

Patron Her Majesty The Queen

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The logo for The British Horse Society, featuring the text "The British Horse Society" in white on a dark red background.

Bringing Horses and People Together

Jason Day
The Responsible Case Officer, Development Management
Wiltshire Council
Monkton Park
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SN15 1ER

Dear Sirs,

Freeth Farm and Calne Quarries – Planning Application Number 16/05708/WCM – Sand and Gravel extraction.

I write on behalf of The British Horse Society and as one of its Bridleway Officers to object to the proposals put forward in the above Application as well as to any Application linked to it (“Application”).

The Application shows that Hills Waste Solutions Limited (“HWSL”) have put forward new proposals for sand and gravel extraction at Freeth Farm. Those proposals have a direct impact on the use of the Bridleway/ Brown Road that crosses the site as well as upon the surrounding bridleway and road network.

The effect of these proposals, if implemented, will be to cause the surrounding routes to become, as a matter of Highway Law, obstructed and to render the routes completely unrideable from an equestrian point of view.

The principal reasons for this statement are set out below. I would, however, make the point that this Application has only very recently come to our notice. The right is therefore reserved to make further objections when it has been possible to review the Application further.

1. The intended diversion of the bridleway which approaches the sand and gravel extraction site (“Site”) from the north will send the bridleway along the north side of the Site.

Those riding that route will, therefore, have to ride in extremely close proximity to the area on which the actual sand and gravel extraction is taking place. They will be directly alongside it.

This, at best, will be an extremely dangerous situation from an equestrian point of view. The large and noisy pieces of machinery and the nature of the operations being conducted will, when in use and operation, be very concerning indeed even to the calmest of horses.

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There is every chance that workmen and large machinery working in proximity to the bridleway in this fashion will cause a horse to rear, shy or bolt with material potential consequences for horse and rider. As such this element of the route is wholly unacceptable in Health and Safety terms.

2. The law recognises this form of obstruction to the bridleway. At Common Law, obstruction is a form of Public Nuisance and, as such, amounts to a criminal offence.

In *Seekings v Clark* (1961) it was decided that “anything which substantially prevents the public from having access over the whole of the highway which is not purely temporary in nature is an unlawful obstruction”.

The obstruction to the passage, in this case, results from noise nuisance and from the fear and bewilderment (to the horse) engendered by heavy machinery in use. It is not “purely temporary” because the obstruction will be in place for a minimum of 5.2 years (plus the period for restoration).

3. Obstruction in this form is also a criminal offence under statute which, here, supplements the Common Law position: see s137 Highways Act 1980 (HA 1980).

4. Furthermore, the Highway Authority is under a statutory duty to prevent and to remove obstructions to the highway: see s130 HA 1980. This section imposes on the Highway Authority a duty to “protect and assert the rights of the public to the use and enjoyment of the highways” as well as to prevent the “obstruction” of those highways; and, as demonstrated above, “obstruction” covers both physical and non physical obstruction.

5. Accordingly, if your Council were to grant the consent sought, it will place itself in direct breach of its own statutory duties and expose itself to the risk of material action (with consequential liability in damages) for failure to recognise the Public Nuisance that will result from this proposed development.

6. Further obstruction to the bridleway will result from the fact that the diverted route will be impassable due to the high water table and poor land surface. This aspect is very well illustrated and set out for you in Dr Peter Alberry’s paper submitted as part of his objections.

Those objections are endorsed and approved of by this letter.

7. The bridleway that is diverted along the northern side of the Site will rejoin the existing network in the north west corner of the Site. We inspected this area in the summer of 2017.

It was forbidding to go there.

The route was well marked by “Keep out” signs and it was made abundantly clear that no one’s presence was welcome there. It is not unreasonable to assume that this approach will be adopted over the period of the development and of the period of sand and gravel extraction, once again, rendering the area a “no go” area.

8. Access to the Site and the bridleway network along the western side of the Site will be a similarly obstructed route. That obstruction will result from the heavy vehicle use of that route. At the time of our last site visit, the route running north south on the western side of the Site was relatively unused. That will most certainly not be the case if this Application is granted.

Large and heavy vehicles are deeply concerning to horses and there are no proposals for the adequate accommodation of the legitimate requirements of equestrian users within your proposals here.

9. The Site is already subject to the terms of Planning permission 3809 dated 13.3.1956 ("ROMP"). This ROMP imposed a Planning Condition requiring a 20 foot exclusion zone all around the bridleway.

This condition is extant and effective.

This letter requires that the Local Planning Authority enforce that Condition in accordance with their statutory duties so to do and ensure its observance. There is nothing in the current Application to suggest that the Applicant intends to observe this requirement: hence the request made.

10. However, the route of the existing bridleway which enters the Site from the north is already recognised by Wiltshire Council as a "Brown track" with higher rights than a mere bridleway. Those carriage rights may well, though, be subject to NERCA. Therefore, the existing route should properly be recognised by Wiltshire Council and by the Applicant as having, at very least, Restricted Byway status.

As such, the current proposals for it and for the accommodation of carriage drivers are very far from adequate and the route should remain in its current position and be left unaffected in every way by the proposed development with that development being refused by the relevant authorities.

11. The Application appears to envisage the removal of material from the Site by way of conveyor. It is not clear to us at present as to how this conveyor will cross the route running north south along the western edge of the Site. However, we have assumed that, at that point at least, it will run overhead and then cross the route in question in the air.

The issue of there being an overhead conveyor raises very material concerns for equine users:

11.1 How will this conveyor be enclosed to prevent all leakage of materials from it and how will it be ensured that the fine particles of sand and gravel that it carries will not pollute the air rendering the route once more obstructed?

11.2 A conveyor of any form is bound to make a substantial noise that will ruin the peace of the surrounding area of countryside.

11.3 An overhead conveyor will be terrifying to all forms of equine users.

I should be grateful, therefore, if you would ensure that this letter, for the reasons stated above reaches all of the relevant deciding bodies and persons concerned with this Application.

Yours sincerely

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