

August 13, 2020

Tom McCabe
Executive Director of Community and Environmental Services
Norfolk County Council
County Hall
Martineau Lane
Norwich NR1 2SG

Dear Mr. McCabe,

Thank you for your letter dated June 10 2020. I remain concerned that the processes adopted by Norfolk County Council's Minerals and Waste Review Process For the Single Issue Silica Sand Acquisition, fail to adequately investigate the public interest and public utility in the AOS E and SIL 02 contiguous sites at or adjacent to Shouldham Warren.

Allow me to set out what I understand to be the official position with regard to the assessment of public utilities at the sites. I am depending upon the cumulative documents on the dedicated Council website. It is necessary to dig through a large number of technical files to find this information, and it is clear that no real attempt to explore the public interests in Shouldham Warren and its environs has been integrated on your processes. I will be specific, and so if I am wrong, any mis-statements can be corrected evidentially.

The sole informing regulation I could find was under Section 8 of the published General Policies for this development, entitled Development Management Criteria: Recreation. It is stated (full quotation):

"The Public Rights of Way (PROW) network provides an important means of accessing the countryside. Where relevant, applications for minerals or waste management development will be required to ensure that PROW remain usable at all times or provide satisfactory alternative routes. Alternative paths and any necessary diversions of existing paths will be required to be in place prior to the closure of the existing PROW. Restoration schemes should, in the first instance, be seen as an opportunity to enhance and upgrade PROW where possible, especially with regard to the provision of Bridleways as multiuser paths as part of any permission granted. In all cases, restoration schemes should provide for access which is at least as good as that existing before workings began.

The closure of a PROW, where no alternative route is provided, will not normally be acceptable.

Local recreation assets, including Public Open Space and other outdoor facilities such as country parks, are protected in District, Borough and City Local Plans. Open Access Land is designated through the Countryside and Rights of Way (CROW) Act 2000. Minerals and waste management proposals will be expected to mitigate any unacceptable impact on such designations."

1. Consideration of the Public Utility of the Land for Recreation:

In the General Policies document, the interests of all other stakeholders have a formal opportunity to engage strategically in the extensive procedures undertaken, including the land use as forestry. This this was not extended to the extraordinarily wide public usage of the land for recreation. The

sole criteria provided under the heading of "Recreation" is an undertaking on Public Rights of Way. An opportunity to forward comments is no guarantor of proper consideration (see below). The specific public recreational interests in the site are to be formally and comprehensively disregarded. In actual fact, Shouldham Warren is probably the most extensively used recreational facility in rural West Norfolk.

The only issues under review are an undertaking to maintain 'registered' PROW, if feasible, with an unspecified 'restoration scheme' for those permanently lost to the resultant reduction of the elevated site to an enormous pit and lake. Open Access Land is also to be preserved, but as the Warren is leasehold land, it is not Crown Land and this statement is not applicable. The issue of how rights of way across a large elevated area of considerable physical attribute can be recreated or satisfactorily bypassed when the landmass is reduced to a pit or lake is judiciously avoided.

There is nowhere an evaluation of how and how intensively the public uses this regional resource. In effect, the Minerals and Waste procedure maintains that the Warren only provides land usage for forestry. The public are spread out all over the Warren right across the extensive network of paths, trails, and roads. Numerous recreational communities use the site regularly including the villagers of several local communities, recreational walkers, dog walkers, cyclists, mountain bikers, horse riders, harness-carriage riders, orienteers, runners, athletes in training, naturalists, bird watchers, photographers, picnickers, schools, and others.. Why is there no formal inquiry into the public land use? Whenever I go to Shouldham Warren in daylight hours, there have never been less than one or two dozen cars at the main Shouldham Warren parking lot, with numerous other parking spots scattered around the site unexamined. At peak times, there are multiples of this.

I do not believe that N.C.C can ignore the land use of the area under question for public recreation.

An additional relevant insight is that the public have used the Warren site for several decades as of right without hindrance. Before these current events came to the knowledge of the public, almost all users had been unaware that it was not owned by Forestry England, which would assure its general access. It is in fact on a 999-year lease from the Stow Hall Estate, but without any relevant signage; this was uncommonly known. The Nar Valley Way long-distance route is also directed through the centre of Shouldham Warren.

