The Planning Law Practice

Wood End, 20 Oaklands Park, Bishops Stortford, Hertfordshire CM23 2BY
Tel : 01279 652505 Mobile
e-mail

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Alan Stones
Planning Development Team Manager
Planning and Development Group
Surrey County Council
County Hall
Penrhyn Road
Kingston upon Thames
Surrey KT1 2DN

Dear Mr Stones

Angus Energy plc: Brockham Oilfield

I am writing as promised to set out Angus Energy's position in relation to the sidetrack to BR-X4 which was drilled in January this year.

In summary, this letter arrives at the following conclusions with respect to sidetracking :

(i) A sidetrack is not a separate well. It constitutes maintenance work to allow the well to continue to produce. The well in question, BR-X4, has planning permission from the Council.

(ii) As a matter of law, the Council should not duplicate the controls of other site regulators. The sidetracking of BR-X4 was controlled by the HSE and Environment Agency.

(iii) Other sidetracks have been drilled at the site since 1998. The Council has been aware of the existence of sidetracks since at least 2007 and has taken no enforcement action.

(iv) The BR-X4Z sidetrack comprises maintenance work to allow the continued use of the well

Angus Energy conducted a workover of its Brockham oil field well LR/24-X4 ((BR-X4) or (B4) with Surface Co-ordinates N 148,649.38 E 518,841.67) cementing up and abandoning the open hole section of the well, which had become redundant and replaced that section with a new cased production side-track as part of a routine operation to replace old non-viable well sections.

At the start of the operations, the hole contents were displaced with a kill fluid and then cemented up to within the 7" casing at 686.9 m. This previously open hole now cemented section and the well annulus were then pressure tested to 1500 psi & 500 psi respectively. On completion of the successful pressure test, the open hole side-track on B4 was officially abandoned. The upper cement was then dressed off and a 6" side-track drilled, as per the approved programme, from 686.9 m to 1391.5 m. This side track was cased with a 5" liner and cemented in place. In addition to cement, the 5" liner/7" casing hanger included a packer element as an additional isolation seal. The cement, 5" liner, Packer and 7" casing annulus were pressure tested to 1500 psi and 500 psi respectively. On completion of the successful test, the well was declared suspended with a Kill string hung off to 198m.

Sidetracking as an integral part of Well BR-X4

A production well is defined as a well drilled to an underground reservoir containing an accumulation of oil and/or natural gas, with the intention of producing hydrocarbons. A sidetrack is an integral part of a well. To sidetrack means to re-enter a well from the well's surface location with drilling equipment for the purpose of deviating from the existing well bore to achieve production from an alternate zone or bottom hole location, or to remedy an engineering problem encountered in the existing well bore.

A sidetrack cannot exist as anything other than part of a well. The well itself, BR-X4, has planning permission from the Council. The implications of the Council's position with respect to the sidetrack BR-X4Z is that every new sidetrack, well modification or any other operation on the well pad would require a new planning permission. This would have the effect of severely hindering operations during a production period when an operator would have to seek planning permissions for every part of the process.

As the Council's planning files show, none of the applications for planning permission for this site were ever accompanied by any plans and drawings to identify the depth and direction of underground drilling. Equally, none of the various planning permissions have ever sought to require those details to be submitted to the County Council for approval.

Sidetracks drilled previously on site

Sidetracks have previously been drilled at the site. Well no BR-X2 was drilled in May 1998 under the terms of the 1995 planning permission and immediately sidetracked as BR-X2Z. In 2003, a further sidetrack (BR-X2Y) was drilled. The BR-X3 sidetrack was drilled in 2007 pursuant to planning permission no MO07/0161.

In 2007, planning permission to drill a new well (BR-X4) was combined with a sidetrack to well BR-X1 (subsequently renamed BR-X3). This sidetrack was dealt with as a workover (alteration) of the existing well. It is highly relevant that the Council's planning file in relation to the 2007 planning permission includes coloured contour plans of the site and surrounding area which expressly identify sidetracks that have been drilled. The County Council has therefore been aware since at least 2007 that the underground framework included sidetracks without ever raising that matter as a planning issue.

Planning controls should not duplicate controls of other regulatory bodies

The Council will be aware of the well-known legal proposition that it is not the role of the planning system to duplicate controls which are the statutory responsibility of other bodies. Planning authorities should not substitute their own judgment on pollution control issues for that of the bodies with the relevant expertise and the responsibility for statutory control over those matters.

