

Minutes

DEVELOPMENT CONTROL COMMITTEE

MINUTES OF THE MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD ON MONDAY 25 FEBRUARY 2019 IN MEZZANINE ROOMS 1 & 2, COUNTY HALL, AYLESBURY, COMMENCING AT 10.05 AM AND CONCLUDING AT 11.36 AM

MEMBERS PRESENT

Ms J Blake, Mr C Clare, Mrs B Gibbs, Ms N Glover, Mr R Reed and Mr D Shakespeare OBE

OTHERS IN ATTENDANCE

Ms M Rajaratnam, Mrs G Crossley, Mrs E Catcheside, Mr M Pugh, Ms S Taylor, Ms S Winkels and Mr D Marsh

Agenda Item

- 1 APOLOGIES FOR ABSENCE / CHANGES IN MEMBERSHIP**
Apologies were received from Mrs A Cranmer.
- 2 DECLARATIONS OF INTEREST**
There were no declarations of interest.
- 3 MINUTES**
RESOLVED: The minutes of the meeting held on 14 January 2019 were **AGREED** as an accurate record and were signed by the Chairman.

4 **CM/19/17 THE IMPORTATION, STORAGE AND ONWARD DISTRIBUTION OF RAIL BORNE AGGREGATES TOGETHER WITH THE ERECTION AND USE OF A CONCRETE BATCHING PLANT AND ASSOCIATED INFRASTRUCTURE**

Mrs G Crossley, Development Management Officer, Buckinghamshire County Council (BCC), reminded Members that the application was first presented to the Committee in July 2018 where it was recommended for approval and members voted in favour of the officer's recommendation with the addition of a road condition survey. It had come before the committee again for consideration due to the material changes that had occurred since the matter was considered in July 2018.

Mrs Crossley highlighted the following points:

- The site benefitted from permitted development rights [granted under The Town and Country Planning (General Permitted Development) (England) Order 2015] to railway undertakers for the movement of traffic by rail.
- The landowner was Network Rail who was a Railway Undertaker.
- The applicant was Breedon Southern Limited who was not a Railway Undertaker.
- The concrete batching plant was not covered by the permitted development rights.
- The certificate of proposed lawful use or development may have caused some confusion. This provided evidence of the permitted development rights but even without this the permitted development rights would exist and these were considered a fall-back in planning terms.
- The proposed development required planning permission which was why it was being presented to the Committee.
- The site was an existing railway siding which was safeguarded for rail use in the Core Strategy and in the emerging Local Plan.
- The site lay within the green belt and was considered inappropriate but very special circumstances applied.
- The key objections raised to the application were highways and air quality matters.

There were three main material changes that had occurred since the application was brought to the Committee last year:

- South Bucks District Council (SBDC) had declared the Iver Air Quality Management Area (AQMA). SBDC Environmental Health Officers (EHO) were re-consulted on the application and they requested mitigation in the form of a contribution towards the progression of the Air Quality Action Plan (AQAP) (recommendation 4 should read 'AQAP' rather than Clean Air Zone)
- Damage Cost Calculation had been reviewed – used to quantify the financial cost of air quality pollutants (NO₂ and PM₁₀) generated by HGVs associated with the development, as there was no alternative mechanism. This methodology was originally suggested by Slough Borough Council (SBC) and agreed by the applicant as being an appropriate means of calculating the air quality impact. BCC had received contradictory views from the applicant and SBC and therefore were taking independent advice from the Department for Environment, Food and Rural Affairs (DEFRA) to ensure correct assessment was being made and adequate mitigation was sought. The figure provided within the recommendation was put forward by the applicant following a request from Officer's to use a particular category and other inputs as suggested by SBC and also to follow newly published guidance (January 2019). This figure (£39,841) was the latest at the time the report went to print. Since then, Mrs Crossley stated she had received further revised calculations from the applicant, SBC and DEFRA. Therefore, Officer's recommended that Members delegate that this be resolved to the Head

- of Planning, following discussion with the applicant, SBC, SBDC & DEFRA.
- Link Park Appeal Decision - an appeal decision was published on 24 July 2018 on the adjoining site referred to as Link Park. The inspector's report raised an issue about noise being generated by HGVs accessing the site outside of normal operating hours. The applicant was requested to provide a noise assessment of HGVs using the routes to and from the site to address this issue. The submitted noise assessment had been reviewed by the EHO and was deemed acceptable.