I have not found any understanding or analysis of landscape history as it pertains to the site. The fact that for several centuries it has been regarded as 'waste of the manor' is important as it helps to explain the numbers of highways across it. Droving was an important industry in Norfolk over several centuries, owing to the need for weeks of months of conditioning pasturage. The historical record before the beginning of the 19th century is deficient, but the main droving road into Norfolk from its portal in Setchey (also on the River Nar) almost certainly was along a drove road established on the south bank of the River Nar, later to become the Towpath on the River Nar navigation. The large number of drove roads in what was formerly an area interspersed with Fen is a reflection of the fact that most droving herds into Norfolk would pass close by, and undoubtedly utilised the lowland heath (before the warren) which was the original landform. Its history of a warren was only for a 40 year-period, did not have a royal warrant, only occupied a central and paracentral position within the area now called the Warren, had no buildings on the site, and appears only to have had a retaining (?rabbit-proof) fence around its central location, without the customary banking. The short-lived warren was replaced by enforestation over a 35-year period that involved only the area within the old circumferential fence. The peripheral, un-warrened area was perhaps half the total, and presumably still 'waste of the manor.' In 1946, shortly after the 1943

(WWII) Forestry Commission-leasing of the Warren, aerial photographs show the site to be almost completely cropped of forestry and restored to the appearance of a 'waste of the manor, as open, uncultivated, and unoccupied. A 999-year lease, apparently on a peppercorn rent, further supports that notion.

2. Established PROW vs Actual PROW

The regulations stated in the General Policies go on to dilute the undertaking to maintain PROW by apparently limiting that assurance to "existing" PROW.

You state in your letter the following, "Until the DMMO application has been determined by the LOR (Legal Orders and Registers) Team (or the Planning Inspectorate if required) then the land in question is not a Public Right Of Way." This, I believe, is a wrongful interpretation of the law. Any public rights of way under Common Law maintain their existence in perpetuity (until January 1, 2026) unless specifically extinguished by a legally-valid stopping-off order, and without rededication. A public right of way is therefore a property of the highway itself, registered or unrecognised, and is not defined by the internal procedures of the individual Surveying Authority. The DMMO processes are an administrative mechanism to provide a formal venue in which the evidential conclusions can be made, but the Surveying Authority does not in this matter 'make' the PROW - which already exist in its own right. It is therefore, I suggest incumbent upon N.C.C to determine the actual public rights of way in advance of the Planning Process, which I understand has been on-going for several years already.

It would also appear disingenuous to endeavour to exclude unregistered PROW across this large site for a number of other reasons. Fourteen putative public rights of way are now identified across AOS E and SIL 02. It is not clear from the project documentation as to what are the registered PROW that are at risk on the sites. Only one highway is identified for SIL 02, but there is no stipulation for AOS E, although 2 or 3 are shown on a recent process map. What therefore is to be the status, for example, of Pentney Drove, its crossing of the River Nar at Pentney Mill Bridge, the Nar Valley Way along the River Nar south bank, and Marham FP9 (Fen Lane Drove), all of which are included in the proposed mining area. Furthermore, all registered PROW over this area appear to have under-registered rights of way. There are several rights of way exclusively reported on Forestry England maps as unregistered highways. The Forestry Commission is obligated under law to maintain rights of way across their land, an undertaking that appears often overlooked. I recognise this may not be pertinent on freehold forestry land, but the duty would then fall on N.C.C. as the surveying authority, to keep the Definitive Map under continuous review in accordance with the Wildlife and Countryside Act 1981 s 53.

The assertion in your letter that the DMMO procedures on these 14 highways must be completed before the true public rights of way on AOS E and SIL 02 can be considered in the silica sand mining application appears improper. It appears based upon the internal realities known fully within your Department that none of them is likely to find consideration in the next 15-20 years, at the current declared ability, is to manage 5 applications a year. Although 39 were submitted between October 2019 and March 2020, none have yet been accepted as valid applications and appeared on the N.C.C DMMO website, despite the announced intention to clear the backlog of acceptances during the Covid-19 lockdown, when new applications have been inhibited by lack of access to record resources.

