

PLANNING & REGULATION COMMITTEE

MINUTES of the meeting held on Monday, 5 September 2016 commencing at 2.00 pm and finishing at 4.00 pm

Present:

Voting Members: Councillor Mrs Catherine Fulljames – in the Chair
Councillor Neil Owen (Deputy Chairman)
Councillor David Bartholomew
Councillor Mark Cherry
Councillor Jean Fooks (In place of Councillor Lynda Atkins)
Councillor Patrick Greene
Councillor Bob Johnston
Councillor Stewart Lilly
Councillor James Mills
Councillor Glynis Phillips
Councillor Anne Purse
Councillor G.A. Reynolds
Councillor John Sanders

Other Members in Attendance: Councillor Roz Smith (for Agenda Item 6)

Officers:

Whole of meeting G.Warrington and J. Crouch (Law & Governance);

Part of meeting

Agenda Item	Officer Attending
6	S. Smith and D. Seroczynski (Environment & Economy)
7.	D. Periam (Environment & Economy)

The Committee considered the matters, reports and recommendations contained or referred to in the agenda for the meeting, and decided as set out below. Except as insofar as otherwise specified, the reasons for the decisions are contained in the agenda and reports, copies of which are attached to the signed Minutes.

31/16 APOLOGIES FOR ABSENCE AND TEMPORARY APPOINTMENTS

(Agenda No. 1)

<i>Apology for Absence</i>	<i>Temporary Appointment</i>
Councillor Lynda Atkins	Councillor Jean Fooks

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32/16 DECLARATIONS OF INTEREST - SEE GUIDANCE NOTE OPPOSITE

(Agenda No. 2)

<i>Councillor</i>	<i>Nature of Interest</i>
Glynis Phillips	Item 6. She advised that having spoken against the licence application at the County Council's Performance Scrutiny Committee and local meetings she considered that having made her views known prior to this meeting she would not participate in any debate or voting.
Patrick Greene	Item 6. Member of the Oxford University Hospital Trust. However he considered that interest minimal and therefore intended to participate in any debate and voting on the licence application.
John Sanders	Item 6. Local resident but as he lived some distance from the proposed route of the pipeline he considered he was not directly affected and therefore intended to participate in any debate and voting on the licence application.

33/16 MINUTES

(Agenda No. 3)

The Minutes of the meeting held on 11 July 2016 were approved and signed.

34/16 PETITIONS AND PUBLIC ADDRESS

(Agenda No. 4)

<i>Speaker</i>	<i>Item</i>

Peter West – Chair of St Anne’s Road Residents Association)
Ann Marie Dickenson – Local Resident)
City Councillor Ruth Wilkinson) 6.New Roads and Street Works Act 1991 Section 50 Licence for
Paul Gredley – Vital Energi) Headington Heat Pipe application
County Councillor Roz Smith)

35/16 NEW ROADS AND STREET WORKS ACT 1991 SECTION 50 LICENCE FOR HEADINGTON HEAT PIPE APPLICATION.

(Agenda No. 6)

As part of a significant project to reduce energy costs the Oxford University Hospital Trust (OUHT) proposed upgrading their heating and hot water systems at the John Radcliffe and Churchill Hospitals by transferring heat via new pipelines which would be placed in the public highway connecting the two sites. In June this year the County Council had received an application from Vital Energi, working for OUHT, for installation of 150 mm diameter district heating pre-insulated pipes on roads between and including the John Radcliffe Hospital and the Churchill Hospital. The Committee now considered (PN6) a report setting out the application information including details of the specific route along (North to South) Woodlands Road, Sandfield Road, A420 London Road, Latimer Road, All Saints Road, Lime Walk, Old Road, and Churchill Drive. A planning application for the works was to be considered by the City Council on 7 September 2016.

The County Council had recently changed its processes for approval of Section 50 licences for installation of apparatus with a significant impact on the transport network and whilst statutory undertakers had a legal right to implement plant in the public highway, non-statutory undertakers were legally required to obtain authorisation from the Street Authority (for Oxfordshire this was the County Council) with specific approval to grant licences for this scale of works now to be determined by the Planning & Regulation Committee.

