

WAVERLEY BOROUGH COUNCIL

EXECUTIVE

MONDAY 18 JULY 2022

Title:

Urgent item - Loxley Well

Portfolio Holder: Cllr Steve Williams, Portfolio Holder for Environment and Sustainability

Cllr Paul Follows, Leader of the Council

Head of Service: Robin Taylor, Monitoring Officer

Key decision: No

Access: Part Exempt

Note pursuant to Section 100B(5) of the Local Government Act 1972

An Annexe to this report contains exempt information by virtue of which the public is likely to be excluded during the item to which the report relates, as specified in Paragraph 5 of Part I of Schedule 12A to the Local Government Act 1972, namely:

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

1. Purpose and summary

1.1 This report asks the Executive to decide whether to apply to the High Court to challenge the decision of the Secretary of State (SoS) made on 7 June 2022 to grant planning permission at Loxley Well and, if the Executive resolves to do so, to authorise officers to make the necessary virement to meet costs of up to £13,500. If the Council seeks a renewal hearing, in the event its application is dismissed on the papers, the estimated cost is a further £4000.

2. Recommendation

i. That the Executive considers whether to apply to the High Court seeking permission to challenge the Secretary of State's decision of 7 June 2022 to grant planning permission at Loxley Well under s.288 of the Town and Country Planning Act 1990.

And, if the Executive resolves to do so,

ii. to authorise officers to make the necessary virement to meet costs of up to £13,500 (excluding VAT and disbursements).

3. Reason for the recommendation

To provide the Executive with the opportunity to consider whether or not to proceed with seeking permission to challenge the SoS's decision of 7 June 2022 to grant planning permission at Loxley Well and, if so, how this would be funded.

4. Background

- 4.1 Earlier this year, the Secretary of State for Levelling Up, Housing and Communities overturned Surrey County Council's refusal of planning consent for an exploratory well at Loxley Well near Dunsfold. Waverley Borough Council has consistently expressed its opposition to any oil and gas exploration at the site, which lies in the Green Belt adjacent to an Area of Outstanding Natural Beauty (AONB). In July 2019, the council held its a Listening Panel, which saw twenty-one speakers highlight concerns with the plans. Local business owners stated their concerns that the oil well would render their business unviable and lead to loss of jobs locally. Residents and community groups expressed concerns about noise, light and air pollution, the loss of ancient woodland, impacts on local wildlife (including Red Listed species) and the detrimental impact on the landscape and AONB.
- 4.2 Following Surrey County Council's refusal of planning permission (<https://planning.surreycc.gov.uk/Planning/Display/SCC%20Ref%202019/0072#>), UKOG (234) Ltd. appealed to the Secretary of State. Waverley Borough Council's submission to the Secretary of State is appended as Annexe 1 and outlines the concerns of the council.
- 4.3 On 7 June 2022, on behalf of the Secretary of State, the Minister for Housing published a decision to allow the appeal and grant planning permission. The decision is appended at Annexe 2.
- 4.4 Waverley Borough Council has received legal advice that outlines that there are grounds for legal challenge and the potential for success. This advice is appended at Annexe 3 (exempt).
- 4.5 The Executive is asked to consider whether to proceed to seek permission to challenge the decision. The deadline (limitation period) for making the application to the High Court under section 288 of the Town and Country Planning Act 1990 is 19 July 2022.
- 4.6 In view of the urgency of the decision and the legal deadline, this special meeting of the Executive has been called to consider this item. Given the relatively short amount of time between the decision being taken in June by the Secretary of State for Levelling Up, Housing and Communities to overturn Surrey County Council's refusal of planning consent for an exploratory well, the time taken to acquire and consider legal advice, and the 19 July legal deadline for seeking permission to challenge that decision, it has not been possible to bring the item to a scheduled Executive meeting.
- 4.7 As per paragraph 16.3 of the Overview and Scrutiny Procedure Rules, if the Executive resolves to apply to the High Court seeking permission to challenge the Secretary of State's decision (and how this will be funded), because this is considered to be an urgent decision, it will not be subject to call in by the relevant

overview and scrutiny committee. This is because the time it would take to allow any call in to be made and dealt with would clearly exceed the legal deadline of 19 July to act. Given this, and what are perceived to be the significant ramifications of the decision made by the Secretary of State for Waverley's communities, it is considered that a delay caused by the application of the call-in process would seriously prejudice the Council's and the public's interests in this matter. As per the arrangements set out in paragraph 16.3 of the Overview and Scrutiny Procedure rules, the Mayor's agreement to this approach being taken has been sought and provided.

5. Relationship to the Corporate Strategy and Service Plan

5.1 This item relates to the Council's strategic priority, as set out within its Corporate Strategy, of '*Taking action on Climate Emergency and protecting the Environment*'.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

The council has obtained a quote from Legal Counsel of £13,000 to register with the High Court, the funding will be covered from available asset management budget.

6.2 Risk management

The risk incurred with taking the proposed action is limited to the quoted financial costs and officer time. Should the council be in a position to progress further, a business case will be made supporting a supplementary estimate.

6.3 Legal

In reaching a decision Members should consider the exempt legal advice and take into account the estimated legal costs associated with seeking to challenge the SoS decision. In the event the application to seek permission to challenge the SoS's decision is unsuccessful it is likely the Court will order the Council to pay the legal costs of the SoS and UKOG (assuming the latter is made an interested party). It is estimated that the SoS and UKOG costs will be similar to the Council's costs.

6.4 Equality, diversity and inclusion

No Equality, Diversity or Inclusion issues were identified during the screening assessment.

6.5 Climate emergency declaration

The potential consequences of the Secretary of State's decision are considered to be significant. These were set out clearly in the Council's and others' submissions to the process and include environmental damage, landscape, road safety and the impact on local businesses. This is the principal reason why the Executive is asked to consider whether they wish to register with the High Court their interest in pursuing a judicial review.

7. Consultation and engagement

7.1 In July 2019, the council held its first community Listening Panel, which saw 21 speakers highlight numerous concerns with the plans. A number of local business owners, including an organic farm, craft brewery and a globally recognised wellbeing festival for cancer sufferers all stated that the oil well would render their business unviable and lead to loss of jobs locally. Local residents and community groups expressed concerns about noise, light and air pollution, the loss of ancient woodland, impacts on local wildlife (including Red Listed species) and the detrimental impact on the landscape and nearby Area of Outstanding Natural Beauty.

8. Other options considered

8.1 The other option is to not pursue this matter with the High Court.

9. Governance journey

9.1 Special Executive – 18 July 2022

Annexes:

Annexe 1 – Waverley Borough Council's submission to the Secretary of State

Annexe 2 – Decision notice issued by Minister for Housing on behalf of the Secretary of State

Exempt Annexe 3 – Legal Advice

Background Papers

There are / are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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