

# Regulation Committee

## Thursday 4 April 2019

### 2.00 pm Taunton Library Meeting Room



To: The Members of the Regulation Committee

Cllr J Parham (Chair), Cllr N Hewitt-Cooper (Vice-Chair), Cllr M Caswell, Cllr J Clarke, Cllr S Coles, Cllr M Keating, Cllr A Kendall and Cllr N Taylor

Issued By Scott Wooldridge, Strategic Manager - Governance and Risk - 27 March 2019

For further information about the meeting, please contact Michael Bryant on 01823 359048 or [mbryant@somerset.gov.uk](mailto:mbryant@somerset.gov.uk)

Guidance about procedures at the meeting follows the printed agenda **including public speaking at the meeting.**

This meeting will be open to the public and press, subject to the passing of any resolution under Section 100A (4) of the Local Government Act 1972.

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## **AGENDA**

Item Regulation Committee - 2.00 pm Thursday 4 April 2019

1 **Accuracy of the Minutes of the meeting held on 7 March 2019** (Pages 3 - 22)

The Committee will consider the accuracy of the minutes (To Follow).

## The Regulation Committee

Minutes of a meeting of the Regulation Committee held on Thursday 7 March 2019 at 14.15 in the Meeting Room, Taunton Library.

### Present:

Cllr J Parham (Chairman)

Cllr A Bown (Substitute for Cllr  
N Hewitt-Cooper)  
Cllr M Caswell  
Cllr J Clarke  
Cllr S Coles

Cllr M Keating  
Cllr A Kendall  
Cllr N Taylor

### Other Members Present:

Cllr P Ham

The Chairman welcomed everyone to the meeting, outlined the meeting procedures, referred to the agendas and papers that were available and highlighted the rules relating to public question time. He delayed the start of the meeting until 14.15 to enable Committee members and the public to consider the late representations that had been received.

### 1 Apologies for Absence - agenda item 1

Cllr N Hewitt-Cooper

### 2 Declarations of Interest - agenda item 2

Reference was made to the following personal interests of the members of the Regulation Committee published in the register of members' interests which were available for public inspection in the meeting room:

Cllr A Bown	Member of Sedgemoor District Council
Cllr Caswell	Member of Sedgemoor District Council
Cllr S Coles	Member of Taunton Deane Borough Council Member of the Devon and Somerset Fire and Rescue Authority
Cllr A Kendall	Member of South Somerset District Council Member of Yeovil Town Council
Cllr J Parham	Member of Member of Mendip District Council Member of Shepton Mallet Town Council

Cllr N Taylor

Member of Mendip District Council  
Member of Cheddar Parish Council

Cllr N Taylor further declared a personal interest as the owner of an explosives engineering company.

**3 Accuracy of the Minutes of the Meeting held on 10 January 2019 – agenda item 3**

The Chairman signed the Minutes of the Regulation Committee held on 10 January 2019 as a correct record.

**4 Public Question Time – agenda item 4**

(1) There were no public questions on matters falling within the remit of the Committee that were not on the agenda.

(2) All other questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

**5 Proposed Deepening of the Quarry Extraction Area, Replacing Asphalt Plant and Extending the End Date at Halecombe Quarry, Leigh-on-Mendip - agenda item 5**

(1) Chairman's Statement

The Chairman made the following statement:

*"The Committee will be aware that it considered and granted planning permission for an application relating to Halecombe Quarry in November 2018.*

*Officers from the Council's Legal Service and Planning Service have subsequently advised that at the time of the Committee in November 2018 Somerset County Council was relying only upon the Stage 1 Assessment which had been approved by Natural England.*

*Reliance upon a Stage 1 Assessment which required mitigation measures was established practice under UK law at the time the Stage 1 Assessment was prepared and approved by Natural England in 2017.*

*However, the case of People over Wind and Sweetman changed the position under UK law. It says that if you are trying to determine whether to carry out a Stage 2 Assessment for a project, it is not appropriate to take into account mitigation measures, which have been set out in the Stage 1 Assessment.*

*A Stage 2 Assessment is necessary if the project will have a significant effect on a Special Area of Conservation (SAC), without the mitigation measures which may have been set out in the Stage 1 Assessment.*

*That position has now been corrected. Somerset County Council have now carried out a Stage 2 Assessment under the Habitats Regulations. The conclusions of the Stage 2 Assessment are the same and Natural England have approved the measures set out.*

*As a result of this officers have requested that the Committee:*

- *rescinds its decision taken on 8 November 2018; and*
- *considers the application afresh together with the officer's recommendation.*

*I will be asking officers to present the application, supporting evidence and recommendations to the Committee. Members will have the opportunity to debate this matter, listen to representations on this application and seek appropriate advice and guidance from officers to any questions that they may have before the Committee is asked to consider the recommendations”.*

## (2) Report

The Committee considered the report of the Strategic Commissioning Manager, Economy and Planning on this application.

