



## Appeal Decision

Inquiry sat from 22 April to 1 May and on 11 June 2015

Site visit made on 30 April 2015

**by J S Nixon BSc(Hons) DipTE CEng MICE MRTPI MCIHT**

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

**Decision date: 7 August 2015**

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**Appeal Ref: APP/YB3600/A/11/2166561**

**Bury Hill Wood, Coldharbour Lane, Holmwood, Surrey, RH5 6HN.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant permission.
  - The appeal is made by Europa Oil and Gas Ltd against the decision of Surrey County Council (the Council).
  - The application Ref. No: 2008/0169/PS, dated 1 December 2008 was refused by notice dated 30 June 2011.
  - The development proposed is for the construction of an exploratory well-site, including plant, buildings and equipment with preliminary short-term drill stem test for one exploratory borehole, the erection of security fencing and associated works to an existing track.
  - This decision supersedes that issued on 26 September 2012. That decision on the appeal was quashed by order of the High Court.
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### Decision

1. For the reasons given below, this appeal is allowed and planning permission granted for the construction of an exploratory drill-site, including plant, buildings and equipment; the use of the drill-site for the drilling of one exploratory borehole and subsequent short-term test for hydrocarbons; the erection of security fencing; to undertake the necessary groundwater monitoring; and the carrying out of associated works to an existing access and track, all on 0.79ha, for a temporary period of up to 3-years, with restoration to forestry on land at Bury Hill Wood, Coldharbour Lane, Holmwood, Surrey, RH5 6HN in accordance with the terms of the application, Ref. No: 2008/0169/PS, dated 1 December 2008, and the plans submitted therewith, subject to the conditions contained in the attached Schedule.

### Clarification

2. This project was recommended by Officers for approval, subject to conditions. However, it was refused by Members for three reasons. This refusal was appealed and an inquiry was held into the appeal in July 2012. Before the start of that inquiry, the Council confirmed that it was no longer contesting the second reason for refusal of planning permission pertaining to the evidence to show that an exploratory drill-site could be located outside the Surrey Hills Area of Outstanding Natural Beauty (AONB). The Council also confirmed that, having regard to the recent felling of trees by the Forestry Commission, the words "*have the potential to irreversibly damage the historic banks and trees*"

*and*” should be deleted from the third reason for refusal. Following the inquiry the appeal was dismissed.

3. Subsequent to the appeal decision, there was a successful challenge in the High Court and the Inspector’s decision quashed. Further to this, the High Court decision was challenged in the Court of appeal by the Leith Hill Action Group (LHAG), but on this occasion the challenge failed. The starting point of this appeal is that the previous decision and the conclusions reached have no legal effect and the merits of the case must be determined as if they had not been considered previously. I have dealt with the appeal on this basis and, as noted above, my decision replaces the previous decision. Whereas the Officer’s original Report and recommendation is taken into account, I have reached my own conclusions on the main issues.
4. As to the description of the appeal proposal, in its notice of refusal the Council describes the development as for the *“construction of an exploratory drill-site, including plant, buildings and equipment; the use of the drill-site for the drilling of one exploratory borehole and subsequent short-term test for hydrocarbons; the erection of security fencing; and the carrying out of associated works to an existing access and track, all on 0.79ha, for a temporary period of up to 3-years, with restoration to forestry”*.
5. Since the 2012 inquiry, the Environment Agency (EA) has introduced a permitting regime and its requirements in respect of groundwater monitoring have tightened up. For this scheme, up to 5No. groundwater monitoring boreholes would now be necessary. These would involve the use of a small rig to drill the boreholes and subsequent testing during the 3-months prior to the commencement of the main drilling and then for the duration of the drilling and a further 6-months following the dismantling of the main rig and compound. There are two suggestions as to how this extra item could be incorporated into the development envelope. The first is to amend the description of the application and the second to see the groundwater monitoring as an essential component of safeguarding the hydrology and attach an appropriate condition to any planning permission.
6. Having considered both suggestions, and recognising that the description of a project is not always definitive, I am minded to adopt both approaches. On this basis, the description of the appeal scheme would be *“the construction of an exploratory drill-site, including plant, buildings and equipment; the use of the drill-site for the drilling of one exploratory borehole and subsequent short-term test for hydrocarbons; the erection of security fencing; to undertake necessary groundwater monitoring; and the carrying out of associated works to an existing access and track, all on 0.79ha, for a temporary period of up to 3-years, with restoration to forestry”*. This represents a comprehensive description of the proposed works and I have considered the appeal on this basis. In doing so I am satisfied that the groundwater monitoring scheme would not impose material adverse impacts on any identified interest and should be of benefit to the groundwater regime and that the amended details had been adequately canvassed in the consolidated Environmental Statement, the evidence and in questioning and discussion at the inquiry.
7. Further to the appeal application, the Appellants have made a related planning application for the underground drilling corridor from the appeal site to the Holmwood Prospect (the pan-handle application). This has still to be

determined by the Council. As part of this later application the Environmental Statement (ES) submitted with the appeal application was updated and consolidated into an ES covering both applications. The Council issued a Regulation 22 in respect of this ES and a detailed technical response was supplied by the Appellants. This along with the evidence to the inquiry, especially on highways and traffic and the updated Written Ecological Statement, means that I am satisfied with the adequacy of the environmental input and have taken this consolidated ES into account in reaching my decision.

## **Background**

8. The appeal site of some 0.79ha is located in the countryside to the north of the village of Coldharbour and to the west of Coldharbour Lane, which links the village with Dorking, further to the north. It lies within a managed plantation woodland belonging to the Forestry Commission (FC) and forms a part of the Abinger Forest. The existing vegetation comprises some mature conifers, silver birch and young deciduous trees and undergrowth, with bracken showing a strong presence. There is evidence of former quarrying on the land.
9. The main site compound, where the exploratory drill-rig would be located, along with a wellhead cellar and related plant, equipment and temporary buildings would be connected to Coldharbour Lane along an existing FC access track that would be upgraded. A turning area and flare pit would be located to the south of the main compound. The internal site layout has undergone minor revisions since the original application, but again I am satisfied that no-one would be materially affected by the changes and these were adequately aired in the evidence and at the inquiry. Importantly, there was general acceptance that it should effect some improvements. Accordingly, I have taken the latest iteration into account in my decision.

## **Planning Policy**

10. The development Plan (DP) comprises the Surrey Minerals Plan Core Strategy, Development Plan Document, 2011 (MCS), the Mole Valley Local Plan, 2000 (MVLDP) and the Mole Valley Core Strategy, Development Plan Document, 2009 (MVCS). In addition, there is the Surrey Hills Management Plan 2014-2019 (SHMP), which has been revised recently following publication of the National Planning Policy Framework (the Framework).
11. The Framework is a material consideration and this is supplemented by the Planning Practice Guidance (PPG), which delivers implementation details on the Framework policies. With respect to the DP policies, this is not a situation where, in the terms set out in paragraph 14 of the Framework, the DP is absent, silent or the relevant policies out of date.

## **Main Issues**

12. Having regard to the policy background referred to above, the evidence presented to the inquiry, the written representations and visits to the appeal site and surroundings, it follows that the main issues to be decided in this appeal are:-
  - i. whether the proposal amounts to inappropriate development in the Green Belt and if so whether the harm, by reason of inappropriateness, and any other harm would be clearly outweighed by other

considerations, so as to amount to the very special circumstances necessary to justify the development;

- ii. the effect on Green Belt openness, its permanence and the purposes of the Green Belt;
  - iii. whether the proposed exploratory drill-site could reasonably be located outside the AONB;
  - iv. whether the proposal constitutes major development within the terms espoused by the Framework in relation to AONBs;
  - v. the effect the scheme would have on the landscape and natural beauty of the AONB and on the public appreciation and enjoyment of it;
  - vi. the effect traffic movements associated with the appeal scheme would have on local residents and highway users; and
  - vii. the need for the development and its consistency with the Government's policies for minerals and energy development.
13. In addition to the main issues identified, a number of other matters were raised by Objectors and these have also been considered before moving to an overall planning balance.

## **Reasons**

### Overview

14. The first thing to say is that the inquiry was assured that the appeal project relates to the winning of oil/gas by conventional means. It is not, nor could become a scheme that would or could employ 'fracking' techniques. On the basis of the evidence presented, I concur. This has clearly not been appreciated by some Objectors and confirmation of this should remove a number of concerns.
15. The purpose of the appeal proposal is to explore for hydrocarbons in the Holmwood Prospect, which is UK Onshore Licence PEDL143. The proposal would involve offset drilling to the Holmwood Prospect, which lies approximately under Coldharbour Village. Four phases are proposed: site clearance and preparation; equipment assembly and drilling operations; testing and evaluation (if hydrocarbons are found); and site reinstatement. These phases are scheduled to last for 6-weeks, 5-weeks, up to 4-days and 6-weeks respectively. Planning permission is sought for a period of 3-years, with main operations extending over a core 18-week period. The Regulatory Authority the EA requires groundwater monitoring, which would extend either side of this core period.
16. The development would be for exploratory purposes only, to establish whether hydrocarbons are present. Although, this exploratory work falls under the broad head of mineral operations, the Framework and the PPG make clear that the three phases of mineral operations, exploration, appraisal and production should be treated as separate and distinct operations. This decision is undertaken on this premise. Moreover, as noted above, a further application for the offset drilling route (the Panhandle) has been submitted and is under consideration by the Council. As such, the Appellants submit that a grant of

permission for this appeal proposal would still need to be backed up by permission for the later application before drilling could commence. Thereafter, if viable reserves were found, an entirely new and separate planning application for a suitable location for extraction would be required.

