



FFBRA NEWSLETTER NUMBER THIRTY TWO

NEWS AND INFORMATION FOR OUR MEMBERS

FFBRA Judicial Review

Our judicial review was held on the 6, 7 November 2014 but the judge has not handed down his verdict yet and so we can't comment on the case. Hopefully we will hear the result before Xmas!

In the meantime I thought it useful to reproduce the journalist, Ruth Hayhurst's report on the judicial review from DrillorDrop.com for the benefit of FFBRA members who could not attend. Ruth attended both days.

Report on Day 1 of the Judicial Review (November 6) by Ruth Hayhurst

“Balcombe planning committee misdirected – judicial review hears

The planning committee that granted planning permission for testing and flaring at Cuadrilla's oil exploration well at Balcombe was misdirected, a court heard this morning.

Frack Free Balcombe Residents Association, which opposed Cuadrilla's application, was making its case at a judicial review of the decision by West Sussex County Council.

The association's barrister, David Wolfe QC, argued at the Royal Courts of Justice in London that council officers gave wrong advice on what the committee could consider in making its decision. He said that at the meeting on April 29th members of the Association had asked the committee to defer its decision until it had more information. They also asked for conditions on any planning permission to be drawn more tightly than were being proposed.

“Had the committee not been misdirected then it might have weighed issues in its mind differently and it might have done things differently”, he said.

The court heard that the council's planning officer should not have directed the committee that it was obliged to assume that organisations, such as the Health and Safety Executive and Environment Agency, were doing their jobs satisfactorily.

Emissions

Mr Wolfe gave as an example a recommendation by Public Health England to West Sussex County Council that emissions of sulphur dioxide from a flare at the site should be monitored. The committee was told that an environmental permit, issued by the Environment Agency, would deal

with this issue. This was simply wrong, Mr Wolfe said, because the EA had said monitoring would not be carried out for sulphur dioxide.

“The planning officer was not saying chose between Public Health England and the Environment Agency”, he said. “She was saying they are at one”. This was misleading, he said.

Well integrity

In another example, he said, the residents raised concerns about whether Cuadrilla’s well would be affected by an earlier well drilled in the 1980s on the same site. The residents were worried about whether there were any problems with the integrity of the old well.

Mr Wolfe said the planning officer told the committee that the Health and Safety Executive had looked at this issue in detail. But he said correspondence between the council and the HSE revealed that the well had not been inspected and there was not enough information in the planning application for the HSE to make any assessment. That correspondence was not available to the committee, Mr Wolfe said.

“Had the committee realised that the HSE had not done the detailed work it might have said: ‘We do have concerns about what the residents are saying’”, he said.

Objections to the application

More than 890 people objected to Cuadrilla’s application and the residents’ association argued that the committee should take this into account when making its decision. Mr Wolfe said the planning officer was wrong to say that the scale of opposition should not be considered.

Breaches of planning conditions

Residents argued that Cuadrilla had breached conditions of an earlier planning permission. Because of this, they called for conditions to be drawn more tightly. The planning officer told the committee that planning permission went with land, not the applicant and members had to assume that conditions should be complied with.

The judge hearing the judicial review, Mr Justice Gilbert, criticised FFBR for focussing on Cuadrilla, rather than generic breaches of conditions. Your clients have adopted an approach that might have been unwise, he said, describing it as an adversarial attack. But Mr Wolfe said this did not reduce the force of what the residents were arguing.

Mr Wolfe said the committee should also have considered the likely crime and disorder implications of the application, which it did not. This had been raised by Cllr Sue Mullins in the committee but her microphone was cut off.during the committee meeting.

The judicial review continues this afternoon when the council’s barrister, James Maurici QC, will respond to the residents’ claims. The action was watched this morning by about six Balcombe villagers, including Sue Taylor who is representing FFBR. Jane Moseley, the planning officer, and Becky Moutrey, the legal officer, who both gave advice to the committee were also in the public gallery, along with the committee chair, Cllr Heidi Brunnsden.”