The main issues for consideration were the recommendations that the Committee:

- rescind the decision at its meeting on 8 November 2018 to grant conditional planning permission subject to a Section 106 Agreement being finalised; and following that
- consider and determine the planning application in the light of additional information set out in the report, taking into account a Habitats Regulations Assessment encompassing appropriate assessment under the Conservation of Habitats and Species Regulations, 2017 completed by Somerset County Council as competent authority.

The report also provided an update on various matters that had arisen and/or had been actioned since the matter was considered in November 2018. These included third party interest in having the application called in for determination by the Secretary of State for Housing, Communities and Local Government and Freedom of Information requests involving procedural matters.

The report focused on third party interest and the Habitats Regulations Assessment and included the report considered at the November 2018 Committee meeting as an appendix.

(3) Rescission of Previous Decision

Cllr Parham, seconded by Cllr Keating, moved Recommendation 1 set out in Paragraph 1 of the report.

The Committee **RESOLVED** to rescind its decision on Planning Application 2017/1022/CNT taken on 8 November 2018 for the reasons stated in the report and also to enable the Committee to consider afresh the application together with Recommendation 2 in the report.

(4) Late Representations

The Committee considered the late representations received which were as follows:

(i) Margaret Stuart on behalf of The Springs Foundation

A letter of objection dated 6 March 2019 which was based on concerns about the possible adverse effects on the Bath Hot Springs and their flow/recharge system of the deepening of Halecombe Quarry, particularly as it would be concurrent with the nearby ongoing Whatley Quarry operations. The letter referred to:

- the national, historic, cultural and economic importance of the Hot Springs which had led to the designation of the City of Bath as a UNESCO World Heritage Site
- the need to protect the Hot Springs from any threats to their continued wellbeing
- the complex deep hydrogeology of the inflow paths and their hydrogeological relationships and the need for a continued, precautionary approach to quarrying operations on the Mendip Hills to mitigate the potential for risk
- the impact of further extraction from Halecombe Quarry on the Bath Hot Springs hydrogeological system not having been properly taken into account in the Environmental Impact Assessment (EIA) and Environmental Statement (ES) either in isolation or in combination with other quarries operating in the area, and no mention having made of any mitigating measures or monitoring systems in the supporting documents
- the unsuitability of proposed planning conditions
- allowing a second quarrying operation to concurrently extend to similar depths before the impact from works on the first were fully understood would be unwise and inconsistent with the precautionary principle approach already adopted for Whatley Quarry as it would make monitoring and enforcement of conditions at either quarry virtually impossible.

(ii) Bath and North East Somerset Council (BANES)

A letter of objection from the Deputy Head of Planning (Development Management) on behalf of Bath and North East Somerset Council (BANES) dated 6 March 2019:

- maintaining the authority's view that the EIA of the effect of the proposed development on water - in particular its impact on the Bath Hot Springs - as required under the Town and Country Planning (Environmental Impact Assessment) Regulations, 2017 was legally/wholly inadequate
- it was no answer to these criticisms to state that the proposed extraction of limestone below 68m Above Ordnance Datum (AOD) would not take place until an impact assessment was undertaken pursuant to proposed Condition 6
- without prejudice to BANES' position, suggesting amendments to the wording of Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD), and a separate, new Condition 8 (Annual Water Monitoring Statement)
- clarifying that, notwithstanding indications that BANES refused to be party to a Section 106 Agreement, that was not considered a factually correct representation of the authority's position.

(iii) Laura Horner

Representations from Laura Horner dated 28 February 2019 about:

- the proposed conditions for the protection of bats from external lighting etc, relating mainly to mitigation after determination and reasons for the conditions
- the Regulation 25 consultation procedures
- a formal objection to Planning Application 2017/1022/CNT on the basis of insufficient evidence to determine the application under the 2011 EIA Regulations; the incorrect use of proposed Conditions 6 and 7 which were also unreasonable and removed excavation from proper control; misapplication of the Habitats Regulations following the *People over Wind and Sweetman* Case in the use of proposed conditions 42, 43 and 46; the lack of a reason for Condition 46; and failure to reconsult on the change to the application from a proposed "break" at 85m AOD in the Regulation 25 consultation to the "break" agreed later with the Environment Agency at 68m AOD.

(5) Case Officer's Presentation

(i) Introduction

The Case Officer made a presentation on Planning Application 2017/1022/CNT which covered the matters referred to in 3(ii) to 3(xii) below as a basis for the Committee's fresh consideration of the application, and the

late representations received.

