

## **Planning Committee**

29 September 2015 - At a meeting of the Committee held at 10.30 a.m. at County Hall, Chichester.

Present: Mrs Brunsdon (Chairman), Mr Crow, Mrs Duncton, Mrs Hall, Mr McAra, Mrs Mockridge, Mr S. Oakley, Mr Parsons, Mr Patel, Mr Quinn, Mr J. Rogers, Mr R. Rogers and Mr Wickremaratchi.

Apologies: Mr Barrett-Miles and Mrs Kitchen.

Substitutes: Mrs Duncton and Mr Patel.

## **Declarations of Interest**

87. In accordance with the code of conduct the following declarations of interest were made:

- Janet Duncton declared a pecuniary interest under agenda item number 5 (i) Crouchland CLU; Crouchland Farm had previously bought grass silage from Mrs Duncton's farm. Mrs Duncton would leave the Committee during the determination of the Crouchland CLU to act as the local member for the application. Mrs Duncton had secured dispensation from the Monitoring Officer at West Sussex County Council (WSSCC) to speak as the Local Member to the application and remain in the meeting room during the debate and determination of the application;
- Simon Oakley declared a personal interest in agenda item number 5 (i) Crouchland CLU as a member of Chichester District Council;
- Gordon McAra declared a personal interest in agenda item number 5 (i) Crouchland CLU as a member of Chichester District Council;
- Sujan Wickremaratchi declared a personal interest in agenda item number 5 (i) as an employee of the company that provided IT support to the applicant.

88. Mr McAra left the meeting at 10.35 a.m.

## **Minutes**

89. Resolved – that the minutes of the meeting of the Committee held on 21 July 2015 be agreed as a correct record.

## **County Matter Waste Application**

### **WSSCC/016/15/WS**

Variation to Conditions 2 and 20 of Planning Permission WSSCC/017/09/WS in respect of the final restoration of the site. Windmill Landfill Site, The Hollow, Rock Road, Washington, West Sussex, RH20 3DA.

90. The Committee considered a report by the Executive Director of Residents' Services and the Strategic Planning Manager (copy appended to the signed minutes). The report was introduced by the Strategic Planning Manager who provided a presentation on the proposals contained in the application.

91. Lesley Britt, Washington Parish Council spoke in objection to the application. The previous permissions had designated that the area be restored with extensive planting. The valley and track onto the site were visible from the South Downs Way and the Committee was urged to object to the application.

92. Paul Marshall, Horsham District Council local member spoke in opposition to the application. The variation of the permissions for the restoration of the site had significantly reduced the scale of planting on the site from 25,000 m<sup>2</sup> to 9,900m<sup>2</sup>. The natural habitat of the site had been largely wooded, the decision to reduce the level of planting was commercial in nature to increase grassland for agricultural purposes. The Committee was urged to refuse the application and ensure that the restoration scheme previously approved on the site was retained to plant an acceptable level of trees and remove the track.

93. James English, local resident spoke in objection to the application. The County Council had been misled by the application; the site was clearly visible from a number of local paths and vantage points. The landfill site had caused the destruction of the windmill, a site of historic importance and damaged the landscape. A number of tracks ran over the site which had not been agreed in the restoration plan and there was no effective screening. Much of the original woodland area had been destroyed by Dutch Elm disease. The Committee was urged to reject the application and implement the original restoration plan.

94. Mary Tappenden, Biffa spoke in support of the application. The application was not related to the potential landfilling of Rock Common sandpit. It was not viable to infill the valley feature on the Windmill site with the quality of inert waste required by the Environment Agency. Significant work had been undertaken on the site by the applicant to restore it to its current condition and the current application sought to increase the amount of land available to the landowner for agricultural use.

95. The following points of clarification were provided by the Strategic Planning Manager:

- 77 objections had been received under the application. However, two-thirds of those related to the nearby site of Rock Common and were not material to the determination of the application.
- The reduction in the planting on site was from approximately 25,000m<sup>2</sup> to 9,000 m<sup>2</sup>.
- The approved 2011 restoration plan included a track across the site slightly different to that on the ground; the track had been formalised onto the restoration plan.
- Future uses of the adjacent site were not relevant to the determination of the application.
- The operator of the site could no longer import material to infill the Valley because the Environmental Permit on the site had expired.
- WSCC's Landscape Architect noted that the area of the application site was considered environmentally sensitive due to the loss of broad-leaved trees and the impact of sand quarrying works.
- The landform and character of the site was visible from local areas and particularly the South Downs Way but the visual impact was not considered to be significant.
- The changes to the restoration scheme approved in 2011 reduced the level of woodland on site by 60%; this application would represent a further reduction of 60%. The total reduction of woodland in the

restoration scheme from its original form would be 83%. The split of grassland to woodland intended in the initial restoration plan for the site was 50/50; the current application would result in a split of around 7% woodland and 93% grassland.

