

LAND AT BILSTHORPE BUSINESS PARK, EAKRING ROAD, BILSTHORPE (13/01767/CMW)

1.0 Purpose of Report

1.1 This report is supplemental to Agenda Item 4. It sets out how the County Planning Committee addressed the grounds of objection raised by NSDC in respect of application 13/01767/CMW, and it provides an estimate of the costs of maintaining rule 6 status at the local inquiry.

2.0 Background Information

2.1 The principal report concludes that the grounds of objection raised by NSDC in respect of application 13/01767/CMW have been addressed by the County Planning Committee. Members were referred to the report submitted to the County Planning Committee and the minutes of that committee meeting. This supplemental report sets out NSDC's grounds of objection in bold with commentary following underneath.

3.1 Ground One

3.2 ***'The proposal does not form part of the County Council's Waste Strategy and there is insufficient evidence as far as this Authority is concerned that a demonstrable need for the proposal exists. The origins and type of waste material are unknown and therefore there is no certainty on its safety, its impact in terms of noise, odour and debris on the highway during transport. Core Policy 6 of the approved Newark and Sherwood District Council Core Strategy clearly states that it is necessary for uses to respond to local needs for such a development. It is our understanding that waste could come from any region unrestricted. Equally we fail to see robust evidence of an assessment of suitable, alternative sites having being considered to meet any identified demand that exists, if it indeed does.'***

3.3 Waste Core Strategy

3.4 The County Council's Committee report confirms that local waste planning policy is incorporated within the Waste Core Strategy (WCS) and is the key development plan document for testing the acceptability of the proposal. The WCS establishes a presumption in favour of sustainable development, identifying the importance of the waste hierarchy in meeting this objective including the appropriate use of energy recovery to minimise future disposal needs. The underlying aim of the plan is to move waste up the waste hierarchy, identifying that where it is not possible to recycle waste, the next most sustainable option is to recover energy from it so as to divert waste from landfill disposal. The County's report sets out that this approach is also consistent with national policy.

3.5 The County's report states that the use of energy recovery is therefore supported by Policy WCS3 where it is shown that it would divert waste that would otherwise be disposed to landfill and the heat and/or electricity can be used locally or fed into the national grid. Paragraphs 175 to 191 of the County's report considers recycling goals within the WCS and capacity within existing waste facilities in Nottinghamshire and Nottingham. The County's

report concludes that the local and regional assessment of waste arisings and management facilities demonstrates there is a need for the additional waste recovery capacity to deliver more sustainable waste management in compliance with the waste hierarchy by diverting waste from landfill disposal and using it within a recovery facility. The report continues that the development will not result in an overcapacity of recovery facilities in the future which could affect recycling and composting performances and the development would assist with delivering the new waste infrastructure required to achieve the objectives set out within WCS3.

3.6 Origins and type of waste

3.7 The County Council's Committee report confirms that the applicant is currently unable to point to any waste contract to provide certainty over the origin of the waste. The report sets out the characteristics of the waste markets for municipal and commercial and industrial waste. This includes that for municipal waste it is common for local authorities to enter into long term contracts (often 20 – 30 years). For commercial and industrial waste the situation is quite different where shorter contracts (often extending just a few months) are commonplace. It is also common that such contracts can only be secured once a facility is in place. On this basis it is understandable that the applicant cannot readily identify the origins of waste. The report states 'to refuse planning permission on this ground would in effect prohibit any merchant facility being developed as all developers would be in the same position...and therefore shortfalls in commercial and industrial waste recovery capacities would never get addressed'.

3.8 Paragraph 197 of the County's report states:

'WCS Policy WCS3 aims to provide sufficient waste management capacity to manage a broadly equivalent amount of waste to that produced in Nottinghamshire. WCS Policy WCS12 acknowledges that waste movements do not necessarily stop at local authority boundaries, this policy therefore takes a pragmatic approach towards dealing with 'non-local waste', establishing a criteria based policy by which developments which take waste from a wider catchment area should be assessed'.