*Whether the proposal amounts to inappropriate development in the Green Belt and if so whether the harm, by reason of inappropriateness, and any other harm would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development*

17. The key starting point is that all the potential sites for exploration fall within the boundaries of the Metropolitan Green Belt. Within the DP MCS Policy MC3 covers mineral development in the Green Belt and advises that anything other than extraction and primary treatment constitutes inappropriate development. Strictly speaking, exploration and appraisal do not fall under these heads, thereby suggesting that the appeal proposal is inappropriate. Moreover, paragraph 147 of the Framework clearly distinguishes between the three phases of development, exploration, appraisal and production. Taken at face value, it is not difficult to see why this could be judged to reinforce the inappropriateness tag in terms of the MCS Policy MC3.
18. Notwithstanding, this simplistic approach has been reviewed by the recent High Court (HC) Judgement following the 2012 appeal decision. In paragraph 42 of the HC decision, there is a clear conclusion that the works in exploration and appraisal of a mineral resource must be treated as a part of the mineral extraction/ production, albeit discrete and separate phases. This means that exploration and appraisal of a mineral resource are not inappropriate activities by definition, but would only be treated as inappropriate if they adversely affect the openness or any other purposes of the Green Belt designation identified in paragraph 80 of the Framework. Under these circumstances, paragraph 90 of the Framework offers more up-to-date advice than MCS Policy MC3 and since the HC Judgement the PPG has been amended to reflect this.
19. Looked at in the round, the HC Judgement is sensible and pragmatic. Without exploration and appraisal it would be extremely difficult, if not impossible, to prove the extent and viability of a mineral resource, the extraction and production of which would not necessarily be inappropriate. As paragraph 90 of the Framework advises, inappropriateness would only arise in circumstances where the openness and/or other purposes of the Green Belt would be compromised. As such, it is necessary to move to ascertain if appeal scheme would be inappropriate development in the Green Belt, by assessing its effect on Green Belt openness, its permanence and the purposes of the Green Belt.
20. There is no dispute that paragraph 79 of the Framework explains the essential characteristics of Green Belts, which are their openness and permanence. Similarly, it is accepted that paragraph 80 of the Framework sets out the five purposes of Green Belts. Of these five, the only one directly relevant to the appeal scheme is the third, pertaining to assisting in safeguarding the countryside from encroachment.
21. Insofar as openness is concerned, the appeal site is not open in the sense of it being an undeveloped field. Nevertheless, it is free from physical development and the activity in the area is almost exclusively limited to local and visitor traffic. Against this background, I am in no doubt that, for the period of the

- drilling contract, the openness of the Green Belt would be materially compromised and the construction of the compound, the attendant buildings and rig, the operations and the vehicle movement and parking would encroach in this area of countryside that forms part of the Green Belt.
22. Thus, for the duration of the exploration, the appeal proposal would conflict with one essential characteristic and one purpose of the Green Belt. Even so, in applying the reasoning behind the HC Judgement, it is difficult to see many circumstances where the openness of the Green Belt would not be compromised to some extent for the duration of mineral operations. It is equally difficult to identify circumstances where active mineral operations would assist in safeguarding the countryside from encroachment. Helpfully, the Judgement refers to some parameters that might aid assessment.
23. One of these is the duration of the operation, with a clear implication that the shorter it is the proportionately less weight should be attached to the inappropriateness argument. In similar vein, there is also an invitation to look at whether the proposal would contain elements over and above the normal or generally appropriate for a particular operation. Lastly, would the restoration deliver something that would closely replicate the previous landscape character and visual contribution to the area?
24. Against this background, when looking at the implications for the Green Belt characteristics and purposes, common sense 'directs' the decision maker to look beyond the exploratory and operational phases to determine the effects of development for the longer term on the characteristics and purposes of the Green Belt. Unless this is done, then one would almost inevitably reach a conclusion on the policy, aptly described in the HC Judgement as "*straining at the gnat only to swallow the elephant*". This is clearly not the intention of Government policy.
25. Looking at this case in the context of the other 'suggested' criteria, as this would be a temporary operation for only some 18-weeks, with the site returned, thereafter, to its original form, the longer term harm to the permanence of the Green Belt would be negligible and to its openness very short term. As the encroachment into the countryside would be significantly mitigated by the restoration proposals, although the scheme may not actively assist in safeguarding the countryside from encroachment, it would have a neutral effect in the longer term. Moreover, in an area of managed woodland similar changes could occur at any time. Next, there is nothing that would be done here that would not normally be expected of a similar exploratory contract. Finally, minerals can only be won where they are located and no site suitable for exploration beyond the Green Belt boundary has been suggested.
26. Drawing these strands together, if the works had been permanent or even very long term, then the characteristics and purposes of the Green Belt could have been materially compromised and the proposed development deemed inappropriate with the attendant presumption against. This is a matter of planning judgement. As this activity would comprise a proportionate, short-term, temporary and fully reversible activity it should not be judged as inappropriate development in the Green Belt and, therefore, not attract the negative presumption. Having said this, there would be the harm to the characteristics and purposes of the Green Belt during the 18-week contract

period and this is a negative factor to be weighed in the overall planning balance.

*Whether the proposed exploratory drill-site could reasonably be located outside the AONB*

27. The position has changed with time and now SCC and some Objectors accept that there would not be a viable site outside the AONB from where to explore the resource. Looking at the detail of the sites outside the AONB, I accept that those that could be used are just as likely to raise objections, albeit not ones stemming directly from the impact of the operation on the AONB.
28. However, the overriding argument against pursuing sites beyond the AONB boundary for the exploratory rig is the diminishing likelihood that the horizon of the resource would be intercepted. From all the sites outside the AONB it is almost certain that the two levels of the Holmwood Prospect resource, within the Portland Sandstone and the Corallian Sandstone, would not be intercepted by a single bore. As such, two boreholes would be necessary, even if parts of the two could be coincident at shallower depths. This would increase the duration of the exploration project and would add to the costs and harm.
29. On the basis of this, I am satisfied that no reasonable site for the proposed exploratory drilling operation has been identified outside the boundary of the AONB. Moreover, of those sites in the AONB that have been assessed, the appeal site would be the least intrusive option and minimise the risks of requiring an extension to the contract period.

*Whether the proposal constitutes major development within the terms espoused by the Framework for AONBs*

30. Owing to the construction of the AONB policies, it is important to establish if the appeal scheme constitutes major development in the terms that would trigger paragraph 116 of the Framework. The test in paragraph 116 is more restrictive if a proposal in an AONB is defined as 'major'. No definition of 'major development' is defined in the Framework and neither can enlightenment be gleaned from the PPG. The Appellants contend that it does not constitute 'major development'.
31. Nevertheless, relying on legal opinions (in particular, a legal opinion delivered by James Maurici QC in respect of an issue in the South Downs National Park) and s.2 of the Town and Country Planning (Development Management Procedure) (England) Act 2010, the Council, the Leith Hill Action Group (LHAG) and some other Objectors take a different view. In combination, these identify a possible list of criteria upon which to base any assessment. These define 'major development' as the winning or working of minerals on a site exceeding 1 ha; a scheme defined as EIA development; a project falling under Schedule 2 of the EIA Regulations; and an application that necessitated various impact assessments.
32. Having said this, there is case law, which clearly divines that the 2010 Act cannot be transposed into general planning assessments and that there should be no universal definition of 'major development'. The general thrust is that it falls to the decision maker, having regard to the local circumstances and the particular factors of the case.

33. The current exploratory proposals have been appraised against this background. First, the site is less than 1 ha in extent. Secondly, in looking at criteria for 'major development' it is not clear that they are intended to apply to exploratory works as opposed to the recovery and operational stages. Thirdly, in this instance the works would essentially last for only 18-weeks, which would be extremely short term, even in the context of mineral operations. Next, although impact assessments have been provided as part of the ES and supporting evidence, none were contained in the reasons for refusal, other than the effect on the AONB, which is dealt with as a discrete issue. Finally, as some Objectors consider that the quantity of oil/gas is not worth the trouble of recovery, this can hardly be taken as a ringing endorsement for deeming this a 'major operation'.
34. So on the basis that the scheme would not be significant in areal extent, would be temporary and very short term I do not consider it to be 'major development' in any common sense meaning. As such, there is no obligation on the Appellants to meet the tests in paragraph 116 of the Framework, and demonstrate that the project would be in the public interest and constitute exceptional circumstances. This, of course, is not the same as concluding that there would be no adverse impact on the AONB and I move next to assess the level of this.

*The effect the scheme would have on the landscape and natural beauty of the AONB and on the public appreciation and enjoyment of it*

35. The appeal site lies within the Greensand Hills: Leith Hills landscape character area as defined in the Surrey Hills Landscape Assessment, 1998. The value of the AONB is described in the Surrey Hills Management Plan 2014-2019 as *"..one of England's finest landscape, equivalent in beauty to a National Park.... Its landscape mosaic of farmland, woodland, heaths, downs and commons has inspired some of the country's greatest artists, writers and architects over the centuries. The Surrey Hills attract millions of visitors every year who contribute to the economy of the area in sectors as diverse as wine production and wood fuel. The Hills are protected as part of London's Metropolitan Green Belt and provide an outstanding natural resource for London and Surrey residents to enjoy outdoor pursuits, taste local food and explore market towns and picture postcard perfect villages."* The importance of these landscape features is not in dispute and all agree that parts of Coldharbour Lane are an example of a sunken lane.
36. The policy base relied on by the various parties is generally sourced from the same documents. In the first place, paragraph 17 of the Framework identifies the core planning principles and in these recognise the intrinsic character and beauty of the countryside. Pertaining to the Surrey Hills AONB designation, paragraph 109 of the Framework seeks to protect valued landscape and in paragraph 115 AONBs are awarded the highest level of protection, along with National Parks and the Broads. This is consistent with the DP and SHMP policies in terms of protection.
37. The Framework (paragraph 123) aims to identify and protect areas of tranquillity and MVCS Policy CS13 requires particular attention to be paid to the effects of development on tranquillity, an approach supported by the SHMP.
38. Even allowing for the points in agreement, the various parties ascribe markedly different levels of landscape and visual harm to the scheme. From the



Council's perspective, and largely supported by the Mole Valley District Council, the Capel Parish Council, LHAG and local Objectors, it concludes that there would be a significant adverse effect on the landscape resource, comprising the characteristics, features, aesthetic and perceptual qualities that define the special character of the Surrey Hills AONB and the setting of Leith Hill: Hills and Views, Tranquillity and Inspiration, and Country Lanes and Public Rights of Way (PROWs).

39. Weighed against this the Appellants conclude that the level of intrusion would be of a lower order, always judging their conclusions alongside the short-term temporary and wholly reversible nature of the appeal project. Accordingly, they judge the effects would not significantly harm the enjoyment of the special qualities of the Surrey Hills by the public for the duration of the appeal scheme and there would be no lasting adverse effects on the public enjoyment of the AONB. As such, they conclude that the landscape and visual effects would not be sufficient to justify dismissing the appeal.
40. Having stated their positions, all parties agreed that the best way of demonstrating their points was by way of an extensive site visit to look from within the appeal site and from vantage points near and far. A site visit programme was planned, with input from all main parties, and this was undertaken over a full day.
41. From what I saw, I am in no doubt that the effects of the development for the duration of the exploration on both the landscape character and visual presentation would be significant in the immediate vicinity of the proposed compound and along Coldharbour Lane when HGVs are passing. With the best will in the world, it would be impossible to disguise the site or the activity when passing close by or using the Lane at certain times.
42. As for impacts from further afield, the direct effect on landscape character and visual impact would diminish very rapidly with distance. The compound could not be seen from Coldharbour Lane or easily, if at all, from the nearest sensitive dwellings. There is already a blemish on the nearby landscape character with the 'abandoned' cleared area used by a film crew, though this may be in the pipeline for restoration. The restoration proposed for the appeal site would be sensitive to the locality and, with the use of more broad leaf trees, should deliver an ecological benefit, in line with SHMB Policies WL1 and B5.
43. The only distant views would be of the rig itself, which at a height of 35 m would be visible from a number of important public vantage points. Even so, only the upper reaches of the rig would be visible – a maximum of some 21 m - and in most cases much less. Even then, the full height would only be seen for a maximum of some 5-6 weeks. Although the impact could be mitigated significantly by choosing an appropriate colour for the rig, the inquiry was advised that, owing to commercial interests, this was not feasible, but the colour should not stand out too much.
44. Users of the Lane and those living nearby would be affected during the two periods of construction and reinstatement. Even though these would be of short duration, as the HGV convoys pass, the impact on the landscape character and visual contribution would be significant. To this must be added the potential for damage to the banks on the section of sunken lane, though the risks of damage could be reduced by the installation of in-cab cameras.