- WSCC's Ecologist noted that the absence of replanting being proposed would reduce the resilience of the local ecological network and would be contrary to West Sussex County Council policy to enhance and protect the natural environment.

96. During the debate the Committee raised the points below:

- The condition of the Valley feature on site was raised as an issue of concern but it was recognised that to require the applicant to undertake significant work on this area of the site would be unreasonable.
- It was the contention of some members that the site was sufficiently screened and was at a significant distance from local properties. The visual impact of the site was felt by some members of the committee to be acceptable.
- The impact of the removal of infill capacity at the site, in relation to the management of waste supported by the Waste Local Plan, was queried.
- Some members were concerned about the reduction in the level of planting required on the site since the original restoration plan. The local area was felt to be heavily wooded and the requirement to replace woodland was felt to be a reasonable condition of a restoration plan.
- If the current application was rejected the existing restoration plan on site could be enforced.

97. In response to queries and issues raised the Strategic Planning Manager and the Director of Law, Assurance and Strategy provided the following clarification:

- Although the capacity for inert fill at Windmill Landfill was identified in the Annual Monitoring Report, the loss of this capacity would not undermine the delivery of the Waste Local Plan.
- The restoration of the Valley would require a new planning permission and it was questionable whether it would meet the policy tests for the deposit of inert waste.
- Members were advised that the main material issue for this proposal was whether or not the proposed restoration was acceptable to them in comparison to the site's approved restoration plan from 2011 (which superseded the original 2009 restoration plan).

98. The Committee approved the officer recommendation in the report by a clear majority.

99. Resolved – that planning permission is granted subject to the conditions and informatives set out in Appendix 1 to the report.

100. Mr McAra re-joined the meeting at 11.35 a.m.

## **Update on Current Planning Applications**

101. The Committee received and noted a report by the Executive Director of Residents' Services and Strategic Planning Manager on applications awaiting determination (copy appended to the signed minutes) including the schedule of County Matter applications and the schedule of applications submitted under the Town and Country Planning General Regulations 1992 – Regulation 3.

## **Report of Delegated Action**

102. The Committee received and noted a report by the Executive Director of Residents' Services and Strategic Planning Manager (copy appended to the signed minutes) regarding applications approved subject to conditions under the Town and Country Planning Act 1990 and Regulation 3 of the Town and Country Planning General Regulations 1992 since the Planning Committee meeting on 21 July 2015.

103. There was a recess of the Committee at 11.40 a.m. the Committee reconvened at 11.55 a.m.

## **County Matter Waste Application**

### **WSCC/019/15/WK**

Extension of yard and storage area along with ancillary works for the processing of wood and bulky waste and increase in site throughput by variation of condition 8 of WSCC/060/11/WK and Condition 8 of WSCC/016/13/WK. Firmland Park Industrial Estate, Henfield Road, Albourne, Hassocks, West Sussex BN6 9JJ.

104. The Committee considered a report by the Executive Director of Residents' Services and the Strategic Planning Manager (copy appended to the signed minutes). The report was introduced by the Strategic Planning Manager who provided a presentation on the proposals contained in the application.

105. A statement was read out on behalf of the local member, Peter Griffiths, relating to the application. The statement explained that the application should be refused by the Committee because; the local B and C roads cannot support the proposed increase in road movements and had not been built to sustain such movements; the increase in volume of the 'manufacture' was not allowed in the original application; and the increase in dust and smell pollution consequent to this increase is not accounted for in the application.

106. Nicola Ernest, Albourne Parish Council spoke in opposition to the application. The recommendation of officers at the county council had not taken account of the 49 objections to the application from the local community. In addition 3 Parish Councils have objected, not 2 as reported by planning officers. The proposed increase in HGV movements along the B2116 which is a dangerous and unsuitable rural road. A restriction on the number of lorries permitted to access the site had been requested not only by Albourne Parish Council but also WSCC Highways. There was concern that the noise and dust conditions would be agreed at a later date and the concerns of the Fire Service regarding the inadequate mains water supply to the site, due to its rural location, should be

given greater weight particularly due to the combustible nature of the stored material.

107. The following points of clarification were provided by the Strategic Planning Manager:

- The objection from the West Sussex Fire and Rescue Service would be dealt with through the Buildings Regulation process.