Mr Serocynski introduced the report. He tabled a clearer plan of the route and highlighted amendments to paragraphs 28 and 30 of the report. He confirmed that the City Council would be considering the planning application on 7 September 2016 and in the event that that was approved the County Council then had a duty to co-ordinate the works effectively to ensure safety, minimal disruption and protection of existing services in the highway and in order to do that a Section 50 licence under the New Roads and Street Works Act 1991 would be required. Officers had engaged with the applicants and were satisfied that what had been proposed would achieve those aims. Discussions would continue regarding the co-ordination of works with regard to proposals relating specifically to Access to Headington. Conditions had been proposed to be applied to the licence if agreed and officers were recommending approval.

Officers then responded to questions from:

Councillor Johnston – Mrs Crouch confirmed that if the application were refused then the applicants could apply for Judicial Review of that decision. There was no appeal process as with a planning application.

Councillor Bartholomew – Mrs Crouch could not give an exact timeframe for a Judicial Review process other than an application would need to be made within 12 weeks. The process would then be in the hands of the Court and although the applicants could ask for the application to be expedited quickly it seemed reasonable to expect that the scheme would be substantially delayed.

Councillor Lilly – Mrs Crouch could not give an exact figure as to the possible costs to the County Council of a successful judicial review but it was reasonable to expect that they would be significant.

Councillor Mills – Mr Seroczynski advised that the highway management plan would seek to minimise disruption as much as possible and local members (both City and County) had been and would continue to be involved in consultation on issues relating to traffic management.

Councillor Cherry – Mr Seroczynski confirmed that there would always be a risk with regard to other apparatus in the highway but considerable research had been undertaken to minimise that risk.

Councillor Sanders – Mr Seroczynski confirmed that works at Old Road or London Road would not be undertaken concurrently.

Councillor Bartholomew – Mrs Crouch advised that there was no prescribed order in which planning permission and licence application needed to be obtained and that one could precede the other.

Mr West addressed the Committee. He referred to a lack of adequate consultation, misleading legal advice, impropriety and discrepancies in the report including reference to reductions in carbon emissions. There would be significant emissions at the plant itself and during construction of the pipeline with significant disruption on a wide scale. He considered that the application had no significant benefit to the public and had been pushed through with little regard for local residents.

He then responded to questions from:

Councillor Lilly – with regard to impropriety he advised that he had been refused information on request and clarified that when he said no benefit to the public he had meant local Headington residents living alongside the route of the pipeline.

Councillor Johnston – as a resident of St Annes Road he would be directly affected.

Councillor Sanders – he disagreed with the legal interpretation which had been applied to ownership of the sub soil.

Councillor Cherry – he considered retention of the 2 independent plants at each site would be a realistic alternative thereby making the pipeline redundant.

Anne Marie Dickinson then addressed the Committee. The County Council had a duty to consider this licence application in a balanced way and with an open mind but the history of the scheme together with the report before the Committee today suggested otherwise. She felt the highway authority had failed to meet its obligations and had adopted a closed mind approach with a number of hidden agendas and had never questioned Vital Energi's entitlement to a licence. The report was controversial in that it stated there were no reasons to refuse it when clearly there were. The scheme would have a huge impact on road users, residents and landowners with potential future risk to the highway itself. What was being proposed had nothing at all to do with the highway or public utilities and ownership issues had been raised with regard to the land under the highway surface which had not been satisfactorily resolved. That had to be a relevant factor for the Committee to consider and it was not enough for the County Council to claim a duty to co-ordinate streetworks as a relevant factor when no other reasons of substance had been put forward in support. The claimed benefits of the energy link were at best unclear but there was clearly no benefit to the public or residents.

Responding to a question from Councillor Lilly she stated that in her view there was undoubtedly a high level of risk from apparatus proposed to be placed in the highway with further risk of perpetual chaos from further works over a 25 year period.

