to 2054 should be given much greater weight when deciding this application than any possible gain from 2055 onwards. For this reason we also feel that any reference to “temporary impacts” (meaning impacts that will last at least 30 years throughout the extraction and infilling process) should be regarded as long term impacts.”
- 12.3** The application recognises that Nightingale and other breeding birds will provide additional breeding habitat for breeding birds, including Nightingale.
- 12.4 Habitat requirements:** Nightingale require thick undisturbed bushes in which to nest, so thinning is not going to be effective. Were coppicing to then be carried out it would take at least 10 years before the coppiced trees might have thickened up enough to be of interest to Nightingales, and if it were to take two cycles of coppicing for them to thicken up sufficiently twenty years would be needed. Therefore, our feeling is that such a project would take far too long for it to be considered able to provide effective mitigation for Nightingale.
- 12.4.1** Therefore, we do not believe that the proposed mitigation measures will be effective unless they are put in place immediately and the clay extraction does not begin until they have taken effect, which in terms of replacing conifer with deciduous woodland will take at least 30 years.

Rather we believe that there will be an immediate impact on significant species of breeding and wintering birds, including Nightingale with inadequate mitigation measures being put in place.”

12. Conclusion and Recommendation:

The additional information provided by Protreat has not addressed the fundamental flaws in the original application and, given the detrimental impacts on the woodland and its surrounds, should be **REFUSED**.

APPENDIX 1: Summary of comments on ecology submitted by national or local groups and specialists concerning Pallinghurst Woods application.

A variety of wildlife groups contributed objections to the application to remove clay from Pallinghurst Woods:

- CPRE
- Natural England
- Parishes Wildlife Group
- SOS – Sussex Ornithological Society
- Sussex Wildlife Trust
- The Woodland Trust
- West Sussex County Council ecologist, Don Baker
- And individuals with specialist knowledge

And other Administrative groups including adjacent Parish Councils and Individuals including the President of SWT etc. Some excerpts from these responses are set out below (available on the CDC planning applications portal):

CPRE Submitted by Dr Roger Smith:

“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).

NATURAL ENGLAND:

Submitted two notes. The first in July declared No objection, then the organisation reviewed its position and submitted a note on November 11th 2021 and made a number of recommendations to be addressed including the need for a Habitats Regulations Assessment, HRA.

PARISHES WILDLIFE GROUP

“and the Environment Statement, Para 22.62 [on NBG] but that will not be the end result as “the majority of baseline area habitats within the site will be lost”

And with reference to “exceptional” numbers of slow worms being found...and the proposal to translocate these...

“There are very few studies of any restoration and translocation projects being effective or successful (Cambridge University conservation evidence website.....)

Infrastructure – and an issue involving Natural England

“The application has not addressed a significant infrastructure issue which is the lack of a suitable sustainable supply of water in this area and an additional potential threat to the Upper Arun Special Protection Area which has been highlighted by Natural England, NE.” More details can be supplied if wished.

- 2.4** Southern Water announced that in the Sussex North Water Supply Zone they might not be able to supply water to the 4 Parish Councils in the North of Chichester District. This has led to a current halt to planning proposals and to the suspension of the Loxwood NP. See map below.
- 2.6 Ecology** – The words repeatedly applied to this area are rural, tranquil and undisturbed. The proposed development would result in the loss of habitat and will have a significant impact on biodiversity including rare and protected species.

SUSSEX ORNITHOLOGICAL SOCIETY. SOS

SOS: Richard Cawser wrote: “It is also proposed that selective rotational thinning and subsequent rotational coppicing will be carried out in other deciduous woodland to provide additional breeding habitat for breeding birds, including Nightingale. Nightingale require thick undisturbed bushes in which to nest, so thinning is not going to be effective. Were coppicing to then be carried out it would take at least 10 years before the coppiced trees might have thickened up enough to be of interest to Nightingales, and if it were to take two cycles of coppicing for them to thicken up sufficiently twenty years would be needed. Therefore, our feeling is that such a project would take far too long for it to be considered able to provide effective mitigation for Nightingale.

“Therefore, we do not believe that the proposed mitigation measures will be effective”

SUSSEX WILDLIFE TRUST:

“The Sussex Wildlife Trust (SWT) has recently become aware of this application which partially sits within the 6.5km buffer zone for The Mens SAC, significant proportions of which we own and manage. SWT objects to this proposal due to the impacts on biodiversity and particularly priority lowland deciduous woodland habitat.

