



13 May 2022

SENT BY RECORDED MAIL AND EMAIL¹

Mr Michael Elkington
Head of Planning Services
West Sussex County Council
County Hall
Chichester
West Sussex
PO19 1RH

Registered Office:

Protreat Limited
6 Abbey Court
High Street
Newport
Shropshire
TF10 7BW

Registration No: 07658884

T: 01952 306352

E: cwilliamson@protreat.co.uk

W: www.protreat.co.uk

Dear Mr Elkington,

Our Client: Loxwood Clay Pits Limited

Town and Country Planning Act 1990

Planning Application Reference: WSCC/030/21

Your report to the Planning and Rights of Way Committee (PRoWC) dated 18 May 2022

We are instructed by our client Loxwood Clay Pits Limited (LCP).

Further to the key decision report ("Report") forward dated 18 May 2022 and issued to the PRoWC and the general public on the 9 May 2022. We respectfully request that this report should be withdrawn and amended to correct factual inaccuracies, misleading statements and conclusions.

For the avoidance of doubt, this letter¹ is not an attempt to persuade WSCC to change its refusal recommendation to the PRoWC but it is an attempt to correct the information that the committee's decision is based on. Should the PRoWC decide to refuse LCP's planning application, that would ultimately be determined on appeal. However, for legal cost reasons and the burden on the local taxpayer, it is in the interests of both parties to avoid a repetition of the former Wealden Brickworks 2020 appeal case, where WSCC dropped 5 of the 6 reasons for refusal on the eve of the public inquiry.

This letter sets out the reasons why the Report should be withdrawn, an amended report produced, and the matter relisted for the next available PRoWC meeting. LCP consents to a further extension of time, to be agreed, to enable WSCC to review and amend the Report for submission to the PRoWC at a later date.

¹ michael.elkington@westsussex.gov.uk; Andrew.Sierakowski@westsussex.gov.uk;
tony.kershaw@westsussex.gov.uk; chris.bartlett@westsussex.gov.uk;
planning.applications@westsussex.gov.uk

The reasons for withdrawing the report can be summarised as follows:

1. The Report does not take into consideration our response to the Regulation 25 Notice.
2. The Report does not take into account the content of our email to Chris Bartlett dated 16 November 2021, issued prior to our response to the Regulation 25 Notice. We received no reply to that email.
3. The Report does not take into account the content of our email to Chris Bartlett dated 30 November 2021, issued prior to our response to the Regulation 25 Notice. We received no reply to that email.
4. The Report does not take into account the content of our emails to Chris Bartlett dated 12 January, 4 March (x2), 9 March (x3), 26 March 2022 (2nd email) and 30 April 2022. Chris Bartlett did not reply to any of these emails.
5. The Report does not take into account the 65-page document attached to our 1st email dated 26 March 2022, especially Urban Edge Environmental Consulting's (UEEC) March 2022 report shown as pages 2 to 35 [also previously emailed to Chris Bartlett on the 4 March], which independently dealt with the final comments from Natural England. Chris Bartlett did not reply to this email, and he did not ask the County Ecologist or Natural England to comment on UEEC's March report. Furthermore, Chris Bartlett did not consider page 56 of 65, which cited Section 66 of the Highways Act [also previously emailed to Chris Bartlett on the 9 March].

Chris Bartlett has previously confirmed that all submissions would be considered right up to the issue of the Report. This was reiterated by his line manager, Andrew Sierakowski in his email dated 23 February 2022. That email was a reply to our email to Chris Bartlett dated 8 December 2021. It is unfortunate that our 23 February email reply to Andrew Sierakowski was not read by him until the 10 May 2022 i.e., after the Report was issued to the PRoWC and the general public. See the enclosed email read receipt as an appendix to this letter. We do not know whether Mr Sierakowski has yet seen our complaint email dated 7 May 2022, but we have retained an electronic confirmation that he received it.

