
FAO

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YOUR REF: Legal/71053/HFO

OUR REF: RWS/JEK/00206085/4

DATED: 19 November 2024

Dear Surrey County Council,

Re: Horse Hill, Surrey, RH6 OHN

Introduction

1. We write again on behalf of members of the WAG, further to our letter of 11 October 2024 and the SCC's response of 23 October 2024 (the "SCC Response"). This letter uses the same defined terms as were used in our previous correspondence.
2. In respect of the Works at the Site, the SCC Response confirmed that:
 - a. There is no extant PP for development at the Site;
 - b. SCC do not yet know if or when any application will come forward;
 - c. The original application (RE18/02667/CON, validated 20 December 2018) (the "2018 Application") remains undetermined following the quashing of the PP issued on 27 September 2019;
 - d. SCC is actively investigating the Works and the investigation will determine whether formal enforcement action is considered expedient.
3. The SCC Response also stated that SCC has not yet reached any conclusion as to whether the continued works at the Site should be permitted, and declined to comment any further at risk of, as far as SCC is concerned, fettering its discretion in relation to any future decision.

Updates

4. Since receipt of the SCC Response, UK Oil and Gas ("UKOG") have issued a statement on 28 October 2024 (the "Statement") stating:

"Given the uniqueness of the situation following the Supreme Court's decision to render SCC's grant of planning permission unlawful, and far from ignoring the ruling's implications, HHDL first contacted SCC on 20th June 2024 regarding the Site's status and to find the most pragmatic way forward to achieve the required planning redetermination.

The ongoing dialogue with SCC has included multiple interactions and a Site visit by SCC as recently as Wednesday 16th October. Other regulators have also been kept

up to date.

A detailed plan for a safe full suspension of related operations and activities, including the necessary safe emptying and cleaning of storage tanks, flow lines and other process equipment, will be implemented following SCC's concurrence. In the interim period HHDL will work with SCC to provide all necessary additional information to facilitate a successful planning redetermination."

5. At a meeting held by SCC on 30 October 2024, SCC confirmed that:

"it was, and still is, the council's position that the extraction of oil at the Site is unlawful. So it has not been permitted by the Council", that HHDL had been "put on notice" but that "no decisions have yet been made as to what those next steps may be".

Issue

6. WAG continues to have serious concerns over the future of the Site and the fate of the oil extracted during the period from 20 June 2024 (the date of the Supreme Court's judgment in *Finch*) to 28 October 2024 (the date UKOG stopped production) (the "Unlawful Period"). This letter seeks further information as to: (i) SCC's duties in respect of the oil unlawfully extracted to date; (ii) the next steps the SCC is intending to take in respect of the application to be redetermined; and (iii) the restoration plans for the Site.

Current actions being taken by SCC

7. Please provide an explanation as to what is meant by SCC putting HHDL "on notice" and what immediate steps SCC is proposing to take.

Enforcement in respect of oil unlawfully extracted

8. Data has recently been released showing that, following the continued Works, HHDL produced 163m³ (or 138 tonnes equivalent) of hydrocarbons during July 2024, at a rate of 33 barrels/day, and produced 153m³ in August 2024. The combustion of this oil will inevitably cause considerable release of GHG emissions. In this respect, WAG notes the following:
- a. Following SCC's concession that it was unlawful for this oil to be produced at the Site, thus amounting to a breach of planning control, SCC should take all steps practicable, including issuing a stop notice on any sale of the oil by the Site operator to third parties under ss. 172 and 183 of the Town and Country Planning Act 1990. This is to ensure that the oil extracted during the Unlawful Period remains unused and not combusted. This is the only way to ensure that no GHG emissions are produced as a result of oil extracted during the Unlawful Period.
 - b. In drawing up such a stop notice (and any other enforcement notice that may be required), SCC should consider that the profits made from the sale of any oil that might be produced in contravention of such a notice could be subject to a confiscation order under the Proceeds of Crime Act 2002 and should ensure that the notice is drafted in order to provide a firm basis for such proceedings.
 - c. Additionally, under the Public Trust Doctrine ("PTD"), public bodies have a fiduciary duty to safeguard vital natural resources and hold them in trust for the benefit of both current and future generations. SCC has a duty as a

public authority actively to take steps to protect and maintain natural resources, including the natural environment, for public use. The Supreme Court confirmed in *Finch*, that GHG emissions beyond the Site are “entirely within” the control of the Site operators (see para 103). Where oil is unlawfully extracted by a Site operator, the related unlawful GHG emissions arising from the burning of that oil are therefore also the responsibility of the operator and appropriate enforcement action should be taken by SCC to prosecute this in keeping with the PTD.

