

MINUTES of a meeting of the **REGULATORY – PLANNING COMMITTEE** held at County Hall, Matlock on 17 March 2017.

PRESENT

Councillor T Southerd (in the Chair)

Councillors D Charles, M Ford, Julie Hill, J Innes (substitute member), R A Parkinson, S Freeborn (substitute member), J Twigg and B Wright

Apologies for absence were received from Councillors J Dixon, R L Hosker and J G Williams.

No Declarations of Interest were received

No Significant Lobbying had been received

19/17 PROPOSED SURFACE COAL MINING SCHEME WITH RESTORATION TO AGRICULTURE AND NATURE CONSERVATION BENEFITS AT HILLTOP FARM, DERBY ROAD, CLAY CROSS APPLICANT: PROTECTUS REMEDIATION LIMITED (CM4/1215/125) The application was for the extraction of coal using surface mining methods on land at Hilltop Farm, Clay Cross. The proposal was to extract 175,000 tonnes of coal from the site following which the site would be restored for agricultural use and nature conservation. The entire scheme would take approximately 3½ years. Access to the site would be from the A61 Derby Road. HGV movements associated with the development would be a maximum of 40 (20 in/20 out) per day during periods of coaling. Two public rights of way that crossed the site would temporarily be affected. The development would involve the removal of some of the sites existing hedgerows and trees. The application was accompanied by an Environmental Statement.

Details about the application, together with comments received from consultees were given in the report of the Strategic Director for Economy, Transport and Communities. The Head of Planning gave a summary of the report at the meeting and highlighted various issues relating to the application. Objections had been received from North East Derbyshire District Council, Clay Cross Parish Council and Tupton Parish Council. Letters of objection had also been received following publicity, including several submissions from a local campaign group 'Hilltop Action Group'. The objections were summarised in the report.

The report referred to Section 38(6) of the Planning and Compulsory Purchase Act 2004 and the material considerations to be taken into account, including development plan policies, National Planning Policy Framework and National Planning Practice Guidance. The main issues identified were the impact of the development on the environment, in particular, the landscape and visual impact on the character and appearance of the area, the impacts of noise and disturbance, air quality, traffic and highway safety, ecological, hydrology and flood risk, heritage, cumulative impacts and impacts on local communities; the social and economic impacts of the development; and whether the proposed development would be acceptable in economic, social and environmental terms or could be made so by planning conditions/obligations. The report examined these issues. It was necessary to consider if any of those impacts, in isolation or cumulatively, were unacceptably harmful so as to outweigh national, local or community benefits of the proposal.

The Strategic Director was of the opinion that the extraction of coal from the site would result in significant adverse environmental impacts. He considered that the proposal would have unacceptable adverse landscape impacts of substantial significance, affecting the character and appearance of the site and its immediate area throughout the operational life of the development. The Head of Planning pointed out that whilst adverse landscape effects were generally inevitable during opencasting, in this case there was a close proximity of the site to residential areas, and the development would also be visually intrusive. Over a longer period, following restoration, these impacts would reduce as the site recovered and the new landscape and habitat developed, however, the scheme would only be reinstating what was lost and there were no apparent overall benefits. There were many residential properties situated very close to the site and it was inevitable that the occupiers would experience some disturbance from the site operations. The applicant's noise assessment found the proposal to be at the threshold of acceptability in terms of noise impact, but the Strategic Director was of the view that the impact of noise would be harmful to an unacceptable extent. Considering the separation distance involved to some residential properties, dust was also likely to be an issue at certain times. Whilst some concerns had been raised over impacts on the water environment and ecology, the Strategic Director had not found, taking into consideration the information under the Environmental Statement and the various comments from consultees, that the development was unacceptable on such a basis.

The report also covered points of potential adverse cumulative impacts associated with the proposal. Clay Cross and its surrounding area had a long history of mining and heavy industry, the remediation and redevelopment of large areas of land associated with previous mining and industry was still ongoing in the area, the proposal would be successive and, in some cases,

concurrent with other development. The report referred to cumulative impact on the landscape of the area as being likely through simultaneous development of an adjacent development site (the former Biwaters site), as well as other simultaneous amenity impacts such as dust and noise. The combined effect of the individual impacts generated from the development, particularly landscape and visual impact, noise and dust were also considered to be more significant in combination so that there would be a significant adverse combined effect.

The Strategic Director had recognised that whilst the proposal would provide some economic and social benefits (through the creation of direct employment, supply chain and indirect expenditure) due to the overall potential impact it might have on other economic activity in the area and on the regeneration aspirations for Clay Cross, there was a case that the proposal would have a negative economic impact.

The Head of Planning emphasised the officer evaluation of the proposal had been sensitive to what impacts the opencasting of this particular site would have on the particular circumstances of Clay Cross, according to its expected timing.

