

**Planning Regulatory Committee
Minutes of the Meeting Held on Friday 14 September 2018
at 10am in the Edwards Room, County Hall**

Present:

Mr C Foulger - Chairman

Mr S Askew
Mr D Collis
Mr D Harrison
Mr B Iles
Mrs B Jones

Mr W Richmond
Mr M Sands
Mr B Spratt
Mr M Storey
Mr A White

1 Apologies and Substitutions

Apologies for absence were received from Dr C Jones (Mrs B Jones substituted); Mr R Brame and Mr B Long (Mr B Spratt substituted).

2 Minutes from the meeting held on 13 July 2018

- 2.1 The minutes from the Planning (Regulatory) Committee meeting held on Friday 13 July 2018 were agreed as a correct record by the Committee and signed by the Chairman.

3 Declarations of Interest

No declarations of interest were made.

4 Urgent Business

There was no urgent business.

Applications referred to the Committee for determination.

5 C/5/2017/5007: SPC Atlas Works, Norwich Road, Lenwade

- 5.1 Proposal: To determine application for: Change of use from B8: Warehousing to a Sui Generis use for waste processing and the production of refuse derived fuel (RDF) with an annual throughput of 150,000 tonnes; Installation of office, 2 x weighbridges and photovoltaic panels, and highway improvement scheme consisting of the major upgrade and realignment of the north-western estate access

with the A1067.

- 5.2 The Committee received the report by the Executive Director of Community and Environmental Services seeking planning permission for the development of a waste processing and RDF production facility on a site that was both industrial land and moreover a site (WAS 78) that was allocated for waste development within the Councils adopted Waste Site Specific Allocations Development Plan Document. Therefore, in land use terms the proposal accorded with the development plan.
- 5.3.1 During the presentation of the report the Principal Planning Officer advised that the Committee had refused a very similar application in March 2017 which the applicant had since appealed. The Planning Inspectorate granted planning permission for that application subject to conditions. The Principal Planning Officer advised that the Planning Inspector's decision was a material consideration of significant weight on the basis that the principle of the nature of this development at the site had clearly now been established. He also advised that this new application offered an opportunity for Norfolk County Council to apply its own conditions should Members' grant planning permission.
- 5.3.2 The Committee was advised, since the publication of the report, that a letter had been received from Richard Buxton Associates indicating that counsel had been instructed to review the Planning Inspector's decision, which may possibly result in a Judicial Review of that decision. Richard Buxton contended that, on the basis the Inspector's decision could be quashed, it would undermine the reliance on it as a material consideration of significant weight.
- 5.3.3 Five additional letters of objection had been received since the report had been published, three from individuals who had previously commented on the application and two new letters of objection from individuals that hadn't previously commented. No new grounds of objection had been made other than it was a waste of Council time and money considering the application.
- 5.3.4 The Committee noted that the applicant had now signed a legal agreement relating to a £7500 contribution for the maintenance of the Marriott's Way.
- 5.3.5 The officer recommendation was to grant planning permission in accordance with the conditions in section 13 of the report, subject to any minor changes to the conditions.
- 5.4 Mr John Bailey, local resident, addressed the Committee in objection to the application, raising concerns about the proximity of the site to the river Wensum; the proposed size of the operation and, in the event of a fire at the site, the possibility of fire-water flooding into the River Wensum which was located approximately a football pitch away. He added that in his view a SSSI site should mean that and should be protected.
- 5.5 Mrs Mary Bishop, who owned a number of industrial units near the application site, addressed the Committee in objection to the application. Mrs Bishop read out

extracts from a letter received from Public Law Cambridge, challenging the Planning Inspector's decision on public law grounds. Mrs Bishop added that if the Committee granted planning permission, it could render Norfolk County Council vulnerable to a judicial review. Mrs Bishop also raised concern about the potential fire risk and considered that the risks had not been understood by either the Environment Agency or Natural England. Mrs Bishop felt that the Planning Inspector's decision could not be supported on the evidence she had been given.

