



Committee and Date
North Planning Committee
2nd April 2019

Item
5
Public

Development Management Report

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Summary of Application

Application Number: 09/00292/MAW **Parish:** Childs Ercall

Proposal: Change of use of existing warehouse to form an in-vessel composting demonstration facility

Site Address: Hangar 3 Eaton Road Childs Ercall Shropshire

Applicant: In-Vessel Composting Limited

Case Officer: Kelvin Hall **email:** planningdmne@shropshire.gov.uk

Recommendation: That, notwithstanding the previous resolution of Members to grant planning permission subject to conditions and a Section 106 legal agreement, planning permission be **refused** as it has not been possible to complete a satisfactory Section 106 legal agreement which is necessary in order to make the development acceptable in highway terms.

REPORT

1.0 INTRODUCTION

1.1 At its meeting on 24th May 2011 the North Planning Committee resolved to grant planning permission for the above proposal subject to planning conditions and the applicant entering into a Section 106 Legal Agreement. The Committee report is attached as Appendix 1, and the Committee's resolution was:

1.2 *That planning permission is granted subject to the conditions listed at the end of this report, and subject to the applicant completing a Section 106 Unilateral Undertaking to provide for the following:*

- *Routing Agreement – to require all HGVs associated with the delivery of waste materials to only use an agreed vehicle route between the A41 and the airfield, avoiding Childs Ercall.*
- *Traffic Management Plan – to include a commitment by the applicant to restrict HGV movements on the local highway network associated with the development; to control the usage of each access to the airfield to specific*

vehicle types and intended destination; to impose time constraints on vehicle access and egress to avoid busy periods/ peak morning and afternoon periods.

- 1.3 Since that time discussions have taken place between Officers and the applicant's representatives to seek to agree an acceptable Section 106 agreement. A draft Section 106 agreement has been prepared by the Council's legal team. It is expected that the signatories to the agreement would be the landowner, the site operator and Shropshire Council, in accordance with normal practice. Officers have requested information from the applicant which is necessary in order to progress the legal agreement. This information has been awaited for a significant length of time. Officers have raised concerns with the applicant over the delay and have requested evidence that meaningful progress is being made on the matter. Officers do not consider that satisfactory evidence has been forthcoming, and there has been no correspondence from the applicant or their representatives for more than ten months. No information has been provided by the applicant as to what their timetable is for providing the required information. Given the time that has elapsed since the original resolution of Members, and the lack of progress that has been made, Officers consider that the matter should now be brought to a close.
- 1.4 The Section 106 legal agreement is considered necessary to provide an acceptable level of control over traffic routing and traffic management measures in order to prevent the development from giving rise to adverse highway safety and local amenity impacts. It has not been possible to secure an acceptable Section 106 agreement within a reasonable period of time.
- 1.5 Since the application was considered by the North Planning Committee there have been a number of changes to planning policy and guidance which are relevant to the proposal. In particular:
- the National Planning Policy Framework has been published;
 - the Regional Spatial Strategy for the West Midlands has been revoked;
 - a number of Planning Policy Statements (PPS) and Planning Policy Guidance notes (PPG) have been cancelled, including PPS1, PPS4, PPS23 and PPG13;
 - Planning Practice Guidance notes have been published;
 - the SAMDev Plan has been adopted (2015).
- 1.6 Officers have re-assessed the proposal against these changes to the Development Plan, national policy and guidance. In the absence of the Section 106 agreement, Officers consider that the proposal would be contrary to Core Strategy policy CS6 which requires that all development is designed to be safe and accessible, and SAMDev Plan policies MD2 and MD8 which requires that development should only take place where there is sufficient existing infrastructure and capacity. It is not considered that there are any other policies or material considerations which would outweigh this conflict with these policies. As such Officers recommend that planning permission should be refused.

2.0 RISK ASSESSMENT AND OPPORTUNITIES APPRAISAL

2.1 Risk Management

There are two principal risks associated with this recommendation as follows:

- ② As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry.
- ② The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

2.2 **Human Rights**

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

2.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

3.0 **FINANCIAL IMPLICATIONS**

- 3.1 There are likely financial implications of the decision and/or imposition of conditions if challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

4. Additional Information

List of Background Papers

09/00292/MAW - Application documents associated with this application can be viewed on the Shropshire Council Planning Webpages

Cabinet Member (Portfolio Holder) - Cllr R. Macey

Local Member - Cllr Rob Gittins

Appendices:

APPENDIX 1 – COMMITTEE REPORT 24th MAY 2011