Re-determination of the 2018 Application

9. It appears from the Statement that HHDL (previously UKOG) intends for the 2018 Application to be redetermined by SCC. For the avoidance of doubt, WAG intends to make written (and, if invited to do so, oral) representations in respect of the redetermined application and any additional environmental information published by HHDL (the “Applicant) or SCC. Please provide: (i) an update as to the timing and next steps for the redetermination of the 2018 Application following the quashing of the previous decision; and (ii) confirmation of the issues on which the SCC will require the Applicant to provide further environmental information in light of *Finch*.
10. In respect of (ii), and without prejudice to other issues on which WAG submits additional information is required, WAG wishes to note at this stage that it considers further evidence should be provided by the Applicant as to where and how oil extracted from the Site will be used.
11. The position in the officer’s report (“OR”) was that the development was justified on the basis that government policy recognises a need to maximise indigenous oil and gas resources and that “*it is therefore appropriate that identified reserves of on shore hydrocarbons are properly husbanded to make a valuable contribution by maximising energy recovery of indigenous supplies and contribute to the UK’s energy sector and energy security*”. On this basis, the officer concluded there is a national need for the development (see para 159-162, 420-421 of the OR) and recommended that permission be granted. The logical conclusion from the above is that SCC proceeded to accept the officer’s advice and grant PP on the basis that oil extracted at the Site would be used to meet domestic energy need
12. However, during the course of the *Finch* proceedings, SCC filed a witness statement which asserted that oil produced at the Site could be refined and used in the United Kingdom, or exported and then refined and used anywhere in the world, including the United Kingdom if it is imported back into the country (see para 38 Witness Statement of Dr Jessica Salder). The statement also opined (see para 48-50) that the modest contribution that the proposed well Site would make to UK based production of crude oil would be readily replaced with crude oil sourced from elsewhere in the event that the development did not proceed, i.e. SCC relied on a “substitution” argument which has recently been analysed by the Court in the decision of Friends of the Earth & Ors v Secretary of State for Levelling Up, Housing and Communities [2014] EWHC 2349 (Admin) (the “Whitehaven” Judgment”).
13. By the time of the Supreme Court hearing, it was an agreed fact between the parties (see 12 of the agreed Statement of Facts and Issues) that it was not possible to say where in the world the oil produced would be refined or subsequently used.
14. As the Claimant in *Finch* emphasised during the proceedings, no evidence has been provided by the Applicant or SCC to suggest that it can be guaranteed that oil extracted at the Site will be refined and/or burnt in the United Kingdom, and indeed

the agreed factual position between the parties confirms otherwise. It is plain in these circumstances that further evidence will need to be provided by the Applicant in order for SCC to make a redetermination decision and reach any conclusion as to need for the development and/or the tenability of any similar 'substitution' type arguments advanced in support of the re-grant of PP.

Restoration of the Site

15. Regardless of any redetermination process, given the length of time that has now passed, WAG considers that SCC should move to require immediate remediation of the Site.
16. Prior to the application made by HHDL in 2018, SCC had granted temporary PP on two occasions for work at the Site. PP was first granted by SCC in January 2012 for construction of an exploratory wellsite, the use of the wellsite for drilling open exploratory borehole, and subsequent short-term testing for hydrocarbons on some 1.6 hectares for a temporary period of three years, with restoration to agriculture and woodland (ref: RE10/2089, the "2012 Decision"), and construction of the wellsite commenced in February 2014.
17. In November 2017, PP was granted to increase the size of the Site to 2.08 hectares, to retain the existing exploratory Site and for further flow testing (ref: RE16/02556/CON, the "2017 Decision"). This permission was also limited to a temporary period of 3 years with restoration to agriculture and woodland, and was subject to 34 planning conditions, including a condition to submit to the County Planning Authority within 6 months of the date the permission, a Landscape and Restoration plan for approval in writing (see condition 33). The reason for this condition was to "secure restoration and assist in absorbing the Site back into the local landscape as soon as practical to accord with the Surrey Minerals Plan Core Strategy Development Plan Document 2011 Policies MC3, MC14 and MC17; and Reigate & Banstead Borough Local Plan 2001 Policy Co 1" (emphasis added).
18. It is noted that the Landscape and Restoration plan, as submitted by HHDL in compliance with condition 33 of the 2017 Decision, is not publicly available. **Please provide a copy of this document within 7 days.**
19. As a result of the Supreme Court's decision on 20 June 2024 in *Finch*, the PP granted by SCC in 2019 has been quashed and, as above, the temporary PPs issued in 2012 and 2017 have expired as of November 2020. In circumstances where the Site currently has no active permissions in place, and the Site operator has ceased operations, WAG considers that SCC should immediately move to require remediation of the Site in compliance with condition 33 of the 2017 Decision. **Please confirm that SCC will now act to enforce the restoration requirements of the 2017 Decision.**

Next steps

20. Please provide a response to this letter within 7 days.

Yours faithfully,



Leigh Day