- 5.6 Mr Paul Webb, local resident who lived at a property approximately 180m from the development, addressed the Committee in objection to the application. Mr Webb raised concerns about the environmental impacts the waste facility would pose on such an environmentally sensitive location, adding that he commended the Committee for refusing the application previously and that he was currently waiting to hear if there were sufficient grounds for a Judicial Review of the decision made by the Planning Inspector to overturn the County Council's previous decision. Mr Webb considered the waste industry had an appalling record of fires at waste sites and raised concern about possible failure to contain fire water in the event there was a fire at the site. He added that the River Wensum was linked to an aquifer which was located under the site and also that no surveys had been carried out into the integrity of the buildings. He added that no evidence had been shown about how contaminated fire water would be managed as this water needed impermeable surfaces to ensure there was no run-off. Mr Webb considered the applicant had provided insufficient information and urged the Committee to refuse the application.
- 5.7 Ms G Mead, local resident, addressed the Committee in objection to the application raising concerns about the location of the works/site and the potential impact on local people. Ms Mead urged the Committee to do the right thing and locate such a waste operation at a different site as the buildings were pre-1940 asbestos cladded buildings and other areas had more suitable buildings for current and future needs, which would help mitigate pollution. Ms Mead said approving the application was tantamount to imposing a psychological prison sentence on nearby residents from noise, smell as well as the detrimental impact from the site. Ms Mead felt other sites were more suitable and as Scotland were leading pioneers in waste disposal, lessons could be learned from there. Ms Mead also suggested a disused air base in Norfolk could offer a suitable site for this facility.
- 5.8 Mr G Youngs, addressed the Committee presenting the views of Amber Real Estate Investments (Industrial) Limited and Bernard Matthews Foods Limited. Mr Youngs raised concerns about the possible loss of the quality of the water course. He said the Bernard Matthews' hatchery contained approximately 1 million eggs, as well as a turkey plant, which was located approximately 300m and 700m from the site. Mr Youngs said that hygiene and security was critical to the whole operation. Bernard Matthews Ltd had a licence to draw water from the aquifer as there was no mains water connected and relied on the pure quality of the water. Mr Youngs added that the application did not include any information about water treatment and as water was used directly in the food processing operation, any pollution entering the water would have a huge detrimental impact on the business, which could ultimately lead to the closure of the factory whilst new eggs were sourced for the hatchery.

- 5.9 Ms J Wisby, Chairman of Great Witchingham Parish Council, addressed the Committee in objection to the application. The Parish Council had raised a number of concerns including the lack of an Environmental Permit; the inadequacy of the current highway infrastructure; possible water pollution/contamination. Ms Wisby added that Swannington with Alderford Parish Council had raised concerns about the lack of a transport plan and the increase in traffic movements. Ms Wisby also raised concerns about water run-off in the event of a fire which could cause contamination, She added that the revised drainage plans were flawed and the effects on the new Royal Norfolk Golf Club development had not been examined. She said the site already operated at capacity and that the significant difference between this application and the previous one was a revised drainage strategy; there was no significant difference to the application which had been determined on appeal; there had been a change in operating hours and that having a waste plant on top of the main water supply to a major city should not be allowed.
- 5.10 Ms R Goodall addressed the Committee on behalf of Weston Longville Parish Council in objection to the application, particularly around the planning conditions and the consultation. Ms Goodall said that the Executive Director of Community & Environmental Services had maintained there was no requirement to show a democratic need for the facility other than moving through the waste hierarchy and that doing nothing may be worse. Ms Goodall then referred to the proposed conditions which in her opinion did not provide any reassurance as too much was left to the Environment Agency for decisions such as noise and smell through the granting of an Environmental Permit. It was also felt that the site had been allowed to deteriorate and was not fit for the intended purpose and also that the £7,500 to maintain Marriotts Way was insufficient. She also felt decisions should not be delegated and that Weston & Morton villages had no neighbourhood plan so had been unable to comment on waste management which was unacceptable.
- 5.11 Mr R Hawker addressed the Committee on behalf of Hockering Parish Council, raising concerns about the process being flawed as well as transport issues, particularly the substantial increase in the number of lorry movements along the A1067 and B1535. Mr Hawker felt the application should not have been accepted until the previous application appeal decision was known. Mr Hawker encouraged the Committee to defer the application or impose more stringent conditions, eg operating from 7am to 7pm 7 days a week and traffic movements restricted to between 7am and 6pm Monday to Friday and 7am – 12 noon on Saturdays. Mr Hawker also stated that Hockering Parish Council had not been consulted on the application. Mr Hawker then showed a map of the HGV routes and encouraged the Committee to reject the application.
- 5.12 Mr Andrew Lake, Wiser Group, agent for the applicant, addressed the Committee. Mr Lake said he had previously worked as an Officer for the Environment Agency. Mr Lake stated that Atlas Works had a history of heavy industrial use over the years and that the site had been vacant for a number of years. He added that the application sought to provide a waste site, with Refuse Derived Fuel (RDF) an increasing way of providing a sustainable power source. Mr Lake added that the

updated drainage plan had been scrutinised and approved. He reassured the Committee that the risk assessment had identified the site as high risk but the proposed mitigation measures had been deemed satisfactory, adding that the two-stage drainage strategy had been designed to reduce/prevent pollution by treating water to an approved level before it was discharged. Mr Lake went on to state the provision for emergencies had been included, for example stop valves. Mr Lake also said that an Environmental Permit would be a requirement of the planning application if it was approved including more detailed inspections to ensure the site operated successfully.

