

Strategy and Resources Committee

26 March 2024

CHALK PIT

Head of Service:	Rod Brown Head of Housing and Community
Wards affected:	(All Wards);
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Appendices (attached):	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 and 2024 Appendix 4: Draft specification (Part II paper – para 3 and 7 of Sch 12A; exempt from publication

Summary

This report sets out the matters considered by the council's Environment Committee on 23rd January 2024 in respect to the options available to respond to complaints of noise from Epsom Chalk Pit.

Following consideration, as funding could not be found from existing budgets and internal resource could not support the work, the Environment Committee resolved that Strategy and Resources Committee be requested to identify funds of £140,000 to instruct external noise consultants to conduct a fresh investigation into activities at Epsom Chalk Pit.

The £140,000 is the total sum anticipated to be needed and is made up of £40,000 for the work to be carried out, £50,000 to support any enforcement action/litigation and a further £50,000 payable to the Appellant in the event of a successful appeal. These amounts can not be considered in isolation from each other in considering the potential total cost to the council.

Members should note that such further external investigation would only proceed if a significant level of complaints continued, despite the required buildings being constructed and commissioned and officers agreed that, in their professional judgement, such work was warranted.

Recommendation (s)

The Committee is asked to:

- (1) Consider the request from Environment Committee for additional funding, as set-out in this report, and then either:**
- (2) I) Given the overall financial deficit position of the council and the diminishing level of available reserves, agree to temporarily release £40,000 for this work until the Environment Committee identify and put forward the equivalent sum through service reductions in their portfolio to replenish the Corporate Property Reserve. This must be in the 24/25 financial year and be over and above those savings already required to close the budget gap next financial year. If the procurement process indicates that in excess of £40,000 is needed for this work then this must be referred back to this Committee before committing to the expenditure and likewise if subsequent potential enforcement/litigation work is expected to exceed £50,000.**
 - II) If recommendation 2.I. is adopted, authorise and nominate the Head of Housing and Community, in consultation with the Chair of Environment Committee, to commence this work only when in their professional opinion the level of noise and complaints warrant such action following completion and commissioning of the required buildings.**
 - III) Given the financial deficit position of the council, the diminishing level of available reserves and the detrimental impact and service reductions would have Borough wide, advise the Environment Committee that following careful consideration the request for additional funding is not supported. Also, Member's attention is directed to paragraph 7.3 of the report, which speaks to inexpensive action that residents are able to progress themselves in this matter.**

1 Reason for Recommendation

- 1.1 To consider the request from Environment Committee to fund a further extensive noise investigation at the Epsom Chalk Pit, by an external noise consultant and any associated legal costs that may be incurred thereafter by identifying £140,000 from council reserves.

2 Background

- 2.1 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.

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- 2.2 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, Reston Waste (previously Epsom Skip Hire) and until recently, a smaller skip business, PM Skips Hire Ltd, which has now ceased operating from the site. Other businesses using the pit are a coach company, scaffolding and vehicle repair workshop.
- 2.3 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.
- 2.4 The sources of noise on the overall site are several.
- Trommel Noise. This is a specific piece of equipment used to process construction waste into different sized elements. The trommels on site, along with associated handling equipment, both have the potential to be noisy and give rise to dust emissions.
 - 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.
 - Noise from site machinery, principally the 360° grabs, their hydraulics, and tracks, separate dumper trucks and other mobile plant.
 - 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 and the rim.
 - Noise from the stacking and manoeuvring of empty skips.
 - Vehicle maintenance activities typically carried out by occupants of the rim.
- 2.5 Operations by the two remaining skip companies, each include the use of a trommel and manual picking line. The smaller skip company which has recently ceased trading from the site did not make use of a trommel during their time of operation.
- 2.6 Although largely out of direct line of sight and separated by natural topography and open fields, 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.