The Strategic Director had concluded that the proposal would have unacceptable environmental, social and economic impacts; the test, as set out in the National Planning Policy Framework and the Derby and Derbyshire Minerals Local Plan, rested with whether the benefits of the proposal were significant enough to outweigh those impacts. The benefits which would stem directly from the proposal had been considered to be very minor. A proposed community fund for off-site benefits would not provide benefits directly related to the proposal and was not to be regarded as a material consideration. The main benefit of the proposal would be the supply of coal. Whilst there was a national, although diminishing, demand for coal to meet energy needs, the contribution that the coal from this site would make was very small. He did not consider that the benefit from the supply of coal would outweigh the likely significant and adverse impacts of the development so as to justify the grant of planning permission

The Head of Planning also referred to regulatory requests concerning the environmental statement and the information which had consequently been received, as had been mentioned in the report. They had required the applicant to provide information about flood risk and water management which had been considered on behalf of the Council to be required as additional information to the environmental statement, pursuant to regulation 22 of the Environmental Impact Regulations. It was explained by the Legal Services officer present that although the report stated (at page 26 under comments concerning the Council's role as Lead Local Flood Authority) that no

information had formally been received by the Minerals Planning Authority for the most recent request, it had been concluded on behalf of the Council in February that information had nevertheless been received in response to the most recent request. Consequently, to accord with the Regulations, a period for any representations regarding the latest further information had then been specified and advertised, which had ended on 16 March. The Head of Planning then indicated that although some further letters relating to the application had been received recently, no representations had been received regarding this further information.

The Head of Planning also mentioned that since the Planning Inspectorate had indicated that the application was subject to an appeal, this might proceed either on written representations, with a hearing, or with a full public inquiry. He pointed out that if the Committee supported the officer recommendation, it could also express a view about the appropriate appeal process. He regarded the full public inquiry as the appropriate process for such an appeal.

Those members of the public who had made representations on the application and had asked to address the Committee were invited by the Chair to do so.

Councillor Derek Skinner of Clay Cross Parish Council referred to the area being surrounded by housing, to several concerns relating to the proximity of housing, and the development depriving a local community of a pleasant place for recreational walking which was valued by bird watchers. He referred to employment and other benefits as being relatively minimal.

Pat Walton referred to the height of the area and it being visible from many homes, the visual effects of proposed bunds, the haul road as a source of dust, the processing area as a source of light pollution, the extent of proposed working times. She felt that the development would have unacceptable effects on residents of all ages, and negative health implications.

George Stevenson introduced himself as Vice Chair of the Clay Cross Parish Council and a founder of the Hilltop Action Group. He referred to the site as naturally draining to the south and to his belief that there would be a high risk of risk of lagoons failing to hold contaminated water was potential for the proposed working to cause pollution to water. He also referred to disturbance to wildlife at the site and its enjoyment being disrupted for many years.

John Cocking referred to concern about dust and particulate impacts from additional traffic on the A61 and from site working and potential working

of a nearby major regeneration site, especially with reference to vulnerable groups, and referred to schools and three residential care homes being in the locality.

Fran Muldoon referred to having come from Clay Cross and lived at Old Tupton for the past 42 years. He referred to the proposal being detrimental to the lives of 5,000 people, particularly in terms of enjoyment of views and wildlife through use of footpaths. He referred to proposed bunds as diminishing views, and users of the A61 road seeing open-casting instead of fields and trees.

Rick Vernal referred to having analysed the proposal as a member of Hilltop Action Group, and to Group concerns about the inaccuracy of the flood risk assessment.

Jo Clarke referred to living adjacent to the site, on Woodland Way, which he referred to as a pocket of six houses occupied by retired people, with an average age of about 75 years. He referred to concern about the impacts of noise and dust from the proposal, particularly potential for bronchial health problems to be worsened. He referred to a wider age range living beyond this pocket but regarded its situation as not atypical.

Several Members of the Committee spoke and each indicated full support for the officer's recommendation in the report and expressed the view that the full public inquiry process was appropriate for an appeal relating to the application.

RESOLVED (1) to authorise the Strategic Director – Economy, Transport and Communities to arrange for appeal representations to be made on behalf of the Council against a grant of permission for the development proposed under the application on behalf of Provectus Remediation Limited submitted on 25 January 2016 on the basis of the following reasons –

i) The proposed development is considered to be unacceptable due to the impact noise generated from the development would have on amenity in the locality of the development. The proposed development would have a significant and adverse noise impact on the amenity of the occupiers of residential properties in the locality. It is therefore considered to be contrary to the requirements of policies MP1, MP3 and MP27 of the Derby and Derbyshire Minerals Local Plan and paragraphs 109,120, 123 and 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.