108. During the debate the Committee raised the points below:

- The nature of the highways survey undertaken at the site was queried.
- The Committee expressed concern regarding the height of the stockpiles on site and current throughput appeared to exceed existing permissions. The height of the processed materials on site was considered to be over the 2.8 metres permitted in the proposed conditions.
- The apparent absence on site of a dust suppression system during the committee's site visit was a concern.
- The number of lorry movements associated with the site, the density of the material loaded onto HGVs at the site and a possible condition to limit the HGV movements was raised. The Committee acknowledged that the Highway Authority had not raised an objection to the application.
- Assurance was sought that regular monitoring and stringent enforcement of conditions would be undertaken at the site.

109. In response to queries and issues raised the Strategic Planning Manager and the Director of Law, Assurance and Strategy provided the following clarification:

- WSCC Highway officers confirmed they had visited the site and had not just relied on a desk top survey.
- The Current application increased the throughput of the site and permitted higher stockpiles of material. If the permitted stockpile heights were exceeded, enforcement action could be considered. The application was effectively seeking to regularise activity on the site.
- The Environmental Health Officers at both Horsham District Council and Mid Sussex District Council had been consulted on the proposals and had not raised an objection subject to the imposition of conditions covering noise mitigation measures and dust suppression. For example, regarding dust suppression, the scheme submitted and discharged on previous permissions included mist sprays and mobile water sprays. It would be expected that such measures would be included in future dust suppression schemes; if this was not in operation enforcement at the site could be initiated. The Environmental Permit on the site required effective dust management.
- The traffic survey had recorded 197 HGV movements over the course of a 24 hour period. New splays at the entrance to the site formed part of the conditions and would improve safety along the access to the site from the B2116. Although the throughput of the site was increasing threefold, restrictions on the number of HGVs accessing the site would be unreasonable as the site has an existing B1 and B2 use with no restriction on the number of HGV movements that could be generated.
- It was confirmed that officers could undertake greater monitoring of the site to ensure that the applicant was operating in accordance with

conditions and where necessary, justifiable and proportionate enforcement could be considered.

110. The Committee approved the officer recommendation in the report by a clear majority.

111. Resolved – that planning permission is granted subject to the conditions and informatives set out in Appendix 1 to the report.

112. There was a recess at 12.40 p.m. the Committee reconvened at 1.20 p.m.

### **Declarations of Interest**

113. In accordance with the code of conduct the following declarations of interest were made:

- Janet Duncton declared a pecuniary interest under agenda item number 5 (i) Crouchland CLU; Crouchland Farm had previously bought grass silage from Mrs Dunston's farm. Mrs Duncton would leave the Committee during the determination of the Crouchland CLU to act as the local member for the application. Mrs Duncton had secured dispensation from the Monitoring Officer at West Sussex County Council (WSSCC) to speak as the Local Member to the application and remain in the meeting room during the debate and determination of the application;
- Simon Oakley declared a personal interest in agenda item number 5 (i) Crouchland CLU as a member of Chichester District Council;
- Gordon McAra declared a personal interest in agenda item number 5 (i) Crouchland CLU as a member of Chichester District Council;
- Sujan Wickremaratchi declared a personal interest in agenda item number 5 (i) Crouchland CLU as an employee of the company that provided IT support to the applicant.
- Anna Whitty, Senior Planner, WSSCC, declared a personal interest in agenda item number 5 (i) Crouchland CLU. A close family relation of Mrs Whitty works in the Planning Department at Chichester District Council (CDC).

### **Certificates of Lawfulness Briefing**

114. The Committee was provided with a briefing regarding the determination of applications for Certificates of Lawful Use (CLUs). It was explained that CLUs were determined strictly in accordance with legal tests and there was no subjective judgement of planning merits during decision-making.

115. Mrs Duncton left the Committee and joined the public gallery.

### **Certificate of Lawfulness Application**

**WSSCC/036/15/PS**

Certificate of lawfulness for the proposed use as an Anaerobic Digestion facility with unrestricted throughput of imported waste or other material and the export of gas and digestate at Crouchland Farm, Rickman's Lane, Kirdford RH14 0LE

116. The Committee considered a report and the agenda update sheet by the Executive Director of Residents' Services and the Director of Law, Strategy and Assurance (copy appended to the signed version of the minutes). The report was introduced by the Director of Law, Strategy and Assurance and the Committee was informed of the history concerning the site and the law underpinning decision-making.

