

**JOINT REPORT**

- i. STRATEGIC OBJECTION TO THE PROPOSED BURTLEY WOOD MOTORWAY SERVICE AREA ON LAND TO THE SOUTH EAST OF THE M40 AT JUNCTION 2, ADJACENT TO HEDGERLEY LANE AND THE A355 SLOUGH ROAD, BEACONSFIELD, BUCKINGHAMSHIRE.**

**APPELLANT: TEXACO LTD, SWAYFIELDS LIMITED**

**AND TRUSTEES OF 8TH VISCOUNT PORTMAN.**

**APPLICATION NO. SBD/99/0723.**

**BUCKS STREET ATLAS PAGE 187, D2.**

- ii. THE HIGH COURT JUDGMENT ON THE M25 MOTORWAY SERVICE AREA APPEALS**

**To: Development Control Committee**

**Date: 5 December 2000**

**Author: Head of Spatial Planning**

**A PURPOSE OF REPORT**

- 1 The Sub Committee was given a brief information report regarding the Mount Hill Farm (MHF) Inspector's Report at the last meeting of the Sub Committee. The purpose of this report is to reaffirm the County Council's strategic objection to the Burtley Wood MSA. Also, it is intended to advise the Sub Committee of the High Court's judgment regarding the various MSA appeals on the western section of the M25 including the Warren Farm scheme, near Chalfont St Peter and Denham.

**B PROPOSED ACTION**

- 2 **The Committee is invited to :**

- a **Proposed Burtley Wood Motorway Service Area at Junction 2 on the M40, Beaconsfield**

- i **MAINTAIN A STRONG OBJECTION to the proposed Burtley Wood MSA (Application No. SBD/0723/99) for the strategic planning reasons previously determined at the Sub Committee meeting held on 25 October 1999 and set out again in Appendix A;**

- ii **ENDORSE the letter sent by the Head of Spatial Planning to the Secretary of State (SoS) in Appendix B;**

**iii INSTRUCT the Head of Spatial Planning to prepare a Supplementary Written Statement based on the issues raised in Appendix C that reiterates the County Council's strong objection agreed in (i) to the Burtley Wood MSA at Junction 2 on the M40 at Beaconsfield;**

**b High Court Judgement on the M25 MSA Appeals**

**i NOTE that the High Court has quashed the Secretary of State's (SoS) decision to approve consent for an MSA at New Barn Farm (near Cobham in Surrey) and his decision to refuse MSAs elsewhere on the western section of the M25 including the MSA proposal at Warren Farm, near Chalfont St Peter/Denham; and**

**ii INSTRUCT the Head of Spatial Planning to prepare a committee report for a future Committee meeting recommending a way forward for the County Council in respect of the MSA appeals on the western section of the M25 motorway.**

**C FINANCIAL APPRAISAL**

3 Not relevant.

**D SUPPORTING INFORMATION**

**The Burtley Wood MSA**

4 The Sub Committee will recall that it resolved to object to the application at the meeting on the 25 October 1999. The County's letter of objection is attached as Appendix A.

5 A Written Statement was submitted to the Burtley Wood MSA public inquiry when it opened on Wednesday 27 September this year. This statement complements and supports South Bucks District Council's case in opposing the development. It emphasises the significant strategic implications of such a substantial MSA development in this sensitive Green Belt and AAL location, as well as articulating the County Council's concern that it will generate additional traffic on the already congested A355. Members will also be aware that a highway consultant has been instructed to appear as the expert witness on behalf of both the County Council and South Bucks District Council.

6 In the event, the Burtley Wood inquiry was adjourned on the day it opened. This was due to the publication of the MHF Inspector's Report (IR). The inquiry is due to re-open on 1 May next year. In the meantime, the County needs to reconsider both the original strategic grounds of objection to the Burtley Wood MSA and the written submission in the light of the conclusions made in that IR. This is because, while the Inspector's overall conclusion that consent ought to be refused is welcome, there are conclusions drawn in the report that are not.