City Councillor Ruth Wilkinson raised 4 issues. The matter of displaced parking in Stapleton Road and Bickerton Road where enforcement of the CPZ was not currently possible. That needed to be resolved before work started. Lack of a legal agreement or condition securing a community contribution to help mitigate against huge disruption. Increased representation by local representatives in future consultation. Future ownership of the pipe needed to be made clear with a clear statement that financial liability for ongoing maintenance and repair would not pass to the County Council. She raised concerns regarding the timescale for processing TTROs and sub-soil ownership which were far from clear. She then responded to questions from:

Councillor Johnston – with regard to enforcement of the existing CPZ she explained that the lines had been worn away and were therefore legally unreliable. Funding for 2 other CPZs had been withdrawn.

Councillor Mills – concerns regarding the CPZ were not centred solely on displaced parking but had been causing problems for everyone in the area to the extent that some residents were seeking refunds for the cost of permits they had purchased. Pressure would inevitably increase after September.

Councillor Bartholomew – she felt the question of a community contribution was relevant to residents who needed an incentive to help convince them that the scheme and disruption would be worthwhile.

Councillor Purse – she confirmed that the legal position of the County and City Councils seemed to be odds regarding ownership and depth of the subsoil.

Mr Smith clarified that questions relating to the CPZ were not relevant to the licence application and the County Council were trying to resolve that issue separately.

Mrs Crouch clarified that under the provisions of the licence process the County Council had no power to consider imposition of a community contribution. That was a matter for the City Council to consider as part of the planning permission process.

Paul Gredley from Vital Energi responded to questions from:

Councillor Bartholomew – there would be considerable financial savings together with considerable saving in emissions estimated at 800 tonnes over 5 years.

Councillor Johnston – the company had made a statement regarding the legal issues relating to the subsoil.

Councillor Sanders – he confirmed that the works would be carried out efficiently and to a high standard.

County Councillor Roz Smith thanked the other speakers and welcomed the fact that this decision was being taken publicly. Referring to the potential for significant impact and disruption to already busy highways she was extremely concerned that the timescale for the pipeline work was unclear and therefore there was potential for it to clash with the Access to Headington scheme which was due to start imminently. There were a lot of unanswered questions with differing legal opinions and ambiguity regarding responsibility and costs. She endorsed the comments regarding the need for increased local consultation and concerns regarding the integrity of apparatus.

She then responded to questions from:

Councillor Johnston – the uncertainty regarding timescales etc offered, in her view, an opportunity to defer consideration of the application to the next meeting.

Councillor Lilly – she could not say categorically that there would be a civil challenge if the licence were granted but she urged that a decision be deferred until after the City Council had considered the application for planning permission and giving members of the County's Planning & Regulation Committee an opportunity to see what the apparatus was like.

Mrs Crouch explained that the principle issue involved in granting a Section 50 licence was to allow the breaking open of the highway and ownership of the sub soil was not a principal matter for consideration when granting a licence. Sub-soil depth itself was imprecise as all roads were different and from a Section 50 licence perspective any person aggrieved by the work would need to take the matter up with the third party carrying out that work.

Councillor Bartholomew considered a deferral was justified until at very least the City Council had considered the planning application for the scheme. He moved, with Councillor Purse seconding that consideration of the application be deferred to the meeting of the Planning & Regulation Committee on 17 October. The motion was put to the Committee and lost by 7 votes to 5.

Councillor Cherry then moved that the officer recommendation as set out in the published report be approved. Seconding the motion Councillor Lilly considered disruption was inevitable wherever or whenever any development took place in the county but the assumption had to be made that we were dealing with a responsible contractor and that full and proper reinstatement of the highway would be carried out. On balance the scheme appeared to benefit both hospitals promising considerable financial savings.

Councillor Reynolds and Councillor Greene both supported the motion and whilst regretting the disruption agreed the benefits were substantial.

Councillor Mrs Fulljames had great concerns having experienced similar problems in her division and felt it was important that any conditions should require full and proper reinstatement and repairs to the public highway. The mover and seconder of the motion accepted an amendment to Condition ii as set out in the resolution below.