The noise and lighting associated with the compound and drilling operation would impact on those closest to the site and the Lane, but from the information submitted, I do not anticipate that any would be affected inordinately.

45. Moving next to the specific topic of tranquillity, the direction of travel is clearly to establish and protect areas where tranquillity is identified as a benefit to be enjoyed. Virtually without exception, it is accepted that this a locality where tranquillity can be experienced and that the activity generated by the appeal scheme would lessen this, within the envelope affected by the drill-site compound and along Coldharbour Lane.
46. Notwithstanding, there are two factors that militate against attaching great weight to this. In the first place, there is the very limited duration of the intrusion and the full restitution of the ambient levels of tranquillity. Secondly, at present the tranquillity of the area is lessened by overflying aircraft noise. This is understood to be occasioned by the changing of flight paths serving Gatwick Airport. Though this could be temporary, there are no guarantees in place.
47. Summing up on these factors, if the impacts identified on landscape character, visual quality and tranquillity, were to be for a permanent or significant duration, then this would materially conflict with the policy aims and objectives for the Surrey Hills AONB. The simple and compelling fact is that the harm would be reversed entirely in terms of landscape character, visual integrity and tranquillity, with a restoration scheme that would arguably be an improvement in landscape and ecological diversity. Yes, the restoration would take a little time, but it would not be particularly noticeable after 1 or 2 years, with the under-storey regenerating very quickly, and even then only from very close to. The longer views would be reinstated immediately following the 5-week drilling period and subsequent dismantling of the drill-rig.
48. Thus, I am in no doubt that the adverse effects on the landscape and natural beauty of the AONB and on the public appreciation and enjoyment are negative factors for the duration of the contract and must be weighed in the overall planning balance. However, the reversibility of the harm militates against judging the overall harm to be significant. I am also mindful that site clearance and restoration could take place in a managed forestry environment, delivering very similar degrees of impact irrespective of the appeal project.
49. Before closing on this issue, there was another matter raised by some participants to the inquiry and this pertains to the possibility of some arguments being double counted and, thereby, risking potential challenge. The particular concern stems from the considerations of the scheme as 'major development' within the AONB and the effects the development would have on the integrity of the AONB. The topics canvassed where arguments were thought to be most vulnerable were the short duration of the operation and the total reversibility of the landscape credentials.
50. It is extremely difficult to entirely divorce the two, but by way of explanation on the approach I have taken, the reversibility of the landscape impact does not feature in the arguments on whether the project constitutes 'major development' or not. Only the short-term nature of the operation contributes to this issue. On the other hand, the compelling argument when considering the effects on the landscape and other aspects of the AONB is the ability to

entirely replicate and potentially improve the landscape character and visual offer. The same applies to the tranquillity of the area. However, the fact that the restitution of these features would be comparatively rapid must reduce the level of harm to the AONB and I am content that this should not be considered double counting.

*The effect traffic movements associated with the appeal scheme would have on local residents and highway users*

51. There is no doubt that the concerns about the effects of traffic loom very large in representations made by local residents. In particular, they feel that the Appellants and the Council, as local highway authority (LHA), have not acknowledged the likely impacts the traffic would have on the accessibility and living conditions for residents and the enjoyment and safety of cyclists and walkers attracted to the area. In some ways their fears were fuelled as the inquiry progressed, with three points appearing vulnerable to challenge.
52. The first of these was the Appellants' designated holding lay-by point for HGVs on the A24 prior to them accessing Knoll Road, before then turning into Coldharbour Lane for passage to the appeal site. Secondly, it was contended by local people that the cycle usage of Coldharbour Lane had increased significantly since the Olympic Games of 2012, and this has not been recognised. Thirdly, in 2013 a width restriction order was imposed on Coldharbour Lane, which did not reveal itself in the Appellants' or the Council's evidence to the inquiry. Bearing these points in mind, it was clear to me that the latest position with respect to the Transport Management Plan (TMP), endorsed by the LHA had not been validated on-site. Relevant LHA Officers were not available to respond to the concerns.
53. There is no doubt that a relatively large volume of HGVs – some 1,100 movements – would use the Lane during the construction and dismantling of the drill-rig site and compound. However, this would be spread over a period of 12 weeks, with a predicted maximum of only some 30 movements in any single day. To reduce the effects of HGV movements, the 'working day' would be restricted to between the hours of 0930 to 1500 hours Monday to Friday and 0930 to 1300 hours on Saturdays. This would allow virtually all peak traffic movements and travel to and from the nearby schools to be complete before HGV movements to the appeal site begin. To further assist in local access, the HGVs would travel in convoys of two or three vehicles along Coldharbour Lane to and from the site.
54. Having said this, it should not be envisaged that there would be no difficulties of access for those served by Coldharbour Lane. There would still be some inconvenience, not least because Coldharbour Lane is narrow over long sections and overtaking or passing is difficult at best and for short periods nigh on impossible. This would be exacerbated by the length of Coldharbour Lane that would have to be traversed by the HGVs, with a traveling time for each convoy of between five and 10 minutes.
55. There is one further difficulty that must be added to the mix and this is the 3-day closure to through traffic of Coldharbour Lane during the hours of 0930 to 1800 hours, other than for access. This would be required to bring the drill-rig in and to take it out at the end of the contract. Alternative routes for general traffic are available, but they are less than ideal and would undoubtedly occasion some inconvenience.

56. Notwithstanding, the HGV traffic usage of Coldharbour Lane, including the two temporary closures, would not, of itself, be a show stopper for the proposed borehole exploration. Yes there would be some inconvenience, but outside the peak hours I strongly suspect that those taking access from Coldharbour Lane would manage their activities to minimise personal inconvenience. Then again, it would only be for two publicised 6-week periods and for a few minutes duration six, eight or, possibly, ten times a day, between the hours of 0930 and 1500 hours, while the convoys traverse the Lane.
57. It was a challenge to the holding point on the A24 and waiting point on Knoll Road for the HGVs to assemble before setting off in convoy along Coldharbour Lane that called into question the highway evidence presented to the inquiry and the LHA's agreement to the proposed TMP. When looked at on site, the lay-by indicated as the holding point was found not to be a lay-by at all, but a junction acceleration/ deceleration lane and, thus, unsuitable for the purpose intended.
58. The site visit toward the end of the inquiry did look at other options and these certainly exist, though invariably more distant from the assembly point in Knoll Road. Moreover, there are still permissions/ agreements to be secured for their use. However, from what I saw, I am satisfied that a suitable location could be found and there are reasonable prospects that any restrictions on use could be overcome. This could be secured by a negative condition.
59. The only downside of a changed assembly location would be that the increased distance between the holding point on the A24 and Knoll Road would lead to the probability of greater traffic dispersion. In turn, this could mean a longer waiting time for the HGVs in Knoll Road before setting off along Coldharbour Lane. This would extend the period HGVs wait on Knoll Road outside residential property and inhibit the use of the Knoll Road/Coldharbour Lane junction and the use of private drives to property.
60. In the original TMP, it was envisaged that HGVs would wait for no longer than 1-2 minutes. The more remote holding point could extend this by a couple of minutes and to this must be added the clearance time for traffic travelling north on Coldharbour Lane to clear the narrow section. In total, however, I do not envisage that the duration of waiting on Knoll Road would exceed 5-minutes four or five times a day. Once again there would be some minor short-term inconvenience, but this would not be inordinate.
61. I also studied the likely visual impact of the waiting HGVs on Knoll Road, but find that the most adjacent properties on the same side as the waiting HGVs are significantly elevated and should experience very little loss of outlook or noise intrusion. For the key property on the opposite side of the road, the main windows are orientated away from the parked HGVs and toward the junction of Knoll Road and Coldharbour Lane. Once again, I anticipate only a transient problem. In terms of access to private drives, there could be some short term inconvenience, but with the Banksmen or Marshalls being on hand at the Knoll Road/Coldharbour Lane junction I would imagine they could assist if an undue perturbation occurred.
62. Access to property on and accessed by Coldharbour Lane is seen as problematical by a number of people. General reference is made to this above, but looking at this more specifically I do not envisage the inconvenience would be of more than very short duration. There would be occasions when residents

- and/or deliveries would be held up, but for a relatively short period and not during the busier periods of the day. My experience in similar circumstances is that people manage their lives to avoid inconvenience wherever possible, and I have little doubt that this would occur here. Crucially, the HGV management team would be in radio contact and this would enable HGV movements to be managed in the event of an emergency.
63. The HGV movements would operate in convoys of two or three vehicles moving into or out of the site at any one time. This should mean that the inconvenience to local users would be minimised. While it would not be practical to forewarn every property about an impending convoy movement, vehicles wishing to enter the affected sections of Coldharbour Lane from either end and at a junction at an intermediate point would be advised by the HGV Banksmen. The timings for the two 6-week periods for HGV movements and the two temporary closures would be publicised locally and via the Parish Councils. This could be done by attaching an appropriately worded condition.
64. Under normal circumstances, the traverse period for HGV between the site and Knoll Road and *vice versa* would be a matter of five minutes if travelling at 30 mph average or seven or eight minutes at 20 mph average. Clearly a convoy could be held up by a number of factors such as slower moving traffic, opposing traffic or cyclists on the narrowest of sections. Even so, I firmly believe the delays should be manageable and the reduction in the speed limit for HGVs to 30mph should assist in reducing accident risk.
65. As for the width restriction Order, the clear intention was to restrict the use of the Knolls Road/Coldharbour Lane route by HGVs. Notwithstanding, the Order does not preclude use for access to land and properties along the route and, of course, the appeal site would comply in this regard. Thus, although the Order seems to have been missed in the evidence, it would actually have little if any bearing on the proposed operation and movement of HGVs to and from the appeal site. At worst, it is merely a pointer to the lack of due diligence on the part of those overseeing the highway interests. At best it will draw public attention to the width restriction Order, which may assist in future observance.
66. Safety of other road users is the most crucial aspect of the access arrangements. With HGV Banksmen in place, and in communication with the HGV drivers, potential hazards should be known and risks minimised. Signs at the entry points will warn users of possible HGV movements and during the working week I do not envisage particular problems. I draw support for this from the lack of any accident record on Coldharbour Lane over recent times and, although the vehicle movements would increase during the period of exploration, the management protocols in place, including the lowering of the speed limit for HGVs, should offset this.
67. My only outstanding concern would be the HGV movements on Saturday mornings. This is a period when general traffic usually reduces, and cyclists could be expected to avail themselves of the less busy period. An increase in the use by cyclists was reflected in the update report produced in March 2015, but this excluded information at weekends, when most cyclists are said to traverse the Lane. Importantly, evidence shows that the route along Coldharbour Lane has become a popular route for cyclists in recent times, and especially since the Olympics in 2012.