To substantiate the above, we would like to comment on certain sections of the Report as follows:

Summary

Page 1 – last paragraph, states that WSCC - Ecology, Trees and Woodland, PROW and Highways object to the application. However, those objections predate the additional information that was sent to Chris Bartlett in March, April and May and their objections have ignored documents that were submitted in our response to the Regulation 25 Notice. Furthermore, UEEC's 4 March response to Natural England's 10 February letter has not been considered by Natural England or WSCC Ecology. If it was considered, their conclusions have not been shared with us or the general public.

The Report does not mention the fact that the Forestry Commission (FC) were consulted about LCP's planning application, and it does not explain why the FC did not respond. LCP's response to the Regulation 25 Notice included the

correspondence exchanged between the FC and Chichester District Council. This document explains that because the 300 acres of land surrounding and including LCP's proposed development, is covered by FC licences and this has been the case for c. 60 years, even if WSCC grants planning permission, the FC would still need to consider a fresh application for new licences and LCP's development could only proceed if they are satisfied with the mitigation measures to compensate for any tree felling. This is a material point of law that the Report fails to mention.

Site and Description

Para. 2.2 does not explain that HGVs used for timber extraction use the existing access and egress to Loxwood Road via the layby.

Relevant Planning History

In addition to forestry, this fails to mention the historical use for clay pits, a brick works, lime pit and limekiln.

EIA and HRA

Paras 5.4 and 5.5 of the Report fail to mention that LCP's consultant's final report was not sent to Natural England and the County Ecologist for consideration.

EU Council Directives 2008/98/EC and 1999/31/EC

The Report fails to mention that Directive 2008/98/EC was amended by Directive 2018/851.

In 2015, the European Commission published proposals to amend six EU Waste Directives, including the Waste Framework Directive 2008/98/EC. Known as the Circular Economy Package (CEP), the proposal entered into force on the 4th July 2018. On 30th July 2020 the UK Government published its Circular Economy Package Policy Statement. The Waste (Circular Economy) (Amendment) Regulations 2020 were made in August 2020 and came into force on 1st October 2020.

Post-Brexit, a transposition failure per se may not leave a person aggrieved with the identical rights of action that would have been available pre-Brexit, such as inviting infraction proceedings at the instance of the Commission for a failure to implement the EU treaty. However, insofar as the failure constitutes a breach of the Trade and Cooperation Agreement with the EU ("TCA"), it is clearly intended that legal redress be available.

This is because the UK has committed under the Trade and Cooperation Agreement with the EU to non-regression from environmental levels of protection.²

The TCA [Article 355] also contains obligations undertaken by the UK in relation to the 'Level Playing Field for Open and Fair Competition and Sustainable Development' designed to prevent distortions of trade or investment, and to ensure that trade and investment take place in a manner conducive to sustainable development. Article 355(2) makes it clear that environmental protection is a

² TCA Article 391(2): "A Party shall not weaken or reduce, in a manner affecting trade or investment between the Parties, its environmental levels of protection or its climate level of protection below the levels that are in place at the end of the transition period, including by failing to effectively enforce its environmental law or climate level of protection."

fundamental aspect of sustainable development, and international trade and investment is to be promoted in a way that contributes to sustainable development.

It is understood that the 'Level Playing Field' (LPF) was one of the most contentious areas of negotiation between the parties, with the European Commission having insisted on mechanisms to manage future regulatory divergence between the EU and the UK (particularly around environmental standards).

It is, therefore, a fundamental principle of the ongoing trade relationship between the UK and the EU, as far as the European Commission is concerned, that the UK should not make its exports more competitive by de-regulating in critical areas such as waste management and environmental standards associated with waste, which could have a damaging effect on EU industry, especially given the agreement on zero tariffs and quotas and the UK's geographical proximity to the EU. This principle is enunciated in the provisions of the TCA, Article 355. Promoting the international export of waste would be a breach of the UK's legal obligations, and run contrary to established proximity principles, including those of Article 4.2.d of the Basel Convention) would, accordingly, be the opposite of sustainable development or a level playing field and would amount to a flagrant distortion of trade and of Article 355 TCA.