Ruth Hayhurst's second report was on the afternoon proceedings, Day 1, November 6 2014

“West Sussex planners followed guidance when approving Cuadrilla's Balcombe application – court hears

The planning authority which granted permission to Cuadrilla to test its well at Balcombe followed government guidance, a court heard this afternoon.

At a judicial review of the way the decision was reached, West Sussex County Council rejected arguments by Balcombe villagers that council officers had misdirected the planning committee.

This morning the Frack Free Balcombe Residents Association, which secured the review, said officers should not have told the committee to assume that the Environment Agency and Health and Safety Executive would do their jobs satisfactorily. FFBRA also said it was wrong to tell the committee that it could not take into account key issues, including:

- Concerns about air and water pollution*
- The number of objections to the application*
- Cuadrilla's breaches of earlier planning conditions*
- Costs to the council arising from crime and disorder if the application were approved.*

FFBRA had objected to the planning application and had urged the committee at its meeting in April this year to defer a decision because more information was needed. But the committee voted to approve the application. FFBRA's barrister, David Wolfe QC, told the High Court in London: “Had the committee not been misdirected then it might have weighed issues in its mind differently and it might have done things differently”. More on this morning's arguments

James Maurici QC, for West Sussex County Council, said the council had followed planning guidance. “Where people raised points about the regulatory regime, they [council officers] put them up to the regulatory organisations and got their advice. This is what the guidance says a planning authority should do and that is what they did.”

He pointed to case law which argued that it was not the job of planning authorities to duplicate the responsibilities of other bodies. He also said planning authorities should not substitute their own judgement for that of other organisations.

Mr Maurici said the planning officer dealing with the case, Jane Moseley, had correctly identified two key issues of air and water quality. He said the Environment Agency had told the council it was satisfied with measures proposed to deal with potential pollution. Nothing would be gained by delaying the decision and no additional information was needed.

Public Health England had said it had no significant concerns about the health of the local population providing the applicant took all appropriate measures to prevent pollution”, Mr Maurici said. He added that PHE had suggested that the council “may wish to consider” wider monitoring of emissions to air from a flare on the site. But this was a suggestion, not a requirement, Mr Maurici added.

On previous breaches of planning permission, Mr Maurici said the committee had been made aware of this. He pointed to the amendments of conditions by councillors that restricted lorry movements

during school drop-off and pick-up times and required continuous noise monitoring and the establishment of a community liaison group.

“There are conditions that have worked”, he said. “They have been tightened. There is no reason to believe they will not be complied with and if not complied then statutory reporting mechanisms will apply.”

On the number of objections, Mr Maurici said this was recorded very clearly in the planning officer’s report to the committee. The report summarised what the objections were and considered those that were relevant. “Planning is not a referendum”, he said. “What matters is where those objections have merit.”

On the costs of crime and disorder arising from the application, he said the police had been consulted and had not objected. The planning report said there were no crime and disorder implications. Mr Maurici said this was because the council had taken out an injunction preventing people opposed to the development from protesting on the road outside the site or on the grass verges. Mr Maurici said the committee had added an additional condition requiring extra security at the site.

“It could not be right to refuse planning permission because you were concerned about lawful or unlawful protest that would cost money,” he said. “That cannot be a proper approach. The council took the view that there was not going to be any serious issue of public order and costs would be minimal. It would not be relevant to consider the costs point.”

About 10 people from Balcombe watched proceedings this afternoon. Also in the public gallery were the chair of West Sussex Planning Committee, Cllr Heidi Brunsdon, and the two officers who gave advice to councillors: Ms Moseley and the legal officer, Becky Moutrey.

The judicial review continues in the morning when the two sides are due to sum up their cases. A result is not expected tomorrow but the judge, Mr Justice Gilbart, said “judgement will be delivered pretty swiftly”

Report on Day 2 of our judicial review, November 7 2014 by Ruth Hayhurst

“Quash Cuadrilla’s Balcombe planning permission, villagers’ lawyer urges

The planning permission granted to Cuadrilla for its exploratory oil well at Balcombe should be quashed and the application reconsidered, the lawyer for a group of villagers argued this morning.

David Wolfe QC, representing the Frack Free Balcombe Residents’ Association, was summing up at the judicial review in the High Court of the decision by West Sussex County Council.