Further to Paragraph 3.6 (Third Party Interest) of the report, the Case Officer asked that the further objections received on behalf of the owner of Whitehole Farm should be disregarded as it had been confirmed by the owner's solicitor that the agent who had submitted the objections had no authority to act on the owner's behalf. The owner's objections were therefore restricted to those set out in the report to the meeting of the Regulation Committee in November 2018.

*(ii) Overview of Proposed Development*

In the light of events since the November 2018 Committee meeting, and with the use of maps, plans and photographs, the Case Officer gave a detailed overview of the proposed development at Halecombe Quarry focusing on:

- the proposals that formed part of the planning application
- the key matters pertaining to the water regime and matters surrounding Habitats Regulations Assessment
- matters arising in the late representations and objections from The Springs Foundation, BANES and Laura Horner
- conditions.

The Case Officer highlighted that:

- the proposed development related to the deepening of the quarry extraction area at Halecombe Quarry, replacing the asphalt plant and associated facilities, retention of the concrete batching plant, and reopening of the access to Rookery Farm
- at the present time the development of the quarry and associated site activities were controlled by a planning permission granted in September 2002 and subject to minor alterations in 2014
- the quarry was currently permitted to work to a depth of 68m AOD
- the applicant was applying for the current end date for limestone extraction of 31 December 2021 to be extended to 31 December 2044 to allow for the additional reserves to be worked
- final restoration was proposed to be completed by 31 December 2046
- the new asphalt plant would be located to the south of the Halecombe Brook, which would be culverted to allow the new plant and associated development to be carried out
- the new plant would be a modern, high efficiency plant with a greatly increased capability to use recycled material, although the overall output would be the same as the existing plant
- it was also proposed to reopen the historic access road between Rookery Farmhouse and Limekiln Lane. Rookery Farmhouse was to be used as the quarry offices and a conference facility. The access would be used by light vehicles only and would avoid vehicles having to travel through the operational quarry area

- at the present time the consented reserves of limestone at Halecombe Quarry amounted to around 6.5 million tonnes (mt). However, the majority of these reserves could not be worked as they lay beneath the existing asphalt plant. As a consequence, it was necessary to remove the plant in order to exploit them. The readily accessible reserves reported to the Committee at its meeting in November 2018 were only sufficient for less than one year of production (approximately 600,000 tonnes). Over four months had elapsed since that time and the level of reserves had significantly depleted
- the proposed total depth increase (down to 10m AOD) would provide an additional 10 mt of limestone. The total amount of reserves at Halecombe Quarry would therefore be increased to around 16.5 mt, sufficient for 24 years of production at the current rate of 700,000 tonnes per year
- no further deepening of the quarry would be possible thereafter as there was insufficient space to widen the excavation to create the necessary benches
- there would be no lateral increase in the extent of the quarry, only a deepening of the quarry floor. There were no proposals to alter the rate of limestone extraction, any of the quarry operations or the working hours at the site
- similarly, there would be no alteration to the approved concept restoration scheme apart from a larger landscaped lake with a greater depth of water. All other aspects of the restoration scheme would remain unchanged
- an Environmental Statement (ES) accompanied the planning application and was the collation of the results of the Environmental Impact Assessment (EIA). A formal scoping opinion (defining the expected scope of the EIA) was issued by the County Council in 2015. The application was registered in April 2017, the culmination of the work undertaken by the applicant
- of particular importance was the Hydrogeological and Hydrological Impact Assessment (HHIA), extracts from which were contained within the November 2018 Committee report, and also the ecological impact assessment, relevant when considering Habitats Regulations matters.

*(iii) Legal Agreements*

- there were three separate legal agreements currently in force which related to Halecombe Quarry. The agreements were produced to accompany planning consents granted in 1992, 2000 and 2002
- It was proposed to consolidate these into a single new agreement, which would cover the entire Halecombe Quarry site. The existing legal agreements would then be revoked along with the relevant planning permissions
- since the matter was discussed at the November 2018 Committee meeting, officers had been working closely with the applicant, Cllr Philip Ham, the Divisional Member and Leigh-on-Mendip Parish Council to agree the content of the agreement.

- the agreed final draft was set out in Appendix 1 to the March 2018 Committee report. This had been agreed by the parties and had already been signed by the applicant and the landowner. In the event that planning permission was granted, the agreement was in a formalised position and ready to be signed by the County Council, in advance of planning permission being issued
- the agreement covered a number of matters, including protection of water resources and monitoring, lorry routeing, restoration, aftercare and long term management.

(iv) Community Fund

- the agreement also made provision (proposed by the applicant) for the establishment of a Community Fund to provide facilities and services for the benefit of communities within the local parishes of Leigh-on-Mendip, Coleford, Mells and Whatley
- contributions to the Community Fund would be related to the level of activity at the quarry and the distribution of monies would be carried out on a democratic basis.