WSSC PROW

Para. 7.9 of the Report does not reflect the content of our 9 March 2022 email to Chris Bartlett, which stated as follows:

"We contend that Mr Hobden's objection is wrong in law and if this forms a reason for refusal, we would seek an order for costs should there be a successful appeal.

I have attached Section 66 from the Highways Act 1980. Subsection (3) which I have side-lined would enable the Council to erect bollards or rails along the line between the surfaced drive and the grass verge. Under subsection (5) the power can't be exercised so as to obstruct accesses or agricultural operations. As long as no bollards or rails are erected in front of the neighbour - Harrison's' gates to his fields, that should not be a problem. Under subsection (8) compensation is payable if Harrison sustains damage by reason of such works but this is unlikely. Loxwood Clay Pits Ltd offers to indemnify the Council against paying compensation which in any event would not be great.

If the Council do grant planning permission they should use their statutory traffic powers to ensure safe working. If permission is granted on appeal there is caselaw in a similar situation that the local authority would be unreasonable if it refused to put in the consequential measures required to implement the Inspector's decision.

Could you please respond to this point of law by close of business on Friday 18 March 2022?

Finally, we confirm that, contrary to Mr Hobden's latest suggestion, we have not consulted with the British Horse Society. As detailed in pdf pages 67 to 74 of 153 in Appendix ES D to the planning application, during the 24/7 PROW camera survey carried out from the 8th to 14th August 2020, only 1 horse rider accessed bridleway 3240 from the layby on Loxwood Road during 2 of the 7 days when the survey was carried out. This a de minimis level of use that does not warrant any further investigation and is not commensurate with the level of risk as purported by Mr Hobden."

Chris Bartlett did not reply to our 9 March email.

Consideration of Key Issues

Need for clay extraction –

This was first addressed in the email to Chris Bartlett dated 16 November 2021. The Report makes no reference to the broader 'need for clay extraction' as set out in the 2019 NPPF, which was published after the JMLP.

This was covered in more detail to the response to the Regulation 25 Notice (previously sections 7.9, 8.2, 8.3, 8.4 and 8.5 of the Planning Statement). Policy M5 predates para. 208 on page 60 of the 2019 NPPF and contradicts the need for provision of brick clay from different sources to enable appropriate blends to be made. It is simply not the case that an individual brick works only uses the clay from their adjoining clay pit.

The section titled "Greenfield development" within section 8.2, reiterates sections of the NPPF that support mineral developments in rural locations.

Section 8.3 addressed the Legal Duty to cooperate with Surrey CC, which has a shortage of brick clay. LCP's proposed clay pit is adjacent to the West Sussex / Surrey County boundary.

Section 8.4 of the planning statement quoted the Inspector's comments during the review of the draft JMLP and the relevance of Policy M5, which WSCC agreed would allow other sites to come forward, and MM1, that would even allow such developments in an AONB, i.e., not just green field.

Para. 66 of the NPPF states the need for a clay reserve of "at least 25 years for brick clay and for cement primary and secondary materials (e.g. concrete) to support a new kiln" (i.e. a cement kiln replacement to the old kiln at Shoreham and negate the need for the import of cement from Kent). The Report refers to the 25-year requirement in relation to brick manufacture but regards this as a *Target* rather than a minimum and acknowledges that this is not being met.

Chapter 3.3.6 of the JMLP acknowledges that clay is required for the production of tiles, pipes, cement manufacture (and hence concrete) and the lining of canals and lakes. LCP's planning application for a clay pit is not restricted to the need for clay to produce bricks. However, the Report explicitly refers to the planning application as the need for bricks.

Moreover, chapter 6.5 of the JMLP acknowledges National Policy where "Authorities are also required to take account of the need for provision of brick clay from a number of different sources, to enable appropriate blends to be made". Furthermore, "the extraction of clay for other uses such as engineering purposes (e.g. flood defences or landfill engineering), will be permitted provided it does not reduce the levels of brick-making clay reserves at individual brickworks which are safeguarded under Policy M9".

