



BROMSBERROW PARISH COUNCIL

MINUTES

7.30pm on Tuesday 9th January 2024 at Bromsberrow Village Hall

1. **Present:** Cllr Robin Launders (Chair), Cllr Chris Neville, Cllr Roxanne Shayle Cllr John Stephens, with FoDDC Cllr Clayton Williams, Cllr Gill Moseley (Gloucestershire County Council), also present: David Mills (Clerk) and two members of public.
Apologies received: FoDDC Cllr Philip Burford
2. **Declaration of interests:** As agreed at the 20th June 2023 meeting the Clerk duly granted dispensation to all councillors to enable discussion of Quarry activity matters, progress of the ROMP and Parish Council Responses of this agenda and at subsequent meetings covering the same topic for the next two years. No other items declared.
3. **Minutes of meeting 28th November 2023** – to be approved and signed at the next meeting.
4. **Matters arising:** None
5. **Parish Council business - Clerk**
 - a. Clerk presented a 3-year budget with 2% increase in the precept taking into account £2000 to be allocated for grants and donations in 2024/5. Sums from this budget could be allocated to the following projects:
 - a. A **playground/playpark area**. Project funds for the assessment of the financial viability, suitability and feasibility of a playground/playpark area located within the village for ages 5 to 10+. Consideration to be given to assessing the practicality of a 'fullsize' play area for a wider age group. The main cost for this project to be grant funded. **Action:** Cllr Shayle to progress with workgroup.
 - b. A **Village Shop project** currently in consideration with details to be discussed. **Action:** Cllr Neville to provide an update.
 - c. **Noticeboards**. Comments have been raised about the need for improved noticeboards in Bromsberrow and by the shop in Bromsberrow Heath for signboard/house finder/ local footpath map uses. **Action:** Councillors to consult residents. Clerk to request funding from the 'Build Back Better' GCC Councillor fund that Cllr Gill Moseley has agreed to support in principle.
 - d. Other projects were considered.
 - b. Council approved the request for a 2% increase in the Precept.
6. **Planning Quarry activity & ROMP:**
 - a. Following consultations with parish councillors, Cllr Robin Launders, as Chairman, provided the following agreed statement on the Quarry activity and ROMP developments. Requesting fuller responses to the 'Eight Complaints' raised by BPC in April 2023, with GCC Planning along with other requests for responses agreed with the GCC Planning Officer at the last BPC meeting in November 2023. To date no meaningful responses have been received.

"Progressing Bromsberrow Sand Quarry planning matters - 9th January 2024

I apologise that we again need an extraordinary meeting of BPC to progress the many planning issues outstanding.

Outstanding planning complaints and the long-delayed ROMP process have been stacking/ up, and we could be near a crisis point!

Nick Bainton of GCC Planning said at our last Council Meeting that he hoped to present his Report on the ROMP very soon; presumably, that would invite final comments on a very tight timetable before approving the Conditions to the ROMP.

Perhaps more crucially, we were told, in effect, that GCC cannot impose Conditions without the Operator being able to go directly to the Secretary of State who would award costs against GCC of material restricted at so much per tonne. GCC seem to be relying solely on being able to persuade the Applicant to accept any change to the Applicant's proposed conditions.

At this point, I should recall (as if we could ever forget!) that the ROMP brought the decades-old existing planning Conditions into the light and the ROMP documents such as topographical survey, revealed evidence of breaches of almost all of those. For example, G1209/C restricts digging to 42.67 metres above sea level; they had dug to 34/35 or so metres over much of G1209/C's area.

We have a sand quarry in our Parish, and the Operator proposes to cancel the old Planning Conditions in favour of a new set of conditions; the Operator wants to keep extracting sand (fair enough) and to fill the pit with 'inert materials' (also fair enough though the extent of materials to be exported and imported would amount to some 100,000 HGV movements over the next 22 years). As such, our quarry is not unusual, nationally, though massive for us villagers.

We have also highlighted many issues, apparently unresolved, with the proposed ROMP conditions and the documents supporting the Application. Also, there are exceptional and vital aspects to this site and its operations:

- The aquifer which serves some 30,000 households from our pumping station opposite the pit. That the operator may have discovered and been excavating an old waste site ("dark materials") within the pit.
- Even after all this time, there is no opinion as to whether this is a 'Schedule 2 development is likely to have significant effects on the environment; such an opinion is required under the Environment Act 1995 which set up the EA and the ROMP process.
- Historic and ongoing breaches of Planning, notwithstanding GCC inspection visits, 5 visits in 2023, presumably scores of visits since commencement.
- GCC have stated: 'We can't do that- it has to be a remediation of the actual breach' (per transcript) of over digging depth, angle, or margin; this would mean the absurd situation that once the sand is extracted beyond permitted limits, there can never be a remediation??
- We have our ongoing formal complaints of breach of planning control which we regard as unresolved and new ones for sale of topsoil, relocation of skips and new excavations almost vertical in a zone restricted to 1:1 slope.

