

## CHALK PIT

<b>Head of Service:</b>	Rod Brown, Head of Housing & Community
<b>Wards affected:</b>	(All Wards);
<b>Urgent Decision?(yes/no)</b>	No
<b>If yes, reason urgent decision required:</b>	
<b>Appendices (attached):</b>	Appendix 1: Map showing various businesses operating at Epsom Chalk Pit Appendix 2: SCC planning conditions EP21/00223/CMA Appendix 3: Graph detailing emails received history during 2023

### Summary

This report sets out the options available to the Council which include, if necessary, to fund further substantial statutory nuisance investigations into noise or dust complaints arising from business located in Epsom Chalk Pit.

### Recommendation (s)

#### The Committee is asked to:

- (1) To note the motion referred to this Committee by Full Council and make no resolution or recommendation following a debate on that motion.
- (2) Agree which of the three options set out in Para 8.5 of this report is to be resolved (option 1 or 2) or recommended to S&R Committee (option 3).

### 1 Reason for Recommendation

- 1.1 To consider the motion referred to this Committee by full Council at its meeting held on 25 July 2023 in accordance with Appendix 5 of the Constitution, CPR 12.3.
- 1.2 To consider the options available to the Council, which include identifying funding for further investigations into recent complaints about significant noise or dust arising from the Epsom Chalk Pit.

### 2 Motion

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- 2.1 A motion was proposed by Cllr Muir and seconded by Cllr Persand at full council on 25 July 2023 that read:

*That this Council mandates officers to install professional noise measurement equipment around the Chalk Pit site in College Road, Epsom, to leave that equipment in place for a minimum period of three months, and to respond to any breaches of noise regulations on the site with the imposition of a noise abatement order on the landowner and any identified operators responsible for the excess noise.*

- 2.2 In accordance with CPR 12.3 (see Appendix 5 of the Constitution), Cllr Muir "...shall have the right to open the debate on the matter in question but may not vote on the matter" as she is not a member of this Committee.
- 2.3 In light of the remainder of this report with its associated options as set out in para 8.5, it is recommended that no resolution or recommendation be made further to that motion and that the debate proceed as to the remainder of the issues set out within this report.

## 3 Background

- 3.1 The Chalk Pit is located off College Road Epsom and ceased to operate as a chalk pit many decades ago. For the last 40 years or so the site has attracted various business uses of a light industrial nature.
- 3.2 Topographically, the site is composed of a deep basin forming the previous chalk pit, where several businesses operate, as shown in **Appendix 1**. These include Skip It, Restons (previously Epsom Skip Hire) and until recently, a smaller skip business PM Skips Hire Ltd which has recently ceased operating from the site. Other businesses using the pit are a coach company, scaffolding and vehicle repair workshop.
- 3.3 Above the basin there is a relatively narrow area, which is closer to the surface, known as the rim. This area is used by several businesses predominately for the storage of empty skips and for a road haulage company.
- 3.4 The sources of noise on site are several.
- 3.4.1 Trommel Noise. This is a specific piece of equipment used to process construction waste into different sized elements. The two trommels on site, along with associated handling equipment, both have the potential to be noisy and give rise to dust emissions.
- 3.4.2 Materials handling noise. This includes materials being mechanically sorted other than using a trommel, loading of the trommels, moving stockpiles, unloading of skip lorries, loading of HGVs.

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- 3.4.3 Noise from site machinery, principally the 360° grabs, their hydraulics, and tracks and separate dumper trucks and other mobile plant.
- 3.4.4 Noise from road vehicle arrivals and departures including deliveries of skips both loaded and empty, HGVs, staff, and visitors to all the businesses within the pit.
- 3.4.5 Noise from the stacking and manoeuvring of empty skips.
- 3.4.6 Vehicle maintenance activities typically carried out by occupants of the rim.
- 3.5 Operations by the two remaining skip companies both include the operation of a trommel each. The smaller skip company which has recently ceased trading from the site was not believed to operate a trommel whilst trading from the site.
- 3.6 Although largely out of direct line of sight and separated by a field area, the Chalk Pit is close to residential properties on Longdown Lane North and College Road. For example, there are 16 residential properties in 250 metre radius and an additional 8 residential properties between 250m and a 300m radius.
- 3.7 Prior to 2021 complaints about activities on the Chalk Pit giving rise to noise and dust were not significant in number. Between January 2021 to May 2023 the volume of complaints had increased significantly including from properties some distance away from the site. From September 2021 the Council established a dedicated email address for residents to log their observations. It has not been possible to count every complaint since some residents have reported individual instances of noise separately, whilst others have summarised a day's or week's activities in one email. Similarly, the subjects range from noise from the pit, road traffic on the local network to hours of operation. This is why the preferred measure is simply volume of emails received which gives a good indication of the level of community concern when taken as a trend. **Appendix 3** contains the most recent trend information.
- 3.8 Since May 2023 the number of complaints received by the Council has reduced significantly, however in September 2023 there has once again been an increase in complaint numbers. The dedicated email address established back in September 2021 remains in use for fresh complaints.