3.9 The proposal is therefore not fundamentally unacceptable in the context of this policy as it would provide additional recovery capacity thus diverting waste from disposal at landfill making a significant contribution to the movement of waste up the hierarchy. The report also considers the DEFRA publication Energy from Waste: A Guide to the debate which considers proximity and requires mixed municipal waste "...to be recovered in one of the nearest appropriate installations" with "one of the nearest" meaning it doesn't have to be the absolute closest facility to the exclusion of all other considerations including cost.

3.10 The report concludes that the WCS identifies that there are shortfalls in commercial and industrial waste recovery capacity within Nottinghamshire which the proposal would assist in addressing and the additional recovery capacity provided by the proposal would satisfy the legislative test of being 'one of the nearest' facilities for Nottinghamshire's and surrounding authorities commercial and industrial waste.

4.0 Ground Two

- 4.1 ***'The proposal would significantly unduly impact on the highway network as a result of the significant increase in volume and type of traffic associated with the proposal. There will be significant implications for the local highway network, specifically for the A614, Ollerton roundabout and A617 which are already the most trafficked routes not only within Newark and Sherwood but indeed across the County.'***
- 4.2 The application is supported by a Traffic Assessment (TA) which incorporates a quantified assessment of the traffic generated by the development, reviews the existing road network capacity, safety and general site accessibility and the networks suitability to accommodate the projected traffic levels. The TA considers both construction and operation traffic.
- 4.3 In considering the application, the County Council have consulted their Highways Officers and no objections have been raised. The Highways Officers have confirmed that the TA provides satisfactory information to address the highway related aspects of the development.
- 4.4 The County's report to Committee refers to previously agreed lorry numbers to the Bilsthorpe Business Park as a material consideration to future traffic conditions and that a legal agreement attached to previous permissions on the site effectively permits up to 10,000sq m of B2 and B8 industrial/warehousing development without a need to improve the A614/Deerdale Lane junction. The report notes that the proposed development would result in an overall lower level of traffic generation (both in terms of HGV movements and total traffic movements) when compared to that level of development identified in the legal agreement attached to existing permissions at Bilsthorpe Business Park which suggests that the proposed development could be operated without improvements to this junction.
- 4.5 The applicant has agreed to enter into a S106 agreement to ensure supplementary control (in addition to the existing Bilsthorpe traffic regulation order which would prohibit delivery HGV's associated with the development from travelling through Bilsthorpe village centre) of vehicles travelling through Eakring and the recommendation in the County's Committee report was that any legal agreement ensures that vehicles enter the site from Deerdale Lane and the A614.
- 4.6 Maximum construction HGV is not anticipated to exceed operational levels. In any case, the County proposed to attach a condition to any consent requiring a Construction Traffic Management Plan to ensure that the best available techniques necessary to minimise/mitigate adverse effects to the local community.
- 4.7 The operation of the proposed facility is not predicted to generate an increase in total traffic demand on the A614 of in excess of 1% of baseline flows. Slightly higher levels of percentage change are predicted for the local road network at Eakring Road and Deerdale Lane due to the low levels of vehicles on these routes, however the County's Committee report considers these to be slight with no significant adverse impacts anticipated.
- 4.8 The County Council's recommendation includes planning conditions limiting weekly deliveries to 616 movements (in and out) based on a 5.5 day working week, limiting hours

for import/export of materials to Monday to Friday (07:00hrs to 19:00hrs) and Saturday (07:00hrs to 13:00hrs), and a requirement for a travel plan aimed at promoting more sustainable patterns of transport.