Referring to past experience of gridlock in Headington when he had worked at Brookes Councillor Joihnston could not support the application.

Councillor Fooks also had some concerns about the application particularly the problems identified with the current CPZ, need for local representation in all consultation and air quality.

Speaking to his motion Councillor Cherry felt the Committee needed to accept the w legal advice which it had been given and the information in the report before it. He commended his motion as amended which was then put to the Committee and –

RESOLVED (by 9 votes to 0, Councillors Bartholomew, Purse and Johnston recorded as having abstained) that a New Roads and Street Works Act Section 50 Licence, subject to the proposed Conditions and Reasons (i) to (v) as detailed in paragraph 25 and in Annex 8 to the report, being granted to the applicant, Vital Energi, for the street works relating to installation of a district heating pipe as described in the application made and details thereof attached in Annexes 1-6 to the report PN6 subject to Condition ii being amended to read as follows:

Condition ii

All works shall comply with the Code of Practice for NRSWA, namely Chapter 8 Signing and Guarding. And full and proper reinstatements undertaken or repair to public highways arising from the works.

36/16 THE CONTINUATION OF THE DEVELOPMENT PERMITTED BY SUT/APF/616/7 (THE MODIFICATION AND INSTALLATION OF NEW RAIL SIDINGS) WITHOUT COMPLYING WITH CONDITION 7 (TO ALLOW TRAINS TO BE UNLOADED UP TO 2200 HOURS MONDAY THROUGH FRIDAY) AT THE PORTWAY, APPLEFORD SIDINGS, APPLEFORD, OXFORDSHIRE, OX14 4PJ - APPLICATION NO. MW.0025/16

(Agenda No. 7)

Application withdrawn on request of the applicant.

The Committee supported a suggestion by Councillor Johnston that the applicants might wish to consider submitting an ecological assessment to address the issue of potential impact on ground nesting birds. He felt that was unlikely to be an issue with regard to this application.

Officers undertook to contact the applicants.

37/16 LORRY ROUTEING PROTOCOL

(Agenda No. 8)

The Committee considered a lorry routeing protocol drafted by officers in response to a motion by Councillor Stewart Lilly which had been unanimously approved by Council on 5 April 2016.

Mr Periam presented the report.

Councillor Lilly felt the protocol was a good start and hoped the Committee would support it. However, he was keen for the issue of penal charges to be pursued further.

Councillor Mills felt the protocol would go some way to clarifying the situation but considered that the County Council should be able to prosecute operators for damages caused to the highway. He also sought clarification of the statement "freely entered..." in paragraph 1 of Annex 1; references to global positioning system tracking devices in point 2 and use of index linking to cover costs.

Mrs Crouch agreed that prosecuting operators could be an option but the County Council would need to demonstrate financial damage. That she felt would be difficult to prove. Use of an index link could be achieved in order to preserve value.

Mr Periam confirmed that the phrase "freely entered..." had been used where an application was likely to be refused due to a highway objection unless the applicant was willing to enter into an agreement. It was felt provision of GPS tracking devices was reasonable.

Councillor Phillips pointed out that points 1, 2 and 3 were a clear cost to the developer and that points 5 and 6 had factored in the recovery of costs incurred by the MPA. However, point 4 did not have a specific stipulation to that effect and she moved the recommendation but with the addition of the following italicized text to Point 4 which would then read as follows "To provide an index linked sum to cover the cost *to the County Council* of traffic surveys to be undertaken on behalf of the MPA". The motion was seconded by Councillor Johnston.

Councillor Mrs Fulljames expressed some misgivings regarding the propriety of some companies and also the attitude of some sub-contractors but agreed it was a good first step.

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RESOLVED: (unanimously) that the Lorry Routeing Protocol set out in Annex 1 to the report PN8 be adopted subject to point 4 in the protocol being amended to read as follows:

“To provide an index linked sum to cover the cost to the County Council of traffic surveys to be undertaken on behalf of the MPA.”

..... in the Chair

Date of signing