

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE
DELEGATION SUB-COMMITTEE

4 May 2018

Joint report of the Deputy Director of Legal Services and the Strategic Director
– Economy, Transport and Environment

4.2509.3

**PROGRESSION OF MINERAL PLANNING AUTHORITY CASE IN
APPEAL BY INEOS UPSTREAM LIMITED AGAINST NON
DETERMINATION OF APPLICATION FOR PLANNING PERMISSION
FOR VERTICAL HYDROCARBON EXPLORATORY CORE WELL
AND ASSOCIATED DEVELOPMENT FOR A TEMPORARY PERIOD
OF FIVE YEARS ON LAND ADJACENT TO BRAMLEYMOOR LANE,
NEAR MARSH LANE
APPLICATION CODE NO: CM4/0517/10**

Introductory Summary

This report is required as a result of the current appeal process concerning the proposal by INEOS to drill a vertical core well to a depth of 2400 metres (m) for hydrocarbon exploration on agricultural land at Bramley Moor Lane, Marsh Lane, Derbyshire. The proposal includes the drilling, suspension, decommissioning and subsequent restoration of the well, along with possible use of the structure as listening well. Core samples of shale rock would be recovered and removed from site and tested for the potential to produce shale gas. The proposal does not involve hydraulic fracturing. The whole development would take place over a period of five years, over five stages. The drilling and coring operations (Stage 2) would take place 24 hours a day for 3 months. On completion of the operations the site would be restored back to agricultural use.

This proposal was the subject of an application for planning permission to the Council as mineral planning authority (CM4/0517/10). The applicant made an appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 against non-determination of the application. The outcome of the appeal is to be determined by a Planning Inspector following a public inquiry which will start on 19 June 2018.

The Committee on 5 February 2018 received a detailed report from the Strategic Director Economy Transport and Environment to enable a case to be stated on behalf of the Council for the appeal. After listening to speakers

during the meeting and discussing various relevant considerations, the Committee resolved to authorise presentation of a case on behalf of the Council against permission being granted under appeal, based on (1) harm to the open nature of the Green Belt, (2) impacts from traffic from the development over the relevant highway network, and (3) unacceptability of night-time noise impacts.

However it has become clear that the Council is not in a position to produce evidence under the appeal to demonstrate that impacts from traffic would not be acceptable. This report therefore firmly recommends immediate discontinuance of that part of the Council's case.

(1) **Purpose of Report** To enable the delegation sub-committee, as recommended, to approve discontinuation of the traffic impacts aspect of the case being presented on behalf of the County Council as Mineral Planning Authority for examination under this appeal. A decision on this is needed urgently because the Council is currently required to finalise agreement with the Appellant on the Statement of Common Ground by 8 May, and all written witness statements must be completed and submitted by 22 May.

(2) **Information and Analysis**

Background

The proposal by INEOS to drill a vertical core well to a depth of 2,400 metres for hydrocarbon exploration on agricultural land at Bramblemoor Lane, Marsh Lane, Derbyshire which is currently subject to appeal was the subject of an application to the Council for planning permission which included the drilling, suspension, decommissioning and restoration of the well, including use as a possible listening well. Core samples of the target geological formation (the shale rock layer) would be recovered and removed from site and tested for the potential to produce hydrocarbons (specifically shale gas). The proposal does not involve hydraulic fracturing. The whole development would take place over a temporary period of five years and would be carried out in five stages. The drilling and coring operations (Stage 2) would take place 24 hours a day for 3 months. On completion of the operations the site would be restored back to agricultural use. . Access to the site would be from the B6056 Main Road, and the applicant proposes that highway traffic associated with the development would follow a route between the site entrance and the M1 motorway via Coal Aston.

The Committee on 5 February 2018 received a detailed report from the Strategic Director Economy Transport and Environment on the proposal, to enable a case to be stated on behalf of the Council for the appeal. After listening to speakers during the meeting and discussing various relevant considerations, the Committee resolved to authorise presentation of a case on behalf of the Council on the basis of (1) harm to the open nature of the Green

Belt, (2) impacts from traffic from the development over the relevant highway network, and (3) unacceptability of night-time noise impacts which cannot be acceptably mitigated by condition (see Minute 11/18).