- 4.9 The County's report concludes that the roads serving the development are of an appropriate standard and their use would not result in any significant adverse road safety or traffic amenity impacts

5.0 Ground Three

- 5.1 ***'The true extent of the impact on the amenity of nearby dwellings and settlements taking into consideration air quality, dust noise and vibration is unknown. This is not only with respect to the operational activities on site, with several agencies (the Environment Agency and HSE all appearing to have a role, making it difficult to understand the position as a whole) but also with respect to the movement of material from and to the site and the impact this would have.'***

5.2 Air quality

- 5.6 The County Council have considered the impact on air quality, pollution and health issues having regard to the policies in the Development plan and being mindful that the facility would also be independently subject to Pollution Prevention and Control legislation (PPC) which is administered by the appropriate regulatory Authority, in this instance the Environment Agency. The County's report makes clear that Waste Planning Authorities should work on the assumption that the relevant pollution control regime will be properly applied and enforced and avoid carrying out their own detailed assessment of epidemiological and other health studies.

- 5.7 The facility would be governed by the Waste Incineration Directive (WID) which requires adherence to specific emission limits for a range of pollutants, and assessment criteria are set out in national Air Quality Standards which set out the objectives to be achieved. To ensure compliance with the WID the operator would be required to apply for and obtain an Environmental Permit from the Environment Agency prior to commissioning the plant. The purpose of the permit is to ensure that the plant is designed and can operate without damage to the environment or harm to human health resulting from pollution and the County's report sets out the precautionary approach adopted by the EA in reaching their decision whether to issue an Environmental Permit.

- 5.8 The County's report points to the National Policy Statement for Energy EN-1 that states that generally, those aspects of energy infrastructure which are most likely to have a significantly detrimental impact on health are subject to separate regulation (for example for air pollution) which will constitute effective mitigation, so that it is unlikely that health concerns will either constitute a reason to refuse permission or require specific mitigation.

- 5.9 In order for concerns raised in relation to health and air quality to carry significant weight within the planning decision, there would need to be reliable evidence to suggest that perceptions of risk are objectively justified.

- 5.10 The Environmental Statement submitted by the applicant includes modelling that indicates the proposed stack would provide appropriate levels of dispersion to the atmosphere and that the operation of the proposed development is not predicted to have a significant impact on local air quality and health. The assessment of the operational phase process emissions has demonstrated that providing measures required by legislation are adhered to (i.e. compliance with the Environmental Permit) the significance of any impacts is considered to be 'negligible'.
- 5.11 It should also be noted that Newark and Sherwood's Environmental Health Officer reviewed the air quality effects and effects on human exposure and these comments were previously reported to Planning Committee. The Environmental Health Officer raised no objections to the development. No objections have been received from the Environment Agency, Public Health England and Public Health Nottinghamshire County on air quality or health grounds.
- 5.12 Noise and vibration
- 5.13 The County Council has considered the proposal against the Waste Local Plan Policy W3.9 which seeks to control noise emissions arising from waste management facilities. The application was supported by a noise assessment report which incorporates surveys of the existing noise environment, an assessment of the noise generated during the construction and operation of the proposed facility including a calculation of the magnitude of change in noise at specific locations surrounding the development. When noise mitigation measures are incorporated the impact is predicted to be a negligible to minor adverse effect at the closest receptor and the construction phase is not expected to give rise to unacceptable noise levels at sensitive receptors. The assessment of vibration from construction operations demonstrates that levels are unlikely to give rise to adverse comment from a nuisance aspect. Construction noise would be limited through the use of good management practices.
- 5.14 Noise from operational activities have also been assessed. The daytime/evening assessment predicts a slight adverse impact, the night time assessment (which does not include the MRF operations) also predicts the impact will be slight adverse. However the highest impact at existing receptors is considered to be acceptable and within NCC usual noise limits.
- 5.15 HGV vibration levels are expected to be below or similar to the threshold of perceptibility and in terms of vibration from operational activities the vibration survey submitted anticipates that the impacts would be negligible adverse and would not be perceptible from the nearest receptors.
- 5.16 The County's report proposes a range of planning conditions to ensure noise levels are controlled in the future to within acceptable limits.