## 4 Surrey County Council Minerals and Waste Planning

- 4.1 Surrey County Council (SCC) are the relevant planning authority for waste processing uses of the site, including Skip It and Reston Waste. The relevant planning authority for activities that are not associated with waste processing is the borough Council.

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- 4.2 In 2023 Skip It submitted a planning application to SCC (SCC reference EP21/00223/CMA) for the retrospective change of use of an existing Waste Transfer Station to a Materials Recycling Facility and extension of this site to incorporate a new Waste Transfer Station and other matters.
- 4.3 This application included the construction of a new enclosure to encompass the noisiest operations from the site including the use of the trommel. This application was approved by SCC with conditions attached, including prohibition of the use of the trommel until the enclosure was built, specific noise limits placed on site operations, requirement for noise monitoring and a requirement for the submission and agreement of a dust management plan. The conditions relating to this planning permission are attached as **Appendix 2**. It is understood that at the time of the preparation of this report the applicant had applied to modify some of these conditions and the matter is currently undergoing assessment by SCC..

## 5 Regulatory responsibilities

- 5.1 Pollution matters in the area of the Chalk Pit have always been regulated by both the local authority in respect of the general statutory nuisance provisions and the Environment Agency (EA) in respect of specific processes regulated under the Environmental Permitting Regulations. These have been the long-standing arrangements since the early 1990s.
- 5.2 The relevant planning authority (either SCC for minerals and waste applications or EEBC for other uses including activities based on the rim of the Chalk Pit) if approving an application will be able to attach conditions controlling aspects of that permitted use. Enforcement of relevant conditions will be the responsibility of the relevant planning authority.
- 5.3 The Environment Agency regulate processes by including legally enforceable controls in the permits issued to operators. These controls are intended to tackle potential noise and dust issues at source from these permitted processes, as opposed to responding to complaints. Permits are specific as to which aspects of the operation they control, and it could be the case that not all aspects of a business subject to an EA permit will be controlled by that permit.
- 5.4 In practice, on receipt of a complaint the local authority would determine whether it related to a process holding a permit from the Environment Agency and if so, inform the complainant that they ought to contact the EA via their incident hotline. Where the complaint arises from a source not controlled under the permit, the Council would commence a standard statutory nuisance investigation.

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- 5.5 In the case of the various businesses operating out of the Chalk Pit, Skip It and Reston Waste are both subjected to controls through Environmental Permits issued by the EA. These limit their emissions and impose controls on their operation intended to reduce nuisance to neighbouring residents.
- 5.6 Activities on the rim area of the Chalk Pit and other non-waste handling activities in the Chalk Pit itself are not EA regulated and fall to the local authority only, either through relevant planning condition or through general statutory nuisance investigations.
- 5.7 Noise and dust can be considered as potential statutory nuisances. The consideration required in a situation such as the Chalk Pit is complex involving many considerations. There is no set statutory decibel level at which noise would be a statutory nuisance. The Council's Environmental Health Team have, and continue to, liaise closely with the EA and SCC concerning activities on the site. Each regulatory service considers their own justification for any enforcement action and it is therefore essential to hold unequivocal evidence to identify which company is the source of the nuisance. To assist with residents' understanding of the respective roles fulfilled by the EA, SCC and this council, it is envisaged that a multi-agency plan will be created and shared with local residents as soon as is possible after this Committee meets to help signpost what each organisation is responsible for, their enforcement powers and the evidential hurdles that each must satisfy before it can exercise any of its enforcement powers.

## 6 Council activity in response to complaints

- 6.1 From 2021 the Council's Environmental Health service has been heavily involved in investigating the allegation of statutory nuisance from various operations on the site. This investigation has been the most intensive nuisance investigation the Council has conducted over recent years, involving:
- Multi-officer team monitoring from residential premises and within the Chalk Pit area
  - In person visits to monitor in response to calls from residents
  - Over 100 hours of in-person dedicated monitoring including a full week of an officer being in a residents' garden.
  - Review of in excess of 700 hours remote monitoring, using installed sound monitoring equipment at several residential addresses in the area, combined with the use of temporary CCTV recording over 22 thousand video clips.

