

**WAVERLEY BOROUGH
COUNCIL**

SPECIAL EXECUTIVE

11 MAY 2023

Title:

Loxley Well, Dunsfold

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

Cllr Paul Follows, Leader of the Council

Executive Head of Service: Susan Sale, Executive Head of Legal & Democratic
Services and Monitoring Officer

Key decision: No

Access: Part Exempt

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

Annexe 1 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 The Executive at its meeting on 18 July 2022 resolved 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 to authorise officers to make the necessary virement to meet the Council's external legal costs of up to £13,500 (excluding VAT and disbursements) up to the permission stage.
- 1.2 The Council's initial application for permission to challenge the SoS's decision was unsuccessful on the papers and the Council made a renewed application for an oral hearing which took place on 2 March 2023. At the oral hearing the Council was successful, and the Council was granted permission to proceed to substantive hearing on one of its grounds of challenge.
- 1.3 This report asks the Executive to decide whether to proceed to substantive hearing at the High Court on 8th June 2023, with a time estimate of 1 day, 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 the Council's external legal costs of up to £32,500 and a portion of the SoSs and UKOGs legal costs of up to £50,000 in the event the Council is unsuccessful and is ordered to pay a portion of their costs.

2. Recommendation

- i. The Executive considers whether to proceed to a substantive hearing at the High Court on 8 June 2023 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.
- ii. And, if the Executive resolves to do so, to authorise officers to make the necessary virement to meet the Council's external legal costs of up to £32,500 and the SoS's and UKOGs legal costs of up to £50,000 in the event the Council is unsuccessful and is ordered to pay a portion of their costs.

3. Reason for the recommendation

To provide the Executive with the opportunity to consider whether to proceed to a substantive hearing at the High Court to challenge the Secretary of State'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 Early last 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. The 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) Limited appealed to the Secretary of State.
- 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.

- 4.4 The Council received legal advice that there were grounds for legal challenge. This is appended at exempt annex 1.
- 4.5 At the Executive meeting on 18 July 2022, it resolved 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 to authorise officers to make the necessary virement to meet the Council's external legal costs of up to £13,500 (excluding VAT and disbursements) up to the permission stage.
- 4.6 The Council (together with Protect Dunsfold (the Co-Claimant) thus sought, by way of statutory review pursuant to section 288 of the Town and Country Planning Act 1990 a challenge to the decision dated 7 June 2022 of the Secretary of State (SoS), the First Defendant, made on his behalf by the Minister of State for Housing, following receipt of a report by an inspector into an inquiry held into the appeal brought by UKOG Ltd, the Third Defendant, against the decision of Surrey County Council ('SCC') the Second Defendant, to refuse planning permission for the following development: "the construction, operation and decommissioning of a well site for the exploration and appraisal of hydrocarbon minerals from one exploratory borehole (Loxley-1) and one side – track borehole (Loxley – 1z) for a temporary period of three years involving the siting of plant and equipment, the construction of a new access track, a new highway junction with High Loxley Rod, highway improvements at the junction of High Loxley Road and Dunsfold Road and the erection of a boundary fence and entrance gates with restoration to agriculture, in accordance with application Ref. WA/2019/0796, dated 26 April 2019."
- 4.7 Statutory review requires permission to be granted, the test being whether grounds of challenge are arguable. Permission was refused on the papers by Justice Lang on 6 October 2022. The Council applied to renew its application for permission orally and was granted such permission at hearing on one of the Council's grounds being the first Defendant's (SoS's) failure to have regard to give 'great weight' to the conservation and enhancement of the landscape and scenic beauty in the Surrey Hills Area of Outstanding Natural Beauty.
- 4.8 The Co-Claimant (Protect Dunsfold) was also granted permission on the same ground as well as a separate ground which the Council is not pleading.
- 4.9 The hearing is listed for the 8 June 2023 with a time estimate of one day. The hearing will be held at the Royal Courts of Justice in London and whilst it will not be streamed the public will be able to attend.
- 4.10 The Executive is asked to consider whether to proceed to the substantive hearing on 8 June 2023 and if the Executive resolves to do so, to authorise officers to make the necessary virement to meet the Council's own external legal costs of up to £32,500 and a portion of the SoS's and UKOGs legal costs of up to £50,000 in the event the Council is unsuccessful and is ordered to pay their costs.
- 4.11 The general rule and starting point in judicial review proceedings is that costs

follow the event and that the unsuccessful party will pay the costs of the successful party. If the Council were successful it should expect to recover around 80% of its costs.

- 4.12 In view of the urgency of the decision and the date of the hearing, this special meeting of the Executive has been called to consider this item as it was not deemed appropriate to consider this item during the pre-election period.

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's estimated own external legal costs from permission stage up to and including the 1-day hearing on 8 June are £32,500. If unsuccessful the Council would pay a portion of the SoS's costs that relate to the Council's involvement in the case as well as a proportion of UKOG's reasonable and proportionate costs if they submit separate legal points relevant to the case. A reasonable worst case costs scenario would be payment of the SoS's costs of £30,000 and £20,000 for UKOG meaning a reasonable worst-case scenario of £50,000 excluding the Council's own external legal costs.

6.2 Risk management

The risk incurred with taking the proposed action is limited to the quoted financial costs and officer time.

6.3 Legal

In reaching a decision Members should balance the cost of proceeding to substantive hearing (including the risks of being ordered to pay a portion of the SoS's and UKOG's costs if the Council is unsuccessful) together with the prospects of success versus the wider public interest in this matter. Counsel's original advice, which included advice on the prospect of success, is attached at exempt annex 1. Counsel has advised informally that her original advice on prospects of success remains unchanged.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity and inclusion implications.

6.5 Climate emergency declaration

The potential consequences of the SoS'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 was originally asked to consider challenging the SoS's decision in the High Court.

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 for the Council to discontinue its challenge. If the Council discontinues it will still be liable for any of its external legal costs that have been incurred up to the date it discontinues and further, the Council is also likely to be liable for a portion of the SoS and UKOGs wasted costs incurred to the point of discontinuance.

9. Governance journey

9.1 Special Executive – 18 July 2022

Annexes:

Exempt Annexe 1 – Counsel's Original 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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