The most recent exposition of the legal principle was in R (Frack Free Balcombe Residents Association) v West Sussex County Council [2014] EWHC 4108. As at Brockham, the proposed development required a number of statutory authorisations in addition to the grant of planning permission, including consent from the Environment Agency, DECC (the predecessor to the Oil and Gas Authority (OGA)) and the Health and Safety Executive.

The Court ruled as follows:

> *"Planning control is but one of the statutory regimes which can affect the carrying out of a development, or its use.....Plainly, while the effect of an activity on the environment is a material consideration, so too is the existence of a statutory code or codes which address(es) the effect(s) being considered. Thus, the generation of airborne emissions or the potential for contamination of groundwaters are matters falling squarely within the purview of the EA permit regime: similarly, well integrity falls within the purview of DECC and of the HSE, and so on. Some fall within the remit of more than one statutory body.*
>
> *It is therefore sensible that where one has a statutory code to address some technical issue, one should not use another statutory regime as an alternative way of addressing the issue in question".*

This position is confirmed in Government policy guidance (DCLG Planning Practice Guidance and DECC). DCLG guidance sets out the scope of the planning system:

> *"In doing so the focus of the planning system should be on whether the development itself is an acceptable use of the land, and the impacts of those uses, rather than any control processes, health and safety issues or emissions themselves where these are subject to approval under regimes. Mineral planning authorities should assume that these non-planning regimes will operate effectively."*

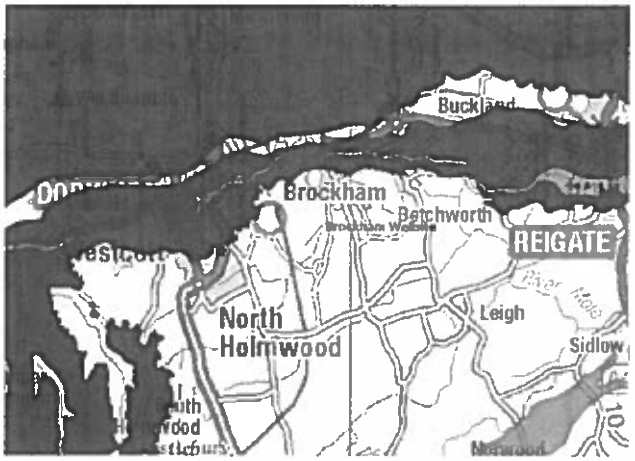
The January sidetracking of BR-X4 was controlled by the HSE, Environment Agency and the Well Examiner.

It is worth pointing out the geographical, geological and depth envelope for the operations being conducted pursuant to the Brockham Licence. The UK subsurface including all minerals is the property of the Crown. On the Crown's behalf, the Government (currently through the OGA) has granted Licence PL235 to produce oil. The supervision of these operations is vested in various different agencies who work together for that purpose. The Licence permits subsurface operations throughout the Licence area subject to approvals from the various bodies according to their jurisdiction. Indeed, early on when the Licence was in the exploration phase, seismic was acquired over the entire area of the Licence. In 1987, Well BR-X1 was drilled to a depth of 2128.2 metres true vertical depth below rotary table (TVD BRT or 2072.2m true vertical depth subsea (TVDSS). Geologically, the well reached total depth in what appears to have been the rocks of the Carboniferous system though some uncertainty remains. The principle formations of interest were in the Jurassic system. Evidence from the mudlog gas readings and electrical logs, backed up by core and test data suggests that the much of the Jurassic is hydrocarbon bearing. In particular, current work is concentrating on the Upper Jurassic. Well BR-X1 produced from the Portland section of the Upper Jurassic but also attempted production from the Corallian Formation around 375m deeper in the Upper Jurassic section. These two formations bracket the zone of primary interest at present but the lower section of the Upper Jurassic may also prove productive in the future. Recent studies conducted jointly with other operators in the area, confirms this view.

For practical purposes, the geographical area of interest and activity is set by the boundaries of the PL235 Licence, the depth limit of interest is around 2070m TVD SS and geologically the envelope of interest extends to the base of the Jurassic system.

A further factor affecting the upper limit of the envelope of operations is the question of potable water aquifers. All of the above formations are saturated with saline water, even those also containing oil. As saline aquifers, they will never constitute formations of interest for potable water production. Indeed, the point where rock saturations of fresh potable water gives way to saturations of saline water occurs in this locality at a depth of 200-300m, or less since the surface clay formations are essentially impermeable. However, since there are no hydrocarbons in these shallow formations operations to extract, hydrocarbons do not and cannot affect the freshwater zone since the well has cemented casing barriers between the well and these formations. It is worth noting that the recent sidetrack started at a depth of around 700m, far below any potable water aquifer and also separated from any such aquifer by a number of horizontal impermeable barriers.