As part of the previous recommendation, the application was sent to the Secretary of State (SoS) to consider if they wished to “call it in” for their own determination, as a departure from Green Belt policy. The SoS had responded to say that they did not wish to “call it in” and therefore it fell to BCC as the determining authority to determine the application.

SBC had put forward three further points:

- The damage cost calculation should now be based on 10 years, rather than 5 years because the “NO₂ levels in Brands Hill are not expected to meet the EU Limit Value for at least another 10 years”. SBC stated that this was in line with the latest guidance. However, DEFRA advised that five years was the most appropriate and that, whilst the example given in the latest guidance was for 10 years, “the guidance did not state a single year value to be applied; it implied this should be looked at on an individual case basis”. SBC’s calculations provided a damage cost figure of £80K.
- SBC had also asked that it was made clear to Members that the Damage Costs did not cover the cost of mitigation, which was why they asked for £100K mitigation on air quality within their initial objection.
- The cumulative effect of this scheme and the CEMEX scheme would see the air quality at Sutton Lane increase over the 40ug/m³ EU Limit Value and is therefore likely to result in the AQMA being extended along Sutton Lane or a new AQMA being declared.

The applicant had also sought advice from the DEFRA helpdesk with regard to sharing mitigation for the two separate AQMAs rather than requesting it twice. DEFRA had responded to say that they believed it should be split between the two areas, based on factors such as the link length within each authority, the sensitivity of the areas and background concentrations of pollutants etc. However, the Legal advice that BCC had received was that we could request the contribution twice for the two separate AQMAs. The applicant had also reiterated their point that the roads affected by this development were not within Outer London or within the M25, and therefore the most appropriate category would be the “Road Transport Outer Conurbation” and that the “Urban Not London” emissions factors should be used. This provided a cost of £13,545. The applicant argued that neither SBDC nor SBC had adopted a policy which would obligate a damage cost calculation to be undertaken. The applicant had carried out an AQA, which concluded that there were “no significant operational effects on air quality as a result of the proposed development”. They stated: “In the absence of any adopted relevant statutory local, regional or national policy which gave definitive terms on the applicability of damage costs calculations to development proposals; it was determined that the damage costs approach could not lawfully be applied as a planning obligation as suggested by BCC. It was not the responsibility of individual developments to fund additional local authority projects which were not guaranteed to directly or indirectly offset the emissions produced by their development. Requests of financial contributions to highways improvements as a Planning Obligation had been made which were significantly greater than the damage costs value and would give rise to significant improvements in air quality within the Slough AQMA No.1 and Iver AQMA. Therefore, if Planning Obligation V was determined to be accepted, this would cover the damage

costs value in almost three times its value.”

The applicant maintained that “the likelihood for the site, should this application fail, was for significantly more HGV movements than being proposed now.”

Mrs Crossley brought members' attention to paragraphs 98-101 of the report regarding the road condition survey which was requested by members at the Development Control Committee meeting in July 2018. Mrs Crossley reiterated that this had not been requested by the Highways Authority and Members might want to reconsider whether they still wanted to include it if the application were to be approved.

Mrs Crossley presented photos of the site and plans.

Mrs Crossley stated the Development Control Committee was invited to APPROVE the application subject to conditions and a Planning Obligation as set out within the report. However, due to the continued disagreement between parties concerning the Air Quality contribution, it was requested that Members delegate the final amount to be determined by the Head of Planning following negotiation between the applicant, SBC and SBDC, with support from DEFRA.

Public Speaking

The Ivers Parish Council submitted a summary of observations on application CM/19/17, which the Parish Council strongly objected to on a number of grounds. The summary was provided to the members of the Development Control Committee and is appended to the minutes.

Mr C Jordan, Iver Parish Council, stated that he wanted to focus on two fundamental issues underlying the Parish Council's objections.