3. Consideration of Evidence for PROW involved in the Review Process For the Single Issue Silica Sand Acquisition Process:

Despite my formal written applications to the Minerals and Waste Team that the DMMO application copies sent to them be considered in the entirely separate context regarding their relevance in the process at hand. The initial response was to deny the existence of the direct submission - on the basis that it was a DMMO - when it was clear that a DMMO had been submitted separately. This was a conceit, and repeated with each submission that I made, which were disregarded, and remained unanswered. An explanation is provided, that I had failed to request replies, which, in the context of a formal statutory process, is alarming. Indeed, I explained that the highly-documented DMMO applications were active internal procedures with Norfolk County Council and as a consequence it would be irregular for Minerals and Waste to attempt to claim that this information did not exist, as you explain it, for the next 15-20 years! As the data is with another branch of your Division, it appears disingenuous to deny that they exist. Furthermore, the considerable relevance to the Silica Sand procedures would I suggest dictate that they be adjudicated forthwith, in case an apparently deliberate absence of data could influence a result.

You are well aware of the formidable efforts required of volunteers to put one DMMO application together. It is unreasonable, I would suggest that the Surveying Authority was proceeding with a public planning consultation over land extensively used by the public for recreation in which those public rights had been disregarded, and the obligation to assess the nature and extent of PROW across that land also disregarded. I will consider the nature of the public communications on these issues below, but I was faced with the problem of the non-elucidation of the public rights of way with one week before your public consultation deadline. It took 4 months of concentrated work to assemble the data, when I think it very likely that you were obliged to do so as a Surveying Authority in the early stages of the Planning process.

4. What Avenues are being Provided to Assess The Public Interest over the SIL 02 and AOS E Silica Sand Proposal Land?

It is true, as far as I can ascertain, that there is no formal process available to the public within the General Rules to properly establish the public recreational interest in Shouldham Warren as would be appropriate to its status as the centre of West Norfolk countryside activities.

Further confirmation of the rules being adopted can be found in a docket of responses to the first consultative process in 2018, published on the internet in July 2019. The selection of AOS E (Shouldham Warren+) had not been made at the time of the initial consultation which occurred between the two consultations. The selection of AOS E occurred at the suggestion of Sibelco, the proposed Belgian-owned contractee for silica sand extraction.. This late decision by N.C.C. effectively nullified much of the anticipated structure of the project (2014-18) as the site had initially been rejected, principally over MOD concerns over increased risks of bird strike at the nearby Marham RAF and AAF base. The second consultation has allegedly generated 4,000 public responses, at least according to CATSS: this apparently is the record number of public responses on a (?) Minerals planning decision, but the N.C.C. responses await publication. The public response to date is therefore limited to the County responses to informal statements submitted prior to 2018 when Shouldham Warren was not part of the proposal.

For example in the first "consultation." the N.C.C Planning Officer was posed with this question, "The threat to recreational activities: not only is The Warren used by many of the villagers on a daily basis, people come from all over to walk, bird watch, horse ride and cycle. There are also many clubs/organisations that use it to enhance their lives. Would this be hindered in any way?" stimulated the following response:

"The area of search includes Shouldham Warren. It is noted that public access is permitted in Shouldham Warren and it is used by many local residents for recreation. There is legislation (s.261 of the Town and Country Planning Act 1990) to allow the temporary diversion or stopping up of a Public Right of Way for mineral extraction. Any future planning application for mineral extraction would need to address the location of existing footpaths and public access. There have been multiple examples of mineral extraction sites in Norfolk, where similar issues regarding PROWs have been successfully addressed."

Note that the sole reply comprises discussion of PROW as physical entities and ignores completely the recreational implications of the question.

And again, "Apart from that. the Warren is a well used recreational facility for people living in the area and others who visit specifically to cycle, run, etc. and it is much valued by all of us." This is followed by the following response from the N.C.C.Planning Officer. "There is legislation (s.261 of the Town and Country Planning Act 1990) to allow the temporary diversion or stopping up of a Public Right of Way for mineral extraction. Any future planning application for mineral extraction would need to address the footpath location. Alternatively, a phased extraction may allow for the existing footpath to be retained, this would be a matter for a future planning application. There have been multiple examples of mineral extraction sites in Norfolk, where similar issues regarding PROWs have been successfully addressed." Again, the absence of an intention to consider the recreational value of the sites hides behind a discussion of possible footpath retention, playing a dubious game by ignoring the almost total loss of recreational value, and of elevation from up to 72 feet ASL to close to sea level. This is deliberate misinformation.