- 5.13 Mr Greg Peck, as Local Councillor for Reepham Division, which covered the application site, addressed the Committee about several aspects of the application, adding that he had visited the site, and spent a considerable amount of time examining evidence and reading letters of objection. In Mr Peck's opinion the site was unsuitable for this operation as RDF plants in other parts of the country were usually purpose built, sealed units and were not asbestos clad which the current buildings were. Mr Peck added that the applicant had confirmed they had no intention of replacing or installing new buildings in the future. Mr Peck then raised concerns about the risk of fire, saying on average there were 300 fires per annum at waste sites and that there was no mention of the mitigation measures for coping with the volumes of water required to put out fires. Mr Peck felt that the decision should not be left to the Environment Agency and that if the decision was overturned on appeal, Norfolk County Council could leave itself open to costs. Mr Peck also mentioned possible river contamination, the buildings being unsuitable and with no plans to make them watertight as reasons to refuse the application. He asked the Committee to refuse the application, or to defer a decision until the outcome of the appeal process had been finalised.
- 5.15 The following points were noted in response to general questions from the Committee:
- 5.15.1 The Principal Planning Officer advised that the proposed hours of operation were the same as had been imposed by the Planning Inspectorate.
- 5.15.2 One Member said he had listened to the arguments and was of the firm opinion that the Planning Inspector had made the wrong decision as there did not appear to be any appreciable difference from the previous application. He added that the concerns remained the same, with inappropriate buildings, damage to local Businesses (eg Bernard Matthews), and permanent pollution to the aquifer. The same Member then referred to the recent waste site fire in Liverpool which had burned for nearly a week and said he would be interested to hear how much water had been used to put out that fire. It was suggested that the Committee should refuse the application and allow that decision to take its course through the Judicial Review process, adding the weight of the Planning Committee to the other objections.
- 5.15.3 One Member felt that the revised conditions were satisfactory in his opinion and that the Committee should allow the Environment Agency to carry out its

obligations.

- 5.15.4 Members asked for further details about the amount of water required if there was a fire at the site as they were not convinced that contaminated water would not get into the aquifer if there was a fire.
- 5.15.5 The Committee thanked all the speakers for attending the meeting and for expressing their views so well.
- 5.15.6 The Principal Planning Officer advised that the fire risk would be dealt within the Fire Risk Management Plan as part of the Environmental Permitting process. He added that Norfolk Fire & Rescue Service had been consulted as part of the planning process and had raised no objection to the application. The Environment Agency had however commented that the submitted draft fire prevention plan would not be acceptable without further work, but a full assessment of the Fire Prevention Plan would be carried out during determination of the Environmental Permit. This was outlined in paragraphs 7.17 to 7.19 of the report and from a planning perspective the site would be able to operate without further planning permission for new development, however an acceptable fire management plan would be required as part of the Environmental Permit in order for the facility to operate.
- 5.15.7 The Committee asked Mr Lake, as the agent for the applicant, to reassure it about the fire prevention plan which Mr Lake confirmed had been drafted. Mr Lake advised that the method of containment was using an impermeable surface area and a sealed bunker. The bunker would be inspected and any areas failing inspection would be repaired and treated accordingly to ensure they were impermeable and could contain any contaminated water. Contaminated water would be removed from the site in sealed tankers and taken to a treatment facility to be dealt with. Shut-off valves had been fitted to automatically contain water in the event of a fire which would automatically shut off as soon as a fire had been identified, with a manual override facility installed in the event the automatic shut off process failed. Any burnt material would be removed from the site as directed by the fire brigade.
- 5.15.8 As soon as a fire was noticed, before the fire brigade arrived and the alarm sounded, the automated system would shut off the valves, with a manual over-ride installed if the automated system failed.
- 5.15.9 Some Members again expressed concern about two major fires this year at waste plants and felt the current buildings at the site were not suitable. Concern was also expressed about the amount of waste material to be stored on the site which could cause leachate into the aquifer from rainwater, contaminating the water. They felt the provision of new buildings could put an entirely different aspect on the application. In reply the Principal Planning Officer advised that all of the materials stored externally would be strictly limited to inert waste, such as building rubble, soil, etc.
- 5.15.10 One Member felt they had not received sufficient reassurance if there was a breach