The applicant had provided estimates of average sound levels per hour and had concluded that there would be a minimal increase in average noise level associated with heavy goods vehicle (HGV) movements during sensitive hours. The Parish Council believed this approach was flawed and therefore meaningless. Mr Jordan stated that if the average noise level associated with one hour of the committee meeting was determined and then repeated with the fire alarm sounding briefly every 10 minutes there would be little change in the total sound energy and therefore the average sound energy per hour, however the impact of the fire alarm would be intolerable. This was what the residents would hear and would be intolerable if the hours were extended during sensitive hours.

The same view was taken by the Planning Inspectorate appeal when a previous application for extended hours on the same site was rejected by this Authority. As regards the concrete batching plant, legal advice provided to this Committee in relation to a previous application, supported by a ministerial ruling, specifically excluded construction of a concrete batching plant under permitted development rights.

There were existing concrete batching plants close to the Thorney Mill site at Thorney Business Park, Langley Station, Denham, Sibson, and at the nearby CEMEX site recently approved by this Committee. Every vehicle carrying cement or concrete to and from the Thorney Mill Siding site would have to pass the CEMEX concrete batching plant. Mr Jordan queried what the condition of very special circumstances was that satisfied the justification of construction of the proposed plant in the Green Belt. BCC's Minerals and Waste Policy 28 stated that “development likely to generate HGV trips would only be permitted when they would not adversely affect the character or amenities of nearby properties or the locality, for example, through noise, vibration, disturbance or visual intrusion”. The South Bucks Local Plan policy TR10 made the same commitment.

The South Bucks Core strategy policy CP16 commented specifically on reducing the number and impact of HGV movements in South Iver and the draft Bucks Minerals and Waste Plan says that construction of new buildings was inappropriate in the Green Belt. The South Bucks Policy GB1 of the Local Plan adopted the same principle.

The Ivers Parish Council could find nothing in the applicant's statement of need to persuade them that disregard of these policies or dismissal of clear legal advice by the authorities' counsel on permitted development rights could be justified.

It was the view of the Ivers Parish Council that were the Committee to approve the application, in its present form, it would be acting "ultra vires".

Ms M Rajaratham, Assistant Team Leader – Planning and Regeneration, Harrow and Barnet Law, commented that her understanding was that the advice previously given was that the current applicant did not benefit from the permitted development rights but the council's case was that the permitted development rights [granted by statute] would create a fall back. The applicant was not a railway operator but the site still benefitted from the permitted development rights [granted by statute].

Mrs Crossley stated that it was unusual to request a noise assessment of HGVs using a route to and from a site and therefore there was no set guidance as to how it should be approached. Following the Link Park decision, the applicant was asked to provide a noise assessment of HGVs travelling to and from the site outside of 'normal operating hours'. The approach and methodology was agreed between the applicant and South Bucks District Environmental Health Officers. The EHO reviewed the submitted assessment and accepted the outcomes.

The original noise assessment submitted for the development identified elevated levels at some receptors around the site and therefore noise barriers had been proposed in the south-east corner of the site closest to the residential property on Thorney Mill Road and up in the northern part to protect residents in Hillingdon.

A Member of the Committee asked for clarification on whether the Council would be acting "ultra vires" if the recommendation proposed was accepted. Ms Rajaratnam stated that, in her view, the Council would not be acting ultra vires if they accepted the officer's recommendation as the officer had considered all the material considerations thoroughly as set out in her report and it was now for the Committee to take a view whether, on a balance of probability, that there was a realistic possibility of the site, if the application was refused, being used by another railway operator under the permitted development rights which still existed.

A Member of the Committee requested clarification on the noise levels and asked whether it was an "average" sound level per hour as she felt it was the difference in noise level, when an HGV passed through a residential area, which should be considered rather than the average, particularly at night. Mrs Crossley stated that the noise assessment addressed the hours of 6.00-11.00 pm and the noise consultant had looked at the number of movements proposed in and out of the site and assessed how many would operate each hour between 6.00 and 11.00 pm. There would be an additional six HGV movements which equated to less than one decibel, which is imperceptible. Mrs Crossley confirmed it was the "average" noise level that was assessed and that it had been agreed between the EHO and the Noise Consultant. Mrs Crossley reiterated that HGV movements would occur anyway due to the permitted development rights.