117. Dave Jordan, Representative of the Residents Action Group spoke in opposition to the application. The CLU should be assessed in light of the legal opinion that considered the Anaerobic Digestion (AD) plant to be ancillary to the dairy farm. Documents submitted with previous applications stated that the plant was ancillary. The 'reasonable reader' would discern through an examination of planning permissions on site that the AD was ancillary. The slurry silos on site did not have the right permissions to be used for AD material and were not felt to be compliant with the National Planning Policy Framework.

118. Sara Burrell, Ifold and Plaistow Parish Council spoke in opposition to the application. An assessment of the reasonable reader principle was used in respect of the previous permissions applied to the site for an on-farm AD ancillary to the farm. The lack of conditions in the 2007 and 2008 permissions cannot mean the applicant has free reign to operate as he sees fit. There must be compliance with the clearly expressed planning consent. The consents are clear and perfectly understandable. No conditions are necessary in order to understand, operate, or limit the consents. The 2011 consent provides no permission to export gas, the documents accompanying the application contain only the words '*ancillary containers to existing biogas plant and conditioning of methane and carbon-dioxide and farm yard use*'. If it was the intention to export gas this should have been explicitly stated in the application, it was not and cannot be implied. The consent to provide equipment to condition gas did not permit the export of gas. The Committee was urged to show consistency in decision-making and find that a change of use from an on-farm operation to a waste facility had not been permitted and the AD plant was ancillary to the farm use.

119. Paul Jordan, local resident, spoke in opposition to the application. Planning officers had previously advised that the 2011 permission had not been implemented. Planning officers had also advised that following a detailed examination further operational development would be required to enable the export of Biogas. Upload stanchions, compressors, coolers and other equipment are installed to ensure the safe and controlled loading of gas. The applicant would need further permissions for this essential equipment in order to export gas from the site. The use of a hose connected to a tanker was not a safe way of loading gas to a trailer. The 2011 permission had not been lawfully implemented with the equipment actually installed bearing no resemblance to that for which permission had been obtained.

120. Nick Leaney, Planning Agent to the Applicant spoke in support of the application. The role of the Committee was to determine the lawfulness of use in accordance with the legal tests and without reference to appeals, enforcement notices or compliance with planning policy. Statutory declarations had been sought to establish lawfulness and had determined that the production of electricity, storage and use of digestate, the importation of material and the export of biogas was permitted on the site.

121. Leon Mekitarian, the Applicant spoke in support of the application. The Committee was asked to determine the application in accordance with defined legal tests. The AD facility and the export of biogas from the site was in accordance with health and safety requirements. During determination of the CLU consideration of the planning merits were irrelevant; officers were satisfied that legal tests had been met and lawfulness established. There had been no evidence submitted to the contrary and if the CLU was not approved there would be strong grounds for an appeal and application for legal costs. The AD facility was essential to support the loss-making dairy farm.

122. Janet Duncton, the local member to the application spoke on the application. Mrs Duncton declared a pecuniary interest in the Crouchland Farm CLU application; Crouchland Farm had previously bought grass silage from Mrs Duncton's farm. Mrs Duncton had secured dispensation from the Monitoring Officer at West Sussex County Council (WSSCC) to speak as the Local Member to the application and remain in the meeting room during the debate and determination of the application. If the application for the CLU was approved this would be inconsistent with the earlier decisions of the committee and would be counter to the interests and wishes of local residents and Chichester District Council (CDC). The environmental health officer at CDC considered that the site: created pollution; had an adverse impact on local roads; and produced noise disturbance. The update to the information in the report concerning the export of gas had been received very late and was not good practice.

123. The following points of clarification were provided by the Director of Law, Assurance and Strategy and the Strategic Planning Manager:

- The legal advice that had been referred to in the report had been sought by the county council and was an objective legal opinion;
- The previous application determined by the Committee was not relevant during consideration of the current application. The Committee was asked to determine the lawfulness of the site not its planning merits;
- The 'reasonable reader' test applied by the county council had determined that explicit conditions had to be attached to the planning permissions to restrict operations;
- The separator and flare had been rejected for inclusion in the CLU and would need separate permission in the future.

124. During the debate the Committee raised the points below:

- The Committee considered that a change of use from an AD facility, which was ancillary to the dairy farm, to a waste operation required planning permission.
- The collection of biogas, the export of electricity and digestate was deemed appropriate and lawful but the importation of waste and materials was felt to indicate a change of use which had not been previously permitted. Therefore, the Committee considered that to approve the CLU contained in the report, without amendment, would give permission for a change of use. Such a use needed to be subject to a separate application process.
- The Committee considered that the 2011 permission which had included facilities for the export of gas had not been implemented. If the use of a hose to export gas was safe it was questioned why the 2011 application contained plans for more extensive equipment to facilitate export. It was

not felt that the 2011 permission had been implemented therefore the export of biogas should not be included in the CLU.