The lack of concern for the public in this process in this first public consultation generated several comments. One such relates, "As a resident of Marham living in close proximity to this planned development I, like most other residents, was totally unaware or advised of such a scheme until a neighbour informed me of it a few days ago. Apparently only 10 letters were sent out to properties closest to the site. It now also appears that this plan has been discussed by the county council for over three years. The consultation period for this development ends in the next few days giving the residents of Marham and Shouldham insufficient time to review and comment on such a scheme. Considering the size and nature of this planned development this is totally unacceptable and unprofessional. Why have we not been made aware of this plan earlier?" This is answered by, "The Single Issue Silica Sand Review process was carried out from 2014-2016 and was subject to multiple rounds of public consultation and an Examination in Public by an independent Planning Inspector. A number of Parish Councils engaged in the review process; Marham and Shouldham Parish Councils were informed. The Silica Sand Review was a separate local plan process to the current Minerals and Waste Local Plan Review. There is no mention here of any intention to ensure that the local population directly affected, and whose property values may suffer, be informed fully and appropriately in good time

Again. "I would also like to point out that the process has not adhered to the principals laid out in Norfolk County Council's own 'Statement of Community Involvement'. Residents were completely unaware of these plans. they were not notified of the consultation and had only a few days to prepare a response ahead of the deadline." This generates, "All parish councils in Norfolk and all addresses within 250m of the proposed site boundary were informed of the Initial Consultation. A distance of 250 metres was used because this represents a distance at which amenity impacts (such as noise and dust) from mineral extraction could be mitigated to acceptable levels with the minimum of controls. The background to this is revealed by another public comment (recorded above) in this archive, which claimed that the addresses within 250m of

the site boundary included only 10 addresses. including landowners, so that the residents of Shouldham, Marham, Wormegay, and Pentney villages remained uninformed. Noise and dust were the sole chosen arbiters, not loss of environment, land structure, and the manifest loss of regional recreational opportunities. No countryside society provided an opinion in this first consultation, and presumably weren't asked for one.

On the dust issue, Norfolk County Council claims that evidence of public bystander damage from downwind silica dust is not reported, which is a false statement, medically. There is increasing concern in the literature, particularly in children, the elderly, the infirm, and the immunosuppressed. States are regulating this issue in the USA. The Council should be properly aware when making medical statements.

I have been unable to find evidence of a valid systematic assessment of the public recreational interests within the formal AOS E and SIL 02 processes .. There has also apparently been a clear failure to properly inform both the local and the regional recreational users of the implications of the proposals.

5. Loss of my Communication to Minerals and Waste, end of March 2020?

Following two episodes of lost communications with your Department in 2018, I always delivered documentary communications by hand. In this case. I had to rely on a signed-for package through the Royal Mail. A separate package including the same data was sent contemporaneously to the Legal Orders and Register's Team. This was also apparently lost for a while, but I was then assured they were then found (It is concerning that in your letter, you refer to checking with LOR!). The submission to Minerals and Waste contained 5 of the 7 DMMO applications submitted to LOR. Can I ask you to have the LOR version copied for the use of Minerals and Waste? The 'lost' Minerals and Waste submission contained EH 034, EH 040, EH 041, EH 042, and EH 045 DMMO files. It would take me several days work to re prepare the package.

Can you please advise me whether LOR are in possession of the March DMMO submissions? In addition to the DMMO mentioned, their package should also contain EH 043 and EH 044.

There appears to have been a failure of the document security processes at N.C.C. that may need review.

Conclusions:

1. The General Policies adopted for the Silica Sand Review afford no evaluation of the public recreational land use over the proposed sites. In the context that much of involved land has particularly extensive public utility, I suggest that a full review of the public interest is required by law and by ethical norms.

2. The deliberate avoidance of the question of unrecognised and under-registered public rights of way across the proposed sites is probably unlawful. The attempt to disregard the PROW data when provided to Minerals and Waste appears to be disingenuous. The suggestion to hide behind a 15-20-year delay in a different statutory process under Departmental control is unusual.

3. I propose that a comprehensive and urgent evaluation of both issues is required to bring the public interest in these sites into proper focus, as appropriate for a statutory public inquiry.

4. I fully understand that there are a number of interests here, but the public volunteers, who provide gratis much of the data investigation on historical land and highway issues, do not deserve to be treated in a high-handed manner. This needs to remain a fact-based relationship.

Yours Sincerely.
L. David Ormerod
PROW volunteer