Mr D Marsh, PDE Consulting attended the meeting on behalf of the applicant and spoke in support of the application. Mr Marsh raised the following key points:

- Since July 2018 PDE Consulting had worked with the case officer to consider the three material changes in the environment surrounding the proposed development; the new Iver AQMA, the methodology associated with calculating damage costs and the Inspector's decision on Link Park.
- The development was exactly the same as the application the Development Control Committee considered in July 2018 and previously resolved to grant permission for.
- PDE Consulting had assessed the development against the new emerging material circumstances and the Officer's recommendation was for approval.

There were no questions from Members of the Development Control Committee.

Ms L Sullivan, Local Member, had submitted comments prior to the meeting which had been circulated to the Committee Members. Ms Sullivan attended the meeting and read out her comments as appended to the minutes and highlighted the following points:

- That the Committee ensure that the calculations to equate the value of secured funding towards Iver AQMA at least matched that funding granted to Slough AQMA - minimum £50,000 calculation.
- To ensure a commitment from the applicant to adhere to the conditions and obligations as stated in the committee report.
- Assurance from the Committee that all the conditions were strictly adhered to and monitored and enforced by officers.
- To suggest a final recommendation from the Committee that the applicant agree to hold regular Community Forum Liaison meetings, with representatives from the applicant side, community, relevant residents' group and parish council.

Members of the Committee raised and discussed the following points:

- The Chairman referred to the figure quoted of £50,000 funding for air quality mitigation and asked if it was an appropriate amount; Mrs Crossley stated that, due to the varying amounts quoted by the different organisations, at the moment the recommendation was for £39,000 proposed by the applicant based on what SBC had put forward, but would like Members to delegate to the Head of Planning to be negotiated outside of the meeting.
- Mrs Crossley stated that the legal agreement was recommended to include that HGVs avoid Iver High Street and that vehicles were to comply with the Euro VI standards; a requirement that HGVs would not exceed 82 per day was recommended as a condition, along with precautions to prevent mud and debris on the highway.
- A Local Liaison meeting could not be conditioned, although it could be added as an 'informative'. Legal advice stated that it could be incorporated into the legal agreement if requested by Members, with appropriate wording.
- In response to a Member of the Committee asking if the resources were available to enforce the condition that HGVs did not travel along Iver High Street; Mrs Crossley confirmed the resources were available for monitoring planning permissions but they would also rely on reports from residents.
- A Member of the Committee expressed concern over the unconfirmed rail slot availability as, if there were not enough rail slots, aggregates would arrive and leave by HGV. Mrs Crossley was unable to comment as to whether there were sufficient rail slots available but confirmed that the number of HGV movements to and from the site would be conditioned.
- Ms Sullivan stated she would be happy to chair the Local Liaison meetings and that she felt they would be beneficial to the community.
- A Member of the Committee asked why the other sites in the area were not being

used. Ms Sullivan confirmed there were two other sites nearby. Mrs Crossley advised there was a need in the market; one of the concrete batching plants had closed down (Breedons) and this application would replace it.

- A Member of the Committee reiterated the need for a road condition survey as the developer would only be required to put right the damage made by them. It was felt that extensive damage could be caused by HGVs. Ms Rajaratham stated that it would be reasonable to include an obligation that the developer should carry out a survey before and after the development had commenced. It was accepted that the roads were already in a bad condition; the extent would be revealed in a survey carried out beforehand. Members agreed to retain the road survey condition.
- Mrs E Catcheside, Planning Lead Officer, summarised that there were two items being voted on which were not included in the officer's recommendation:
 - A road condition survey
 - Local Member Liaison Group being set up
- A Member of the Committee queried whether the applicant would be responsible for the cost of repairing any damage to the road surface. Ms S Winkels, Planning and Enforcement Manager, stated that the road condition survey had not been requested by BCC as a Highways Authority; it was however, a requirement of BCC to provide a highway of a certain standard. This was a road which had high traffic volume in its own right so the Highways response was to restrict the number of HGVs and did not see it as something that should be enforced. The Chairman reminded the Committee that the issue of proving who had caused the damage had been raised in July 2018 and that his own view was that it was better to keep it in because it provided an opportunity even though it may be difficult to prove. The Committee agreed to keep in the requirement for a road condition survey.
- Members of the Committee agreed that Liaison Committee meetings would be held and that it would be part of a legal agreement; the wording would be provided by the officers and would allow for the possibility that the meetings may cease if interest dwindled.