Section 8 of the Planning Statement – "Need for Clay", from page 79 to 96, provides a full explanation for the clay pit part of the planning application, which has been redacted by WSCC to restrict the Report to the arguments that support WSCC's reasons for recommending refusal.

The Report refers to the former Rudgwick site and claims that the statements previously made in the West Sussex Minerals Local Plan 2003 were false. The Report claims that, in 2014, the extracted clay was not of usable quality. This is contrary to the truth and contrary to the information that was provided in the

Planning Statement dated May 2014 – “it is understood that Wienerberger failed to fully exhaust the clay reserves” after they acquired Baggeridge Brick plc in 2006 and decided to cease the import of coke breeze and sand to assist with the manufacture of clay products. This was a commercial decision to sell the land to R Harrison & Sons Ltd, which was supported by WSCC granting planning permission, and the removal of the clay safeguarding in 2015, for an “Excavation” waste site that was not designated in the WLP. The original planning conditions were varied in 2016, to include the crushing and screening of 15% of the waste inputs, outside of a building, with the attendant dust and noise emissions; and again in 2019, to allow an extension of the area for the deposit of more Excavation waste beyond the area of the original clay pit.

The Report asserts that LCP’s application is purely speculative, and the Report makes no reference whatsoever to LCP’s stated intention to produce handmade bricks at another location in due course. This position was stated in the original planning application and reinforced with more information in the response to the Regulation 25 Notice. A small handmade brick works investment is not economically viable without a permitted clay supply that is not subject to competing brickworks market positioning to the financial detriment of the smaller competitor. The Report’s author has erred by not referring to LCP’s stated intentions or by referring to those intentions as purely speculative, either explicitly or by implication. The planning application states that from commencement, it will take 2-3 years before clay can be sold, which provides enough time to establish a brick making facility.

Restoration of the Clay Pit Using Inert Waste and Need –

Section 9 of the Planning Statement (pages 97 to 104) set out the “Need for CD&E waste recovery **and** recycling facility”. This provides a full explanation for the waste recovery and recycling part of the planning application, which has been redacted by WSCC to restrict the Report to the arguments that support WSCC’s reasons for recommending refusal.

The Report mainly objects to the need for LCP’s waste facility by relying on an argument that if the clay pit development should be refused then there is no possible mechanism to allow the waste facility. The Report’s other objections to the waste facility focus solely on the CMRF, and Construction (C) and Demolition (D) wastes. However, LCP’s proposed development is for C,D&E wastes. ‘E’ representing Excavation wastes i.e., those permitted for the Rudgwick facility. The Report provides no arguments for the refusal of the application for E wastes and does not consider the reduction in the number of vehicle movements, from 42 to 21 HGV movements per day, if only E wastes were received for the restoration of the clay pit.

Section 9 of the Planning Statement explains why the West Sussex Waste Local Plan (WLP) is a shambles:

- Allocated sites refused planning permission for waste
- Allocated sites granted planning permission for non-waste developments
- The 2019 review of the WLP failed to consider the Brexit impacts
- The WLP was rendered meaningless by the introduction of the Circular Economy policies in 2020
- The former Rudgwick clay pit approved as a waste site in 2015 was not an allocated site in the 2014 WLP

The planning approval for the Rudgwick site, operated by Restoration to Agriculture Ltd (RtA), for the deposit of 415,000m³ (c. 750,000 tonnes) over a 4-year period

(compared to LCP's proposed 375,000 tonnes over 30 years) demonstrates that there is a local demand. The permitted Rudgwick development was on an annual scale 15 x greater than LCP's proposed development and enabled RtA to pay shareholder dividends amounting to c. £900,000 for the period 2018/19. This is a company that is controlled by Nigel Danhash's neighbouring landowner at Loxwood. Mr Danhash's private right of way to LCP's proposed development site, passes through this neighbour's / potential competitor's land.

The parties involved in RtA are active members of the Stop the Clay Pit campaign group, that lobbied against LCP's planning application and raised numerous written questions to LCP's agent, Protreat, about LCP's proposed planning application, during 2020/21. The nature of those questions suggested a concern that LCP's development would reduce the profitability of RtA's business.