68. Although restricting HGV movements totally on Saturdays would mean that there would have to be a correspondingly higher number of movements during the week there may be a balance of advantage in this. I am mindful that if large numbers of cyclists do use the Lane on Saturdays, then this would not make the passage of HGVs easy and this may indicate to the contractors and LHA that precluding HGV movements on Saturdays would be in both their and the public's interest. However, only a survey would furnish the necessary information to inform this decision and this can be covered by condition.
69. Access to the appeal site would utilise an existing Forestry Commission access and the necessary junction upgrade would not result in the loss of any mature trees. However, the under-storey would be cleared to provide an adequate visibility, but this should largely re-generate in the following season. HGVs would not wait on Coldharbour Lane itself, before moving off to the north, but would wait on the access track and join Coldharbour Lane in convoy. There should be no cause for anyone associated with the appeal project to park in the open area on the opposite side of Coldharbour Lane to the appeal site access. Under these circumstances, a condition would be unnecessary and extremely difficult if not impossible to enforce. For site staff, the HGV Banksmen would be on hand to remove any staff tempted to linger.
70. The banks of Coldharbour Lane are a particularly important feature of the sunken lane and need to be protected from 'erosion' caused by passing vehicles. Crucially, prevention is key. No-one could advance a realistic solution for remediation of the banks following damage. Having said this, it is necessary to be realistic about the level of risk that would be caused by the HGV movements etc to and from the appeal site.
71. We are talking about professional HGV drivers under the direction of dedicated Banksmen, working to an approved TMP. Although the Lane is narrow, and extremely so in places, it is never of a width less than an HGV, with reasonable clearance. As such, I think the fears are somewhat overstated. Importantly, additional preventative measures could be worse than the cure, at least as far as local people are concerned. To further narrow the Lane over the sunken sections to reduce the risks of impact would inhibit general movement and access. A before and after condition survey would be carried out, though that would not prevent accidental abuse.
72. The problems I foresee would be the temptation for an HGV driver to overtake a cyclist or for opposing vehicles to try to pass on a narrow sunken section of the sunken Lane. The alternative would be to wait behind until a clear section of road presented itself. I am sure that most, if not all drivers, would adopt the safer course. However, the danger is that if anything untoward were to occur the finger of blame would inevitably be pointed at the Contractors, irrespective of the actual 'culprit'. Thus, to ensure that HGV drivers associated with the exploratory contract are persuaded this way, a camera in the cab to record activity would go a long way to safeguard the situation and prevent misdirected accusations. This could be required by condition.
73. Walkers are also major users of the Lane and require catering for. This could be done with warning signs where known formal and informal tracks meet or cross Coldharbour Lane. For those walking along the Lane itself, the reduced speed of HGVs would assist and allow both walker and driver to take the appropriate avoiding action. Such arrangements are never without risk, but

again the in-cab camera would act as a deterrent and provide evidence should this be required.

74. Questions about light, noise and air quality were raised, but the evidence from the ES is that none would be compromised to any undue degree. As such these aspects do not amount to a material ground for resisting the project. The question of ambient tranquillity of the area for recreation and wider enjoyment is considered elsewhere.
75. To summarise on the effects of traffic movements, it is certain they would not go unnoticed. There would be an increase in HGV movements and this would cause some inconvenience and, almost certainly, local irritation. This is a negative aspect to be weighed in the balance. Even so, the introduction of a TMP and additional reinforcing conditions where necessary would minimise the levels of interference, inconvenience and risk. Once again, it has to be remembered that this would be for the short duration of the exploratory scheme. As said, when faced with potential disruption people are invariably adept at managing their lives to minimise the inconvenience to themselves.
76. Under these circumstances, the proposals would create some small tension with the DP Policies MOV2 in the MVCS or Policy 1 in the SMLP and this must be weighed in the overall balance. Crucially, however, the cumulative impacts would not meet the definition of severe given in paragraph 32 of the Framework.

*The need for the development and its consistency with the Government's policies for minerals and energy development*

77. There are two opposing arguments on this issue. On the one hand, the Framework emphasises that minerals are essential to support sustainable economic growth and the economic advantage they deliver. In addition, Government confirms the continuing need for fossil fuels for many years and the benefits of a secure energy supply. On the back of this, the need to extract fossil fuels is strongly encouraged, commensurate with protection of the environment. On the other hand, whereas much of this is accepted in principle, the small quantum of oil and gas thought to be in the Holmwood Prospect and even if located the relatively low chance of this being won (1 in 3 or 4) does not outweigh the harm to the environment.
78. The first thing to note here is that we are talking only about exploration and not final recovery, though this is now accepted as a part of mineral extraction. Secondly, the policies supporting the winning of oil and gas do not set any lower limit. In this case, the fact that the resource 'under' the appeal site was claimed to have the potential to be the fifth largest on-shore reserve in the UK, as confirmed in a Competent Persons Report, was not challenged. It might only provide a resource to serve the entire needs of the country for a few days (2-4 days), but as potentially the fifth largest on-shore resource it must fall within the 'policy of encouragement'.
79. One can look at the submissions to the inquiry about need from both sides, and some may be specific to one type of operation or another. However, I am under no illusion that the Government's current direction of travel is one of a strong line of encouragement for exploration and to maximise the recovery of the country's oil and gas reserves. Thirdly, it is not disputed that the 1 in 3 or 1 in 4 probabilities of recovery are high by industry standards.

80. Next, in answer to my questions, it was agreed that the knowledge of any winnable resource of oil or gas was important in both benefiting the balance of payments and strengthening the Government's negotiating position in terms of the need for imports, the costs of importation and ultimately fuel pricing. Finally, the operation in terms of exploration and possible subsequent winning of the resource would contribute to the economy in terms of jobs and tax and some, albeit a low level of local spend.
81. Finally on this issue, it was claimed that as a 'Penny Share' company Europa is a speculative enterprise and not 'fit and proper' persons to be granted the planning permission. I have attached no weight to this line of argument. In the first place, they are able to associate with an awarded on-shore Licence and I am sure this would have required checks. Secondly, there is fear that the Company would not be able to afford the level of restoration required. As this is FC land, I am certain the FC will have made certain that in agreeing to lease the land to Europa its position in this regard will have been covered. Finally, the planning process is designed to regulate the use of land, and is not intended to discriminate against one party or another. The process allows for regulation and control through the imposition of conditions or by employing a s.106 Obligation. Crucially, the FC has raised no concerns in this regard.
82. Overall, I am in no doubt that the exploration of the potential resource accords with Government's encouraging policies for investigating and winning onshore oil and gas. If successful, the site would offer the fifth largest on-shore resource and by industry standards the omens are good. Moreover, there are additional benefits in terms of the economy, though, of course, most of the tax and the balance of payments benefits would not arise if and until any identified oil and gas were won. Albeit this proposal is only for exploratory development, all these attract weight in its support.

*Other matters*

83. A number of concerns are expressed about the threat to the ecological integrity of the area. These relate particularly to badgers and birds. The starting point for assessment of the likely effects of the exploration on the local ecology is that an ES has been prepared and this includes a section on ecology. As noted previously, this was updated in November 2014 and again in March 2015, with a Written Statement. The second point is that, informed by the ES, Natural England raises no objections and neither does the Council's Ecological Officer, the EA nor the Surrey Wildlife Trust. Disquiet raised by any of these responsible authorities would have triggered a high level of concern to be weighed in the balance. However, in the absence of any sustained objection from the responsible agencies, it is difficult to accord material weight to submissions that are unsupported by professionally accredited objective evidence and evaluation.
84. For my part, I did observe the badger setts below the appeal site, which appear active. Even so, there is no objective evidence to the effect that these would be physically affected by the scheme and, bearing in mind their relationship to the compound, I see no reason to depart from this view. What may well happen is that the foraging area for the badgers using the setts may be interfered with or an outlier sett be located within the sphere of influence. However, having regard to the general expanse of open land in the area and the short term of the exploration drilling, I am satisfied that there would be no



long term adverse effects. As a failsafe, a pre-operation survey would be undertaken to establish if any changes had taken place and, if necessary, for appropriate action to be taken.

85. As for birds, I am grateful to the local resident who submitted lists and photographs of the local birdlife and I did see several of these species on my site visit. In particular, the red-listed fire crest and nightjar are drawn to attention, with several other locally important species. There do appear to be some differences in the lists supplied, though this may stem from the more localised study undertaken for the ES in the context of the proposed site compound and the effects the operation might have. However, there is no suggestion that any particular species would be materially adversely affected by the development proposal. Moreover, there are legal requirements in respect of breeding birds and the Ecological Monitoring and Management Plan, required by condition, should ensure that these duties are honoured. The timings of the activities associated with the exploratory contract could be controlled to assist in minimising problems and an Ecological Clerk of Works would be present on site during the operations.
86. The pollution affecting light, noise and air quality generated by the vehicle movements associated with the development have been looked at earlier. However, the construction and operational work in and around the site compound would introduce their own levels of intrusion. What can best be said is that conditions and sensible operating practices should minimise the effects. From the submissions in the ES, and the conditions suggested, I am confident that no dwellings or businesses would be affected to any marked degree and the vast majority not at all.
87. The two areas of most concern would be to walkers and other leisure users passing near to the site and the night-time lighting for aviation purposes on the top of the drill-rig, which would no doubt intrude in the night sky over much wider distances. These aspects cannot be mitigated entirely and do constitute a small objection to be weighed in the balance. Nevertheless, this would, once again, last for a very short period.
88. Next, the potential effects on the hydrological status of the area are raised, not least by Sutton and East Surrey Water. The safeguarding of groundwater quality is always important, especially where it is used as a potable resource. However, the regime recently introduced by the EA would provide for more robust testing and checking for any leakage from the site operations into the underlying groundwater. This should reduce significantly the dangers of a loss at source travelling along pathways to sensitive receptors. With this monitoring in place, it should be much easier and quicker to introduce remediation. In the absence of any worries raised by the Regulator, objections could only have attracted more weight if they had relied on technical evidence and evaluation. As it is, they seem to be almost entirely precautionary and the management proposals for the site and EA's monitoring should answer any doubts.
89. Penultimately, there are some objections on the basis that the road management and closures would cause businesses and customers inconvenience. The submissions on this point are largely subjective, with no independent assessment of the likely economic effects. First off, it would be silly to say that there would be no effects. Even so, as said before, people and

businesses would manage the inconvenience. Other than for the two 3-day closures of Coldharbour Lane, when access might be more difficult, though not denied, businesses and customers would have unfettered access during the peak hours. As such, there may be a small level of inconvenience that constitutes a negative factor, but not of itself crucial. This conclusion also covers the leisure activities associated with the Coldharbour Conservation Area and the Leith Hill Tower.

90. Finally, there was some challenge to Appellants' assertion that the development would be sustainable and attract the presumption in favour that the Framework endows. The Framework invites consideration to be given to the three strands of sustainability – economic, social and environmental.
91. In this context, there would be some economic benefits during the exploration stage and more to follow if the results were positive. In particular, jobs would be sustained and financial benefits would accrue. I do not believe there would be any social benefits and, in all likelihood, albeit short-term there would be modest disbenefits to local residents, businesses and the tourist industry. As for the environment, the scheme would impose landscape character and visual harm and impinge on tranquillity for the duration of the contract. There could also be some short term interference with the ecological balance in the area. Overall, I do not agree that the scheme would be sustainable in the sense required in the Framework and, therefore, the presumption in favour does not apply.
92. Thus, in summary on these matters, there are some small negative elements to be weighed in the balance, but neither individually nor cumulatively do these points add great weight against the exploratory project.