(v) Water Regime - Hydrogeology and Hydrology

- the hydrogeological background was described in detail in Section 7 of the November 2018 Committee report and a HHIA had accompanied the application and informed the EIA
- there were three objections to the original application, from the owner of Whitehole Spings, BANES and The Springs Foundation, as set out in full in the November 2018 report. These related to impact on local springs and Bath Hot Springs
- also, the Environment Agency had responded as follows:

*“It is recommended that the developer provides evidence to show that the Bath Hot Springs will not be affected by this proposal. We will then review any documentation and comment accordingly”*

- a supplementary “Note” was provided, post submission, by the applicant’s hydrogeological consultant dated 22 June 2018. This followed a request from the previous Case Officer at a meeting with the applicant in May 2018 to specifically address the cumulative impact of deepening Halecombe and Whatley Quarries at the same time as this had not been raised by the initial and subsequent Case Officers
- BANES and The Springs Foundation were only consulted on the application in early 2018, some 12 months after the application was validated. This was done at the request of the initial Case Officer
- subsequently a letter from the applicant’s agent dated 11 September 2018 was submitted to the County Council. This included a proposed planning condition that restricted quarrying to the current quarry floor level of 85m AOD, and until a Section 106 Agreement relating to Bath Hot Springs had been entered into in a similar format to the Whatley

#### Quarry agreement

- the Note and Letter were accordingly submitted as further information under the provisions of Regulation 25 of the EIA Regulations, 2017 to supplement the Environmental Statement previously submitted. The further information was formally advertised and subject to consultation in accordance with the Regulations
- cumulative impacts were raised by parties in the late representations and objections
- there was some confusion in the late representations regarding the status of the proposed condition and the depth. For the avoidance of doubt and clarification, the proposed condition was just that - it was not proposing a change to the description of the development or in any way undermining the comprehensive EIA which had assessed the impact of quarrying to 10m AOD
- two objections were received in response to the Regulation 25 consultation - from the owner of Whitehole Farm and BANES
- BANES raised no objection to the proposal to relocate the existing asphalt plant and extract stone to the currently permitted depth of 68m AOD. However, they also stated in response to the Regulation 25 consultation that:

*“Allowing a second quarrying operation to concurrently extend to similar depths before the impact from works on the first are fully understood is not acceptable as it would make monitoring and enforcement of conditions virtually impossible. The Council would expect to be able to consider the impacts of a completed Whatley Quarry before agreeing to a second de watering operation to similar depths”*

- following the objection from BANES it was clear to the officers that they would be unwilling to be signatory to any S.106 Agreement. As a consequence of their position, an alternative option needed to be explored to deal with their objection, and the concerns of the Environment Agency (EA). This led to proposed Conditions 6 and 7 relating to the 68m AOD restriction
- since the November 2018 Committee meeting, there had been various third party interventions/objections. BANES had submitted late representations relating to cumulative impact/EIA matters. As previously mentioned, cumulative impacts had been addressed by the applicant and had been consulted upon in accordance with the EIA Regulations. Neither BANES nor other parties had advanced evidence to suggest that the conclusions of the officers, the applicant and most importantly, the competent authority on the water regime (the EA) were incorrect
- further to BANES' remarks in their late representations regarding the conclusion that they were unwilling to enter into a S.106 Agreement, there was no correspondence from BANES that would suggest a contrary position to the one stated. They made their position very clear in the response to the Regulation 25 consultation.

*(vi) Water Regime - Local Impact*

- a scheme of hydrometric monitoring was currently operated at Halecombe Quarry to allow assessment of any potential impacts associated with ongoing extraction operations
- matters pertaining to local impact were now effectively “water under the bridge” as the applicant had entered in detailed discussions with the owner of Whitehole Farm which followed discussions and agreement with the EA on the S.106 Agreement and conditions
- historical and recent monitoring had not indicated that dewatering from Halecombe Quarry had had any direct impact on Whitehole Springs
- as already mentioned there were measures already in place to effectively monitor any impact on the localised water regime. These measures were proposed to continue under any new permission and form part of the consolidated S.106 Agreement (Schedules 1 and 2 set out a series of binding covenants)
- in order to further protect local groundwater resources, an additional clause had been added to the new legal agreement which prevented extraction below 85m AOD, the current depth of the quarry, until the operator had undertaken an assessment of dewatering down to the next bench level. This process would then be repeated for each bench drop (i.e. every 15m)
- the proposed legal agreement clause would mean that the extraction would not go any deeper than 85m AOD until any mitigation measures, if needed, in connection with local water supplies, were implemented
- with these provisions in place it was considered that the local water regime would be adequately protected.