The Chairman stated the recommendation was to APPROVE application CM/19/17 for the proposed importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure at Thorney Mill Rail Sidings subject to conditions, to be determined by the Head of Planning and Environment, including those set out in Appendix B and subject first to completion of a Planning Obligation, with details, alterations, additions and deletions, to be determined by the Head of Planning and Environment, to secure the following:

- i. Routing agreement to avoid Iver High Street and minimise traffic through the Sutton Lane/A4 London Road Junction and M4 Junction 5 where possible.
- ii. All HGV's within the applicants own fleet that travel to and from the site should be in full compliance with the Euro VI Standards and the applicant should use best endeavours to encourage contracted HGV's to travel to and from the site in full compliance with the Euro VI Standards.
- iii. A financial contribution of £39,841.50 to SBC's Low Emission Strategy, in particular to fund a Clean Air Zone (CAZ) feasibility study and implementation plan for Brands Hill AQMA.
- iv. A financial contribution of £39,841.50 to SBDC towards the progression of an AQ Action Plan for the Iver AQMA.
- v. A financial contribution of £115,700 towards Highways Improvements at the

- Sutton Lane/A4 London Road Junction.
- vi. A road condition survey to be carried out.
 - vii. Local Member Liaison meetings to be held at regular intervals to be arranged with the Local Member.

Due to the continued disagreement between parties concerning the Air Quality contribution, it was requested that the Committee delegate the final amount to be determined by the Head of Planning following negotiation between the applicant, SBC and SBDC, with support from DEFRA.

Mr Clare proposed the approval of the recommendations as listed in the report (with the slight amendment to number iv) and the two further recommendations as listed above.

Mr Reed seconded this proposal and the following vote was recorded.

For	6
Against	0
Abstention	0

RESOLVED: The Committee unanimously APPROVED application CM/19/17 for the proposed importation, storage and onward distribution of rail borne aggregates together with the erection and use of a concrete batching plant and associated infrastructure at Thorney Mill Rail Sidings subject to conditions, to be determined by the Head of Planning and Environment, including those set out in Appendix B and subject first to completion of a Planning Obligation, with details, alterations, additions and deletions, to be determined by the Head of Planning and Environment, to secure the recommendations listed above.

- 5 **CM/0077/18 - VARIATION OF CONDITION 18 OF PLANNING PERMISSION 11/20000/AWD (ENERGY FROM WASTE FACILITY AND ASSOCIATED DEVELOPMENT) TO ALLOW AN INCREASE IN THE MAXIMUM DAILY HGV MOVEMENT FROM 276 PER DAY (138 IN, 138 OUT) TO 600 PER DAY (300 IN, 300 OUT)**

CM/0077/18 - VARIATION OF CONDITION 18 OF PLANNING PERMISSION 11/20000/AWD (ENERGY FROM WASTE FACILITY AND ASSOCIATED DEVELOPMENT) TO ALLOW AN INCREASE IN THE MAXIMUM DAILY HGV MOVEMENT FROM 276 PER DAY (138 IN, 138 OUT) TO 600 PER DAY (300 IN, 300 OUT)

Ms J Blake, Local Member, confirmed she would consider the application with an open mind.

Mrs E Catcheside, Planning Lead Officer, BCC stated that the reasons for the increase in the maximum daily HGV movement were set out in paragraphs 22-24 of the report. There had been some objections received from the local residents and parish councils due to the highway impacts immediately surrounding the sites as well as the impact on the environment. Mrs Catcheside stated that there had been extensive discussions with the Highway Authority, Ecology Advisers, Natural England and Environmental Health Officers at the district council and there were no objections outstanding.

Mrs Catcheside highlighted two points of clarification:

- Paragraph four referred to the In-Vessel Composting Facility which did have its own planning consent but the movements to and from the site, if it was implemented, would form part of the current 276 or the proposed 600.
- Paragraph 25 stated that “the HGV limit imposed by condition 18 had been breached periodically since planning permission was granted in 2012”. Mrs Catchside clarified that the periodic breaches had taken place since the site became operational in 2016 rather than 2012.

