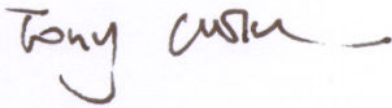


To: Members of the Planning & Regulation Committee

***Notice of a Meeting of the Planning & Regulation
Committee***

Thursday, 12 November 2009 at 10.30 am

County Hall



Tony Cloke
Assistant Head of Legal & Democratic Services

November 2009

Contact Officer: **Graham Warrington**
Tel: (01865) 815321; E-Mail:
graham.warrington@oxfordshire.gov.uk

Membership

Chairman – Councillor Steve Hayward
Deputy Chairman - Councillor Mrs Catherine Fulljames

Councillors

Alan Armitage
Anda Fitzgerald-O'Connor
Tim Hallchurch MBE
Jenny Hannaby
Ray Jelf

Peter Jones
Lorraine Lindsay-Gale
David Nimmo-Smith
Neil Owen
G.A. Reynolds

John Sanders
Don Seale
John Tanner

Notes:

- **Date of next meeting: 23 November 2009**

Declarations of Interest

This note briefly summarises the position on interests which you must declare at the meeting. Please refer to the Members' Code of Conduct in Section DD of the Constitution for a fuller description.

The duty to declare ...

You must always declare any "personal interest" in a matter under consideration, ie where the matter affects (either positively or negatively):

- (i) any of the financial and other interests which you are required to notify for inclusion in the statutory Register of Members' Interests; or
- (ii) your own well-being or financial position or that of any member of your family or any person with whom you have a close association more than it would affect other people in the County.

Whose interests are included ...

"Member of your family" in (ii) above includes spouses and partners and other relatives' spouses and partners, and extends to the employment and investment interests of relatives and friends and their involvement in other bodies of various descriptions. For a full list of what "relative" covers, please see the Code of Conduct.

When and what to declare ...

The best time to make any declaration is under the agenda item "Declarations of Interest". Under the Code you must declare not later than at the start of the item concerned or (if different) as soon as the interest "becomes apparent".

In making a declaration you must state the nature of the interest.

Taking part if you have an interest ...

Having made a declaration you may still take part in the debate and vote on the matter unless your personal interest is also a "prejudicial" interest.

"Prejudicial" interests ...

A prejudicial interest is one which a member of the public knowing the relevant facts would think so significant as to be likely to affect your judgment of the public interest.

What to do if your interest is prejudicial ...

If you have a prejudicial interest in any matter under consideration, you may remain in the room but only for the purpose of making representations, answering questions or giving evidence relating to the matter under consideration, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Exceptions ...

There are a few circumstances where you may regard yourself as not having a prejudicial interest or may participate even though you may have one. These, together with other rules about participation in the case of a prejudicial interest, are set out in paragraphs 10 – 12 of the Code.

Seeking Advice ...

It is your responsibility to decide whether any of these provisions apply to you in particular circumstances, but you may wish to seek the advice of the Monitoring Officer before the meeting.

If you have any special requirements (such as a large print version of these papers or special access facilities) please contact the officer named on the front page, but please give as much notice as possible before the meeting.

AGENDA

1. **Apologies for Absence and Temporary Appointments**
2. **Declarations of Interest - see guidance note opposite**
3. **Petitions and Public Address**

EXEMPT INFORMATION

In the event that any Member or officer wishes to discuss the implications for the Council's legal position, particularly in relation to any evidence and costs, the Committee will be invited to resolve to exclude the public for the consideration of that discussion by passing a resolution in relation to that item in the following terms:

“that the public be excluded during the discussion since it is likely that if they were present during that discussion there would be a disclosure of “exempt” information as described in Part 1 of Schedule 12A to the Local Government Act 1972 and specified below the item in the agenda”

NOTE: The attached report does not contain exempt information and is thus available for members of the public.

4. **Mineral Extraction and Associated Development - Stonehenge Farm, Northmoor (Pages 1 - 4)**

Report by the Head of Sustainable Development & County Solicitor (**PN4**)

The information that may be discussed is exempt in that it falls within the following prescribed category:

3 - Information relating to the financial or business affairs of any particular person (including the authority holding that information)

5 - Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

It is considered that in this case the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in that such disclosure would prejudice the Council's legal position.