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- 2.7 Prior to 2021, complaints about activities on the Chalk Pit giving rise to noise and dust were not significant in number. More recently 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.
- 2.8 Since May 2023 the number of complaints received by the Council had reduced significantly, however in September 2023 there was a further increase in complaint numbers which have fluctuated week on week. The council's dedicated email address established back in September 2021 remains in use for new complaints.

3 Surrey County Council Minerals and Waste Planning

- 3.1 Waste processing and recycling falls to Surrey County Council (SCC) as the County Planning Authority for minerals and waste. This includes the activities of Skip It and Reston Waste.
- 3.2 In 2021, the precursor company to Skip It submitted a planning application to SCC (SCC reference EP21/00223/CMA) for the part retrospective change of use of an existing Waste Transfer Station to a Materials Recycling Facility and extension of this site to incorporate new buildings and facilities.
- 3.3 This application included the construction of a new enclosure to encompass the noisiest operations from the Skip It site including the use of the trommel. This application was approved by SCC on 2 May 2023 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 that there is counterpart planning enforcement action being taken by SCC.

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4 Regulatory responsibilities

- 4.1 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 from which the EA derive a subsistence fee from the regulated business.
- 4.2 The EA regulate processes by including technical conditions as part of the permits granted to operators. These controls are intended to mitigate emissions to air, land and water regardless of any complaints received. 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. For example, the operation of the recycling plant will be controllable via the permit, but noise from arrivals of staff in adjacent roads will not.
- 4.3 The relevant planning authority (SCC for the waste processing activities and EEBC for activities outside of this definition), will be able to attach appropriate conditions controlling aspects of the permitted use in the event of planning application. Enforcement of relevant conditions will be the responsibility of the relevant planning authority.
- 4.4 In practice, on receipt of a complaint the local authority would determine whether it likely 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, EEBC would commence a standard statutory nuisance investigation.
- 4.5 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 granted by the EA. These limit their emissions and impose controls on their operation intended to reduce the impact to the environment.
- 4.6 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 conditions or through general statutory nuisance provisions.

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- 4.7 Noise and dust can be considered as potential statutory nuisances via section 80 of the Environmental Protection Act 1990. This general provision is the same one used for other nuisances such as a noisy party, barking dogs or unacceptable bonfire smoke. Its operation in respect of a situation such as the Chalk Pit is more complex involving many considerations. There is no set statutory decibel level at which noise would be a statutory nuisance and the assessment is inherently a subjective one based around the common law definition of 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 when considering enforcement options.

5 Council activity in response to complaints

- 5.1 From 2021 the council's Environmental Health service has been heavily involved in investigating noise complaints from the Chalk Pit. This investigation has been the most intensive nuisance investigation the council has conducted over recent years, which up to the summer of 2023 involved:
- Deployment of a multi-officer team monitoring from residential premises and within the Chalk Pit area;
 - In person visits in response to complaints 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.
- 5.2 Given the topography of the site and the fact that there are two operators both 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. As a result the council has developed an investigation strategy which is focussed on both the investigating officer witnessing the noise *and* verifying the source of that noise, identifying the individual business. This requires the use of multiple teams of officers, in communication, to identify noise at resident's properties and to cross reference that to activities on site in real time.

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5.3 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. The investigation included the installation of CCTV on site to help identify activities. In accordance with legal requirements, at the point when the CCTV was installed the users of the chalk pit were informed.

6 Professional opinion based on the outcome of the June 2022 investigation:

6.1 The council's approach to enforcement is evidence based. Despite this extensive monitoring in June 2022, it was the opinion of its qualified officers that at that time the council did not have sufficient justification to issue an abatement notice on any of the site operators.

6.2 Officers are very mindful of the concerns from local residents and extend their thanks to those 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 reasonably considered to have had 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 could not evidence the disturbance, at that time, amounted to a statutory nuisance.