*(vii) Water Regime - Bath Hot Springs*

- discussions had taken place with the applicant and the EA to agree appropriately worded conditions to deal with BANES’ objection to the quarry going below 68m AOD. These discussions had continued after the November 2018 Committee meeting
- the result was proposed Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD) in the March 2018 Committee report. These were conditions that the EA, as the competent authority on these matters, had assisted in drafting and advocated in order to protect Bath Hot Springs
- the consequence of the implementation of these conditions was that the quarry would therefore only be allowed to progress beyond the current permitted level of 68m AOD if the applicant demonstrated that there had not, or would not be, any impact on Bath Hot Springs. The outcome of the assessment work would be submitted to the County Council which would consult with BANES and the EA (included in the condition wording)
- if this was achieved then further assessment would then be required for each subsequent bench drop (proposed Condition 7). This added three further layers of protection for Bath Hot Springs at bench drops to

55m AOD, 40m AOD and 25m AOD

- in a worst case scenario, the quarry would be required to cease at 68m AOD and would be restored. This would still give the quarry about 11.5 mt of extractable reserves, equivalent to around 16 years of working at current output rates
- this approach was considered to be both a logical and sensible compromise in allowing the quarry to access already permitted reserves, while at the same time being prevented from extracting below the permitted 68m AOD level, without first demonstrating that there would be no adverse impact on Bath Hot Springs
- the Committee was reminded that BANES had no objection to the proposal to relocate the existing asphalt plant and extract stone to the currently permitted depth of 68m AOD
- it was also relevant that BANES in their late representations, while raising EIA points, appeared now to accept the principle of proposed Conditions 6 and 7 (a change from their late representations to the November 2018 Committee meeting).

(viii) *Water Regime - Cumulative Impact (ie. the impact of working Halecombe and Whatley Quarry at the same time)*

- while simultaneous working would take place, the depth and extent of working in each quarry was vastly different
- both quarries would require ongoing programmes of dewatering to facilitate the basal level of extraction. The cumulative effects from each operation would depend on the timing of those operations and relative levels of extraction at each site
- notwithstanding this, it was expected that the worst case potential cumulative effects would be recorded if both operations were extended to the full depth at the same time
- as stated in the HIAA, groundwater movement within the limestone aquifer occurred from west to east. As both quarries were operating within the same aquifer unit, in relatively close proximity, any increase in dewatering rate at one site was expected to be balanced by a reduction at the other. In this manner, groundwater movement through the aquifer intercepted at Halecombe Quarry when working the deepest levels of extraction would have otherwise been expected to be abstracted at the deeper Whatley Quarry, which was located down the hydraulic gradient
- this meant that Whatley Quarry did not have to pump as hard to achieve the required level of dewatering, as Halecombe Quarry had already removed a proportion of groundwater moving through the aquifer to the east
- to look at it another way, if Halecombe Quarry ceased dewatering and Whatley Quarry continued with the same required level of dewatering, Whatley Quarry would have to pump harder (i.e. remove more water) to maintain the same level of dry working. This was because Halecombe Quarry would no longer be removing that proportion of easterly flow within the aquifer

- it could not therefore be assumed that there would be pro-rata impact from both quarries deepening at the same time. At the time of reporting to the November 2018 Committee meeting, Whatley Quarry was already at 41m AOD (well below the 55m AOD where the geology changed) and any significant impact would already have happened. Since November 2018, the quarry had continued to extract stone
- the reality of the situation was that Whatley Quarry would go below BANES' trigger point for potential for impacts (29m AOD) before Halecombe got to 68m AOD
- there was no real prospect that Halecombe Quarry would "catch up" so both were at similar depths but if that did happen then any increase in dewatering rate at one site was expected to be balanced by a reduction at the other
- Whatley Quarry was three times bigger than Halecombe Quarry; was currently quarrying at a depth significantly lower than Halecombe Quarry, as BANES had stated; and there had been no impacts on Bath Hot Springs to date
- furthermore, Whatley Quarry would reach the critical depths alluded to by BANES before Halecombe Quarry reached 68m AOD
- far from being inappropriate, the delayed consideration of the impact on Bath Hot Springs, was entirely appropriate given the timing and depths of working in each quarry
- in conclusion, if there was to be any impact on Bath Hot Springs which was deemed to be caused by a quarry some 11 miles to the south it would most likely be as a result of quarrying at Whatley Quarry, not Halecombe Quarry.

(ix) Water Regime - Summary

- the HIAA concluded that the deepening works, when taking into account monitoring and mitigation measures incorporated into the proposed development, had minimal potential to cause negative impact on local groundwater resources or the Bath Hot Springs
- this conclusion was based on the quarry deepening to 10m AOD. With the interim depth restriction, the proposed extraction to 68m AOD would be highly unlikely to have any detrimental impact on the water regime
- the EA had been consulted as the competent authority on these matters since 2017. In addition to their formal responses to the original application and the Regulation 25 consultation, active engagement had taken place with the EA pre and post the November 2018 Committee meeting to provide the best advice to Members and ensure the future protection of the groundwater resources, while at the same time allowing the quarry to access permitted reserves.