ii) The proposed development is considered to be unacceptable due to the impacts it would have on the local landscape character. The proposed

development would have an adverse impact on it of substantial significance for the timescale of the operational site and for the subsequent timescale from the restoration of the site until a restored landscape matures; thereby affecting the character and appearance of the site and its immediate area. It is therefore considered to be contrary to the requirements of policies MP1, MP3, MP4 and MP27 of the Derby and Derbyshire Minerals Local Plan, policies GS1, GS6, NE1, NE7 and NE8 of the North East Derbyshire Local Plan and paragraphs 109 and 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.

iii) The proposed development is considered to be unacceptable due to the impact it would have on visual amenity in the locality of the development. The proposed development would have a significant and substantial adverse effect on the visual amenity of the locality for the timescale of the operational site. It is therefore considered to be contrary to the requirements of policies MP1, MP3 and MP27 of the DDMLP and Paragraph 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.

iv) The proposed development is considered to be unacceptable due to the cumulative impact the local community would experience from its impacts on visual amenity and local landscape character, and its noise and dust emissions. It is therefore considered to be contrary to the requirements of Policy MP4 of the North East Derbyshire Local Plan and paragraphs 144 and 149 of the National Planning Policy Framework, failing to represent sustainable development in principle.

v) The proposed development is considered to be unacceptable due to the negative impact it could have on the progress of economic regeneration for Clay Cross. It is therefore considered to be contrary to Paragraph 19 of the National Planning Policy Framework, failing to represent sustainable development in principle; and

(2) that it is the view of the Committee that the full public inquiry process is appropriate for an appeal relating to the application.

20/17 THE CONSTRUCTION AND OPERATION OF AN ENERGY RECOVERY FACILITY (ERF) AND ANCILLARY FACILITIES, COMPRISING OFFICES AND WELFARE FACILITIES, ELECTRICAL COMPOUND, TOGETHER WITH PERIPHERAL LANDSCAPING, DRAINAGE AND SECURITY FENCE AT BRIDGE STREET, CLAY CROSS
APPLICANT: CLAY CROSS BIOMASS LTD (CODE NO: CW4/1114/98)
(Minute No 31/16) On 11 April 2016, Members had granted planning permission for the construction and operation of this Energy Recovery Facility (ERF) development, subject to conditions, and subject to the applicant first

entering into a legal agreement relating to a number of matters relating to Employment opportunities, Sustainable Community Energy fund, Rights of Way contribution, Surplus Heat provision, Public Art provision and a Liaison Committee.

Since the resolution had been passed negotiations had been taking place between the County Council, the applicant and the landowner (NEDDC) to agree the terms of the Section 106 agreement. The Strategic Director explained that it was usual for the landowner to be a party to a Section 106 agreement to ensure that the obligations contained in that deed continued to bind the land even if it was sold. However, in this instance NEDDC had not agreed the terms of the document.

The Committee was advised that planning permission could not be issued until the legal agreement was finalised and agreed to by all relevant parties. Given the ongoing delay the applicant had requested an alternative approach so that the planning permission could be issued sooner. The applicant had requested that the County Council, as Waste Planning Authority (WPA), consider the use of a 'Grampian' style condition to secure the provision of the Section 106 legal agreement, rather than continuing to require the agreement to be completed before permission was granted.

It was considered that in this case there was an exceptional circumstance as the development was complex and strategically important (in terms of the district heating opportunity to the adjoining housing site) and the delivery of the development was understood to be at risk should the window of opportunity be lost in achieving this round of "Contract of Difference" which was due to come to an end on 21 April 2017.

RESOLVED to authorise the grant of planning permission for the development proposed in the application reference CW4/1114/98 which was previously considered at Committee on 11 April 2016, subject to conditions substantially in accordance with the conditions contained in the draft Decision Notice which was attached to the report of the Strategic Director for Economy, Transport and Communities (Appendix B) and an additional condition in the following form:

No development shall commence until the parties with an interest in the land have entered into a planning obligation under Section 106 of the Town and Country Planning Act 1990 in substantially the same form as and including the obligations set out in the draft agreement attached to this Decision Notice reference CW4/1114/98.

.21/17 **CURRENT ENFORCEMENT ACTION RESOLVED**
to receive the report on current Enforcement Action.

22/17 **OUTSTANDING APPLICATIONS** No matters to report since the last meeting.

23/17 **CURRENT APPEALS/CALLED-IN APPLICATIONS**
RESOLVED to note the report on current appeals/called-in applications relating to County matters.

24/17 **DEVELOPMENT MANAGEMENT MONTHLY**
PERFORMANCE MANAGEMENT STATISTICS No matters to report since the last meeting.

25/17 **MATTERS DETERMINED BY THE STRATEGIC**
DIRECTOR FOR ECONOMY, TRANSPORT AND COMMUNITIES UNDER
DELEGATED POWERS No matters to report since the last meeting.

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