It is also worth noting that the area of the Brockham Licence does not generally include areas with significant aquifers. The aquifer map reproduced below from the Environmental Agency shows the extent of the potable water aquifers primary in purple and secondary in pink.



It is clear that work in the area of the current operations cannot affect the main aquifers which are a considerable distance away. These matters are of course primarily the concern of the Environmental agency with whom Angus have been working closely.

Health and Safety Executive

As the Council will be aware, the Health and Safety Executive monitors operations from a well integrity and site safety perspective. The HSE initially scrutinises the well design for safety and then monitors progress on the well to determine if the operator is conducting operations as planned. During drilling activities, the HSE requires a weekly drilling completion and workover report focusing on well control and well integrity. During assessment and inspection activities, HSE checks that the operator has independent well examination arrangements in place. These controls were in operation during the January drilling of the sidetrack. Further detail can be provided to the Council, if necessary.

The sidetracking operation were notified in advance to the Health and Safety Executive pursuant to the Boreholes Sites and Operations Regulations 1995. Requisite information provided pursuant to Schedule 1 of the Regulations included the directional path of the borehole drilling and the depth and location of the drilling. The HSE requested no further information and raised no queries or concerns about the proposed operation. Further details can be provided if necessary.

The Well Examiner

The Company is required by law to ensure that a complete examination of its well design and construction is conducted by an independent and competent person (known as a well examiner). The company produced a report on the proposed sidetracking operation which the Well Examiner reviewed. The Well Examiner approved the sidetrack operation and was in communication with the company in January 2017, advising on the BR-X4Z sidetracking operation, shortly before the operation started. Further details can be provided if necessary.

The Environment Agency

If an Operator wishes to drill for the purposes of oil and gas exploratory activities in England, then the Environment Agency is the lead authority for :

- the regulation of extractive waste under the Mining Waste Directive; and
- the protection and management of groundwater resources under the Groundwater and Water Framework Directives

The Environment Agency did not ask Angus Energy to apply for any groundwater activity authority as the drilling activities at Brockham did not involve the injection of any fluids into the reservoir formation and the chemicals used to drill complied with the requirements of the Standard Rules Permit applied.

In November 2016, the Environment Agency issued the company with Standard Rules Permit SR2015 for the management of extractive waste generated from onshore oil and gas prospecting activities including drilling. Information provided to the Agency included a method statement providing information on the planned operations on site. As Angus Energy had applied for the Standard Rules Permit SR2015, the Environment Agency has produced a generic Waste Management Plan and Environmental Risk Assessment which the Operator must adhere to. These documents which accompany the Environmental Permit place strict controls on the Operator for the management of wastes; emissions to air, water or land, odour, noise and vibration, monitoring and record keeping and reporting by the Company.

The drilling In January 2017 (side-track) was drilled from below the already isolated 7" shoe at 686.9 m to 1391.5 m. The 7" shoe itself was far below any aquifers or ground water of interest and the new side-track did not intersect any. This was confirmed by the EA through Angus Energy's environmental consultants (Orbis) at the pre application meeting. Multiple EA visits were conducted through December 2016 and twice in January 2017.

Enforcement action

For the reasons set out above, it is clear that the Council should not as a matter of law seek to duplicate the controls of other site regulators.

The Council has indicated that enforcement action could be taken in relation to sidetrack BR-X4Z if no retrospective application for planning permission is submitted. For the reasons set out there is however no planning breach to enforce against. Moreover, it is not expedient for the Council to do so, given the position of the other regulatory agencies. There is no basis on which the County Council could properly allege that the existence of sidetrack BR-X4Z is giving rise to any planning or environmental harm.

The Planning Practice Guidance advises that:

> *Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control* and that *In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:*
>
> - *there is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;*
> - *development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development;*
> - *in their assessment, the local planning authority consider that an application is the appropriate way forward to regularise the situation, for example, where planning conditions may need to be imposed.*

Neither a retrospective planning application for sidetrack BR-X4Z nor enforcement action would serve any useful planning purpose.

Detailed matters for approval

My clients accept that approval is required to regularise the site layout, including details of the offices, toilet facilities, fencing and container storage under condition no 4 of the 2006 planning permission. Relevant details will be provided shortly.