The council’s planning committee voted in April by a margin of 12 to one to grant planning permission to Cuadrilla for flow testing and flaring. FFBRA had objected to the application and called for tighter conditions on any permission.

The group brought the judicial review because it believed council officers misdirected the committee in six key areas, making the decision unlawful.

In summarising his case, Mr Wolfe told the court that council officers had been wrong to say that the committee must assume that the Environment Agency and Health and Safety Executive would do their jobs satisfactorily.

He also said the officers had misdirected members by saying the committee could not take into account:

- Breaches of planning conditions by Cuadrilla at the site imposed under an earlier permission
- The number of objections to the current application
- Any costs arising from the application if it were approved
- He also said the decision was unlawful because the committee should not have been told that a recommendation of Public Health England was covered by a permit issued by the Environment Agency and that the Health and Safety Executive had looked in detail at the integrity of a well drilled on the same site in the 1980s. Neither of these statements were true, Mr Wolfe argued.

He said West Sussex County Council “could not show that the decision of the planning committee would have been the same if the directions had been different. The permission must be quashed to allow for its lawful reconsideration by the Council”.

Mr Wolfe added that judicial review “must not unconsciously stray from its proper province of reviewing the propriety of the decision-making process into the forbidden territory of evaluating the substantial merits of the decision”.

Despite this, the judge, Mr Justice Gilbert, questioned Mr Wolfe closely this morning on issues of air quality monitoring and modelling and on what costs might have been incurred by the council. He also asked to see copies of the planning application and environmental permit and correspondence between the council and Public Health England. The case has been adjourned for the judge to consider these documents. He said he would deliver a written ruling “pretty swiftly”.

The council’s barrister, James Maurici QC, was not asked to address the court this morning but he responded to FFBRA’s case yesterday.

Mr Justice Gilbert thanked FFBRA members, West Sussex council officers and the chair of the planning committee, Cllr Heidi Brunnsden, for attending.

After the hearing, Ugo Hayter, of law firm Leigh Day, representing FFBRA, said: “We think the councillors should have been able to consider the issues that our clients raised. We hope the court will agree and quash the decision of the planning committee.” West Sussex County Council declined to comment on the proceedings.”

Celtique Energie has appealed against the unanimous WSCC decision to refuse them planning permission to construct an Exploratory drill on land to the south of Boxal Bridge which borders the two Parishes of Kirdford and Wisborough Green.

Celtique’s application was for “The installation of a well and associated infrastructure, including access road and soil bunds, for the drilling of a vertical borehole and contingent horizontal borehole from the same well for the exploration, testing and evaluation of hydrocarbons for a temporary period of three years”

From details given in Celtique's appeal form to the Planning Inspector, it can be seen that Celtique requested a local inquiry and that they expect it to take three days and they will bring three witnesses. This has now been extended to 5 days.

A Planning Inquiry (PI) is about the technical issues of the planning application (as opposed to a judicial review (JR) which is about whether or not procedures in the planning process were correctly followed). This means all the technical details about the traffic, the site, the drilling process, the geology etc. etc. get to be represented by both sides, Celtique and WSCC.

Rule 6 status awarded to KKWG

Keep Kirdford and Wisborough Green (KKWG) have been awarded "Rule 6" status which means that they can attend the PI, give evidence and cross examine witnesses.

There is a complete guide to Rule 6 to be found on the Planning Portal at

http://www.planningportal.gov.uk/uploads/pins/guide_rule_6.pdf

They have been granted this status because they have taken part in the whole decision making process and thus it has been decided that they can offer significant value to the inquiry process and can add substantively to the case being made by the local planning authority.

What does this mean in practical terms for KKWG?

KKWG now have to prepare a Statement of Case and submit it by December 19th or 24th at the latest (ie 4 weeks after being informed that they have been awarded Rule 6 status.). In this, they have to give an outline of the case they intend to present the PI together with all the references they intend to refer to plus all maps and diagrams. A Statement of Common Ground is prepared jointly by WSCC and KKWG in which they (i.e. matters they agree on). This will include basic facts such as the site description, area, planning history, relevant planning policies, and as many other matters as possible relating to the application. KKWG can then comment on it as to the areas on which they agree or disagree.