*The overall planning balance*

93. There are an appreciable number of elements to the appeal scheme and the impacts it would have on a variety of interests. In the first place, I have found that the development would not constitute inappropriate development, which by definition would be harmful to the Metropolitan Green Belt. As for the essential characteristics of Green Belts, the compound and activity would impinge on its openness and one of the five purposes of Green Belts, assisting in safeguarding the countryside from encroachment, would also be breached. However, to temper this, the operations would be very short-term and entirely reversible, thus ensuring the permanence of the Green Belt and greatly reducing the harm to this interest.
94. Although I do not find this to be major development in Framework terms, there would be harm to the AONB in terms of character, visual intrusion and infringement of the prevailing tranquillity. This reflects the high level of policy protection evinced by the Framework and development plan and less formal policies. However, the wholly reversible nature of the proposals and possible long-term benefits materially reduces the level of objection this harm attracts well below the threshold of significant.
95. Turning to other matters, the traffic, ecology, effects on businesses and visitor enjoyment are all topics that raise negative quotients in the balancing equation. Notwithstanding, taken individually or cumulatively, I have found these not to be compelling. Even the traffic protocols can be made to work effectively and safely through the TMP. In particular, because the duration of

the project is so short, I am certain local people, visitors and businesses would manage the inconveniences that would occur as best they can. No doubt the experience would prove irritating, but not life changing. The raft of conditions proposed would mitigate much of the feared harm. I am still left with the sense that local people, while objecting to the impacts of the exploration scheme, harbour a greater concern about what would happen should the oil and gas reserves be proven. Whereas this might be understandable, it can carry no weight in the conclusions leading to this decision.

96. On the benefit side, there are several key arguments in favour of the scheme. The exploration and winning of minerals is, in principle, consistent with and encouraged by national policies. Moreover, in industry terms the likelihood of finding oil and gas in the Holmwood Prospect is high and it could register as the fifth largest on-shore site in the UK. Next, no other realistic, better, or even equivalent alternative location from which to explore the Prospect has been established in any objective detail, either within or beyond the AONB boundary. The benefits that would flow from identification of the reserve in the short term carry some weight in their own right. However, without exploration there would be no means of establishing whether a viable resource exists, thereby delivering the greater long term benefits in terms of the economy, balance of payments, some aspects of sustainability and employment. Thus, these are all positive factors that attract very significant weight, even though some may not be fully realised in the short term.
97. On the physical aspects of the scheme, it would be of very short duration, would be fully reversible and should incorporate improvements in habitat biodiversity. The imposition of a comprehensive raft of conditions would minimise the vast majority of impacts and assist local interests.
98. Overall, I conclude for the reasons given above that the scheme would not be inappropriate development in the Green Belt. Moreover, the benefits clearly and convincingly outweigh the very short term harm to the Green Belt, the AONB and other interests. Even had I found the project to fall under the head of 'major development', I consider the assessment required by paragraph 116 of the Framework in terms of national benefits, the lack of alternatives, public benefits and the extremely limited duration of the effects on the environment, recreational opportunities and the extent the effects of the scheme could be moderated would constitute exceptional circumstances that would justify a favourable outcome in terms of the AONB.
99. In reaching my final position, and notwithstanding what I write in paragraph 3 above, I am mindful that some of my conclusions depart from those reached by the Inspector in the earlier appeal decision. The main difference is in my conclusion on inappropriateness in the context of the Green Belt. However, this stems almost entirely from the direction given by the HC Judgement in this regard. Any differences in my conclusions on the impact on the AONB are based on judgement and the ambient tranquillity for the area has diminished with the changes in flight path. As for the highway factors, it is not certain that the local Objectors raised their current concerns as forcibly with the previous Inspector. However, on the basis of the submission to the later inquiry, it was clear that some of the parameters of the TMP judged acceptable by the LHA had not been validated and, since 2012, there had been changes to the cycle usage of Coldharbour Lane and the width restriction Order that had been introduced after that date. Finally, it is not clear how extensively the draft

conditions were discussed at the earlier inquiry, but when some were questioned, it was necessary to make substantial changes to the wording to meet the tests in the PPG and to ensure the contract would be completed within the 18 weeks stipulated. Without these changes, this could have made allowing the appeal problematical.

## **Conditions**

100. In the event I were minded to allow the appeal and grant planning permission, the parties produced a set of draft conditions. This followed two open discussions at the inquiry and several meetings and exchanges of drafts during the adjournment. The main difficulty encountered is the tension between the 18-week contract duration and the requirement to safeguard the interests of acknowledged importance identified. This particularly pertains to those regimes where testing would be necessary and the results of the testing need to be verified by the LPA. After exhaustive discussion and exchange of views, there is not an entire measure of agreement, but most suggestions by the Appellants/ Council are accepted for the reasons given and to accord with development plan policies. The comments submitted by LHAG have been considered and where they would comply with the PPG guidance and are not covered in other ways the wording has been adjusted.
101. In finalising the conditions, I have had regard to the PPG and to accord with the guidance contained therein I have made minor amendments to the wording of several in the interests of clarity and consistency.
102. Condition 1 has been revised to show the most recent plans and is required to ensure the permission is implemented in accordance with the terms of the application. As requested by the Council, a Tree Constraint Plan has been included. The suggestion by LHAG that a plan showing the rig height should be included is unnecessary as it already captured by the plans referred to. Condition 2 is essential to ensure that site operatives are conversant with the terms of the planning permission in the interests of the local environment and amenity.
103. Condition 3 is required to enable the Council to exercise planning control over the operation, so as to minimise the impact on local amenity and to comply with Schedule 5 paragraph 1 of the Town and Country Planning Act 1990.
104. Moving to Condition 4, this is required for a similar reason and to ensure the prompt and effective restoration of the site. In response to this, LHAG says that it would be self-defeating to force the Appellant to abandon the site before the site reinstatement is completed. This is scheduled to be a six week period. Therefore, in order for this Condition to have effect it should require cessation of operations (drilling and testing) after 12 weeks as well as vacation of site at 18 weeks. Although I can see the reasoning behind LHAG's suggestion, I believe it would be a hostage to fortune to tie the contractors down so tightly. The crucial target is that the exploration should be completed and the site restored ready for landscape planting within the 18 weeks. Condition 4 is unequivocal on this point. Within this period the contractor can fulfil activities either more quickly or more slowly than the outline plan, just so long as the 18 week target is met. Thus, any intermediate timings are unnecessary and potentially counterproductive.

105. Condition 5, pertaining to the hours of operation is essential to safeguard the environment and protect the amenities of local residents. Condition 6 establishes necessary limitations on operations for similar reasons. However, the EA believes that the initial proposals for the fence surrounding the site may need to be reviewed to ensure that there is adequate site security. At present it is a 2 metre post and a chain link fence. The EA's requirement may mean that there has to be a change from the original planning application proposals, which could be dealt with by means of a s.73 amendment. In this context, the Council responds that any s.73 application to carry out development not in accordance with Condition 1 (i.e. amend/revise plans) would be determined by the Council, with consultation/notification in accordance with its Statement of Community Involvement. Such an application may require the Appellants to submit a further Addendum to the Environmental Statement chapters on Landscape and Visual Impact and also Ecology. The EA is happy to deal with it in this way, provided the site security and fencing is deemed appropriate at the environmental permitting stage.
106. For my part, it is unfortunate that this was not resolved before the close of the inquiry. Notwithstanding, although a s.73 application could prove a tortuous and lengthy process, especially if the ES had to be revisited, it is an acceptable route forward within the planning legislation. As such, the Condition can remain unchanged and parties will be aware of the timing implications of the process.
107. Turning to Condition 7, which covers dust, this is essential in the interest of local amenity. Condition 8 embraces the noise environment and is needed to ensure the minimum disturbance and avoid nuisance to the locality. LHAG is worried that a method of calculation may be employed, which it considers less reliable than direct measurement. Whereas this may be true, the condition requires the method of calculation to be agreed with the Council prior to operations. If this is done then it will permit the Council to verify calculations with actual readings to secure the necessary level of accuracy. One problem with direct measurement is that it makes it more difficult to filter out other noise. As the Council submits, this approach accords with the measurement method described in British Standard 4142: 'Methods for rating and assessing industrial and commercial sound'. For these reasons I support the submitted draft, with the addition of the words 'except in emergency' when measuring for gas flaring.
108. Condition 9 is fully justified, and requires details to safeguard the ecological and biodiversity interests of the site. There is no dispute about the aims intended, but concerns are expressed by the Council about the way '*new or amending mitigation measures*' following the decommissioning phase will be readily enforced/secured. This is particularly so since the Council understands that the developer has a short-term one-year lease on the land (i.e. handing the area back to the Forestry Commission (FC) after that time, who will then have its own Forestry Management Plan). For this reason the Council considers that inclusion of any '*new or amending mitigation measures*' in a five year aftercare scheme is the most appropriate method for securing such measures.
109. This is a difficult matter, but the Condition, as worded, is not challenged in terms of outcome. It seems to me that irrespective of any '*new or amending mitigation measures*' that are needed, the usual monitoring and aftercare would extend outside the period the land would be leased from the FC.

Importantly, however, the permission and attendant conditions run with the land. It falls, therefore, to the developer and the FC to agree how any action to implement conditions beyond the period of tenure is handled. As I see it, this does not invalidate this condition. With one small amendment to the wording of the condition, the necessary monitoring and aftercare can be included as part of the Ecological Monitoring and Management Plan.

110. The first lighting Condition 10 is imperative to avoid endangering the safe movement of aircraft and the operation of the nearby Gatwick Airport. The second lighting Condition 11 seeks a Light Management Plan and is necessary in the interest of residential amenity and the local environment.
111. Condition 12 relates to soil contamination and is a matter of dispute with alternatives suggested by the Appellants and others. First, there is no submission that it is unnecessary or that the objectives embraced by the condition are flawed. It is essential to demonstrate that there has been no long term contamination of the near surface natural soils at the site as a result of the development and to ensure the site can be suitably restored, on completion of the exploration. The argument is about the appropriate wording that would best secure this, commensurate with meeting the developers' 18 week contract timescale.
112. The Environment Agency has no objection to the technical aspects of this condition saying that the important aspect is, just as it is for environmental permitting, that the ground is tested prior to and post the activity, to ensure there has been no deterioration. However, the condition has to be workable, and the limitation of 18 weeks appears to make this unachievable.
113. From the Appellants' comments the EA has noted that there are areas to be filled, where they "*will be building up the ground levels*". The implications related to this aspect of the work are not clear in the site preparation works section of the planning application documents. In the event that the developer/ applicant imports materials to make up the working level or the landscape profile, a further environmental permitting condition may be required.
114. The Appellants say that the condition as drafted is unworkable, because the development has to commence in order to prepare the levelled drilling compound. It is this work that would enable geochemical testing of the levelled compound as required by the condition. The timing will also cause problems, because the Appellants will be levelling the site and covering it with membrane as the work progresses to avoid leaving the final level open to deterioration, so the sampling will be progressive. Moreover, nothing is said in the condition about the filled areas, where the levels will be built up. An alternative condition is suggested by the Appellants, which can be seen below.
115. In response, the Council says that the condition states that the "*geochemical soil testing shall be carried out.....before site operations commence...*" This is not the same as '*before development commences*' in the CPA's opinion. The wording could be amended to '*before drilling operations commence*'.
116. As a basic principle, the Council considers it is correct and workable to require the methodology and scope of the pre and post development geochemical testing to be agreed in writing before commencement and therefore no change is required here. Timing should not be an issue – the soil

testing has to be carried out before the membrane is laid. This should be able to be incorporated into the programme by the Appellants, and with the samples only being taken from within the top 300mm of soil, should be a quick process.