7 Further work from October 2023

7.1 Following the increase in noise complaints during the first half of October 2023, Environmental Health Officers once again deployed to the locality on the week commencing 9th October and undertook a series of monitoring activities over several days. During this intervention, it was possible to determine that a nuisance existed arising from the use of one particular piece of machinery at one of the two separate waste businesses in operation, and as a result an abatement notice was served on 13th October in line with the Council's duty to do so. This was communicated to residents on 16th October by email.

7.2 Since the abatement notice was served, the council has monitored for evidence of non-compliance. This monitoring has not identified a breach of the abatement notice served on Skip It.

7.3 The Environmental Protection Act 1990 enables any person affected by any form of nuisance to complain directly to the Magistrates' Court under section 82. There is a court fee of £226 to issue such proceedings. This remains an available option should local residents wish to explore this themselves.

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8 Separate Council enforcement action

- 8.1 Separately to the action outlined above, the council has taken the following legal steps prior to 2024:
- 8.2 Community Protection Warning Notice served on/issued to the landowner requiring various management steps and resurfacing of the road surface on the rim.
- 8.3 Nine further Community Protection Warning Notices served on/issued to users of the rim and of the chalk pit mandating chain covers on skip guards.
- 8.4 One Community Protection Warning Notice served/issued requiring a skip company to cease using the site entirely.

9 Options considered

- 9.1 The multiple sources of possible noise and dust arising from the site together with the difficult topography, including lack of visibility from resident's properties, make monitoring and evidence gathering very resource intensive. Fundamentally, the fact that there are two similar businesses, out of visual range, who at any one time may or may not be operating in such a way so as to cause nuisance, requires at least two, preferably three officers to properly assess.
- 9.2 Nevertheless, officers are satisfied that by prioritising investigations at the chalk pit at the expense of other statutory work, the response to this issue as outlined in this report has met and exceeded the statutory requirements on councils to complete a reasonable investigation into the complaints.
- 9.3 During 2023 and early 2024 building construction has taken place and, in the case of Skip It, will mean the noisiest of their activities being carried out from within a building as per the intent of the original 2021 planning application.
- 9.4 The completion of this development will allow the relevant planning condition attached to the SCC consent to be engaged to control noise.
- 9.5 At its meeting on 23 January 2024, Environment Committee considered this matter and were provided with three options.
- 9.6 The Environment Committee was invited to consider the following three options:
 - 9.6.1 Accept the account set out in this report that having extensively investigated the issues, the outcome of an abatement notice associated with the use of a trommel is sufficient and to close this investigation with no further action, or

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- 9.6.2 Officers keep this under review and bring this back to the Environment Committee should, in their professional opinion, sufficient evidence of a breach of the abatement notice or a further statutory nuisance be evident to seek any necessary funding to take enforcement action, or
- 9.6.3 A request be submitted to Strategy and Resources Committee that funding be allocated from limited Council reserves to instruct external noise consultants who would need to be procured to conduct a fresh investigation based upon the activities on the site and that significant complaints continue despite the buildings being constructed and commissioned. It is anticipated that further investigations may require a financial commitment of up to £140,000, as set-out in section 10 of the report.
- 9.7 It was outlined to the Committee that save for Option 1, 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 these businesses 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 3 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). This option would represent a once only, last line defence for residents.
- 9.8 It was highlighted that the further investigation as set out in Option 3 requires resourcing that the Environmental Health service could only provide with significant changes to their other statutory functions. These statutory services include food safety inspection programme, private sector housing inspections, other noise and pollution complaints, and health and safety functions.
- 9.9 The Environment Committee were informed that if it were minded to adopt Option 3, if funding cannot be identified within the committee's budget envelope of identified savings within the said budget, that 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 proceedings.
- 9.10 Following a vote of its membership, the decision of Environment Committee was to recommend Option 3 and request that Strategy and Resources Committee approve the use of reserves to settle those identified costs. It is now a decision of this Committee whether or not to accept that recommendation taking into consideration the financial impact that this will have on the council's overall financial wellbeing.

