

Agenda Item No.2

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

29 January 2018

Report of the Strategic Director – Economy, Transport and Environment

POWER TO NOT DETERMINE SECOND APPLICATION FOR PLANNING PERMISSION TO CONSTRUCT A WELL SITE AND CREATE A NEW ACCESS TRACK, MOBILISE DRILLING, ANCILLARY EQUIPMENT AND CONTRACTOR WELFARE FACILITIES TO DRILL A VERTICAL HYDROCARBON EXPLORATORY CORE WELL AND MOBILISE OF WORKOVER RIG, LISTENING WELL OPERATIONS, AND RETENTION OF THE SITE AND WELLHEAD ASSEMBLY GEAR FOR A TEMPORARY PERIOD OF 5 YEARS ON LAND ADJACENT TO BRAMLEYMOOR LANE, MARSH LANE
APPLICANT: INEOS UPSTREAM LIMITED
CODE NO: CM4/1217/72

4.2509.3

(1) **Purpose of Report** To enable the Committee to consider, and exercise, the power to decline to determine an application for planning permission, as provided by Section 70B of the Town and Country Planning Act 1990.

(2) **Information and Analysis** On 19 December 2017, the Council received from the agent for INEOS Upstream Limited a second application by the company for planning permission to construct a well site and create a new access track, mobilise drilling, ancillary equipment and contractor welfare facilities to drill a vertical hydrocarbon exploratory core well and mobilise of workover rig, listening well operations, and retention of the site and wellhead assembly gear for a temporary period of 5 years on land adjacent to Bramley Moor Lane, Marsh Lane.

The exploration for hydrocarbon under the development would be aimed at a large geological formation of shale rock deep underground, which is suspected to contain significant petroleum (commonly referred to as 'shale gas').

This current application is for exactly the same proposed development as that described in the first application (CM4/0517/10), covering exactly the same site in the administrative area of North East Derbyshire District Council,

approximately 4 kilometres from Dronfield to the west and 7 km from Chesterfield.

As the Committee is aware, this development proposal has been referred as an appeal for determination by Secretary of State (reference no. APP/U1050/W/17/3190838). The starting date of this appeal is 6 December 2017. Only a few days before (on 1 December) INEOS had provided the Council with certain further detailed information relating to the proposed development. However, in the covering letter from the agents with that information it was also indicated that INEOS were choosing to proceed by way of appeal. They were entitled to do this because their application remained undetermined beyond 17 November (the end of the previously agreed extended period for determination).

A very large volume of representations on the development, including many objections from local residents, was received by the Council in response to public notification of the first application. The Council has sent copies of all of these representations to the Planning Inspectorate. The Council has also written recently, as directed by the Inspectorate, to those who made these representations about the appeal, inviting them send to the Inspectorate any comments they may have for the appeal, by 2 February 2018.

By the time this second application was received, the Planning Inspectorate had decided that the appeal from the first application would proceed to a full public inquiry rather than being considered by written representations, and had drawn up a draft bespoke programme.

It is now understood that this inquiry could take place at the earliest in the later part of June 2018, subject to an Inspector being available for it. As the local planning authority which received the first application, the Council is expected to provide a statement of case for the appeal. This is due to be provided by 26 February 2018. To enable this to proceed, a detailed report is to be produced for the next Committee meeting, on 5 February 2018, which will include a recommendation for authorisation by the Committee of a clear position for the Council to take in respect of the appeal.

Although no new fee is payable by an applicant for the determination of this 'twin track' type of application, these applications are generally subject to the normal rules on time limits for determination.

However, since this second application is for a development which is the subject of an appeal for determination by the Secretary of State, the Council is not obliged to seek to determine it. It is specifically empowered (by Section 70B of the Town and Country Planning Act 1990 as amended) to decline to determine it.

In circumstances such as these, in which the Council and other parties are already engaged in a statutory appeal process which is set to arrive at a decision by or on behalf of the Secretary of State, the processing by the Council of what is not simply a similar twin track application, but in all practical respects an identical application, would not appear to provide any tangible public benefit.

If the Council was to proceed to determination of the second application, it would certainly require considerable extra work and duplication of effort for the Council's professional planning officers. Furthermore, if the Council were to proceed with this application, in order for any local residents and others to remain active in seeking to influence all decision making on this proposal, they would in effect be obliged to make representations not only for the current appeal and forthcoming inquiry but also under the new application process (perhaps concurrently).

There is no assurance that, if Council was to proceed to a determination of the application, the matter would then reach a final conclusion; INEOS could choose to bring an appeal in respect of either a refusal of permission or any conditions relating to a grant of permission which it might find unacceptable.

There is considered to be no compelling reason for the proposal not to be determined simply through the appeal process under the first application which INEOS has chosen to activate.

(3) **Financial Considerations** As referred to under Information and Analysis above, there is no fee for this application. It is not possible to provide any reliable estimates for the total additional cost to the Council that might be expected to result from the Council determining this application, but it could be substantial.

(4) **Legal Considerations** Section 70B of the Town and Country Planning Act 1990 enables the Council to decline to determine an application for planning permission for the development of land if there is a similar application under consideration by the Secretary of State on an appeal under Section 78 of the 1990 Act. See also Information and Analysis, above.

It is considered that the exercise of this power in respect of the application under code CM4/1217/72 would not have any significant impacts on anyone's human rights under the European Convention on Human Rights.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human

resources, environmental, health, property, social value and transport considerations.

(5) **Background Papers** Application documents on file 4.2509.4.

(6) **OFFICER'S RECOMMENDATION** That the Committee resolves to exercise on behalf of the Council the power provided by Section 70B of the Town and Country Planning Act 1990 (as amended) to decline to determine the second application for planning permission under code number CM4/1217/72.

Mike Ashworth
Strategic Director – Economy, Transport and Environment