Can FFBRA members attend the inquiry?

Yes – Planning Inquiries are open to journalists and the wider public, as well as interested people”.

What happens at an Inquiry?

It is not a court of law, but the proceedings will often seem to be quite similar. Often expert evidence is presented and witnesses are cross-examined (questioned).

What are the costs of being a Rule 6 Party?

If Celtique Energie win their appeal against WSCC, they will seek costs against WSCC but they cannot claim them from KKWG. So KKWG do not have to find money to cover costs awarded against them, however they do have to bear the cost of preparing their case such

as the cost of their planning consultant. However the group does have to meet all deadlines and follow planning procedures or costs could be awarded against them.

What documents have Celtique lodged so far for their appeal?

To see the documents lodged so far go to

<http://buildings.westsussex.gov.uk/ePlanningOPS/loadFullDetails.do?apId=1599>

Or Google "WSCC Celtique Boxal Bridge"

Then click on the link to "documents" on the right hand side; then click on the folder "Post Decision". In this folder you will see all the documents that Celtique have lodged so far. These include (amongst many) a transcript of the WSCC Planning Meeting and also FOIs responses they have received from WSCC.

Fund Raising to Fight Celtique's Appeal

KKWG is looking to raise funds to enable them to fight Celtique's Appeal and to call witnesses on the key issues which the local community has identified as impacting on them to include traffic, character of the village, geology etc.

Contact: For donations - contact Miranda Alderton 07976 930306 or Cecilia Smith 01403 700346 if you can help with fund raising or Jill Sutcliffe 01403 700395 for further information.

Billingshurst, Broadford Bridge.

Preparation of the drill site by Celtique Energie has started. Celtique have cut down trees and started preparation of the drilling pad.

This is a site for which planning permission was granted in January 2013 (i.e. before the Balcombe protests) and so approval was given with little understanding of what it meant.

Frack Free Billingshurst has now been established and they are working on raising awareness about fracking and Celtique in the locality.

Every Saturday residents assemble from 10.30 am to 2.30 pm at the Adversane cross roads near the site and give out leaflets and information about fracking to passing traffic.

General awareness is now growing in the area. Last week "*residents, business owners, and bikers held a demonstration on Saturday November 22 and drove through the village, towards the planned drill site and back again*" <http://www.wscountytimes.co.uk/news/local/campaigners-against-fracking-march-through-billingshurst-1-6446402>.

The drill site is in the parish of West Chiltington and two miles from Billingshurst itself.

Frack Free Billingshurst plan to carry out a week long survey to obtain their own baseline traffic statistics for the week December 8 2014. If you know anyone in the area who could help, please forward this newsletter to them. More information and contact details are in the Beyond Balcombe section.

(This is something that we FFBRA members should consider doing for London Road, Balcombe in order to challenge the baseline statistics provided by Cuadrilla (which treated an estate car as an HGV amongst other problems).)

Horse Hill near Gatwick, Drilling Completed, and the Rig has left.

Previously Horse Hill Development Group (HHDG) said they had absolutely no interest in unconventional oil and gas at the site and no intention of exploring strata other than those relating to conventional oil and gas. They have completed drilling their well and have found the results from the conventional targets disappointing (for investors not residents).

Now it seems that their Chairman, David Lenigas is “surprised” to find oil and gas in the Kimmeridge Clay (a type of shale) which was not one of his original stated targets, David Lenigas is now comparing the find to Balcombe.

Not much of a surprise when you consider this site is only ten miles from Lower Stumble.

Baxter’s Copse, Graffham, Plans by IGas for new oil well

In the 1980s, Conoco discovered oil at Baxter’s Copse, Graffham, south of Midhurst, but abandoned the well because it was regarded as uncommercial. Conoco did the same at the Lower Stumble site in Balcombe in 1986.

The PEDL licence for the area is now owned by IGas (the company behind controversial gas drilling at Barton Moss near Manchester) and UKOG (also involved in Horse Hill).

