



**19<sup>th</sup> July 2016**

**Agenda Item:**

**REPORT OF CORPORATE DIRECTOR – PLACE**

**GEDLING DISTRICT REF. NO.: 7/2012/1493**

**ASHFIELD DISTRICT REF. NO.: 4/V2012/057**

**PROPOSAL: IMPROVEMENT WORKS TO THE COUNTRY PARK INVOLVING THE REMODELLING AND PARTIAL IN-FILLING OF LAKE 2 FOR DEVELOPMENT AS A FISHERY, AND WIDER LANDSCAPE IMPROVEMENT WORKS AND PATH UPGRADES, IN TOTAL REQUIRING THE IMPORTATION OF CIRCA 17,000M<sup>3</sup> OF INERT MATERIALS AND SOILS.**

**LOCATION: NEWSTEAD AND ANNESLEY COUNTRY PARK, NEWSTEAD VILLAGE**

**APPLICANT: RURAL COMMUNITY ACTION NOTTINGHAMSHIRE**

**Purpose of Report**

1. To reconsider a planning application previously determined by Planning and Licensing Committee for improvement works to Newstead and Annesley Country Park involving the remodelling and partial infilling of lake 2 for development as a fishery, and wider landscape improvement works and path upgrades, in total requiring the importation of circa 17,000 cubic metres of inert materials and soils subject to the signing of a Section 106 legal agreement governing lorry routeing and road surveys. Since the original resolution of the application in February 2014, the required legal agreement has not been completed, despite requests to the applicant to progress the matter. It is therefore recommended to refuse planning permission due to unacceptable highways safety and amenity impacts.

**Background to the report**

2. Members will recall considering this application in November and December 2013 and February 2014 which proposed various improvement works to the Newstead and Annesley Country Park- the former Newstead Colliery tip site- requiring importation by road of inert waste materials. The application raised issues centred on impacts to sensitive ecology/wildlife on the site and the impacts of the HGV importation campaign upon local communities and to road safety. The committee decision was twice deferred to allow for further analysis of possible HGV routes to and from the site and to allow for an additional public

consultation on routeing options. At the meeting of 25<sup>th</sup> February 2014 Members agreed to approve the application (as had been revised) subject to the completion of a Section 106 legal agreement incorporating a HGV routeing agreement and a before and after condition survey of the highway route and subject to recommended planning conditions to cover other issues, particularly with respect to ecological mitigation.

3. Since that resolution there has been a considerable passage of time during which the required legal agreement has not been completed and therefore the formal grant of planning permission has not been issued. The application has not been withdrawn and has therefore lain 'undetermined' and remains so in this present situation. The applicant (RCAN) have been notified by a letter dated 16<sup>th</sup> March 2016 that the current situation cannot be sustained and that the County Council is legally required to finally determine the planning application-either to approve or refuse planning permission. A date was set (30<sup>th</sup> April 2016) by which time a substantive response was required from the applicant, after which this Authority would have to reconsider the application. To date no response has been received and in all likelihood the project has stalled indefinitely.
4. In light of the passage of time and the lack of engagement/interest from the applicant, this committee is asked to again consider determining the application. At the time of the application's determination in February 2014, officers did not have delegated powers to refuse applications if legal agreements had not been completed within a specified timeframe, as is currently the case. The application is therefore being brought back to committee with the recommendation to refuse planning permission due to the lack of adequate HGV routeing and provisions to protect the condition of the public highway, without which the proposed development would result in unacceptable highways safety and amenity impacts.
5. The report from November 2013 is attached as appendix A. The supplementary report on highway routeing options from December 2014 is attached as appendix B. The final report from February 2014 which followed further public consultation on highway routeing options is attached as appendix C.

### **The Site and Surroundings**

6. The site and surrounding remain as described on the original report to committee at appendix A to this report and plans 1 and 2 which are also appended, however some relevant changes are noted as follows.
7. It is noted that the new housing development at the eastern end of Annesley Cutting has been nearly completed and that this end of the road is due to be rebuilt by the housing developer (Persimmon Homes) under the terms of its planning obligations. It is this road by which HGVs importing material to the application site would pass along.
8. Planning permission was granted to RCAN in October 2015 by Gedling Borough Council for the erection of a single wind turbine (max tip height 100m)

on the eastern side of the country park site. (Ref 2014/1168) This has not yet been erected but work to discharge pre-commencement conditions is underway.

9. In winter 2013 RCAN undertook to import surplus waste soils into the site in order to landscape around the lower lake 1 (used for angling) and around the visitor centre building. These soils were delivered by HGVs traversing through Newstead village along Tilford Road leading to complaints from local residents about mud being deposited on the road. The applicant was cautioned by County Council enforcement officers that these soils were considered to form part of the planning application and therefore did not benefit from permission. This accounted for a small part of the overall total – 800m<sup>3</sup>. The soils were of such quality, and were in all likelihood too rich in nutrients, so that weeds and ruderal species have become over-dominant instead of the amenity and wildflower mix envisaged.