“Thorough ecological surveys have been carried out that demonstrate that the main application site contains high quality lowland deciduous woodland priority habitat with clear ancient woodland characteristics. *“Indeed, section 3.3.21 of Appendix ES U – Results of Surveys for Flora and Fauna states that it was not possible to identify clear floristic or structural differences between areas of ancient woodland within the wider site and other areas of woodland. In particular, DW1 which will be completely destroyed by the development is of high value.*

“this proposal is contrary to the requirements of the NPPF 2021 (paragraphs 174 and 180), Policy M17 of the Joint Minerals Local Plan or Policy W14 of the Waste Local Plan.

SWT is also concerned that indirect impacts on areas of recognised ancient woodland have not been assessed contrary to Natural England Standing Advice. Particularly along the track, the passing places to be created and the parking area in Pephurst Wood. Appendix B of the Ecological Impact Assessment states that the easterly passing place is located within ancient woodland, yet there is no discussion of this.”

West Sussex County Council Ecologist, Don Baker

“Nonetheless, the proposed development would remove an area of biodiversity value. The loss of the habitats affected (including a habitat of principal importance as listed under S41 of the NERC Act 2006), would have a detrimental impact on the wider ecological unit. Whilst proposals for improved management of retained areas have been outlined, they do not compensate for the total loss of the existing resource (visible on the 1842 Tithe Map as “wood” and its future contribution and potential improvement) for potentially 2 or more generations. The loss of

woodland and associated habitats to both extraction and the impacts associated with access improvements, would have detrimental knock [on] affects to the adjacent ancient woodland”. The application lacks an Ecological management plan.

Individuals: Mary Mansson Recorder of butterflies “My objection to this planning application is the destruction of Ancient Woodland and the threat to all the wildlife and their habitats. I have been recording wildlife in these woods and surrounding fields for the past 8 years. My records are sent to Sussex Biodiversity Records Centre. I am particularly interested in butterflies and have seen at least 25 different species. They are found in various habitats - unimproved grassland, hedgerows, ancient and other woodland and others spend most of the time in the canopy of large trees, such as Oak, Ash and Beech. You need a good pair of binoculars to see them but I was lucky once when the beautiful Brown Hairstreak came down to lay eggs on Blackthorn.”



The WOODLAND TRUST

“The Trust objects to planning application WSCC/030/21 on the basis of damage and direct loss of woodland designated on Natural England’s Ancient Woodland Inventory (AWI). We hold concerns for the following woodlands in relation to varying aspects of this proposal:

- Unnamed PAWS at grid reference: TQ0494132957
- Hurst Wood PAWS (grid reference: TQ0539832027)
- Pephurst Wood ASNW/PAWS (grid reference: TQ0562831937)

Impacts on Ancient Woodland

“This application is for the construction of a clay quarry and construction materials recycling facility (CMRF) within close proximity to an area of ancient woodland. Natural England has identified the impacts of development on ancient woodland or veteran trees within their standing advice. This guidance should be considered as Natural England’s position with regards to development impacting ancient woodland: “Direct impacts of development on ancient woodland or ancient and veteran trees include:

- damaging or destroying all or part of them (including their soils, ground flora, or fungi)
- damaging roots and understorey (all the vegetation under the taller trees)
- damaging or compacting soil around the tree roots
- polluting the ground around them
- changing the water table or drainage of woodland or individual trees
- damaging archaeological features or heritage assets

Furthermore, “Nearby development can also have an indirect impact on ancient woodland or veteran trees and the species they support. These can include:

- breaking up or destroying connections between woodlands and veteran trees
- reducing the amount of semi-natural habitats next to ancient woodland and other habitats
- increasing the amount of pollution, including dust
- increasing disturbance to wildlife from additional traffic and visitors
- increasing light pollution
- increasing damaging activities like fly-tipping and the impact of domestic pets
- changing the landscape character of the area”

“When land use is intensified such as in this situation, plant and animal populations are exposed to environmental impacts from the outside of a woodland. In particular, the habitats become more vulnerable to the outside influences, or edge effects, that result from the adjacent land’s change of use. These can impact cumulatively on ancient woodland - this is much more damaging than individual effects.”