(x) Habitats Regulations Assessment (HRA) and Appropriate Assessments

- an Ecological Impact Assessment was carried out by the applicant, the outcomes from which were set out in the Environmental Statement.

Ecology and bio-diversity were considered in some detail in the November 2018 Committee report

- the County Ecologist was consulted and responded at some length, including proposing planning conditions.
- HRA - the legal requirement - European designated sites, such as Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites, were afforded strict protection under the Conservation of Habitats and Species Regulations, 2017, otherwise known as "the Habitats Regulations". Competent authorities, in this case the County Council, had a legal obligation to consider the impacts of any plan or project likely to have an adverse effect on a European designated site, including the granting of consents or permissions for any such plan or project. The process by which this was assessed was known as a Habitats Regulations Assessment (HRA)
- the HRA process involved two stages: a Stage 1 Screening Assessment; and a Stage 2 Appropriate Assessment, if the proposals were likely to give rise to significant (adverse) impacts on the sites previously referred to
- it was reported to the November 2018 Committee meeting that a Stage 1 Screening Assessment had been carried out. This concluded that the proposals were unlikely to cause significant effect. For that reason a Stage 2 Appropriate Assessment was not carried out. At the time of the assessment, this was entirely in accordance with the Habitats Regulations. However, since November 2018, officers had reviewed matters raised by third parties and a decision was taken to undertake a Stage 2 Appropriate Assessment. The full HRA was set out in Appendix 4 to the March 2018 Committee report
- the reasoning for this related to the leading case, referred to as *People over Wind and Sweetman*, which was reported after the County Ecologist had completed his Stage 1 Assessment
- in this case the Court of Justice of the European Union considered the following question:

*“Whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive”*

- the Court concluded that, the very fact that mitigation was required at the Stage 1 Assessment, in that case, was evidence that the plan or project would significantly affect the special protection area. In such a situation, an assessment should be undertaken so that the adequacy of mitigation could be considered with the benefit of full Stage 2 Appropriate Assessment
- in summary, the Stage 1 Assessment should be undertaken without mitigation
- the implications of the case for this application was a requirement to do just that i.e. consider the impacts with no mitigation in place. Mitigation had been taken into account in the original Stage 1 Screening Assessment, without mitigation the assessment was bound to confirm

that significant effects were likely and that a Stage 2 Appropriate Assessment should have been undertaken

- this had now been carried out and Natural England had been consulted. Their response dated 12 February 2019 confirmed that:

*“Natural England supports the conclusion of the HRA and, subject to the mitigation identified being secured, agrees that the development alone or in-combination, will not result in an adverse effect on the integrity of European Sites”*

- the case law was in a state of flux and there was more recent case law that suggested some types of mitigation could be considered. Notwithstanding this, in the context of the *People over Wind and Sweetman* case, officers were satisfied that proper consideration had been given to the effects of the proposed development in the context of the Habitats Regulations.

(xi) Conditions

- third party representation was received regarding the reasoning for the ecological Conditions 42, 43 and 46 (no reason)). The latter was an error, the reason had been omitted. In the former, the reason was cited as *“to ensure the integrity of a European site”*. It was suggested that the requirement to submit schemes, post determination with that reasoning fell foul of the case law previously referred to
- advice had been sought from Natural England who confirmed this was standard practice, particularly in the case of lighting schemes. However, the appropriate reason should read:

*“In the interests of the favourable conservation status of populations of European protected species and wildlife generally”*

These changes could be accommodated within the recommendation

- the second matter relating to conditions was in respect of BANES' late representations and suggested changes to Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD) and a new Condition 8 (Annual Water Monitoring Statement). However any changes to the wording would need to be agreed by the EA and the applicant.

(xii) Case Officer's Conclusions

- no evidence had been provided to support the assertions of impact in relation to the water regime
- there were no statutory objections to the proposed development
- three requests had been made for the Secretary of State to call the application in for his determination. This included requests based on the potential for impact on a World Heritage Site, Bath Hot Springs. The Secretary of State had declined to intervene. The Secretary of State's letter of 19 December 2018 confirmed:

*“In deciding whether to call in this application, the Secretary of State has considered his policy on calling in planning applications. This policy gives examples of the types of issues which may lead him to conclude, in his opinion that the application should be called in. The Secretary of State has decided not to call in this application. He is content that it should be determined by the local planning authority. The reason for this decision is that, having regard to the policy on call in, the application does not involve issues of more than local importance justifying the Secretary of State’s intervention”*

- the proposed planning conditions and S.106 Agreement protected the water regime (local and Bath Hot Springs) and the species associated with European sites.