- 7 For those Members who have a particular interest in this appeal, I have undertaken a more thorough appraisal of the strategic planning issues contained in the IR in Appendix C. For convenience, however, I can summarise the main points as follows:
- i The Inspector has concluded that there is no policy requirement to assess "roughly thirty mile sites" (such as the MHF MSA) against other factors such as the composition of the traffic flow and safety;
  - ii The Inspector agreed with the Appellant's assessment that "local trips" are those under 30 miles;
  - iii The "non local" traffic (ie. more than 30 miles) that passes Hedgerley and New Barn Farm or South Mimms on the M25 is 23% of the total flow on the M40;
  - iv The "non local" (ie. more than that 30 miles) traffic that passes Hedgerley and proceeds to use the A40(T) accounts for 9.2% of the total M40 flow;
  - v The Appellant's case regarding "need" at the Inquiry was based on the M40/A40T/A40(M) route alone but this argument was rejected by the Inspector; and
  - vi It is the relevant spacing with other MSAs (Oxford MSA at 26 miles, NBF at 24 miles and South Mimms at 26 miles) that persuaded the Inspector to conclude that there is a compelling need for an MSA at Hedgerley.
- 8 I consider that the County Council should stand by the arguments that have previously been made in support of the County's strategic objections to both the Mount Hill Farm (Hedgerley) and Burtley Wood (Beaconsfield) MSA proposals. While these arguments did not find favour with the MHF Inspector, with respect, it is his view and the SoS (or another Inspector for that matter) may well take another.
- 9 Certainly, there are good reasons against basing an assessment of the need for an MSA at Hedgerley based on the spacing between the Oxford MSA and Paddington in West London. It is apparent from the IR that the level of "non local" traffic that passes Hedgerley and proceeds to use the A40(T) is low. Indeed, the Inspector concluded that the genuine need for the appeal proposal based on the M40/A40(T)/A40(M) route alone is insufficient to outweigh the overall harm it would cause to the Green Belt and other interests. If Members agree I will articulate these points in a Supplementary Written Statement that will be submitted to the Burtley Wood MSA Inquiry in due course.
- 10 Also, Members are advised that, as instructed by the Sub Committee at the last meeting, I have written to the Secretary of State requesting that he clarify the Government's MSA Policy, particularly with regard to the test for the "need" for what are categorised as "thirty mile MSAs" in the Green Belt. The Inspector took the view that there is no policy requirement to test the need for the Mount Hill Farm MSA against such factors as the composition of the traffic flow and safety. While these matters are covered elsewhere in his report, this is an important point of principle that needs to be clarified. A copy of this letter is attached as Appendix B.

11 I turn now to the separate but related issue of the M25 MSA appeals.

**b High Court Judgement on the M25 MSA Appeals**

12 Members will recall that five MSA sites were proposed on the western section of the M25 including three proposals that were County Council matters (Woodlands Park and Elk Meadows, both in Iver and Warren Farm near Chalfont St Peter/Denham). To assist the Sub Committee, I have summarised these sites in Appendix D. The approximate locations of the sites are also shown on the schematic plan attached as Appendix E.

13 Last year the SoS approved an MSA at New Barn Farm (near Cobham, Surrey). All the other MSAs were refused. Elmbridge Borough Council (EBC) launched a challenge against the decision to approve New Barn Farm, and Totalfina launched separate challenges against the decision to refuse consent at Simplemarsh Farm (near Addlestone, Surrey) and Warren Farm.

14 A legal challenge to a decision must be based on a point of law regarding the legality of the decision-making process. It cannot challenge the merits of a planning decision. The legal points canvassed by the claimants were numerous but a crucial matter was the manner in which highway evidence was handled.

15 Following the closure of the NBF inquiry, EBC made representations to the Government Office for the South East (GOSE) suggesting that the inspector had not been in full possession of all the latest relevant highway information on traffic flows. In 1997, the GOSE gave a written undertaking to the effect that it would give EBC an opportunity to respond to this information prior to the final decision being reached.

16 Last year, once all the inquiries had been completed and before reaching his final decision, the SoS sought expert advice from the Highways Agency regarding the representations he had received to date. The Agency reaffirmed their view that the additional weaving resulting from an MSA at New Barn Farm could be accommodated within the existing four lanes. This exchange of correspondence was subsequently taken into account in making the SoS decision but he took the view that it did not raise new evidence requiring wider reference back to the inquiry parties prior to making his decision. EBC and Totalfina claimed that this process had been unfair.

17 The High Court found in favour of EBC on the grounds of both the breach of legitimate expectation and natural justice, and in favour of Totalfina solely on the ground of breach of natural justice.

18 Also, the High Court concluded that the SoS had failed to carry out a proper comparative exercise of the competing sites. While noting that the situation was somewhat unique, the court held that not enough had been done by the SoS to provide a reasonable reconciliation of all the diverse inputs gained from all the separate public inquiries.

19 Overall, the court ordered all the SoS's decisions under challenge to be quashed (i.e. NBF, WF and SMF) to allow the SoS to reconsider the matter as a whole. The court has not insisted that the SoS arrange a single public inquiry to consider all these issues again,

however, this may well be the outcome. The MSA sites at Iver (Woodlands Park and Elk Meadows) were not challenged and are unaffected by this judgment. Therefore, the promoters of those sites would have to make a fresh application if they want the sites to be reconsidered. In any event, it is suggested that a report be prepared for a future meeting of the Sub Committee to agree a way forward for the M25 MSA appeals on the western section of the M25.

## **E BACKGROUND PAPERS**

The Buckinghamshire County Structure Plan 1991 - 2011.

The Mount Hill Farm Inspector's Report.

The County Council's Written Statement submitted to the Burtley Wood MSA Inquiry.

The High Court Judgement on the M25 MSAs.

**CONTACT OFFICER: RICHARD WILKINSON (01296) 382092**