WSSC approved an expansion of RtA's business (beyond the original claypit footprint) in 2019.

Whilst the Rudgwick planning permissions were restricted to inert excavation wastes, the permit issued by the Environment Agency (with WSSC as a statutory consultee) includes Mirror Non-Hazardous EWC codes. An EA Freedom of Information request has confirmed there are no records to show that any of the waste deposited at Rudgwick has been assessed in accordance with WM3 and Waste Acceptance Criteria to prove that the mirror non-hazardous wastes were in fact inert.

As further evidence for Need, Appendix PSC to LCP's Planning Statement detailed an 8-page list of waste activities operating without an environmental permit within 5km of LCP's proposed development. All of these waste activities are exempt from holding an environmental permit under Schedule 2 & 3 of the Environmental Permitting (England & Wales) Regulations (as amended). However, many of these exempt waste activities, are larger than LCP's proposed waste facility. The existence of just one of those larger exempt facilities demonstrates there is a Need for LCP's development.

A waste activity that is exempt from environmental permitting must still comply with the planning regulations and hold a sui generis planning consent. A recent Freedom of Information request served on WSSC revealed that none of these facilities have planning permission and WSSC has taken no enforcement action. This demonstrates that it is much easier to beg for forgiveness than it is to ask for permission.

The Report claims that the development would not accord with landscape character. However, whilst LCP did instruct a Chartered Landscape Architect to carry out a Landscape and Visual Impact Assessment (LVIA), WSSC did not appoint their own expert. The Report quotes sentences from the LVIA without providing their full context.

The bio-diversity issues are addressed later in this letter.

The Location of the Waste Facility

The Report does not acknowledge that none of the existing alternative permitted sites are suitable for a clay pit development. The prime reason for the development is for the extraction of clay. Without the extraction of clay, there is no requirement for suitable wastes to be used for the restoration of the clay pit. Clay pits are permitted in rural areas.

The co-location of the clay pit and CMRF was justified in the planning application. The Report claims that separate locations is more sustainable but provides no evidence to support that claim.

Impacts on Landscape Character and Public Amenity

The Report claims that the development would not accord with landscape character. However, whilst LCP did instruct a Chartered Landscape Architect to carry out a Landscape and Visual Impact Assessment (LVIA), WSCC did not appoint their own expert. The Report quotes sentences from the LVIA without providing their full context.

Appendix ESH to LCP's Environmental Statement is the 184-page LVIA. Paragraphs 5.1.1 to 5.1.17 correctly categorise the impacts. The minor extracts, taken out of context, in the Report, are a gross misrepresentation of the facts and WSCC have not appointed an expert to challenge LCP's findings.

Para. 9.58 of the Report states that the NIA failed to fully consider or mitigate against the development on the surrounding PROW network. This was clearly a last-minute afterthought which LCP were not given the opportunity to address. Furthermore, the Report does not explain why WSCC's Regulation 25 Notice did not raise this issue as part of their request for additional information. The Noise section of the Reg 25 Notice raised only 2 points to do with noise and the PROW network was not one of them.

Impacts upon Biodiversity

The Report's reference to bio-diversity loss in para. 9.70 demonstrates that WSCC did not consider the response to the Regulation 25 Notice. The response to the notice explained that the old version of the DEFRA model calculated a net loss because it does not allow the consideration of the land owned by the majority owner of LCP. This is a perverse function of the model.

Section A 6 of LCP's response to the Regulation 25 Notice stated that:

"The % change calculation in Biodiversity Units (BU) only allows full consideration of the area within the planning redline, whereas in this case, the enhancements in the wider area of woodland within the planning blue line reduces the % change shown in the draft assessment, from minus 36.6% to just minus 2.1%. With the inclusion of more enhancements in the blue line area, it is estimated that a positive diversity net gain can be achieved".

Para. 9.72 of the Report is based on para. 9.70, which proves that the County Ecologist did not read LCP's response to the Regulation 25 Notice.