Professional independent consultants were duly commissioned to advance the Council's appeal case with respect to the planning issues relating to green belt and planning policies, noise, and transport, in accordance with the Committee resolution of 5 February 2018. The Council then, with the benefit of the consultants involvement, produced a formal statement of case by 26 February, to meet the appeal programme.

New considerations

As part of the ongoing work, the transport consultant has investigated the characteristics of the proposed route between the site access and the M1 and traffic information available concerning it, and assessed the matter professionally, therefore taking into account mitigation measures that could be imposed by planning conditions or obligations. He has now concluded that he cannot establish a sound evidential basis for maintaining, on behalf of the Council under the appeal process, that the development traffic would have any impacts on the highway network in terms of either highway safety or capacity that would be unacceptable.

A decision on the recommendation set out in this report is therefore required most urgently due to the timescales of the inquiry programme to which all parties involved in the appeal need to work, and so a meeting of the delegation sub-committee is being convened to enable this report to come before it as quickly as is practicable.

The ongoing work remains on course to provide robust professional evidence in respect of the green belt and planning, and night-time noise limbs of the Council's stated case.

Conclusions

This professional transport conclusion on highway safety and capacity issues does not preclude the production of any evidence available to prove any harmful environmental amenity impacts from the temporary additional traffic associated with the development (e.g. additional visual or noise impacts experienced at residential properties situated close to the proposed route). However the Council - in practice in this case – does not appear to have any evidence base from which it might possibly maintain a convincing case that the proposal would be unacceptable in such environmental amenity terms.

If the Council under the appeal was to attempt to continue with any argument based on traffic impact considerations, without sound evidential backing, it would be at odds with the integrity and professionalism of its case in relation

to night-time noise and green belt and general planning considerations, and would not assist the continuing case against the proposal in those respects.

(3) Legal Considerations The Secretary of State, represented by the Inspector appointed by the Planning Inspectorate, is the determining authority for the application under the appeal. However the Council in presenting a case for the appeal remains bound by the accepted legal principles of public administration as they relate to its role as the mineral planning authority. The sub-committee in reviewing the Council's appeal case is required, as ever, to avoid irrelevance irrationality and any manifestly unreasonable decision. The reasons for the firm officer recommendation below are provided by the 'relevant considerations' and 'conclusions' content of the Information and Analysis section above.

(4) Financial Considerations In an appeal each side normally bears its own costs, unless there is loss incurred by others due to its unreasonable behaviour which results in a costs order from the Inspector. Therefore if a party in an appeal continues to maintain an argument which it has become clear does not have a reasonable prospect of succeeding, it will clearly be running a risk of being required to meet whatever costs may have reasonably been incurred by others as a result.

(5) Planning Environmental and Health Considerations As indicated in the report.

(6) 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, property, social value and transport considerations.

(7) Background Papers File 4.2509.3
Application documents dated 8 May 2017, with additional information received 15 August, 18 August, 12 September, 15 September, 2 October, and 1 December 2017 from Turley Associates Limited, on behalf of INEOS Upstream Limited
Highway Authority responses dated 9 August and 14 November 2017.
Planning Inspectorate letter of 23 January 2018 with confirmed programme for appeal Report of Strategic Director to Regulatory Planning Committee meeting on 5 February 2018
Minute 11/18 of Regulatory Planning Committee
Statement of case on behalf of Council for appeal, 26 February.

OFFICER'S RECOMMENDATION That the Committee resolves to **approve:** **(1)** the discontinuation of the traffic impacts aspect of the case on behalf of the County Council as Mineral Planning Authority for examination under this appeal in opposition to the grant of planning permission, and **(2)** the

continuation of the case on behalf of the County Council as Mineral Planning Authority for examination under this appeal on the basis of (1) harm to the open nature of the Green Belt and (2) unacceptability of night-time noise impacts which cannot be acceptably mitigated by condition.

Director of Legal Services

Strategic Director – Economy, Transport and Environment