APPENDIX 2: Chichester District Local Plan relevant policies

POLICY 48: Natural environment

The setting of the South Downs National Park;

- the tranquil and rural character of the area; and
- Development recognises distinctive local landscape character and sensitively contributes to its setting and quality;
- the effect of the scheme on the character and appearance of the area

CDC extant Local Policy

19.30 Where appropriate, permitted development rights will be withdrawn to protect the visual amenities of the area, the size, rural character and appearance of the building or structure, and affordability of the development.

19.51 Protecting and enhancing the natural environment of the District includes providing adequate open space, sport and recreation facilities and maintaining the biodiversity. Designated open space and areas of biodiversity form key components of a green infrastructure network. Due to the coastal nature of the District the protection of the coast and views are of importance.

19.52 Development proposals must take account of international, national and local designations as part of their application. Exceptions will only be made where no reasonable alternatives are available and the benefits of development clearly outweigh the negative impacts. Where a development proposal would result in any significant harm that cannot be prevented or mitigated, appropriate compensation will be sought.

19.53 The Plan area includes parts of four national landscape areas: Low Weald, Wealden Greensand, South Downs and South Coast Plain. A Strategy for the West Sussex Landscape has been developed by West Sussex County Council, which sets a vision for each of the character areas, and landscape guidelines relating to development including for internationally important sites of Chichester and Pagham Harbours and the emerging Medmerry coastal realignment site.

CDC Local Plan:

19.23 Where essential development in the countryside is proposed to meet a demonstrable need, the following preferences for development should be applied:

- Conversion of existing buildings worthy of retention; or
- Redevelopment of sustainably located previously developed sites; or

- If no appropriately located and deliverable previously developed sites exist in the local area, greenfield sites within or immediately adjacent to existing settlements may be considered.
The “demonstrable need” has not been shown and preferences have not been met.

Policy 45:

....where it can be demonstrated that all the following criteria have been met:

1. The proposal is well related to an existing farmstead or group of buildings, or located close to an established settlement;
2. The proposal is complementary to and does not prejudice any viable agricultural operations on a farm and other existing viable uses; and
3. Proposals requiring a countryside setting, for example agricultural buildings, ensure that their scale, siting, design and materials would have minimal impact on the landscape and rural character of the area.

Policy 48: Natural Environment

Planning permission will be granted where it can be demonstrated that all the following criteria have been met:

1. There is **no adverse impact** on:
 - The openness of the views in and around the coast, designated environmental areas and the setting of the South Downs National Park; and
 - The tranquil and rural character of the area.
2. Development recognises distinctive local landscape character and sensitively contributes to its setting and quality;
3. Proposals respect and enhance the landscape character of the surrounding area and site, and public amenity through detailed design;
4. Development of poorer quality agricultural land has been fully considered in preference to best and most versatile land; and
5. The individual identity of settlements, actual or perceived, is maintained and the integrity of predominantly open and undeveloped land between settlements is not undermined.

Policy 49: Biodiversity

Planning permission will be granted for development where it can be demonstrated that all the following criteria have been met:

1. The biodiversity value of the site is safeguarded;

2. Demonstrable harm to habitats or species which are protected or which are of importance to biodiversity is avoided or mitigated;
3. The proposal has incorporated features that enhance biodiversity as part of good design and sustainable development;
4. The proposal protects, manages and enhances the District's network of ecology, biodiversity and geological sites, including the international, national and local designated sites (statutory and non-statutory), priority habitats, wildlife corridors and stepping stones that connect them;
5. Any individual or cumulative adverse impacts on sites are avoided;
6. The benefits of development outweigh any adverse impact on the biodiversity on the site. Exceptions will only be made where no reasonable alternatives are available; and planning conditions and/or planning obligations may be imposed to mitigate or compensate for the harmful effects of the development.

And, in the Chichester Plan still in preparation and yet to be finalised so currently carries little weight but does show direction of travel and a re-statement of policies concerning the rural area of the county:

Green Infrastructure

Rural area (Map B1 in the Chichester Local Plan) is designated as rural under section 157 of the Housing Act 1985,

- Conserve and enhance the rural character of the area, the quality of its landscape and the natural and historic environment
- Protecting the biodiversity value of the site and its environment in accordance with Policy DM29

CDC, March 2019, Chichester Local Plan Review 2035, Landscape Capacity Study

REFERENCES

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