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- 6.2 Given the topography of the site and the fact that there are several operators all emitting the same type of noise, it is imperative that monitoring can identify which business operator is responsible for the source of the noise at any one time. It is not sufficient to assume or to guess, since that would risk the failure of any resultant regulatory action. This is why the investigation strategy between January 2021 and May 2023 has focussed on both witnessing the noise *and* verifying the source of that noise down to individual businesses. To do this properly requires the use of multiple teams of officers, with communication, to identify noise at resident's properties and to cross reference that to activities on site in real time.
- 6.3 This monitoring was completed in June 2022 without the various operators at the Chalk Pit being informed of when this might be occurring and, apart from when we needed their co-operation to selectively isolate machinery, we did not inform any of the operators of the timing of our monitoring visits. It was necessary however to notify users of the pit of the existence of Council CCTV surveillance for the time it was installed.

### **Professional opinion based on the outcome of that investigation:**

- 6.4 The Council's approach to enforcement is evidence based. Despite this extensive monitoring, it is the opinion of its qualified officers that the Council has not had and does not have sufficient evidence to issue an abatement notice on any of the site operators.
- 6.5 Officers are very mindful of the public sentiment on this subject and extend their thanks to those members of the public who have facilitated short notice and planned visits and who have hosted noise monitoring equipment in their gardens. There is clear evidence that noise from the chalk pit is audible, causing annoyance and possibly having a negative impact on the local amenity. However, taking into account what is required for the Council to positively demonstrate a statutory nuisance and despite undertaking the most significant nuisance assessment in recent times, officers cannot show the disturbance amounts to a statutory nuisance. This in turn makes the service of an abatement notice on any of the companies occupying the site, based upon the evidence currently available to the Council, unjustified and open to legal challenge exposing the Council to considerable financial and reputational risk.
- 6.6 Notwithstanding the professional assessment of the Council's expert officers based upon the findings of its own investigation, residents should be aware that they remain at liberty to take their own action via section 82 of the Environmental Protection Act 1990. This remains an available option should they wish to explore this themselves by way of engaging their own external experts to advise them as to the merits of such proceedings and the risks to be aware of when bringing legal proceedings against a third party.

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### **7 Council enforcement action taken**

- 7.1 Having set out why the Council has been unable to exercise any of its enforcement powers regarding noise nuisance, it should be noted that the Council has undertaken the following enforcement actions:
  - 7.1.1 Community Protection Warning Notice on the landowner requiring various management steps and resurfacing of the road surface on the rim.
  - 7.1.2 Nine further Community Protection Warning Notices on users of the rim and of the chalk pit mandating chain covers on skip guards.
  - 7.1.3 One Community Protection Warning Notice requiring a skip company to cease using the site entirely.

### **8 Proposal**

- 8.1 The multiple sources of possible noise and dust arising from the site, together with the difficult topography of the site including lack of visibility from resident's properties, make monitoring and evidence gathering very resource intensive.
- 8.2 Officers are satisfied that the significant investigation to the general industrial noise from across the site outlined in this report has met and probably exceeded the statutory requirements on Councils to complete a reasonable investigation into allegations.
- 8.3 However, alongside fresh complaints of ongoing noise nuisance and changes in the site characteristics such as the introduction of mitigation measures, e.g., the building enclosing part of Skip It's operation, or the introduction of new noise sources, it may be justified to carry out further nuisance investigations should resources be in place to support this.
- 8.4 Officers consider that it would not be possible to carry out a similar in-depth investigation as previously undertaken, as the redirection of the significant resources required to carry this out would adversely affect the other statutory duties the Environmental Health service are responsible for such as the food hygiene, private sector housing, health & safety and pollution functions.
- 8.5 This Committee is therefore invited to consider three options:
  - 8.5.1 Accept the account set out in this report that insufficient evidence exists to warrant any enforcement action and to close this investigation with no further action, or
  - 8.5.2 Officers keep this under review and bring this back to this Committee should, in their professional opinion, sufficient evidence of a statutory nuisance be evident to seek any necessary funding to take enforcement action, or