We have written to GCC twice about the ROMP conditions, apparently to no avail. We had a detailed meeting with GCC Planning in April, with no apparent outcome. We have (in our November Meeting) listened to 'explanations' that GCC Planning cannot propose or alter ROMP proposed Conditions without the Operator being able, successfully, to claim costs of lost volume at sale price against GCC. Needless to say, we were 'puzzled' about this, exasperated even.

Indeed, we debated for 90 minutes on just some of our concerns with GCC Planning -legal interpretations and 'constraints' not making sense, breach of existing controls, recent adverts, diggings, skip stacking, relocation of aggregates outside the lawful zones.

Does all this matter?

If we just let events take their course, what might happen?

- No environmental statement?
- No maintenance of the soakaway draining the clay lined 'bucket' adjacent to Water
- Protection Zone 1 and the pumping station?
- Insufficient protection for the drinking water, the aquifer?
- No redress of previous diggings in breach of Conditions as to depth, slope or proximity to boundary?
- Disappearance of existing Conditions altogether?

- Existing alleged breaches, which need to be resolved, could 'disappear' with the cancellation of the old Conditions?
- Skips operations persisting, perhaps becoming 'legal' via a Certificate of Lawfulness?
- Topsoil meant for restoration being sold; 'soil' being manufactured?
- No effective Planning Control?
- GCC's own Planning Enforcement Plan, updated May 2023, in disrepute?
- No effective Control of the new conditions upon determination of the ROMP?

So, what can we do?

I think we can and must challenge GCC. It is GCC that has the conduct of these affairs and resolutions of issues (or non-resolutions) that are coming to the crunch. If we can challenge and promote discussions to resolution, so much the better!

I propose that we continue to press for resolution of each of the 8 formal 'Complaints' already registered, of the unanswered allegations as to, eg, 'dark materials' waters disposed of in pits, for the results of GCC investigations to be made known to us.

I propose that we press on skips, so far not responded to, described to us at the last Meeting - quote from GCC: "Those empty skips down in the bottom constitute a use that does not have planning permission and breaches current Conditions".

I propose that we challenge on the conduct of GCC in respect of environmental statement, in particular as to the wording of their policy statement, their wait for others, the fact that the matter remains undetermined.

And, I propose that Statements by GCC of a legal nature, that appear to prevent or limit Planning Control and ROMP Permissions, be challenged.

The rest of this presentation deals with:

- exactly what concepts by GCC as to legal limits to action does GCC appear to be operating under
- proposing how we can make such challenges and promote discussions to resolution.

We have been told that GCC cannot impose ROMP Conditions without 'the Operator being able to go directly to the Secretary of State who would award costs against GC.C'; this would be of 'winnings restricted' at so much per tonne. GCC are relying solely on being able to persuade the Applicant to accept any change to the Applicant's proposed conditions.

I propose that we should challenge this.

Based on my reading of the Environmental Act 1995/25, Schedule 13:9(6) F634 'the Mineral Planning Authority ...shall determine the conditions...

Now, there are clauses (Section 10 F637) to the effect that the MPA has to notify the applicant of mineral working rights restricted by Conditions (which in turn could/would lead to compensation to the applicant of the value of the winnings lost, tonnes at sale value). However, this excludes 'restoration or aftercare conditions.

Furthermore the 'restriction' is 'as compared with the effect of the conditions ..of the planning permissions.. immediately prior..' (Section 10(2) F637)

So, it would appear that Conditions can be imposed by GCC as envisaged by the Act.

This appears to contradict GCC's stance, and I am reminded of what was said of the ROMP at our last meeting:

- "As with Planning Applications, it could be called in to Planning Committee. But, and I will say this rather strongly, Our Committee will be informed in no uncertain terms by our legal department, not by me, of the consequences of changing any of the Conditions .. "

And I remind you here of what was said of remediation of the excess winnings from exceeding depth, slope and boundary limits of existing Conditions; we were told at our last Meeting: 'We can't do that- it has to be a remediation of the actual breach' (per transcript). This in reference to over digging depth, angle, or margin. This approach suggested the absurd situation that once the sand is extracted beyond permitted limits, there can never be a remediation because the actual act of cutting into the sandstone cannot be precisely remedied shovelful by shovelful!! And now, a perusal of EA 2015, which sets up the Environment Agency and the ROMP process, suggests that remediation of excess diggings would not be any restriction of working rights when compared to the effect of existing Conditions.