The County Ecologist's last report was attached to an email from Chris Bartlett on the 4 March 2022, which crossed with an email sent to Chris Bartlett earlier that same day. This exchange of correspondence proves that the County Ecologist did not consider UEEC's HRA response to Natural England. Furthermore, a second email sent to Chris Bartlett on the 4 March detailed the errors in the County Ecologist's latest report, which was largely incomprehensible. Part of the second 4 March email to Chris Bartlett stated as follows:

“Environmental Statement

Paras 7.7, 8.3, 8.4, 8.6, 8.7, 19.1.1, 19.7.7, 22.6, 22.46, 22.49 – (“With the inclusion of more enhancements in the blue line area, it is estimated that a positive biodiversity net gain can be achieved”, 22.50 – (“the ‘Do Nothing’ option suggests that any BioDiversity Net Gain assessment should not assume that the current BU baseline measurement would be maintained if the development does not proceed”), 22.51.

Perhaps most importantly, when read in conjunction with 7.7, para. 19.6.6 states – “It is anticipated that detailed method statements for implementing these measures will be contained in a Landscape and Ecological Management Plan, secured by planning condition for an agreed level of Biodiversity Net Gain”.

Moreover, could you please provide the legal guidance that WSCC will wish to rely on for any statutory BNG requirement as of the date that this application will be determined?

HRA – Natural England’s last letter made the point that we included this in our Reg 25 response and if WSCC are not going to carry out their own assessment, then a decision should be made whether to adopt our assessment. It would appear that Don Baker has ducked that question?”

Chris Bartlett did not reply to that email.

LCP’s planning application was 2,127 pages long. LCP’s response to the Regulation 25 Notice was 278 pages long, the document attached to our 26 March email to Chris Bartlett was 65 pages long. In response, the County Ecologist’s intelligible comments were just 1 page long. The entire 2,470-page application is littered with S106 proposals to bind LCP and the landowner to BNG commitments backed up by covenants that would be transferred to any future landowner.

Part of the 300 acres of land owned by LCP’s majority shareholder, is situated in the District of Horsham, the only neighbouring authority not consulted by WSCC.

Paras 9.77, 9.79 and 9.80 of the Report state that “West Sussex officers have carried out HRA Screening.....which has been subject to consultation with Natural England”. They also claim that the water usage evidence was not provided. That is incorrect.

The water usage evidence calculations were included in the Environmental Statement, cross referenced in UEEC’s report, that formed part of the response to the Regulation 25 Notice and further detailed in UEEC’s final report in response to the last consultation comments submitted by Natural England, which was emailed to Chris Bartlett on the 4 March 2022.

As previously set out in this letter, WSCC did not provide UEEC’s final report to Natural England, Chris Bartlett did not reply to the 4 March email asking the County Ecologist to review and no evidence has been provided on the planning portal to substantiate the statements made in paras 9.77, 9.79 and 9.80 of the Report. A complete lack of transparency.

As detailed in our 9 March 2022 email to Chris Bartlett:

“Their final water neutrality comments are without foundation and are pure conjecture. Loxwood Clay Pits Ltd will accept a planning condition preventing mains water from being piped onto site and preventing potable water from being

transported on to site. As stated in the Reg 25 response, only drinking water will be imported onto site from a supply outside of the Arun Valley.”

It is difficult to see how para. 9.87 of the Report has any credibility, but on the basis that “the Appropriate Assessment undertaken by officers”, has not been disclosed, it is not possible to comment any further.

Impacts on Highway Capacity and Road Safety

Paras 9.88 to 9.97 of the Report do not take into account the information submitted by email to Chris Bartlett on the 30 April 2022 and to WSCC Highways on the 4 May 2022.

WSCC Highways appear to be oblivious to the fact that the layby on Loxwood Road is part of the existing highway. The western access is currently subject to c. 110 vehicle movements per day and the layby’s configuration and visibility splay does not currently comply with the Manual for Streets. LCP has proposed significant improvements to the layby.