At a public meeting on 22 October 2014 called by Graffham Parish Council, a land agent working for IGas told the residents that the company wanted to drill a new well at the old Baxter’s Copse Site. He also told them of plans for another oil site at West Dean, near Goodwood.

“The results that we picked up from Conoco suggest that it is worth trying again”. He said: “We understand the geology rather better than we did then”.

In reality what has changed is not understanding of the geology but rather the advances in engineering with the development of horizontal drilling and high pressure hydraulic fracking.

Graffham is in the South Downs National Park and lies between Fernhurst and Singleton. IGas is operating the oil well site at Singleton and it appears to be planning to go west from Singleton to West Dean and east to Graffham.

Abandoned oil wells in Sussex

There are 84 oil and gas wells stretching across Sussex, most of which have been abandoned and in many cases people are unaware of their existence. For example, did you know there was a site at Turners Hill off Vowels Lane which was drilled in 1992 and classified as an exploratory oil site?

Will these sites be targeted by the oil and gas industry when selecting future sites?

Where are these sites? And what is their history?

Attached with this newsletter is a spreadsheet from DECC listing all the onshore oil and gas wells. If you filter on column Q you can select county so you can see the ones in West and East Sussex. This spreadsheet contains basis information – location in terms of longitude and latitude, when it was drilled and who by and the well reference number.

If you want to find out more about any of these sites, then you can by contacting a data agent. The government has privatised the holding of UK oil and gas site data to four data agents. FFBRA contacted several of them in order to buy data about the Balcombe-1 site drilled by Conoco in 1986 TGS was the first back with a quote and so FFBRA purchased the data from them.

“TGS is one of several data release agents licensed by DECC to supply scanned images and digital information from oil and gas wells drilled in the UK and released by DECC under the Petroleum License Act. The attached map shows the location of wells drilled in an around the Balcombe Area for which such data may be obtained. Scanned images of the logs and reports for these wells may be purchased from TGS at a cost of \$100 per well, however, under the license terms of the purchase these data may not be copied or given to anyone other than the licensee. For further information please contact Steve Allen (steve.allen@tgs.com) or visit our web site www.tgs.com”

Without buying this data FFBRA would not have been aware that Conoco punctuated the well casing of the Balcombe 1 in 1986 with multiple holes along two forty foot sections so that they could apply 6,000 gallons of 15% hydrochloric acid to the micrite shale.

The map supplied by TGS shows some of the wells within 50 miles of Balcombe. It is not complete because it only shows wells for which TGS can release data. Well data is not released for a certain period of time in order to protect the commercial interests of the drilling company. So for example the new well at Balcombe is not shown or the new well at Horse Hill. And the Singleton wells are shown in the wrong place.

Some of the Oil and Gas sites within 50 miles of Balcombe



John Browne, Chairman of Cuadrilla, has resigned from the government and his number two from BP, John Manzoni, has been appointed Chief Executive of the Civil Service.

Our MP, Francis Maude announced on the 18th November 2014, that Lord Browne has resigned from his position as the government's Lead Non-Executive Director and Lead Non-Executive Director for the Cabinet Office and will leave by 31 January 2015.

In this role Lord Browne had enormous powers in the government and civil service and he has used them "to create a new set of departmental boards in government with an enhanced role for non-executive directors from the private and not-for-profit sectors."

Minister for the Cabinet Office Francis Maude said: "Lord Browne has played a crucial role in sharpening the governance of departments, and establishing our programme of efficiency and reform. Last year alone this work helped save taxpayers £14.3 billion, as part of our long term economic plan, compared with spending in the year before the 2010 General Election. There's much more to do and I am working closely with the **new Chief Executive of the Civil Service** to drive even greater savings for hard-working taxpayers. Working with John has been a pleasure and an inspiration, and I thank him for his extraordinary contribution to this important agenda."

It is a massive conflict of interest for someone to be Chairman of Cuadrilla and an unelected cabinet member so it is good news that he has resigned. However he leaves a legacy of “Browne appointees” across White Hall and the civil service.

His most significant legacy is the creation of the new role of “**Chief Executive of the Civil Service**” to which was appointed on the 13 October 2014, his number two from his BP days, John Manzoni.