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- 8.5.3 Recommend to Strategy and Resources Committee that funding be allocated from limited Council reserves to instruct external noise consultants to conduct a fresh investigation based upon the current activities on the site noted within the recent complaints received from local residents – such investigation to commence once the Skip It building surrounding the trommel is completed and in operation to make best use of this funding.
- 8.6 Should this Committee be minded to adopt Option 3, as funding cannot be identified within the Committee’s budget envelope, a request would be required to Strategy and Resources Committee to find additional funding from alternative sources (such as reserves) to commission an external noise consultant to investigate for possible statutory nuisance and to take appropriate enforcement action, including representation in legal proceeding.
- 8.7 Save for Option 1 above, Options 2 and/or 3 would only be acted upon should the Council receive substantial and substantiated complaints about noise or dust nuisance arising from businesses operating in the Chalk Pit, and only if they were operating in accordance with all other relevant regulatory controls. These include planning controls, including having constructed and commissioned the new building at Skip It. Under such circumstances, approval of either Option 2 or 33 would then provide the Council with either a clear way forward (Option 2) or provide the necessary resources to commission external consultants to purchase the capacity necessary to carry out an intensive investigation into any new or ongoing complaints (Option 3).

## 9 Risk Assessment

Legal or other duties

### 9.1 Equality Impact Assessment

9.1.1 There are substantial numbers of residents requesting assistance from the Environmental Health service. If existing resources were to be redirected into further extensive nuisance investigations, there could be negative impacts on other residents and the ability to respond to their needs.

### 9.2 Crime & Disorder

9.2.1 The Council’s Environmental Health service’s resources are important as part of the overall response to community safety and enforcement. If existing resources were to be redirected into further extensive nuisance investigation, there could be negative impacts on the Council’s response to crime and disorder.

### 9.3 Safeguarding



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9.3.1 The Council's Environmental Health service's resources are important as part of the overall response to safeguarding. If existing resources were to be redirected into further extensive nuisance investigation, there could be negative impacts on the Council's safeguarding response.

## 9.4 Dependencies

9.4.1 Regulation of activities from the businesses operating in the Chalk Pit are shared principally between the Council, SCC, and the EA. The proposal outlined in this report is only required should alleged noise or dust nuisance continue, despite the application of controls from these other regulatory partners.

## 10 Financial Implications

10.1 In addition to the working hours committed to the investigation to date, the Council has incurred a cost of £5,600 for matters associated to the investigation.

10.2 Informal approaches to several consultancies have resulted in indicative costs of £40,000 based on a specification generated by the service designed to address the likely work required to demonstrate nuisance or not.

10.3 Should any resultant enforcement be contested, legal costs of up to £50,000 would be expected, with potentially a further estimated £50,000 payable to the appellant in the event of their successful appeal.

10.4 Officers have been unable to identify funding within the Committee's existing budget envelope to support the additional cost of £140,000 without impacting existing services. Should the Committee decide to support further investigations, it is anticipated that a further report would be required to S&R Committee to request one-off funding from limited Council reserves.

10.5 **Section 151 Officer's comments:** The Council faces a budget gap of £1.1m in 2024/25, rising to £2.5m by 2027/28. If funding were required for external consultants to undertake additional investigations at the Chalk Pit, it is expected that this would need be taken from the Corporate Projects reserve (subject to S&R Committee approval), reducing the balance available for other key Council priorities.

10.6 In deciding whether to support renewed investigations on top of those that have already taken place, Members are asked to consider the likelihood of whether renewed investigation would ultimately lead to successful enforcement action and, by extension, whether it would be an effective use of limited Council resources.

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### 11 Legal Implications

- 11.1 The burden is on the Council to demonstrate by way of evidence that a statutory nuisance exists at the time that both an abatement notice is served and at the time it is heard before the Court. Until the current planning conditions have been complied with, the on-going level of noise and dust emanating from the site and its impact on neighbouring residents can not be known. The relevant legislation that applies to statutory nuisance is set out in section 79-81 of the Environment Protection Act 1990.
- 11.2 This report sets out that it is the view of its professional Environmental Health Officers who are experienced in noise nuisance matters and have the necessary qualifications and training in the area that there is insufficient evidence to justify service of an abatement notice, both at present and also further to the outcome of their investigation between 2021-23.
- 11.3 Faced with that professional view, the Council should not be issuing an abatement notice. An abatement notice may be challenged by way of appeal before the Magistrates Court where the Council would need to set out why it felt it was warranted and legal to do so. If successfully challenged, the notice would be set aside with considerable financial, legal, and reputational damage to the Council.
- 11.4 **Legal Officer's comments:** None arising further to the contents of this report that contain relevant advice relevant to legal issues.

### 12 Policies, Plans & Partnerships

- 12.1 **Council's Key Priorities:** The following Key Priorities are engaged: Safe and well.
- 12.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 12.3 **Climate & Environmental Impact of recommendations:** None arising from this report.
- 12.4 **Sustainability Policy & Community Safety Implications:**
- 12.5 **Partnerships:**

### 13 Background papers

- None