#### (6) Public Speakers

The Committee heard from the following:

##### (i) Laura Horner

Points raised included:

- the impact of additional lighting associated with the relocated asphalt plant on the bat roost on the site, and non-compliance with Government guidance on protected bats requiring the Planning Authority to give due weight to the presence of a European protected species and consider whether the necessary licence would be obtained before planning permission was granted
- the need for the cumulative impacts of the development on local hydrogeology and the Bath Hot Springs to have been assessed under the EIA process rather than covered by conditions
- concerns regarding the use of a “backstop” or “tailpiece” in proposed Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD) which removed excavation from proper statutory control, rights and responsibilities contrary to case law
- and suggesting that, while the application should be refused, the Mineral Planning authority might want to consider the merits of a significantly different proposal/permission that allowed some quarrying to continue.

##### (ii) Margaret Stuart on behalf of The Springs Foundation

Points raised included: the possible adverse effects on the Bath Hot Springs and their flow/recharge system of the deepening of Halecombe Quarry, particularly as it would be concurrent with the nearby ongoing Whatley Quarry operations (as summarised above in Paragraph (4) - Late Representations).

##### (iii) Andy Cadell (Tarmac Planning Manager, representing the applicant, Tarmac Trading Ltd)

Points raised included:

- the planning application having been submitted in April 2017 and frustratingly nearly two years and five Case Officers later, Halecombe Quarry being in a desperate position because there was less than one year's accessible stone left
- the quarry's plight, described at the November 2018 Committee meeting as "desperate", being now so severe that production at the site had been significantly reduced and if planning permission was not forthcoming soon Tarmac's options for reducing costs would involve substantial staff reductions
- being here again due to a technicality in the Habitats Regulations Assessment work carried out by the County Council which had now been addressed and did not affect, whatsoever, the conclusions of the assessment or the recommendation made to the November 2018 Committee meeting
- accordingly there being no reason for further delay and it was expected that the Committee would endorse their previous unanimous decision
- in good faith Tarmac having spent time, effort and money in agreeing the form of the S.106 Agreement with the County Council, the EA and Leigh-on-Mendip Parish Council - the Agreement was now signed, and back with the County Council ready for completion.

The Case Officer and the County Ecologist responded to matters raised by the objectors. The Case Officer indicated that the EA had been actively involved in drafting proposed Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD); it was emphasised that the Agency would not have agreed to this course of action, and would have objected to the application, if they thought that the Mineral Planning Authority would fail to investigate any possible adverse effects on Bath Hot Springs, in consultation with the EA and BANES. The Case Officer explained why the arguments regarding the use of a "backstop" or "tailpiece" in proposed Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD) were not valid.

The County Ecologist indicated that he did not consider a Natural England European protected species licence necessary as the application did not directly affect the bat roost. A licence would be required where, for example, there was work to a roof, replace tiles, or roof and loft alterations. The County Ecologist had never known such a licence being required due to new lighting affecting a roost site. The effects of disturbance from lighting would be considered within a 'Favourable Conservation Status' assessment, carried out where a proposed development potentially affected the abundance and/or distribution of populations of European protected species as required of the Local Planning Authority under the provisions of the Conservation of Habitats and Species Regulations, 2017 (as amended).

The bat roost was not affected by lighting on the current processing plant. There was a single red warning light on the top of the plant, which bats would

not be able to see. The lights were otherwise located at the bottom of the plant and the topography shielded any light spill from this source affecting the roost. Light meter readings carried out by the applicant's consultant ecologist found that light levels were virtually zero between the plant and roost site. The application to relocate the asphalt plant to the south would bring it closer to the roost. However, this would improve the situation, not that it was needed, by bringing the lights closer to the foot of the slope, which would further topographically shield the roost from any light spill. The lights would also be enclosed in the relocated plant.

#### (7) Local County Councillor

Cllr Philip Ham, the local Divisional Member, spoke in support of the application, referring to matters including: the importance of Halecombe Quarry to the local economy; the unsatisfactory, continuing delays involved in the planning process; the serious financial consequences for the quarry and its employees, contractors, suppliers etc; the extensive proposed safeguarding/mitigation measures; the completion of the S.106 Agreement; and the need for planning permission to be granted as soon as possible.

#### (8) Debate

The Committee proceeded to debate during which Members discussed - with the Case Officer responding as appropriate, points raised included:

- arrangements for safeguarding/mitigation, monitoring and evaluation of operations at Whatley Quarry involving the EA in relation to the impact on groundwater resources and their application to Halecombe Quarry
- relevant conditions being specifically targeted at protecting Bath Hot Springs
- the early identification of problems at different excavation benches
- the enforcement process
- the impact of the relocated asphalt plant and associated lighting on bats
- it being unlikely that quarrying on the Mendip Hills would affect the Bath Hot Springs in view of geological conditions, depth of the aquifer, distance etc
- disappointment regarding BANES' very late formal responses to the consultations on the application, both in November 2018 and in March 2019 and the authority not having been represented at either Committee meeting (Members supported the Chairman's proposal that representations should be made to the Chief Executive of BANES about this situation).