### **Proposed Development and background**

10. The proposed development related to the importation of circa 17,000 cubic metres of inert waste materials in order to undertake various works on site. Again the full description of planned works and a breakdown of how materials would be used is set out in full in the report at appendix A and in particular at paragraphs 18-35. Of the 17,000m<sup>3</sup>, the majority (11,000m<sup>3</sup>) would be used to partially infill and re-profile the margins in and around lake 2 (the former polishing ponds) so to make them more suitable for angling use. Other soils and materials would be used around lakes 1 and 2 and for other works to correct erosion issues and to improve pathways. As noted above circa 800m<sup>3</sup> of soils were previously imported and spread around lake 1.
11. The materials would be imported by HGV requiring a total of 1,800-1,900 deliveries at an average of 13 in and 13 out per day, possibly peaking at 40 loads a day. The application did not propose that HGVs use Tilford Road, through Newstead village, but instead they would utilise an access track leading from the eastern end of Annesley Cutting which then runs under the Robin Hood railway line and into the site (see plan 1).
12. Four rounds of consultation and publicity were originally undertaken; in December 2012 on the originally submitted application; July 2013; September 2013 and February 2014 and involved discussions with the Parish Councils. No new consultations or publicity have been undertaken for the purposes of this report.
13. Routeing options to and from the A611 were extensively looked at by Officers and Members of committee in consultation with the two affected Parish Councils. A series of options were consulted on and a hybrid option was considered the most optimal routeing solution to minimise impacts to local amenity as much as possible and to minimise accident risk. Under this routeing solution HGVs would only use Annesley Cutting from the A611, both in-bound and out-bound. However right hand turns out of Annesley Cutting on the A611 would be prohibited requiring north-bound traffic to divert south to the roundabout before turning north again. (See plan 2). Members supported this

option when resolving to grant planning permission subject to these HGV routes being secured within a legal agreement.

## Observations

14. Since the time of the committee resolution there has been little meaningful progress from the applicant to progress the required legal agreement. Initially RCAN instructed the County Council's legal officers to draft the agreement with RCAN undertaking to meet reasonable legal costs. At the request of RCAN this work was halted possibly due to ambiguity over ownership of the access track by which HGVs would use to import materials. An approach was made by RCAN in October 2015 to restart the drafting work, however by November they asked that the work be stopped again due to unknown 'legal issues'. Separately and during the intervening time RCAN have pursued and have secured planning permission for a large scale wind turbine as noted above.
15. Without the legal agreement HGVs would be able to travel unrestricted both in terms of manoeuvres at the junction of Annesley Cutting and the A611 and through Newstead village itself along Tilford Road. This would raise considerable local concern as shown when a relatively small quantity of soils were brought in this way previously. Tilford Road is a constrained terrace street with on-street parking. Also along this road is a primary school, play areas, a shop and a community centre. Members also raised concerns previously about the safety of certain manoeuvres at the A611 junction with Annesley Cutting.
16. A before and after highways condition survey of Annesley Cutting was also a requirement of the legal agreement and which would provide a mechanism to record any damage resulting from the passage of HGVs associated with the development and to require any reasonable repairs to be made. Without the accompanying highway condition surveys, Annesley Cutting or other roads could be adversely affected by a campaign of HGVs without any means of requiring repairs by the applicant. It is notable that Persimmon Homes, who are developing the new housing at the eastern end of Annesley Cutting, now wish to proceed with completing their obligations to re-surface the end of this road and are waiting for the applicant's importation scheme to commence. Further delays and uncertainties would impact on the timely completion of the road resurfacing to the detriment of those new residents.
17. A further matter for consideration is that due to the passage of time the ecological surveys and Officers assessment of them are now considered out of date and it is possible that the mix of species and habitats present may have changed on what is a designated Local Wildlife Site which was known to be used by several notable breeding bird species and had large populations of amphibians.
18. In reconsidering the application consideration should be had to relevant Policies in the Nottinghamshire and Nottingham Replacement Waste Local Plan- Part 1: The Waste Core Strategy (WCS) and saved Policies of the Nottinghamshire and Nottingham Waste Local Plan (WLP). The National Planning Policy Framework is a material consideration.

19. In reaching the previous recommendation and resolution Members of committee and Officers were mindful of the benefits and improvements which would be realised at the site, on completion of the development and importation phase - in terms of improved angling; landscape works and access improvements. These environmental benefits to what is a former colliery tip satisfied the terms of Policy WCS5 (Disposal Sites) of the WCS. It was considered that 'very special circumstances' were evident to allow the works within the Green Belt and that the improvements were wholly in line with national Green Belt policy to enhance landscape, preserve openness and promote opportunities for outdoor recreation.
20. With regards to assessment of the key environmental impacts Policies W3.14 and W3.15 of the Waste Local Plan and Policy WSC13 of the Waste Core Strategy are particularly relevant.
21. Policy W3.14 requires that associated vehicle movements need to be satisfactorily accommodated on the local highway network without causing unacceptable disturbance to local communities. Policy W3.15 enables the planning authority to require any necessary highway routeing agreements to mitigate the associated transport impacts. Policy WCS13 requires that there would be no unacceptable environmental impacts resulting to any aspect of the environment and/or to the quality of life of those living or working nearby.
22. It is considered that without the provisions of the required legal agreement the environmental impacts would be contrary to the above policies and the highway impacts would be severe for the purposes of the NPPF which requires safe and suitable access. The proposal therefore would be contrary to the development plan taken as a whole and that planning permission should accordingly be now refused.
23. Any applications coming before committee today which recommend planning permission be granted subject to an accompanying legal agreement do so on the basis of allowing a three-month period in which the applicant party/parties should complete this agreement with the County Council's solicitors. Further time can be granted if required, however after three months (or after the extended timeframe as agreed), the recommendation reverts to one of the application being refused due to the necessary agreement and the measures within it- such as HGV routeing not being secured. This encourages pro-active work on the agreement and in most cases the applicant is keen to complete at the earliest possibility. The committee report in February 2014 pre-dated the introduction of this practice.
24. The applicant would be free to make a new application for any such works in the future based on up-to-date information and the County Planning Authority would be willing to engage in pre-application discussions and to undertake the necessary local consultations.