6.0 Ground Four

- 6.1 ***'Serious concerns remain in respect of the impact on ecology having regard to the comments of Nottinghamshire Wildlife Trust. These are a significant material consideration to which great weight should be attached.'***

6.2 The County Council's Committee report acknowledges the detailed objections raised by Nottinghamshire Wildlife Trust concerning both direct and indirect effects from the development and questioning the adequacy of the compensator habitat proposed. The advice of the County Council's ecologist regarding the matters raised has resulted in the developer providing further survey work, altering planting proposals and making enhancements to the wader mitigation plan. The County's report states that whilst the Wildlife Trust and community maintain their ecological concerns, the professional advice from the County's ecologist is that the ecological effect of the development has been appropriately investigated, mitigated and compensated and significant ecological impacts would not result from the proposed facility. The wader mitigation plan would be secured through a Section 106 Agreement and the County considers this would provide satisfactory compensatory habitat for affected species and would be provided in addition to anything that has previously been secured through the planning process in terms of mitigation for waders relating to other consented developments within the wider colliery site.

7.0 Ground Five

7.1 ***'Concerns as to the impact on heritage assets having particular regard to the statutory tests and policy guidance to assess any identified harm. Indeed your own conservation officer clearly identifies harm which must be given considerable weight in any planning balance.'***

7.2 The County Council has considered the proposal against the Waste Local Plan Policy W3.28 which seeks to protect the character, appearance, condition and setting of conservation areas, listed buildings and historic parks and gardens.

7.3 The Environmental Statement submitted with the application incorporates a cultural heritage chapter which identifies heritage assets in the surrounding area and the need to have special regard to the setting of these heritage assets. The original assessments have also been supplemented by further information to substantiate conclusions reached in terms of impacts to the setting of the Grade 1 listed Church of St Margaret at Bilsthorpe and assessment of impacts to viewpoints within the Rufford Abbey Historic Park. The County Council is satisfied that the level of information submitted has allowed them to make a full assessment of the impact on heritage assets including Eakring Conservation Area and Eakring Church which were specifically recognised in the comments made by Newark and Sherwood's Conservation Officer.

7.4 The assessment identifies that the impact upon the setting of heritage assets would be less than substantial. The County Council's report refers to the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires the planning authority to have special regard to any heritage impacts as well as Paragraph 134 of the NPPF which provides scope to balance impacts to the historic environment which are less than substantial against any benefits provided by the development.

7.5 Following the original report to Newark and Sherwood's Planning Committee on the County's planning consultation, the County's Heritage Officer provided further comments which were reported in the County Council's Committee report. The County's Heritage

Officer considers additional information provided demonstrated the impact of the proposals on the setting of St Margaret's Church would be less than substantial. The County's Heritage Officer also identified that there is potential to off-set the minor adverse impacts that have been identified to some vistas across the 18th century historic parkland setting of Rufford Abbey by undertaking an interpretation scheme of this heritage asset such as erecting interpretation boards or web based information documents to draw attention, raise awareness and improve intellectual access to the heritage assets of the area. The applicant has agreed to meet the costs of such a scheme to be secured through a Section 106 Agreement.

- 7.6 The report concludes that the benefits derived by the development notably in terms of providing additional waste recovery capacity and low carbon energy outweighs the less than substantial harm to the heritage assets that has been identified.

8.0 Ground Six

- 8.1 ***'Concerns were also raised as to the potential experimental nature/limited operation of a similar facility elsewhere, that job creation and the real extent of this was uncertain (especially when only permeant job creation is considered), the end destination for ash created and whether this would create additional journeys, and that the proposal was not an efficient technology.'***

8.2 Efficiency

- 8.3 The proposal would manage a maximum 117,310 tonnes per annum of waste and the gasifier and associated power generating facilities would have an electricity generating capacity of approximately 13.6 Megawatts (MW) of which circa 4.0MWe would be used within the energy centre itself and around 9.6MWe would be available to export to the electricity grid.