- The exclusion of the flare and separator from the CLU was supported.
- A motion to refuse the CLU was proposed and seconded on the basis of the lack of material evidence to authorise uses beyond the 2007 and 2008 permissions. Following discussion, this motion was withdrawn.
- The Committee confirmed that it was convinced that the 2007 and 2008 permissions were lawful and should be included in the CLU.
- The Committee considered that the 2011 permission had not been implemented and that the 2008 permission had not agreed a change of use.
- The legal advice sought by the County Council was not accepted; the Committee agreed with the legal advice provided by the local Parish Councils and Chichester District Council.
- The Committee stated that the AD facility was only ancillary to farm use.

125. In response to queries and issues raised the Strategic Planning Manager and the Director of Law, Assurance and Strategy provided the following clarification:

- The use of the hose to export gas would not require a new planning permission;
- The Committee needed to determine if it was satisfied by the evidence to approve the CLU. If it was not, the Committee could refuse the certificate or approve an amended version.
- The legal advice sought by the County Council concerned the duties and powers of the county council. The advice of the Parish Councils was provided from a different perspective.

126. A motion to amend the CLU in Appendix 1 and recommendation in the report was proposed by Simon Oakley and seconded by John Rogers. The motion proposed the following changes:

1. On page 75 – the removal of the third paragraph under the reasons for lawfulness beginning “The proposed use of the four metal containers...”
2. On page 76 – the removal from the first paragraph under the Extent of Use and Development section the words “...and the importation of waste and other materials:” and the inclusion of this wording under the section listing those elements excluded from the CLU.
3. On page 76 – the removal of bullet point (d), “Four metal containers to aid gas conditioning for biogas plant marked D on the plan attached:” and the inclusion of this wording under the section listing those elements excluded from the CLU.
4. On page 77 – the removal of the wording “...and edged red on the attached plan.”
5. To include text in the final certificate which stated that the AD plant on site was only ancillary to the dairy farm. The final form of the wording to be agreed with the Chairman of the Planning Committee.
6. An amendment to officer recommendation (b) to include consultation with the Chairman of the Planning Committee in the production of the final form of the certificate.

127. The reasons presented to substantiate the proposals in the motion were as follows:

- Points 1 – 3 in the motion were proposed because it was the opinion of the proposer that consent for the importation of waste required a separate application and planning permission. Earlier permissions associated with the site had not sought or permitted a change of use from an ancillary, on-farm facility to a waste operation. The legal advice sought by the County Council was rejected.
- Point 4 was proposed for the avoidance of doubt.
- Points 5 and 6 ensured that there was adequate scrutiny for the production and finalisation of the final form of the certificate.

128. The Committee voted by a clear majority to accept the motion.

129. The substantive recommendation was put to the Committee and approved unanimously.

130. Resolved – that:

- (a) A Certificate of Lawfulness be granted that is restricted to the lawful development on the application site and subject to the limitations substantially in the form set out in the certificate in Appendix 1 as amended by items 1 – 5 from the motion in paragraph 126 above; and
- (b) The final form of the certificate is delegated to the Strategic Planning Manager in consultation with the Chairman of the Committee and the Director of Law, Assurance and Strategy.

131. There was a brief adjournment at 3.00 p.m. The meeting reconvened at 3.05 p.m.

132. Mrs Duncton re-joined the Committee at 3.05 p.m.

### **Certificate of Lawfulness Application**

#### **WSCC/038/15/TG**

Certificate of Lawful Development for the storage and processing of up to 18,000tpa of soils, compost, sand and bark. The Old Airfield, City Field Way, Tangmere, Chichester, West Sussex, PO20 2FT

133. The Committee considered the updated version of the report by the Executive Director of Residents' Services and the Director of Law, Strategy and Assurance (copy appended to the signed version of the minutes). The report was introduced by the Director of Law, Strategy and Assurance and the Committee was informed of the law associated with the application and the evidence been submitted.

134. During the debate the Committee raised the points below:

- It was felt that on the balance of probabilities the development in the application was lawful.
- It was noted that there was an absence of evidence to disprove the lawfulness of the development.

135. The recommendation was proposed by Mr Patel and seconded by Mr Rogers.

136. A clear majority of the Committee approved the application.

137. Resolved – that a Certificate of Lawfulness be granted that is restricted to the lawful development on the application site and subject to the limitations set out in the certificate attached as Appendix 1 to the report.

The meeting closed at 3.10 p.m.

Chairman