## **Other Options Considered**

25. The report relates to the determination of a planning application. The County Council is under a duty to consider the planning application and either approve or refuse planning permission. As set out in the report, this application has remained undetermined due to the failure of the applicant to complete a necessary legal agreement to provide for HGV routeing and road condition surveys. Without this the application proposal is considered unacceptable and contrary to planning policy on highway safety and amenity impacts. The application is therefore recommended for refusal.
26. A recommendation could be made to again grant planning permission subject to the same legal agreement requirements and planning conditions, but with this time setting the three-month period which is now the standard time limit for completing these agreements,. However the delays experienced so far give officers little confidence that the legal agreement would be completed within this timeframe. It should be noted that the supporting ecological surveys originally undertaken for the application would now be considered out of date and could therefore undermine any grant of planning permission particularly as the site is designated a Local Wildlife Site and was known to support a range of notable plant, amphibian and bird species.

### **Statutory and Policy Implications**

27. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment, and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

#### Crime and Disorder Implications

28. There are no implications arising from the recommendation. The site is often used by off-road motor biking and has in the past suffered incidences of theft. The site will continue to be managed by RCAN.

#### Human Rights Implications

29. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In the case of this recommendation, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

#### Implications for Sustainability and the Environment

30. The proposal sought to balance the desire for public access and recreation (such as angling) with the nature conservation interests at the site. The

proposed works would have resulted in benefits to lakeside-marginal habitats and from the seeding and landscaping of bare areas. It will be for RCAN in its management of the site to determine the scope and programme of future improvement works.

31. There are no human resources; children safeguarding; financial; or equalities implications. There are no implications for county council service users.

### **Statement of Positive and Proactive Engagement**

32. In determining this application the Waste Planning Authority has worked positively and proactively with the applicant at all previous stages of the application. This included pre-application discussions; meetings during the course of the application; identifying the scope of information necessary to assess the proposal and liaising between interested stakeholders. The applicant has been involved in discussing various access options and in discussing other concerns. This approach has been in accordance with the requirement set out in the National Planning Policy Framework. In this instance, however, the applicant has ceased to progress the required legal agreement which is required to resolve issues of concern regarding HGV routeing. Without this agreement it has not been possible to resolve this issue of concern so as to overcome the harm as identified in the reason for refusal. The Waste Planning Authority has given the applicant a final opportunity to explain their current position, however in light of the passage of time during which the application has remained technically undetermined, the application should be reconsidered. The Waste Planning Authority would be willing to offer pre-application advice to the applicant in respect of any future revised proposal.

### **RECOMMENDATIONS**

33. It is RECOMMENDED that planning permission be refused for the reasons set out below. Members need to consider the issues, including the Human Rights Act issues, set out in the report, and resolve accordingly.

#### **Reason for Refusal**

34. The development fails to secure safe and suitable access and routeing for the level and intensity of heavy traffic associated with the construction and importation stage of the development as required by Paragraph 32 of the National Planning Policy Framework. The otherwise free unrestricted movement of such HGVs accessing the site would cause an unacceptable degree of disturbance and disruption to local residents and endanger vulnerable young people such that the resulting cumulative impact would be considered severe. The haulage campaign also has the potential to lead to damage to the public highway without ensuring appropriate mitigation is secured. The proposal is therefore considered contrary to the requirements of Policies W3.14 and W3.15 of the Nottinghamshire and Nottingham Waste Local Plan and Policy WCS13 of the Nottinghamshire and Nottingham Replacement Waste Local Plan Part 1:

The Waste Core Strategy. There are no material considerations which suggest the decision should be taken otherwise.

**TIM GREGORY**

**Corporate Director – Place**

### **Constitutional Comments**

RHC 1/7/2016

The subject of the attached report falls within the scope of Planning and Licensing Committee and this is the appropriate body to consider the report.

### **Comments of the Service Director - Finance [RWK 04/07/2016]**

There are no specific financial implications arising directly from this report.

### **Background Papers Available for Inspection**

The application file available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

### **Electoral Divisions and Members Affected**

Newstead - Councillor Chris Barnfather

Kirkby in Ashfield South – Councillor Rachel Madden

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For any enquiries about this report, please contact the report author.