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- 9.11 Members of this Committee are advised that in order to operate a compliant procurement process, and to allow the chosen consultant to mobilise, there may be a period of time of 3-4 months between deciding to proceed and deployment of the specified resource.

10 Risk Assessment

Legal or other duties

10.1 Equality Impact Assessment

- 10.1.1 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 of the Borough and the ability to respond to their needs

10.2 Crime & Disorder

- 10.2.1 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

10.3 Safeguarding

- 10.3.1 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.

10.4 Dependencies

- 10.4.1 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.

11 Financial Implications

- 11.1 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 otherwise (Exempt Appendix 4).

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- 11.2 Should any resultant enforcement be contested, legal costs of up to £50,000 would be expected to support any enforcement action taken by the Council, with potentially a further estimated £50,000 payable to the Appellant in the event of their successful appeal. Even if the Council were successful, it is not guaranteed to either be awarded or to recover its costs. There is also risk that costs could escalate beyond these estimates, as inflation remains elevated and litigation can also lead to unforeseen events/matters arising.
- 11.3 Officers have been unable to identify funding within the Environment Committee's existing budget envelope to support the additional cost of £140,000 without impacting existing services. The recommendation to this Committee requests one-off funding from limited Council reserves.
- 11.4 The Council's Corporate Projects Reserve currently holds an uncommitted balance of £1.49m. Members have previously agreed that this reserve should always hold a minimum balance of £1m to ensure funds are retained for future, unforeseen projects. This leaves a balance of just £490,000 available for projects, before the minimum threshold is reached.
- 11.5 Allocating £140,000 from this reserve would reduce the remaining available balance from £490,000 to £350,000, a reduction of c.29% in the funds available for other corporate projects.
- 11.6 In addition, there would be an estimated £6,300 per annum reduction in treasury management income, assuming investment returns of 4.5%.
- 11.7 **Section 151 Officer's comments:** The Council already faces a significant budget gap in future years of c.£0.5m (as reported to Full Council in February 2024), which may place further pressure on the Council's limited available reserves. In deciding whether to allocate significant funding for renewed investigations on top of those that have already taken place, Members are asked to also consider the alternative options, the likelihood of whether renewed investigation would ultimately lead to successful enforcement action and whether it would be a proportionate and effective use of limited council resources.

12 Legal Implications

- 12.1 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 cannot be known. The relevant legislation that applies to statutory nuisance is set out in section 79-81 of the Environment Protection Act 1990.

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- 12.2 This report sets out that it is the view of its professional Environmental Health Officers who are experienced in nuisance matters and have the necessary qualifications and training in the area that, having carried out a reasonable investigation in discharge of its statutory duty, there was insufficient previous evidence to justify service of an abatement notice, but that the noise in the week of 9 October 2023 did constitute a statutory nuisance so as to justify service of an abatement notice based on what was witnessed.
- 12.3 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.
- 12.4 Likewise, where the council felt it warranted bringing proceedings further to clear evidence of any alleged breach of the recently served Abatement Notice, the Council would need to set out its case positively supported by evidence. If successful, the Council could seek to recover its costs in bringing such proceedings but cost recovery is not guaranteed. If unsuccessful, the council would need to bear its own costs and potentially be awarded to settle the costs of the successful party.
- 12.5 **Legal Officer's comments:** Any relevant comments are contained within the body of this report.

13 Policies, Plans & Partnerships

- 13.1 **Council's Key Priorities:** The following Key Priorities are engaged:
- Safe and Well
- 13.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 13.3 **Climate & Environmental Impact of recommendations:** None arising from this report.
- 13.4 **Sustainability Policy & Community Safety Implications:** None
- 13.5 **Partnerships:** The council works closely with other enforcement partners in responding to complaints from this site.

14 Background papers

- 14.1 The documents referred to in compiling this report are as follows:

Previous reports:

- Chalk Pit Environment Committee 23rd January 2024

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Other papers:

- None