#### (9) Conclusions

The Committee noted that:

- the updated HRA did not impact on the planning balance
- the proposal was in accordance with both the National Planning Policy

Framework and the development plan

- the site was recognised as an active aggregate quarry in the Somerset Minerals Plan and had a low level of reserves
- the overall objective was to continue to operate within the existing quarry area
- the proposed development would utilise the existing infrastructure and would not intensify the use of the site
- the proposed development would continue to provide the substantial economic benefits associated with a quarry
- the proposed development had been through a thorough assessment as required by the Town and Country Planning (Environmental Impact Assessment) Regulations, 2017 and had been subject to extensive consultation and engagement
- with the adoption of suitable mitigation measures and imposition of appropriate planning conditions the development would not result in any significant adverse impacts on the environment or local amenity.
- in respect of the water regime, which was the only element of the proposal subject to an objection, the HIAA concluded that the deepening works, when taking into account monitoring and mitigation measures incorporated in the proposed development, had minimum potential to cause negative impact in the locality in comparison with the already permitted depth of extraction. This conclusion was based on the quarry deepening to 10m AOD. With the interim depth restriction, the proposed extraction to 68m AOD would be highly unlikely to have any detrimental impact on the water regime.

The application and the objections/representations thereon had been very fully considered. The Committee declined to accept the changes to proposed Conditions 6 (Excavation Depth Limit) and 7 (Excavation below 68m AOD) requested by BANES as the conditions as proposed, having been agreed with the EA and the applicant, were felt to be sufficiently robust.

(10) Fresh Determination of Planning Application 2017/1022/CNT

Cllr Taylor, seconded by Cllr Caswell, moved Recommendation 2 by the Strategic Commissioning Manager, Economy and Planning set out in Paragraph 1 of the report.

The Committee RESOLVED that planning permission be granted subject to the applicant entering into a Section 106 agreement, the draft of which was included in the report as Appendix 1 and the imposition of the conditions set out in Section 8 of the report, and that authority to undertake any minor, non-material editing which may be necessary to the wording of those conditions be delegated to the Strategic Commissioning Manager, Economy and Planning.

**6 Proposed Extension to Chard Junction Quarry, Westford Park Farm, Chard - agenda item 6**

(1) The Committee considered the report of the Strategic Commissioning Manager, Economy and Planning on this planning application which was presented by the Case Officer with the use of maps, plans and photographs.

(2) The application involved a proposed extension to Chard Junction Quarry at Westford Park Farm to release approximately 930,000 saleable tonnes of sand and gravel, equating to approximately 4.5 years of extraction at the current level of production. A designated haul road would be used to transport sand and gravel back to the existing Chard Junction Quarry for processing.

(3) The Committee was informed that Chard Junction Quarry had been established in the 1940s and extracted sand and gravel from river terrace deposits to the south of the River Axe. The quarry's processing and stocking area and silt lagoons were established to the south of Chard Junction, with extraction currently taking place to the east of the lagoons in an area known as Carter's Close. At current extraction rates of 200,000 tonnes per annum, the remaining reserves within Carter's Close would provide approximately 12 months' supply.

(4) The applicant proposed to develop a new area for extraction at Westford Park Farm to the south west of the processing area, to which it would be linked by a new haul road. The application site covered 22.3ha and comprised the new extraction area at Westford Park Farm (6.6ha) together with the processing and stocking areas, existing silt lagoons and new haul road.

(5) The application site lay almost entirely within Dorset, with the exception of part of an existing silt lagoon where an area of 0.4ha lay within Somerset. As the site fell within the boundaries of separate Mineral Planning Authorities, the applicant was obliged to submit duplicate planning applications to Dorset and Somerset County Councils seeking planning permission from each authority for development of the land falling within their administrative area.

(6) It was considered appropriate for Somerset County Council to discharge its function to determine mineral planning applications to Dorset County Council in this case under Section 101(1) of the Local Government Act, 1972 for the reasons set out in Paragraph 4 of the report and Dorset County Council was content with this approach.

(7) Cllr Parham, seconded by Cllr Keating, moved the recommendations set out in Paragraph 1.2 of the report.

The Committee RESOLVED that the following functions be discharged to Dorset County Council in accordance with Section 101(1) of the Local Government Act, 1972:

(a) determination of Planning Application SCC/3540/2018; and

(b) determination of any applications for the discharge of conditions or non-material amendments pursuant to that application; subject to Somerset County Council in its roles as Mineral Planning Authority and Highway Authority, together with the local Divisional Member, being consulted for their views regarding the application.

(The meeting closed at 16.28)