“While at BP, Manzoni was second-in-command to Lord Browne at the time of the Texas City refinery accident, one of the worst industrial accidents in US history.

After the disaster, in which 15 people were killed and 170 injured, a confidential BP report found Manzoni had paid insufficient attention to safety and failed to spot clear warning signs. It accused him of failing to perform his duties in the run-up to the explosion and of engaging in a “simply not acceptable” standoff with a colleague. Regulators levied a then-record fine of \$21m (£13m) on the company for breaching safety rules.

Manzoni said he would be stepping down from his role in charge of refining a month after the report was published, in 2007. He then took up a new role at Talisman Energy, a company heavily engaged in fracking in the US.

In July 2012 Talisman was fined more than \$60,000 for alleged violations in reporting hazardous chemicals at 52 sites in Pennsylvania. Among these were natural gas wells and sites of hydraulic fracturing; the company neither confirmed nor denied the allegations in a settlement with the Environmental Protection Agency.”

As Chief Executive for our civil service, John Manzoni will be paid £190,000.

According to Forbes as CEO of the US fracking company, Talisman Energy he was paid over US \$18 million by Talisman for 2012, the year in which his company was fined for alleged violations in reporting hazardous chemicals.

<https://www.gov.uk/government/news/chief-executive-for-civil-service-appointed>

<http://www.civilserviceworld.com/former-bp-executive-john-manzoni-is-new-chief-of-major-projects-authority-replacing-dr-norma-wood>

<http://www.theguardian.com/uk-news/2014/feb/03/bp-oil-disaster-fracking-executive-hs2-john-manzoni>

<http://www.wired-gov.net/wg/news.nsf/articles/Lord+Browne+to+stand+down+as+governments+Lead+NonExecutive+Director+19112014150529?open>

What's On

Balcombe

Coffee and a Chat, Half Moon Pub, Thursday 4 December 2014

10.30 am to 12.00 noon. Meet up with FFBRA members for a chat and a cup of coffee. This takes place every week – numbers vary and there is no fixed agenda.

Balcombe Parish Council Meeting, 17 Dec, Bramble Hall 8.00 pm

The seating arrangements of the councillors has now been changed so that the parish councillors no longer sit in a rectangle (which meant some councillors previously had their backs to members of the public) but instead they are now in an inverted U-shape. Much more welcoming – plus it is now easier to hear what they are saying. Most fracking related subjects are discussed in the first hour. Do go along if you can.

FFBRA Committee Elections

Still being organised; these have been delayed because of the judicial review. If you are interested in standing for election to the FFBRA Committee, please email members@frackfreebalcombe.co.uk

Beyond Balcombe

Traffic Survey, Frack Free Billingshurst, 8 Dec to 15 Dec 2014

This is from the “Frack Free Billingshurst Face Book Page”

Call out for help! We would like to do a traffic monitoring survey for one week at the Adversane end of Adversane Lane. This is so we have some baseline data to then compare with traffic movements later and this MAY prove useful if Celtique re-apply for planning again later (either at the same site or further along the road etc). So, what we would like is for people to tell us what time(s) they can do!

This would commence at 7am on Monday 8th December until 6pm, and every day that week at the same times. Even if you can spare just half an hour, it would be great to know so we can get a rota developed, complete with more details and a form to fill in. PLEASE SEND US A MESSAGE WITH A CONTACT NUMBER rather than post up your details here, or drop by the roadside 'awareness raising' campaign on Saturday between 10.30am and 2.30pm! Thanks in advance.

For those of you who would like to help but don't use Face Book, email members@frackfreebalcombe.co.uk and I will pass your email along to the Billingshurst group.

House of Commons, Monday, 08 December 2014

Infrastructure Bill (Drilling Under Homes Without Permission) expected to have its second reading debate in the House of Commons on the 8 December 2014.

Support KKWG, Friday, 19 December, 2014

Deadline for comments to the planning inspectorate for Celtique Energie's appeal against refusal of planning permission to drill near Wisborough Green and Kirdford. Comments should be sent to Alan.Ridley@pins.gsi.gov.uk or posted to the planning inspectorate at Temple Quay House, 2 The Square, Bristol BS1 6PN