Future operations on site

My clients are currently considering their plans for future operations on site.

My clients do not agree with the Council's position that the permission has expired for the following reasons.

Planning permission for oil exploration of the site was originally granted in 1986 (MO86/1112). That permission authorised inter alia *formation of a dwelling site, the drilling of an exploratory well and subsequent testing ... for a temporary period.* The permission required all buildings, plant, machinery and engineering works to be removed within 1 year or 6 months from the completion of flow testing, whichever was the earlier.

That permission was then replaced by planning permission no MO92/0969 dated 13th January 1995("the 1995 permission") which granted permission *to retain the existing 1.2 ha well site, further test the existing oil bore, drill up to 5 additional wells and install production and road tanker loading facilities.* Condition no 3 of the permission included the words *before further wells are drilled for commercial production* and therefore made it clear that commercial production was envisaged for the 6 wells permitted by the permission.

The application which led to the 1995 permission was not accompanied by any plans to identify the location of the 5 additional wells or the depth and direction of the proposed underground drilling. The County Council did not require any such plans and the planning permission is not subject to any conditions requiring the location of the additional wells or the depth/direction of any underground drilling to be approved by the County Council.

The 1995 planning permission therefore left the question of the location, depth and direction of underground drilling as a matter entirely for the operator.

The 1995 planning permission has been described by you and your colleagues at various meetings as having expired. That argument appears to rely on condition no 2 of the permission which required buildings, plant, machinery and engineering works to be removed by the earliest of (i) 12 months from completion of flow testing of the first bore unless the County Planning Authority had previously approved the scheme required by condition no 3, (ii) 6 months of completion of oil extraction and (iii) 15 years from the commencement of drilling operations.

The 1995 permission was however extended by permission no MO/2001/1288 , as is clear from the face of the permissions when read alongside each other.

The 2001 permission authorised the *retention of an existing 1.2 ha well site and access road, the erection of production equipment, the production of oil and export by tanker.* The phrase in the 2001 permission - *retention of an existing 1.2ha well site* repeats the wording in the 1995 permission - *retain the existing 1.2 ha well site.* The dictionary definition of *retention* includes *the continued use.*

In this context, it is significant that the 2001 permission did not seek to require the submission of an oil transportation scheme, which was a condition of the 1995 permission (condition number 3) which required the submission of an oil transportation scheme within 12 months of the drilling of the first bore hole under the terms of the permission and before further wells were drilled for commercial production.

As the Council's planning files show, the planning application which led to the grant of the 2001 permission set out the anticipated level of daily production, the vehicular access arrangements and the daily numbers of HGV movements in connection with the transportation of oil away from the site. It is therefore clear that the planning application included all of the material that the County Council could reasonably have required in an oil transportation scheme with the result that the requirements of condition no 3 were met.

The internal report which led grant of that permission stated that:

> "*Condition 3 of 92/0969 required site to be restored to agriculture within 12 months of completion of flow testing. These conditions have not been complied with given other more recent activities at the site but can be enforced if the current proposal is refused planning permission.*

It is clear from this extract that the understanding of the Planning Officers at the time was that the effect of the 2001 permission was to extend the life of the site and that condition no 3 of the 1995 permission was satisfied by the detail provided in the application.

Accordingly, for the reasons set out above, the 2001 permission extended the life of the site to 31st December 2006. The Council's decision to extend the life of the site in 2001 is unsurprising given the policy framework in place in 2001 encouraging exploitation of hydrocarbons; a policy position which continues today.

Subsequently, planning permission MO/006/1294 extended the life of the site further until 2036. The 2006 permission provides for the *continued use of 1.2ha of land for production, treatment and export of crude oil from an existing well site... until 2036.* The references to *continued use* and *existing well site* are clear and cannot be interpreted as anything other than permission for the production, treatment and export of oil from the site until 2036.

As you will be aware, planning permissions capable of implementation cannot be abandoned.

As with the earlier permissions, the 2006 permission did not require submission of any oil transportation scheme or for the depth and direction of any underground drilling to be approved by the Council.

I trust this letter clearly explains my client's position. We are happy to meet the Council to discuss matters arising from this letter.

Yours sincerely,

[redacted]

Solicitor
The Planning Law Practice

Member of the Law Society's Specialist Planning Panel
Authorised and regulated by the Solicitors Regulation Authority
SRA no [redacted]