

PLANNING REF : 252782  
PROPERTY ADDRESS : 39 East Park Farm Drive  
: Charvil  
: RG10 9UG  
SUBMITTED BY : Mr Nathan Hogg  
DATE SUBMITTED : 01/12/2025

COMMENTS:

LEGAL MEMORANDUM AND STATUTORY DEMAND FOR REFUSAL

TO: The Planning Department, Wokingham Borough Council (WBC) RE:  
FORMAL OBJECTION AND LEGAL CHALLENGE - APPLICATION 252782 SITE:  
Grove Service Station / Former Prince Bros Site, Old Bath Road,  
Charvil

This memorandum constitutes the final, comprehensive representation detailing the fatal flaws and statutory impediments that render Planning Application 252782 incapable of lawful determination and require immediate refusal.

I. PROCEDURAL HISTORY AND ATTEMPT TO CIRCUMVENT DUE PROCESS

This application (252782) is a resubmission following the withdrawal of a previous, substantially similar application, prior to its determination. The withdrawal appears to be a calculated attempt to avoid a formal officer recommendation for refusal and subsequent rejection by the Planning Committee, thereby sidestepping the required due process.

Crucially, the material planning grounds for objection raised by local residents and statutory consultees against the previous application have not been withdrawn; they remain valid and are directly applicable to the current submission. The Council must treat this resubmission with extreme caution, recognising that the applicant is attempting to avoid a decision that would create an adverse planning history.

The Council must consider the current application on its full merits and should not permit the withdrawal strategy to undermine the legitimate and substantive objections already lodged by the community regarding flood risk, highway safety, and environmental impact.

II. LEGAL PRIMACY AND THE THRESHOLD FOR JUDICIAL REVIEW

The determination of this application must comply with the Planning and Compulsory Purchase Act 2004, requiring the decision to accord with the Development Plan. The central tenet of this objection is that the cumulative risks particularly the storage of 800,000 litres of fuel on a flood-prone site are so severe that granting approval would be irrational and unlawful under the principle of Wednesbury Unreasonableness (the legal test for an administrative decision so unreasonable that no reasonable authority would have made it).

WBC holds mandatory statutory duties under UK law. Approving this

scheme without satisfying those duties constitutes a demonstrable failure of legal diligence and opens the Council to legal challenge on the grounds of procedural or substantive illegality.

### III. CATASTROPHIC RISK: FLOODING, CONTAMINATION, AND SAFETY

The co-location of extreme fire/explosion risk with a high flood hazard on land adjacent to a sensitive ecological site presents an uninsurable, existential threat.

#### Failure to Address Hazardous Substance Requirements

The proposed storage of 800,000 litres of fuel (a highly flammable substance) triggers a mandatory and heightened level of scrutiny. The application is legally unsound for failing to address or demonstrate compliance with the Control of Major Accident Hazards (COMAH)

Regulations 2015 principles and for neglecting to secure a formal Hazardous Substance Consent (HSC).

#### Breach of Flood and Water Management Law

The Flood Risk Assessment (FRA) is fatally flawed if it does not explicitly model the risk of catastrophic fuel release during a severe flood event. The FRA must satisfy the NPPF Exception Test using the Upper End Climate Change Allowance (>40% increase) over the development's lifespan. Any failure to model this high-consequence contamination pathway constitutes a direct breach of the Water

Resources Act 1991 (Section 85) to prevent pollution and the Flood and Water Management Act 2010. The resultant contamination would violate the objectives of the Water Framework Directive (WFD).

#### Inadequate Drainage Strategy

The application must submit a detailed Sustainable Drainage System (SuDS) Strategy that proves surface water runoff rates will be maintained at or below greenfield rates, accounting for the flood/chemical risk. The absence of an independently verified SuDS scheme is a breach of the Land Drainage Act 1991 and a fundamental ground for refusal.

### IV. IRRECONCILABLE ENVIRONMENTAL AND HIGHWAY BREACHES

#### Breach of Conservation Law (Ecology)

The site's adjacency to a designated Nature Reserve triggers the strict protection requirements of the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations). The application must demonstrate that it will not result in Adverse Effect on Integrity of the protected site.

Furthermore, the application must be rejected for failing to provide a verified Biodiversity Net Gain (BNG) Metric Calculation and a legal instrument (S106 or covenant) to secure the mandatory 10% gain for 30 years, as required by the Environment Act 2021 and associated local policy. The risk of Contaminant Run-off from

800,000 litres of fuel into the habitat is unmitigable.

#### Breach of Highway Safety Law

The proposed access is fundamentally unsafe for the volume and type of traffic (fuel tankers) it will generate on Old Bath Road. The risk to vulnerable users (cyclists and schoolchildren commuting to the station) is intolerable.

The application is technically inadequate and non-compliant with the Highways Act 1980 (Section 170) and NPPF Paragraph 112 due to the absence of:

A Swept Path Analysis proving that the largest fuel tankers can enter/exit without encroaching onto the public highway.

Verified Visibility Splay assessments that account for the longer braking distance required by heavy goods vehicles.

#### V. LEGAL ACCOUNTABILITY AND JUDICIAL PRECEDENT

This memorandum serves as a formal and detailed warning to the Local Planning Authority (LPA), its officers, and the Planning Committee.

**Fettering of Discretion:** Should the Council approve this application despite the overwhelming and documented evidence of statutory risks, the decision will be open to Judicial Review on the grounds that the Council has fettered its discretion or failed to give adequate reasons for overriding the clear public safety and environmental conflicts.

**Legal Precedent (Wednesbury Unreasonableness):** The legal test for a successful Judicial Review in planning is whether the decision is so unreasonable that no reasonable Local Planning Authority, properly applying its mind to the statutory duties (e.g., protecting the environment, ensuring highway safety), could have approved it. Approving the storage of 800,000 litres of fuel in a flood zone adjacent to a designated nature site, without legally compliant evidence, provides powerful grounds to satisfy this precedent.

**Liability:** Any subsequent accident (fuel spill, fire, explosion, or fatal road traffic collision) linked to the documented failure to enforce the Hazardous Substance Consent or Highways Act 1980 will expose the Council to severe financial and legal liability, potentially including claims of corporate or individual negligence.

#### FINAL STATUTORY DEMAND FOR REFUSAL

We formally and finally demand the IMMEDIATE REFUSAL of Planning Application 252782 on the cumulative basis that the proposal is in fundamental, irreconcilable conflict with the NPPF, the Environment Act 2021, and the Water Resources Act 1991. The approval of this application would constitute an unlawful administrative act.