of contaminated water which then contaminated the water drunk by the people of Norwich and asked how long it would take for the clean-up operation to be effective. In response, Mr Lake, agent for the applicant, stated that when an incident occurred the Environment Agency was notified, with officers immediately being sent to the scene to manage the situation. The Environment Agency was duty bound to report the matter to Norfolk Fire & Rescue Service. The clean-up operation would take place immediately with the remediation work undertaken and overseen by the Environment Agency.

- 5.15.11 The Principal Planning Officer advised that, to his knowledge, there had been no incidents that had caused pollution to the aquifer from previous operations at the site. However, he added that the site had historically operated for a long time under a permission issued and regulated by Broadland District Council. Some Members felt that the current proposal was different as the site had not previously had 150k tonnes of refuse and waste stored there.
- 5.15.12 Mr Sands expressed the view that the application should be refused.
- 5.15.13 Mr Askew expressed his opinion that the Committee should defer the application until it was convinced sufficient mitigation plans were in place to reduce the risks, particularly with regard to concerns about the buildings; the risk to the aquifer and water pollution.
- 5.15.14 The Chairman advised that the Committee was unable to defer the application as a similar application had been refused previously and then been successful on appeal. He added that this application had been submitted with improvements and the Committee needed to consider it. The Chairman proposed a vote. A vote took place on a show of hands, with 4 votes counted in favour; 5 votes against and 1 abstention.
- 5.15.15 The Senior Lawyer (Planning & Environment) reminded the Committee of the implications of refusing an application contrary to officer recommendation: that if the Committee was minded to refuse the application, it would need to make its reasons very clear, that there was a possibility of the decision being overturned on appeal (particularly given that the previous, similar application had already been appealed successfully) and that there was an associated risk of a costs award against the authority.
- 5.15.16 Mr Sands suggested the application could be refused because of the unsuitability of the site; the site being above the aquifer; the risk of leachate into the aquifer; the buildings had been designed for a different purpose and no information had been submitted that the buildings would be upgraded to the standard required; the concrete floors were cracked and porous and no matter how carefully the site was managed, there could be water leachate and chemical contamination. He felt these details provided sufficient reasons for rejecting the application and that the Planning Inspector had got her decision wrong.

Mr Richmond added that the Committee could refuse the application on the

grounds of conflict between Norfolk Minerals and Waste Local Development Framework Core Strategy and Minerals and Waste Development Management Policies Development Plan Document 2010-2026 – Policies CS14 (Environmental Protection) and DM2 (Core River Valleys).

- 5.16 Two Members requested that the individual votes of Members set out in paragraph 5.15.14 be recorded and suggested that one Member's vote had not been counted. The Committee agreed to record the votes cast in the above vote, to enable the status of all Members to be correctly recorded. In response to a query from Mr Sands, the Chairman clarified that the recorded vote was not a second vote on the application, it was to make clear how each Member of the Committee had voted. The results of the recorded vote were as follows:

Mr C Foulger	For
Mr S Askew	Against
Mr D Collis	Against
Mr D Harrison	For
Mr B Iles	For
Mrs B Jones	Against
Mr W Richmond	Against
Mr M Sands	Against
Mr B Spratt	For
Mr M Storey	Abstain
Mr A White	For

With 5 votes in favour, 5 votes against and 1 abstention, the Chairman exercised his casting vote in favour of approval of the application.

- 5.17 The Committee **RESOLVED** that the Executive Director of Community and Environmental Services should be authorised to:
- i. Grant planning permission subject to the conditions outlined in section 13 of the report, and a Unilateral Undertaking relating to the £7500 contribution for maintenance of the Marriott's Way.
 - ii. Discharge conditions (in discussion with the Chairman and Vice-Chairman of the Committee) where those detailed in the report require the submission and implementation of a scheme, or further details, either before development commences, or within a specified date of planning permission being granted.
 - iii. Delegate powers to officers (in discussion with the Chairman and Vice-Chairman of the Committee) to deal with any non-material amendments to the application that may be submitted.

The meeting concluded at 11.30 am.

Chairman



If you need this report in large print, audio, Braille, alternative format or in a different language please contact 0344 800 8020 or Textphone 0344 8008011 and we will do our best to help.