8.4 Potential experimental nature/limited operation of a similar facility elsewhere

- 8.5 The applicant has confirmed that currently no other waste processing plants are operational which utilise the same configuration of plant and technology as the proposal in the UK and Europe. However, the plasma gasification technology proposed is being used successfully and reliably in a number of plants around the world and individually most parts of the plant are used extensively albeit in differing configurations. The County's report confirms that the main part of the process that is not commercially operational is the part that cleans the process gases prior to them entering the gas engines but states that just because this part of the plant has not been commercially proven does not mean it is experimental, potentially dangerous or proven to be unreliable. If the proposal was dismissed on this basis, the County argues that this would stifle innovation and would therefore be contrary to the approach in the National Planning Policy for Waste (NPPW). The technology is also being utilised in a major energy generation scheme in Teeside which was due to go into commissioning during 2014 with a second plant also using this technology due to go into commissioning in 2016. The first of these plants has obtained an Environmental Permit and is part of an overall capital investment of circa £800m. The County's report argues that it is highly unlikely such capital investment would be made or the Environment Agency would

award a permit for a technology that is unreliable or is likely to raise concerns regarding safety.

8.6 Job Creation

8.7 The Environmental Statement submitted with the application anticipates that the construction phase has the potential to deliver 180 on-site temporary employment jobs per annum (over 2 years). Taking account of supply chain jobs this total could be in the region of 330 FTE jobs and it is estimated that 45 – 60 FTE jobs could be secured during the construction period by local contractors and workers. There may also be further benefits for some local business as a result of any temporary visiting workforce.

8.8 Once operational the proposed facility is anticipated to support some 46 permanent FTE jobs and the applicant has identified potential to make available a number of local apprenticeships to young workers. Once indirect and induced employment impacts are also considered, it is estimated that the proposal could support 57 permanent FTE jobs in the impact area and has the potential to lead to an annual input of £4.3m to the local economy.

8.9 The County's report concludes that the proposed facility would have an overall moderately beneficial effect on the local economy.

9.0 The costs

9.1 The principal report makes reference to the fact that maintaining rule 6 party status at the local inquiry would be significant. In order to quantify the costs for the benefit of members the following is an estimate of the costs involved assuming that the inquiry lasts for 4 weeks:

- Given the complexity of the issues and the time involved the Council would likely need to instruct both a leading (£60,000) and junior barrister (£48,000) at a total cost of £108,000 for the duration of the inquiry. This cost will largely remain the same even if members decide not to maintain all grounds of objection.
- A Waste Planner would cost approximately £5,000 per week of the inquiry.
- A Planner would cost approximately £3,000 to £4,000 per week of the inquiry.
- A Highways Engineer (assuming the Council can find one who thinks there is a professionally defensible case) would cost £5,000 to £6,000 per week of the inquiry.
- An Ecologist (assuming the Council can find one who thinks there is a professionally defensible case) would cost £2,000 to £3,000 per week of the inquiry.
- An Environmental Health expert witness (assuming the Council can find one who thinks there is a professionally defensible case) would cost £2,000 to £6,000 per week of the inquiry.

- 9.2 The total direct cost to NSDC if it perused all grounds of objection would be in excess of £150,000. In addition costs can be awarded against a rule 6 party if it is found to have acted unreasonably and caused the other parties to incur unnecessary costs. There is therefore a risk that NSDC may be ordered to pay the costs of Nottinghamshire County Council and the Applicant in addition to its own directly incurred costs.
- 9.3 Members should note that the figures for instructing a leading and junior barrister are based on a quotation obtained in January 2015. The figures for the various expert witnesses are taken from the costs incurred by Salford City Council in defending a public inquiry regarding the development of a similar type of 'gasification plant' in Salford on 21 August 2012. The figures are estimates only and are subject to change.

BACKGROUND PAPERS

Application case file.

All submission documents relating to this planning application can be found on the following

Websites:

- www.newark-sherwooddc.gov.uk.
- <http://www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=ES/2950>

For further information please contact Daniel Marston (report author) on Ext 5612.

Kirsty Cole

Deputy Chief Executive