Planning & Regulation Committee refused planning permission for mineral extraction and associated development at Stonehenge Farm on 24 November 2008. The reasons for refusal as decided by the committee were:

1. It has not been sufficiently demonstrated to the satisfaction of the County Planning Authority that the impact of the proposed development would not increase the risk to

people, property and businesses arising from additional flood risk.

2. That routeing agreements had proved ineffective in the past and in practice and was therefore considered to be contrary to Oxfordshire Structure Plan (OSP) policy T8.

3. The development is contrary to MWLP Policy PE7 and WOLP NE8 and NE9.

The applicants appealed and an Inquiry is due to start on 17 November 2009.

The reasons for refusal relate to two issues, flood risk and traffic impacts on local roads and villages.

Government Circular 03/2009 ("Costs Awards in Appeals and other Planning Proceedings") provides guidelines so that the parties to an appeal can minimise the likelihood of costs being awarded against them. One such guideline is that parties to an appeal should actively review their cases, respond promptly to changing circumstances and provide a clear explanation of a revised stance or position, with nothing coming as a complete surprise throughout the process.

This report outlines the work that has been undertaken since the Committee made its decision, and seeks the Committee's further instructions as to the stance to be taken at the forthcoming Inquiry in the light of developments since the refusal of permission last year.

No recommendation in relation to the flood risk issue can be made at the time of drafting this report, as our consultant's final conclusions on the robustness of the new modelling exercise are not yet available. A recommendation will be made at the meeting.

In relation to traffic impacts the Committee is **RECOMMENDED** that:

No recommendation in relation to the flood risk issue can be made at the time of drafting this report, as our consultant's final conclusions on the robustness of the new modelling exercise are not yet available. A recommendation will be made at the meeting.

In relation to traffic impacts it is RECOMMENDED that subject to the completion of formal legal agreements in terms to be approved by the Director for Environment & Economy and County Solicitor but to include the matters set out below, the Council does not pursue at the inquiry its reasons for refusal relating to non-compliance with routeing agreements:

- (a) Development traffic to use an approved route (through Dix Pit, west along the B4449 and north along the A415);**
- (b) Appellant to provide £32,000 to enable OCC to carry out 3 (random) monitoring surveys per year, and 3 additional monitoring surveys per year in the event of complaints;**
- (c) Provision for meetings after routeing surveys to discuss action to be taken (if required).**

Division(s): Eynsham

PLANNING & REGULATION COMMITTEE - 12 NOVEMBER 2009

MINERAL EXTRACTION AND ASSOCIATED DEVELOPMENT AT STONEHENGE FARM, NORTHMOOR

Report by Head of Sustainable Development and County Solicitor

Introduction

1. Planning & Regulation Committee refused planning permission for mineral extraction and associated development at Stonehenge Farm on 24 November 2008. The reasons for refusal as decided by the committee were:
 - (a) *It has not been sufficiently demonstrated to the satisfaction of the County Planning Authority that the impact of the proposed development would not increase the risk to people, property and businesses arising from additional flood risk.*
 - (b) *That routeing agreements had proved ineffective in the past and in practice and was therefore considered to be contrary to Oxfordshire Structure Plan (OSP) policy T8.*
 - (c) *The development is contrary to MWLP Policy PE7 and WOLP NE8 and NE9.*
2. The applicants appealed and an Inquiry is due to start on 17 November 2009.
3. The reasons for refusal relate to two issues, flood risk and traffic impacts on local roads and villages.
4. This report seeks the Committee's further instructions as to the stance to be taken at the forthcoming Inquiry in the light of developments since the refusal of permission last November.

Flood Risk

5. The application was supported by a Flood Risk Assessment (FRA), on which the body with relevant statutory responsibility (the Environment Agency (EA)) was consulted. The EA was ultimately satisfied with the FRA, and did not object to the development. Its views did not therefore support the refusal.
6. There was however substantial criticism by third parties of the FRA.
7. An independent consultant hydrologist was therefore instructed by OCC, initially to review the FRA, and the criticisms of it by third parties. His review concluded that there were deficiencies in the computer modelling on which the FRA was based ("1D modelling"). He further concluded that given the

complexities of the hydrology of the extraction site, at the confluence of the rivers Thames and Windrush, a different form of computer modelling (“2D modelling”) should have been used to model the wider effects of the development on the floodplain.