117. The Appellants' alternative condition is worded as follows:

Condition 12: No development hereby permitted (save for anything done pursuant to Condition 16) (Ground and surface water monitoring) shall commence until geochemical baseline soil testing has been carried out across the drilling compound and a report submitted to the County Planning Authority for evaluation.

A Method Statement shall be submitted to the County Planning Authority identifying how the developer will identify any soil contamination at the decommissioning stage and how it will be dealt with, should it be encountered.

The Method Statement should also identify the proposed design and methods of prevention and remediation of any soil contamination should it occur.

Development (save for anything done pursuant to Condition 16 (Ground and surface water monitoring) shall not be commenced until the both the report and the method statement are approved.

118. This alternative text attracts an equal number of comments. In the first place, the EA will also be covering this aspect in the Environmental Permit (permit and surrender documents), which is normal practice. The Appellants are able to submit the same documentation to the Council and the EA, as a requirement of planning and environmental permitting, to prove that there has been no deterioration in soil quality across the site as a result of their works. The 18 week limit makes it difficult for this Condition 12 "Contamination" to be achieved. The final soil samples will take time to be analysed, and then the Council and the EA will need to be consulted to satisfy themselves the planning and environmental permitting obligations have been met.

119. The EA recognises that the alternative has been suggested to help resolve this issue, with respect to completing the work within 18 weeks to comply with the planning application proposal. The first section, testing the soils prior to works commencing, appears fine. The next two sections appear fine in their own right (a methodology for identifying soil contamination, proposed mitigation measures and methods of remediation if contamination has occurred), but may not be fine in the context of what is required for the site.

120. As the Appellants' alternative was written, the restoration work may be completed (to comply with the time schedule), a methodology of what will be done to clean-up the site if it has been contaminated will have been submitted, but any potential areas of contamination may be covered over by the restoration soils prior to getting the full sample results back. This could result in the need for a clean-up programme and remediation works being agreed, implemented and finalised outside the proposed 18 week planning timescale.

121. In the Council's view, the alternative is not acceptable. First, it does not include minimum sampling spacing; secondly, it does not specify that the methodology and scope of the pre and post testing should be approved in writing by the Council; and, thirdly, it does not specify that remediation shall

be carried out in accordance with the approved scheme – only that a Method Statement will be submitted and approved. The Council does not consider that this issue can simply be devolved to the EA, because it is not just a potential controlled waters issue – it is also a human health matter.

122. Having regard to the aforementioned views, I consider the need for the condition and how best to achieve the aims within the 18 week contract period. In the first place, on the basis of the evidence, I consider the prospect of the additional importation to be *de minimis* and, therefore, should be dealt with outside the condition as an 'emergency'. Secondly, I do not demur from the joint views of the Council and the EA that this is a matter of interest to both the planning and regulatory regimes. As such, it cannot be left solely to one agency and a condition is required for planning purposes.
123. As I said at the start of this topic, the tension between completing the contract and the 18 weeks allowed for this makes resolution of the differences difficult. Having said this, this is what the application seeks, the permission grants and the ES has covered. To extend the contract would mean going back to square one and this is in no-ones' interest and so wording is required to deliver a sensible and pragmatic solution that accords with the tests in the PPG.
124. As I suggested at the inquiry when this condition was discussed, a mobile testing unit would remove many, if not all, of the problems and give the parties what they need to move forward. No-one disagreed that this is a feasible option. To achieve this, a baseline survey, as suggested in the Appellants' modified condition, could be done during the site construction and the results passed to the planning and regulatory authorities for their consideration during the 5 week period of the drilling process. It could be undertaken in a phased way either before the membrane is laid or, as seems more likely, progressively as the membrane is being completed. The spacing and timing protocols should be agreed before the commencement of the contract as part of the Method Statement.
125. This baseline would allow both the planning and regulatory regimes to determine the acceptable post evaluation contaminant thresholds for them (they may not be the same), which could then be tested against as the compound was dismantled and the membrane removed. With a mobile testing unit, any breaches would be identified immediately and that area left open until remediation measures are put in place. During the restoration phase the plan of the dismantling would have to be sensitive to meeting the 18 week contract period, but I am confident that this could be achieved, with very little chance of the 18 weeks being breached and only then in a case of emergency. We have to remember that one is not anticipating a breach in the integrity of the membrane leading to groundwater contamination and the check should be precautionary only. On this basis, and in the absence of any agreement between the parties, I have drafted a condition that meets the PPG tests and accommodates the wishes of the parties as far as is possible within this remit.
126. Draft Condition 13 deals with soils and is necessary to enable the County Planning Authority to adequately control the development and to secure restoration of the site to a condition capable of beneficial afteruse. The draft wording attracts no adverse comment.
127. The landscape and restoration Conditions 14 and 15 remain in dispute, with the Council arguing for two conditions and the Appellants for one. In the main,



the problems arise from the relationship between the Appellants and the Forestry Commission (FC) who own the land. In a nutshell, restoration proposals are usually undertaken in the first planting season following completion of the development. However, in this case, the Appellants seem to have a short term relationship with the owners of the land, and the inquiry is not privy to the detail. In my view, this is not crucial. As mentioned previously, the permission runs with the land and the necessary work would have to be overseen by the Appellants or their successors in title – the FC.

128. The key difficulty with the condition as drafted is that it requires a Landscape and Restoration Plan that complies with the aims and objectives of planning principles and these may not be entirely consistent with the FC's management regime. It was not possible to engage with the FC to ascertain its thoughts or expectations. Neither was the FC available to answer questions or to inform whether it has powers to avoid complying with a planning permission. If the latter, then no condition would overcome this and there would have to be an Legal Undertaking/Agreement. However, in the absence of this, it would have to comply with the permission as issued and, if changes are proposed, it would have to apply for a variation under s.73.
129. As such, I agree with the Appellants that one condition is sufficient and that the Council cannot dictate how the FC manages its land. However, from the Council's perspective, the restoration and subsequent maintenance must secure the approved scheme and assist in absorbing the site back into the local landscape as soon as practical and to enhance nature conservation interests. It must be assumed for the purposes of this permission that the landscape restoration scheme will reach maturity. To ensure this there must be a maintenance element. How the Appellants and the FC manage this is between them, subject to meeting the necessary end result. To reflect this, I have reworded some parts of Condition 14, including the reference to the FC. The FC can avail itself of s.73 if necessary. Condition 15, therefore, is omitted.
130. With Condition 15 omitted, the remainder of the Conditions have been renumbered in the Schedule of Conditions that follows. When discussing the draft conditions here, I have retained the numbers given to me in the draft.
131. Draft Condition 16 is essential to ensure appropriate baseline water quality monitoring and the protection of the water environment throughout the course of the development. There are no disagreements about the wording.
132. Then follows several conditions pertaining to highway and traffic matters. Condition 17 on routing is agreed as necessary for reasons of highway safety. Condition 18 covers delivery hours, and is fully justified in the interests of protecting the residential amenities of local residents. There is a suggestion from some that a shorter core time would be preferred. From my observations on site and the information contained in the composite ES I do not consider this to be necessary.
133. Condition 19 is included at my suggestion and requires a traffic survey and safety audit to be undertaken to assess changes in highway usage and is imperative in the interests of highway safety. There is no disagreement with the inclusion of this or to the wording proposed. However, this should not just solely be a survey, but must contain a risk based analysis - safety audit - of the findings.

134. Condition 20 requires a Traffic Management Scheme (TMS) to be prepared in the interests of highway safety. There is no disagreement with the aims and objectives, but there are a number of issues about the content and wording.
135. LHAG raises a number of points. First, it believes that details of the preliminary holding area on the A24 are a necessary part of the TMS. Secondly, it considers it to be essential to the operation of the TMS (as well as the safety of cyclists) that the TMS contains specific measures to cater for cyclists (as promised at 7.214 of the Environmental Statement). The requirement for such measures should, therefore, be an explicit part of the TMS description in this condition. Next, in order to preserve access to bike trails and walking routes on the East side of Coldharbour Lane, it proposes that the TMS should include a prohibition of all site-related traffic from parking or waiting in the area opposite the site entrance. Finally, it submits that parts of the TMS should be in operation “*..in advance of AND DURING the works*”.
136. The Council looks for an addition to the banksmen and escort details to include management of the progress of HGVs along Coldharbour Lane to protect trees and banks. On other points, it agrees with LHAG’s view on the holding area, but recommends an alternative reference in the TMS to simply ‘details of the preliminary holding area’. The Council considers that it would be advantageous for the Appellants to undertake a search for any other area (such as a large car park or depot area) to provide a rendezvous point off the public highway. This could avoid the problem whereby a broken-down vehicle etc blocks any A24 lay-by or any other part of the public highway used.
137. With reference to the issue of provisions for cyclist, recreational opportunities and residential amenities suggested by LHAG, this was discussed at the Conditions Session on 30 April 2015 and the Council considers that such provisions/requirements would not comply with paragraph 206 of the Framework. The Appellants comment that LHAG’s suggestions were discussed at the conditions sessions and where they meet the tests of paragraph 206 of the Framework have been incorporated. However, there are several items that fall outside the Framework remit and some that require consultation with individuals that would not be appropriate.
138. For my part, I believe that, with some minor amendments to reflect certain points, the suggested condition covers virtually all eventualities. It has to be remembered that any condition must meet the tests in the PPG and if a small part of a condition fails in this regard then the entire condition would be open to challenge. Thus, while appreciating the sincerity of LHAG’s proposals they would not comply. With regard to identifying a holding point, I favour a wider review to find the best option. As for cycling and safety, this should be covered in the Safety Audit required as part of Condition 19. I support having a camera in the cabs of the HGVs for reasons of both safety and road condition. This is looked at later.
139. Condition 21 requires that pre and post development condition surveys and subsequent repairs are undertaken taken in the interests of the long term preservation of the existing character of Coldharbour Lane and Knoll Road. This seems eminently sensible and is not disputed. Some of the content is challenged and this pertains to the need for a bond and the inclusion of reference to the closure Order on Coldharbour Lane.