Having set a Planning limit to operations, like a boundary or steepness of slope or depth, and that is exceeded, then we can maintain that those operations are now without Planning Consent, and therefore the 4 years rule from substantial completion will apply. This contrasts with the limit to action of 10 years from breach as postulated by GCC this is another of the perceived limits to GCC action that we challenge.

So how do we challenge all these apparent hurdles to effective Planning Control, to the setting of ROMP setting Conditions, to removing skips which are without permissions and contrary to existing permissions, to balancing our amenity with the economics of winning sand plus earning on the deposit of waste materials, some 100,000 HGV movements. So, how do we best protect our aquifer? And how do we do this without alienating our relationships with GCC Officers, with GCC as a whole, who as MPA and WPA have the duty and the power to set conditions and deliver planning control?

I propose that we immediately set in train GCC's complaints procedure, perhaps with a number of precise complaints. Now I know that may sound aggressive, but bear with me because there are 3 stages:

- Informal Local Resolution
- if not resolved, then Formal Complaint
- if not resolved then Formal Complaint Review.

I propose that the Complaint Stage 1, Informal Local Resolution, should be invoked without delay, topic by topic.

- I propose starting with the ability/requirement under the Law of determining ROMP Conditions, as that will be highly relevant to the remaining stages of the ROMP process, and most urgently, to the Report by Officers being preparatory to GCC determination of the Application and to the Conditions to apply.

I propose as also urgent is the conduct of GCC in respect of environmental statement duties under the 1995 Environment Act.

I propose further general invocations as to resolution of the outstanding complaints re skips, other outstanding complaints, and of planning control, the situation where pit inspections have not led to action on breaches observed, the operation of the Enforcement Plan.

Each would be expressed as a formal invitation by Bromsberrow Parish Council to GCC Planning to reach an Informal Local Resolution before submission by BPC to GCC of a Stage 1 Formal Complaint.

I ask for approval of this approach and for the assistance of our clerk and of other members for the preparation and launch of GCC's Complaints Procedure in respect of our prior concerns plus current observations of suspected breaches within the quarry, and to authorise your Chairman and Deputy Chairman to conduct these affairs.

Thank you."

The Chairman asked for comment responses:

County Cllr Gill Mosely commented: The comments provided by BPC over the two years were useful in negotiations with the applicant and that BPC should trust the Planning Officer is acting in the best interests. The planning officer has made site visits and is working on this case along with many others within his workload. BPC should be aware that negotiations with the applicant are fragile and influenced by wider issues. Cllr Moseley expressed concern that if BPC should complain in this way it may well have unintended consequences, cause more damage to relations and hold up negotiations.

Cllr Moseley agreed to contact the planning Officer and seek an update on progress for BPC for the next BPC meeting on the 30th January 2024.

District Cllr. Clayton Williams agreed to share the concerns expressed by BPC with the MP Mark Harper highlighting the potential impact on many residents if the aquafer has been damaged in any way by the activities within the Quarry and the apparent inactivity in progress by GCC Planning. In response Cllr Robin Launders responded reiterating and reinforcing points made in the statement with legal evidence supporting the statement comments. He further commented that over the last two years there was little evidence of planning gains and that GCC Planning were acting in a pusillanimous manner. He strongly believes resorting to the complaints process is the only option available to BPC currently.

Council considered waiting for Cllr Mosely to provide an update before the next Parish Council meeting in two weeks' time however members agreed the Informal Complaint Stage 1 of the GCC complaints process should be despatched immediately by Cllr Robin Launders. Subject to receiving responses, moving to a Stage 2 to be considered at the BPC meeting on the 30th January 2024.

7. AOB None

8. Date of next meetings

Tuesday 30th January 2024

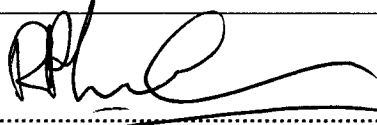
Tuesday 26th March 2024

Tuesday 28th May 2024

Tuesday 30th July 2024

Tuesday 24th September 2024

Tuesday 26th November 2024

Signed:	
Date:.....	30 JANUARY 2024