Omissions

WSCC’s Regulation 25 Notice dated 10 December 2021 requested additional information in accordance with that regulation. The Report omits a vast amount of the information provided in response to that notice; on the 24 December 2021, 5 January and 26 March 2022. Prior to the issue of that notice, we provided new appendices to the Environmental Statement ES X and ES Y. As an extension of that notice, resulting from the further comments issued by Natural England, dated 10 February 2022, we provided a further response to the notice on the 26 March 2022.

The audit trail of our documents, that relate to the letters from Natural England dated 11 November 2021 and 10 February 2022, is most revealing. The chronology is shown below:

11 November 2021 -	Natural England’s letter issued to allegedly replace their letter dated 17 August 2021
10 December 2021 -	WSCC’s Regulation 25 Notice
24 December 2021 -	Our main response to the Reg 25 Notice
5 January 2022 -	Our supplemental response to the Reg 25 Notice
10 February 2022 -	Natural England’s 3 rd and final letter
26 March 2022 -	Our further response to the Reg 25 Notice

The first paragraph of Natural England’s **final letter dated 10 February 2022** is most illuminating:

“Thank you for your consultation on the above dated 9 December 2021 which was received by Natural England on 13 December 2021.”

We have drawn the following conclusions from the above:

1. The consultation issued by WSCC to Natural England on the 9 December 2021 i.e., the day before the issue of the Regulation 25 Notice, has not been disclosed.

2. Natural England's final letter dated 10 February 2022 is **NOT** a response to our response to the Regulation 25 Notice on the 24 December 2021 and 5 January 2022.
3. Natural England's final letter dated 10 February 2022 predates our further response to the Reg 25 Notice on the 26 March 2022.
4. Our new appendices to the Environmental Statement ES X & ES Y dated 8 December 2021, which were included in our 24 December 2021 response to the Regulation 25 Notice, were first issued direct to Natural England on the 8 December 2021 i.e., before WSCC's undisclosed 9 December consultation with Natural England.
5. UEEC's Technical Note, at pages 2 to 35 of 65, in our further response to the Regulation 25 Notice dated 26 March 2022, was issued after Natural England's final letter.
6. There is no evidence that Natural England has ever considered our response to the Regulation 25 Notice issued on the 24 December 2021, 5 January 2022 and 26 March 2022.
7. When this factual chronology is considered in conjunction with paras 9.77, 9.79, 9.80 and 9.87 of the Report, it is clear there has been a series of '*behind-the-scenes*' undisclosed correspondence between Natural England and WSCC Officers.

In addition, much of the detail provided in our responses to the Regulation 25 Notice has been omitted from the Report.

Conclusion

In view of the number of matters which have not been addressed in the Report it would be unfair to your Members and to the applicant to circulate this letter to your Members at this late stage or to put a supplementary report or reports before them at the meeting.

If you agree with our request to withdraw the Report and issue a new report for consideration at a future PRoWC meeting, in a timescale to be agreed, we confirm that will be acceptable to LCP. However, if our request is denied, we would need to take instructions to decide whether your decision is subject to a legal challenge.

As the report does not include a number of important material considerations we are copying this letter to the Council's Monitoring Officer.

Please acknowledge receipt of this letter. An email acknowledgement to – cwilliamson@protreat.co.uk will suffice.

Yours Sincerely,
For and on behalf of
Protreat Limited



C Williamson
Director

Chris Williamson

From: Andrew Sierakowski <Andrew.Sierakowski@westsussex.gov.uk>
To: Chris Williamson
Sent: 10 May 2022 09:22
Subject: Read: [FOI/3145] RE: [FOI/3145] Provide full details of the Public Comments made in relation to Planning Application Reference WSCC/030/21

Your message

To: Andrew Sierakowski
Subject: RE: [FOI/3145] RE: [FOI/3145] Provide full details of the Public Comments made in relation to Planning Application Reference WSCC/030/21
Sent: Saturday, February 26, 2022 1:16:57 PM (UTC+00:00) Monrovia, Reykjavik
was read on Tuesday, May 10, 2022 8:21:26 AM (UTC+00:00) Monrovia, Reykjavik.