8. Meanwhile, the applicant had instructed its consultants to carry out a 2D modelling exercise, to respond to criticisms of the original FRA by third parties.
9. Evidence for the Inquiry had to be submitted to the Planning Inspectorate by 20 October, in order to meet the timetable imposed for the Inquiry. The Council’s evidence therefore included a Statement (Proof of Evidence) by the Council’s consultant hydrologist identifying the areas in which the original 1D model was deficient, and the requirements that should be dealt with in any 2D model if it was to provide a robust basis for flood risk assessment.
10. The 2D modelling is now in its final stages. Our consultant has confirmed that the modelling methodology meets the requirements set out in his Proof of Evidence. He considers that the indications are that the model will show that the development will not increase flood risk at local properties (subject to a slight adjustment of one of the proposed bunds).
11. An update on the progress of the 2d modelling will be provided at the meeting, together with an officer recommendation.

Traffic Impacts

12. The Committee were concerned about the potential impacts of development traffic on local roads and villages. In relation to previous applications for mineral extraction, those impacts had been intended to be avoided by the use of routeing agreements. The Committee heard that the agreements had been breached in the past, and had therefore proved ineffective, hence the reason for refusal.
13. In the Statement of Common Ground for the inquiry (a statutory requirement to narrow the issues between the appellant and the planning authority) the issue was addressed as follows:

If a satisfactory combination of routeing agreement and planning obligation can be agreed between the parties, so as to provide a suitable monitoring and enforcement regime and a mechanism to ensure that the appellant can exert greater control over development-related traffic, it may be that the second reason for refusal can be withdrawn

Note that the statement refers only to the possibility of withdrawal of that reason for refusal.

14. It is standard practice, encouraged by the Planning Inspectorate, for the appellant and local planning authority to put forward draft conditions for the Inspector to consider in the event that he decides to grant permission. This is

done 'without prejudice' to the local planning authority's case that permission should be refused.

15. Negotiations on agreements to address routeing and monitoring, and other matters such as management and aftercare have been proceeding on a similar basis. They will only take effect if permission is granted for the development. They will ensure that provision is made for certain desirable matters in the event of permission being granted, which might otherwise not be able to be imposed by the Inspector. Routeing is one example, in that the Inspector's powers in relation to imposition of routeing are very limited.
16. The routeing/monitoring terms considered satisfactory by OCC's Transport Development Control have been agreed by the appellant, and negotiations on incorporation of those terms into formal agreements are proceeding well. The principal terms are:
 - (a) Development traffic to use an approved route (through Dix Pit, west along the B4449 and north along the A415)
 - (b) Appellant to provide £32,000 to enable OCC to carry out 3 (random) monitoring surveys per year, and 3 additional monitoring surveys per year in the event of complaints
 - (c) Provision for meetings after routeing surveys to discuss action to be taken (if required)
17. In the event of persistent breaches of the routeing agreement, OCC would be able to apply to the court for an injunction against the appellant to enforce the terms of the agreement.
18. Negotiations in relation to routeing and monitoring are likely to result in formal agreements being in place before the start of the Inquiry on 17 November.
19. Routeing agreements have been used in similar situations throughout Oxfordshire, and in general have worked well.
20. Assuming that the formal agreements are in place to provide for monitoring (which was not the case with the previous agreements), officers consider that the Committee's concerns relating to the traffic impacts of the development will have been addressed.

RECOMMENDATIONS

21. **No recommendation in relation to the flood risk issue can be made at the time of drafting this report, as our consultant's final conclusions on the robustness of the new modelling exercise are not yet available. A recommendation will be made at the meeting.**
22. **In relation to traffic impacts it is RECOMMENDED that subject to the completion of formal legal agreements in terms to be approved by the**

Director for Environment & Economy and County Solicitor but to include the matters set out below, the Council does not pursue at the inquiry its reasons for refusal relating to non-compliance with routeing agreements:

- (a) Development traffic to use an approved route (through Dix Pit, west along the B4449 and north along the A415);**
- (b) Appellant to provide £32,000 to enable OCC to carry out 3 (random) monitoring surveys per year, and 3 additional monitoring surveys per year in the event of complaints;**
- (c) Provision for meetings after routeing surveys to discuss action to be taken (if required).**

CHRIS COUSINS
Head of Sustainable Development
Environment & Economy

PETER CLARK
County Solicitor

Background Papers: Nil

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Robert Hanson, Consultant Solicitor Tel: 07792 477718

November 2009