140. In my view a bond would give the LHA some confidence about maintenance of the Lane etc, but without the agreement of the Council, who is both LPA and LHA, there is little point. There is no legal obligation on the LPA to enforce conditions and the clear indication is that it would not on this point. While nothing in s.59 of the Highways Act 1980 appears to preclude a planning condition, s.59 covers the recovery of expenses due to extraordinary traffic, and provides a fall-back position for the LHA. It should be remembered that one of the key features of planning legislation is that it should not be used where other primary legislation would better cover the matter. As for the closure Order, this is a matter of law. The Appellants cannot suspend or impose orders without negotiating the necessary legal processes.
141. Moving to Condition 22, this covers the method of construction and reinstatement protocols and is vital to ensure the future reinstatement of the site, consistent with Green Belt objectives. LHAG suggests that this condition should include a parking prohibition on the opposite side of Coldharbour Lane from the site entrance. As explained previously, I do not support this as it would be counterproductive and virtually impossible to enforce. As it happens, however, this should be covered in the Method of Construction/Reinstatement Statement under the section entitled "*a) parking and manoeuvring of for vehicles of site personnel, operatives and visitors*".
142. Draft Condition 23 requires wheel cleaning facilities to be installed in the interests of highway safety. Under many circumstances this is covered by highway legislation. However, in this instance, where cyclists form a considerable proportion of the traffic using Coldharbour Lane, and use the Lane primarily for leisure and sporting pursuits, I agree that there is sufficient justification in this instance to include this as part of the planning regime. There is no dispute about the wording.
143. Finally, I did canvass the inclusion of an in-cab camera/CCTV in the HGVs used for the contract. These are cheap and effective and, from experience, now widely used in London today in connection with cycle safety. The installation of cameras would assist in both highway safety and protection of the environment along the sunken sections of the Lane. I think that they would have a very positive influence on the standard of driving and in the event of an accident or other incident go a long way to establishing the onus of responsibility. The recordings would be made available to the LPA. Although the Appellants did not volunteer a separate condition in this regard, they did indicate that they were content to follow my lead. For these reasons I have added an appropriately worded condition.

### **Formal decision**

144. Having regard to the evidence presented to the inquiry, the written representations and visits to the appeal site and surroundings, I am convinced that the short-term harm to the identified interests of acknowledged importance would be clearly and demonstrably outweighed by the fully reversible nature and the benefits of the scheme in national and local terms. I believe these do constitute exceptional circumstances and that none of the national or local policies referred to above would be unduly compromised over the medium of longer term. Accordingly, and having taken into account all other matters raised, this appeal succeeds.

*J S Nixon*

Inspector

## **SCHEDULE OF CONDITIONS**

### **Approved documents**

1. The development hereby permitted shall be carried out and completed in all respects strictly in accordance with the terms of this permission. The following approved plans are contained in the application:
  - Site Application Area – Drawing No. 2.9 (January 2007)
  - Rig Access Route to Site - Drawing No. 5.9 Rev A (July 2009)
  - Proposed Site Entrance & Vehicle Swept Paths - Drawing No. 4.1 (July 2007)
  - Site Layout Drilling Mode - Drawing No. 1.7 (April 2008)
  - Cross Section of Site & Flare Compound - Drawing No. 4.3 (August 2006)
  - Typical Section Through Cellar - Drawing No. 5.4 REV A (April 2015)
  - Flare Bund Containment Details – Drawing No. 4.5 (March 2015)
  - Site Layout Drill Stem Testing - Drawing No. 4.6 REV B (July 2007)
  - Plans & Elevations proposed Site Cabins - Drawing No. 4.7 (May 2007)
  - Rig 28 Lights – Drawing No. 02061\_TCP\_01 REV A (14 May 2014)
2. A copy of this decision notice, together with the approved plans and any schemes and/or details subsequently approved pursuant to this permission, shall be kept at the site office at all times and the terms and contents shall be made known to supervising staff on the site.

### **Temporary permission and commencement**

3. This planning permission shall be limited to a period of three years from the date of this decision. The developer shall notify the County Planning Authority in writing within seven working days of the commencement of the implementation of the planning permission.
4. Within 18 weeks from the commencement of the development (save insofar that, for the purposes of this condition, anything done pursuant to Condition 15 (Ground and surface water monitoring) shall be deemed not to constitute commencement of development), all buildings, plant, machinery (both fixed and otherwise) and any engineering works connected therewith, on or related to the application site (including any hard surface constructed for any purpose), shall be removed from the application site and the drill-site shall be reinstated to a condition suitable for forestry save that this condition shall not operate to require the removal or cessation of anything done or to be done pursuant to Condition 15 (Ground and surface water monitoring). The site shall be fully restored in accordance with the detailed restoration scheme required under Condition 14.

### **Hours of operation**

5. With the exception of emergencies, drilling, gas flaring and ingress and egress by relevant HGVs as specified in Condition 17, no lights shall be illuminated nor shall any operations or activities authorised or required by this permission, take place other than during the hours of:

0700 to 1800 hours on Monday to Friday

0700 to 1300 hours on Saturday

Apart from the exceptions referred to above, there shall be no working at any time on Sundays, Bank or National Holidays.

### **Limitations**

6. Notwithstanding any provision to the contrary under Part 17 of the Town and Country Planning (General Permitted Development Order) 2015 or any subsequent Order (but subject to the proviso set out below):
- i. no plant, building or machinery, whether fixed or moveable, shall be erected pursuant to the said permitted development rights, on the application site.
  - ii. no lights or fences other than those permitted by this application shall be installed or erected at the application site.

Proviso: This condition, however, does not prohibit the exercise of and reliance on any permitted development right under which the ground and surface water monitoring scheme under Condition 15 could be carried out.

### **Dust**

7. None of the development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring)) shall commence until a scheme for appropriate on-site dust suppression has been submitted to the County Planning Authority and approved in writing. Such a scheme shall include measures necessary to minimise any impact upon local road users, residential properties located near the site, or any other sensitive interests of importance from the emission of dust from the application site. The approved scheme shall be implemented and retained in place for the duration of the development in a condition that ensures the aims of the approved scheme are met.

## Noise

8. The level of noise arising from any operation, plant or machinery on site, at a height of 1.2m above ground level and at least 3.5m from the façade of any residential property or other noise-sensitive building most exposed to noise from the site shall not exceed the limits in the table below. Such noise levels may be measured directly at the relevant location(s) or may be calculated according to a method previously agreed in writing with the County Planning Authority.

Activities	Times of day	Noise limit L <sub>Aeq,30min</sub> dB	Explanatory notes
Temporary operations such as site preparation and reinstatement	07:00h – 18:00h weekdays 07:00h – 13:00h Saturdays	55	These hours are limited by Condition 5
All activities save gas flaring (covered separately below)	07:00h – 18:00h daily	45	
Any activity save gas flaring (covered separately below)	18:00h – 07:00h daily	42	
Gas flaring	07:00h – 19:30h (except in emergencies)	53	Gas flaring shall only be undertaken in between the hours here specified.

## Ecology and Bio-diversity

9. No development hereby permitted (including removal of vegetation, lopping of trees and other site clearance) but excluding anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until an Ecological Monitoring and Management Plan has been submitted to and approved in writing by the County Planning Authority.

The plan will include details of the following:

- i. Methods, survey area(s) and programme for pre-commencement surveys for vegetation, badger, roosting and foraging bats, nesting birds (including nightjar and firecrest), reptiles, other protected species and invasive plant species;
- ii. Ecological protection and mitigation objectives and measures for site clearance, construction, operation and decommissioning phases of the consented development. These will include:

- a. Measures to address potential disturbance or harm to badger, roosting and foraging bats, nesting birds (including nightjar and firecrest), reptiles and other protected species,
  - b. Details of mitigation for potential lighting, noise and dust impacts on flora and fauna, and
  - c. Other protection measures for retained and adjacent vegetation and habitats;
- iii. Specifications for any habitat management and/or translocation necessary to address potential impacts on reptiles and other protected species, including exclusion fencing;
  - iv. Methods and programme for on-going ecological monitoring and aftercare of the development, including provision of an Ecological Clerk of Works to implement the Ecological Monitoring and Mitigation Plan and oversee mitigation works at the site; and
  - v. Measures for the control of Japanese knotweed and any other invasive plant species recorded by the ecological monitoring surveys.

The results of the pre-commencement ecological surveys shall be reported to the County Planning Authority in writing. Should the results of the pre-commencement ecological surveys require new or amended mitigation measures, the Ecological Monitoring and Management Plan will be amended and resubmitted to the County Planning Authority for further approval within one month of the surveys taking place.

The results of the monitoring surveys during site clearance, operational and decommissioning phases shall be reported to the County Planning Authority in writing.

The final approved Ecological Monitoring and Mitigation Plan shall be implemented in full and those protection measures that are required to be retained shall be maintained in a functional condition for the duration of the development and any agreed aftercare period.

## **Lighting**

10. Obstacle lighting consisting of the 200 candela LL330 series shall be placed on the top of the drill-rig for the duration that the drill-rig is on site. The periods of illumination of obstacle lights, obstacle light locations and obstacle light photometric performance must all be in accordance with the requirements of 'CAP 168 Licensing of Aerodromes'.
11. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Light Management Plan has been submitted to the County Planning Authority and approved in writing. The Light Management Plan shall be in accordance with drawing no. 0277-1300-001 Rev A and shall include details of:
  - i. the siting of temporary security lighting for all phases of the development, taking into account the location of sensitive receptors;
  - ii. the hours lights would be illuminated and good practice measures to minimise the use of lights;



- iii. measures to control and minimise light spill;
- iv. measures for reviewing any unforeseen impacts;
- v. Practical measures to minimise upward waste of light from site luminaries and to minimise light spill into the surrounding woodland.

The approved Light Management Plan shall be implemented for the duration of the development.

### **Soil Contamination**

12. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring)) shall commence until a Method Statement for the geochemical baseline soil testing and how the developer will identify any soil contamination at the decommissioning stage and how this will be remediated has been submitted to and approved in writing by the County Planning Authority.

The Method Statement will include:-

- i. details of the proposed design;
- ii. details of minimum sample spacing and depths below existing ground level;
- iii. the method of testing samples using a mobile testing laboratory;
- iv. a programme for the geochemical baseline soil testing for the site and submission of results to the County Planning Authority;
- ii. the methods proposed to prevent soil contamination;
- iii. remediation methods for soil contamination should it occur during the contract period. The remediation methods shall deal with a sliding scale of contamination with protocols to cover each level of potential contamination identified; and
- v. a programme for identifying any soil contamination at the decommissioning stage and how it will be dealt with, should it be encountered, again on a sliding scale of contamination with protocols to cover each level of potential contamination identified. This programme should allow time within the 18-week contract period for the County Planning Authority to approve the test results in writing and for any necessary remediation to take place.

NB It should also be remembered that the test results at both pre construction and decommissioning stage will be of interest to the Environment Agency and its contamination thresholds may differ from those of the County Planning Authority.

### **Soils**

13. All topsoil and subsoil shall be retained on the site for subsequent use in restoration. No soils or soil making material for use in the restoration shall be brought onto the site. Stored soil bunds shall not exceed 4m in height.

The restoration soils shall be spread over the site at an even depth and shall not exceed the final levels shown on The Restoration Profile Drawing No 4.10 dated July 2007.

### **Landscape and restoration**

14. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Landscape and Restoration Plan to be implemented on the cessation of phase 3 of the development (testing and evaluation) shall be submitted to and approved in writing by the County Planning Authority.

The Landscape and Restoration Plan shall include details of:

- i. the excavation, storage and reinstatement of soils to ensure the survival of the of the existing seed bank;
- ii. programme for the implementation of the restoration, monitoring and aftercare;
- iii. provision for the enhancement of biodiversity focusing on native species and the results of the pre-commencement ecological surveys, whilst taking into account the use of the land for commercial forestry;
- iv. planting specification including details of species, planting sizes and proposed numbers/quantities/seed mix & application as appropriate;
- v. the reinstatement of the access track; and
- vi. details of any elements of the ground and surface water monitoring scheme approved under Condition 15 to be retained or continued on the site.