Mrs Catchside presented photographs of the site, the access and the Sites of Special Scientific Interest (SSSIs). Natural England had raised concerns in connection with the SSSIs but these had been overcome.

Members of the Committee raised and discussed the following points:

- A Member of the Committee stated that significant controversy had occurred as the reason for the original recommendation of the limitation of traffic movements was to protect the environment of residential properties located on the transport routes of vehicles delivering waste to the Energy from Waste (EFW) Facility and therefore the movements were regulated to not exceed two hundred and seventy six. The current application represented a vast increase. The report had gone into great detail to explain environmental and residential concern and it would give members comfort to know why the facility was built in the first place. Mrs Catchside explained that the vehicle movement limitation was not requested by any technical consultees. The movement limitations were proposed by the applicant and had formed the basis of the technical assessments submitted at the time therefore it was good practice to limit the movements to those proposed. This application proposed to increase those vehicle movements quite substantially and this application had been accompanied by updated assessments which concluded that there would not be any significant adverse effects arising from the increase and this had been reviewed in terms of noise and air quality effects on local residents and there were no objections.
- A Member of the Committee raised concern over whether the road could cope with 600 vehicles a day as much of the road was single carriageway with blind bends. Mrs Catchside confirmed that a traffic assessment had been carried out; there were a number of vehicle refuge bays along the road and the assessment produced stated that no widening of the road was required.

Public speaking

Mr M Pollard, Axis, Planning Consultant and Mr M Nicholson, FCC Environment UK Limited, attended the meeting on behalf of the applicant.

Mr Pollard had submitted a statement, appended to the minutes, which he read out highlighting the following points:

- The current limitation on vehicle numbers was derived from traffic figures included in the original planning application for the EFW

facility in 2011.

- The EFW facility did not become fully operational until early 2017, by which time, the circumstances had changed. There had been an upturn in the economy and an associated increase in development activity, which had led to greater demand for the disposal of waste at the landfill site.
- The proposed increase in the vehicle cap from 276 to 600 daily HGV movements would provide FCC with operational flexibility and headroom they needed to address the continued up-turn in waste inputs at the landfill site.
- The planning application had been supported by a wealth of technical and environmental information, which had assessed the impacts of the daily increase in vehicle movements.
- Officers had concluded that the proposal would not give rise to unacceptable effects on the highway network, the environment or the amenity of local residents.

Members of the Committee raised and discussed the following points:

- A Member of the Committee stated that the Liaison Committee was still functioning and asked whether it had been included in the consultation. Mrs Catcheside stated that the Liaison Committee was not a formal body and, as such, would not have been consulted.. However, the people who attended the Liaison Committee meetings would have been included in their other roles e.g. the parish council, local member and as local residents.
- In response to a query from a member as to whether the HS2 routes had been confirmed; Mr D Marsh, Senior Highways Development Management Officer, stated that HS2 had submitted a cumulative assessment and he was satisfied that there would not be a severe impact on junction capacity.

Mr Clare proposed the approval of application CM/0077/18.

Mr Reed seconded this proposal and the following vote was recorded.

For	6
Against	0
Abstention	0

RESOLVED: The Committee unanimously APPROVED application CM/0077/18 for the proposed variation of condition 18 of planning permission 11/20000/AWD to allow an increase in the maximum daily HGV movements from 276 per day (138 in, 138 out) to 600 per day (300 in, 300 out) subject to conditions to be determined by the Head of Planning and Environment, including those set out in Column 2 of Appendix A and a Deed of Variation to the each of the existing S106 Agreements to tie the obligations to the new planning permission.

6 DATE OF NEXT MEETING
Monday 1 April 2019 at 9.30 am in Mezzanine Rooms 1 and 2, County Hall, Aylesbury.

7 EXCLUSION OF THE PRESS AND PUBLIC
RESOLVED

That the press and public be excluded for the following item which is exempt by virtue of Paragraph 1 of Part 1 of Schedule 12a of the Local Government Act 1972 because it contains information relating to an individual.

8 CONFIDENTIAL MINUTES

9 ENFORCEMENT REPORT

CHAIRMAN