The plan as approved shall be carried out in full.

All planting implemented pursuant to this permission shall be maintained in good, healthy condition and be protected from damage for five years from the completion of site restoration. During that period any trees or shrubs which die, or are severely damaged or diseased shall be replaced in the next available planting season with others of a similar size and species.

### **Groundwater monitoring**

15. No development shall commence until a scheme for the evaluation of groundwater and surface-water baseline quality and monitoring has been submitted to and approved in writing by the County Planning Authority. The scheme of works shall include full details of any proposed borehole design, installation details and monitoring (and include an action plan in the case of any identification of pollutants found beneath the appeal site prior to commencement of development). The development shall thereafter be carried out in accordance with the approved details.

### **Highways**

#### Routing

16. No relevant vehicle (i.e. any HGV connected with the development hereby permitted and including any vehicle carrying parts of the drill-rig, but excluding

any vehicle used for the purposes of the ground and surface water monitoring) shall enter or leave the application site unless accompanied by an escort vehicle to ensure correct routing in accordance with the approved Traffic Management Scheme (agreed in accordance with Condition 19 below).

#### Delivery hours

17. With the exception of the 2No. three day road closures, no relevant vehicle shall enter or leave the application site other than between the hours of 0930 to 1500 hours Monday to Friday and 0930 to 1300 hours on Saturdays; no relevant vehicles (as defined in Condition 16) shall enter or leave the site at any time on Sundays, Bank or National Holidays.

The developer shall notify the County Planning Authority in writing of the dates of any road closures at least seven working days prior to the road closure.

#### Traffic survey and safety audit

18. Prior to the submission of the Traffic Management Scheme a traffic survey shall be undertaken of all vehicles and pedestrians using Knoll Road and Coldharbour Lane on Saturdays between the hours of 0800 and 1400. This survey should cover all recreational activities, including cycling, which currently take place in Knoll Road and Coldharbour Lane. The results of this survey, combined with those of the traffic survey conducted in late 2014, supplemented by any pedestrian counts to fill in gaps, shall be used to produce a safety audit for the junction of Knoll Road and Coldharbour Lane and for the length of Coldharbour Lane between Knoll Road and the site access. The results of this audit shall be used to inform the Traffic Management Scheme required by Condition 19 below.

#### Traffic Management Scheme

19. No development (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall take place until a Traffic Management Scheme has been submitted to and approved in writing by the County Planning Authority.

The Traffic Management Scheme shall include:

- i. the provision, implementation and monitoring of traffic management measures (including details of the HGV holding area) to regulate the passage of relevant vehicles (as defined in Condition 16) travelling to and from the site and these measures shall take account of the road safety audit. Any mitigation measures should be subject to the road safety audit process;
- ii. details of the temporary road closures, the management of traffic, including emergency vehicles, during the road closures;
- iii. details of temporary warning signs for rights of way users at the point at which the rights of way meet Coldharbour Lane;
- iv. details of temporary signs and any appropriate road marking prohibiting all relevant vehicles from parking or waiting in Knoll Road other than in three temporary marked parking places;

- v. details of the publicity and prior notification signs to be provided to Capel, Holmwood and Wotton Parish Councils and to residents in Coldharbour Lane, Knoll Road, Abinger Road, Leith Hill Road, Lake Road, Broome Hall Road and Hen Hurst Cross Road in advance of and during the works;
- vi. banksmen and escort details, including management of the progress of HGVs along Coldharbour Lane to protect trees and banks.

The Traffic Management Scheme shall be implemented as approved and continue for the duration of the contract.

### **Pre and Post development Condition Survey and subsequent repairs**

20. No works shall commence unless and until:

- i. A pre-development condition survey of Knoll Road and the section of Coldharbour Lane from the application site to Knoll Road (the route for HGVs agreed in the Traffic Management Scheme) has been carried out and submitted to the County Planning Authority and approved in writing.
- ii. A method statement has been submitted to the County Planning Authority and approved in writing identifying how any damage to the carriageway or highway verge, which may be inadvertently caused as a result of the development, will be made safe and remediated by the developer.

In the event of damage to the banks (as opposed to verges) of Coldharbour Lane (which it is agreed cannot be repaired), the method statement shall include steps to be taken to minimise the impact of the damage.

A post development condition survey of Knoll Road and the section of Coldharbour Lane from the application site to Knoll Road (the route for HGVs agreed in the Traffic Management Scheme) shall be undertaken by the developer and submitted to the County Planning Authority within three months of the completion of the development hereby approved. As part of this survey, a scheme, including the method of payment at the developer's expense, for the remediation of any damage to the public highway and its verges resulting from the passage of relevant vehicles (as defined in Condition 16) shall be submitted to and approved in writing by the County Planning Authority.

Method of construction/reinstatement

21. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a Method of Construction/Reinstatement Statement has been submitted to the County Planning Authority and approved in writing. Such a Method Statement shall include details of:

- i. parking (both on and off site) and manoeuvring of vehicles for site personnel, operatives and visitors;
- ii. loading and unloading of plant and materials;

- iii. storage of plant and materials;
- iv. the protection of trees to remain on the appeal site and immediately adjacent to it; and
- v. programme of works.

Only the approved details shall be implemented during the site construction and reinstatement periods.

#### Wheel cleaning

22. No development hereby permitted (save for anything done pursuant to Condition 15 (Ground and surface water monitoring) shall commence until a scheme for the prevention of contamination of the public highway has been submitted to and approved by the County Planning Authority in writing. Such a scheme shall specify all measures necessary to keep the public highway clean and prevent the creation of a dangerous surface on the highway. The scheme shall be implemented in full and the measures as approved shall be thereafter retained and used for the duration of the development.

#### In-cab cameras/CCTV

23. All relevant vehicles (as defined in Condition 16) shall be fitted with a camera or CCTV within the cab. This feature shall be fitted to give a forward view from the cab and capable of covering the width of the carriageway and immediate highway verges/banks. The cameras shall be running at all times the relevant vehicles are traversing the route of Knoll Road and Coldharbour Lane in either direction. The film/tapes shall be retained without deletion of content and made available to the County Planning Authority for a period to be agreed in writing with County Planning Authority, before commencement of the development hereby permitted.

## **APPEARANCES**

### **FOR SURREY COUNTY COUNCIL:**

Mr R Walton Instructed by the County Council's Legal Officer

He called:

Ms L Brown BA DipLA CMLI Associate Landscape Architect, Atkins Ltd

Mr P M White MA MSc MRTPI Technical Director with Atkins Ltd

### **FOR THE APPELLANTS:**

Mr A Newcombe Queens Counsel, instructed Charles Russell Speechlys LLP

Assisted by:

Mr M Westmoreland Smith Of Counsel

They called:

Mr A Stuart BSc(Hons) MEng Consultant Petroleum Engineer, Europa

Mr S Kosky BA(Hons) DipTP MRTPI Planning Director, Barton Willmore LLP

Mr J Dodds BSc(Hons) DUC MSc MGeol FGS Specialist in Hydrogeology and water management

Mr I Burdis BSc (Hons) Executive Vice President for AGR Petroleum Services

Ms L Toyne BA Dip LA CMLI DipTP Landscape Planning Director Barton Willmore

Mr R D C Elliott BA(Hons) BSc(Hons) CEng MICE MISTrutE R Elliott Associates Ltd

### **FOR THE LEITH HILL ACTION GROUP (LHAG)**

Mr Stephen Whale Of Counsel

He called:

Mr Patrick Nolan MA FIA Chair of LHAG

Mr Hustings For conditions sessions

**FOR THE SURREY HILLS AONB BOARD**

Mr Clive Smith BA(T&CP) MRTPI DMS Planning Advisor

**FOR MOLE VALLEY DISTRICT COUNCIL**

Mr Christopher Robertson Planning Officer

**FOR THE ENVIRONMENT AGENCY (Conditions discussions and Permit advice only)**

Ms Jan Hookey

**INTERESTED PERSONS**

Councillor Paul Garber	Chair of Capel PC Planning Committee
Councillor Hazel Watson	County Councillor
Councillor Stephen Cooksey	County Councillor
Professor Colin Garner	Resident
Mr John Roberts	Resident
Mr John Simpson	Resident
Mr Keith Sargent	Resident
Mr William Travers	Resident
Ms Gillian Coton	Resident
Mrs Lucinda Butler-Manuel	Resident
Mr Hilary Hopper	Resident
Mr Sean Ede	Resident

## **DOCUMENTS HANDED IN AT THE INQUIRY**

Attendance List (not included)

Document 1 – Letter of notification

Document 2 – Appellants’ opening submissions

Document 3 – Opening submissions by Leith Hill Action Group

Document 4 – Third party submissions

Document 5 – Europa Oil and Gas (Holdings) Financial details

Document 6 – Surrey Hills AONB Management Plan 2104-2019

Document 7 – Counsel’s opinion in respect of South Downs National Park Authority and the Framework

Document 8 – Lincolnshire County Council Report to Planning Committee Feb 2015

Document 9 – Extract from PPG 24: Planning and Noise

Document 10 – Mr White’s errata and updates

Document 11 – Minutes of Surrey CC Planning Committee 25 May 2011

Document 12 – Screening opinion 2006

Document 13 – Minutes of Surrey CC Planning Committee 22 June 2011

Document 14 – Core Documents List

Document 15 – Mr Nolan’s addenda sheet

Document 16 – Plan showing Environmental setting and water features

Document 17 – Letter from EA dated 10 April 2015

Document 18 – Note on EA’s attitude to groundwater monitoring

Document 19 – Aide-memoire re groundwater and surface-water monitoring

Document 20 – Developing an intrusion map of England

Document 21 – Letter from Sutton and East Surrey Water (undated)

Document 22 – Report to Capel Parish Council 5 December 2014

Document 23 – Extract from Maximising Economic Recovery of UK Petroleum and relevant legal Judgement

Document 24 – Alternative site assessment – summary table

Document 25 – Photographs of parking in Knoll Road

Document 26 – Extract from the Guidelines for Landscape and Visual Assessment

Document 27 – Plan of combined photograph locations

Document 28 – Information in respect of cycling in Surrey



- Document 29 – Width restriction Order 2013 – Coldharbour Lane
- Document 30 – Note on traffic generation from Appellants
- Document 31 – Further note on traffic generation from Appellants
- Document 32 – Note on noise rating from Appellants
- Document 33 – Note on holding bays from Appellants
- Document 34 – Note on South Lodge from Appellants
- Document 35 – Submission on badgers from Chair of East Surrey Badger Protection Society
- Document 36 – e-mail from Appellants re badgers (10 June 2015)
- Document 37 – Evidence of badger activity on and around the appeal site
- Document 38 – Information on birds in the area
- Document 39 – Technical Note on Ecology from Appellants
- Document 40 – Plan showing flare bund containment details
- Document 41 – Plan showing typical section through the Cellar
- Document 42 – Site visit itinerary
- Document 43 – Draft conditions and comments
- Document 44 – Closing submission of Leith Hill Action Group
- Document 45 – Closing submission of Surrey County Council
- Document 46 – Closing submission of Europa Oil and Gas