



Meeting **PLANNING AND LICENSING COMMITTEE**

Date **Wednesday 5 October 2016 (commencing at 10.00 am -4.10pm) concluded on 15 November (10.30 am - 1.05 pm)**

membership

Persons absent are marked with `A`

COUNCILLORS

John Wilkinson (Chairman)
Sue Saddington (Vice-Chairman)

Roy Allan
Andrew Brown
Steve Calvert
Jim Creamer
Stan Heptinstall MBE

Rachel Madden
Andy Sissons
Keith Walker
Yvonne Woodhead

ALSO IN ATTENDANCE

Councillor Liz Yates	5 October and 15 November 2016
Councillor Maureen Dobson	5 October 2016 only
Councillor Stuart Wallace	5 October 2016 only
Councillor Parry Tsimbirdis	15 November 2016 only

OFFICERS IN ATTENDANCE

David Forster – Resources Department
Rachel Clack – Resources Department
Alison Fawley – Resources Department
Sally Gill – Place Department
Jonathan Smith - Place Department
Oliver Meek – Place Department
Nick Crouch – Place Department
Ruth Kinsey – Place Department
Tracey Barnes – Place Department
Tim Gregory – Corporate Director Place
Tommi Cluley – Place Department
Jane Marsden-Dale – Place Department

MINUTES OF LAST MEETING HELD ON 20 SEPTEMBER 2016

The minutes of the meeting held on 20 September 2016 having been circulated to all Members were taken as read and were confirmed and signed by the Chairman

APOLOGIES FOR ABSENCE

There were no apologies

DECLARATIONS OF INTERESTS BY MEMBERS AND OFFICERS

None

DECLARATIONS OF LOBBYING OF MEMBERS

The Chair with the approval of the Committee declared lobbying by various groups on the single agenda item for all members of the committee

TO DEVELOP A HYDROCARBON WELLSITE AND DRILL UP TO TWO EXPLORATORY HYDROCARBON WELLS BY USE OF A DRILLING RIG AND ANCILLARY WORKS

Mr Smith introduced the report and gave a slide presentation and highlighted the following issues in the officer's report:-

- The application is to develop a hydrocarbon well site and drill up to two exploratory hydrocarbon wells: one vertically and one horizontally.
- The site is 3.2 kilometres from the centre of Misson Village which is South West of the site (the closest village).
- The site of the application is a disused military base which housed Bloodhound Missiles.
- The nearest occupied property is 130 metres north of the site boundary and 260 metres from the well pad.
- The Misson Training Area Site of Special Scientific Interest (SSSI) is approximately 125 metres to the east of the site with further SSSI sites and local wildlife sites also in the surrounding area
- There will be four phases of the development:-
 - Construction of the site approx. 14 weeks which would include the installation of water drainage system around the site, to allow water to be collected and taken to a water treatment installation.
 - The second phase would be the drilling stage approx. 39 weeks to a depth of approx. 3500 metres. The first well would be drilled vertically and the second well would be drilled vertically then horizontally to the south of the site. There would be two types of drill mud used (this is to prevent the equipment from overheating), one water based and the other low toxicity oil based and both would be captured and treated after use. The application states that there are a number of different drill rigs available within the UK and Europe but it is not possible to reserve a rig in advance of the planning application being determined. On this basis, the application has been assessed based on the worst case scenario in relation to particular environmental and amenity effects such as noise, visual and lighting impacts arising from the four types of possible rig.

- The third stage is suspending the drilling and making the site safe in accordance with industry best practice and the regulatory requirements contained in relevant licences.
- Finally in the event of the site being decommissioned then the well heads would need to be plugged and abandoned in line with the requirements of the Oil and Gas Authority and the site restored to its existing condition.
- Operational hours would be 24/7 for the period of drilling and the vehicle movements would be highest at the construction and restoration phases with 36 movements a day, none of which would go through the village of Misson in accordance with the lorry routing agreement to be secured by s106 obligation.
- There have been 3 formal public consultations and 2630 representations received; all but 6 were against the application.
- 75 further representations have been received since the publication of the report, all objecting to the application, mainly raising concerns about the financial position of the applicant following publication of the interim accounts of the applicant after the report was published.
- Legal advice has been obtained with regard to the objection recently received from Friends of the Earth regarding a restrictive covenant on the site and this dealt with in paragraph 1393 of the report
- Other regulatory authorities have responsibilities for the licensing of the site and the environmental impact of the application e.g. Oil and Gas Authority, Environment Agency, Health and Safety Executive and Natural England.
- The noise impact has been considered and it has been agreed that the construction phase should not be undertaken during the bird breeding season.
- Natural England have recommended that noise levels should not exceed 42 decibels during the drilling phase in bird breeding season..
- The report states that although the development would have a temporary adverse effect on the SSSI the benefits of the proposed development at the site outweigh the impacts.
- The benefits are that the proposed development is on existing commercially developed land rather than a greenfield site, lower elements of the development would be screened by existing buildings and vegetation the site already has access for HGV's and other large vehicles, and the site is well located from a rock quality perspective.
- The applicant has undertaken site search exercises starting with a 3D seismic survey which has identified the most suitable rock formation for this type of development.
- Two other sites were discounted by the applicant on account of them comprising best and most versatile agricultural land, the lack of screening and difficult access arrangements. Officers do not agree that these are justified reasons for discounting these other two sites and so, given that these other two sites are in an area with a lower probability of flooding, considers that the application site does not pass the sequential test.
- However, the flood risk to the application site does not create a significant hazard and as such it is in accordance with Minerals Local

Plan Policy M3.9, despite the fact it does not pass the Sequential Test and is therefore technically contrary to Policy DM12 of the Bassetlaw Core Strategy.

- The site would be lined and a perimeter water drainage system put in place to protect the ground water, and tests would be carried out regularly to ensure the integrity of the site is kept to the highest standard
- Visual impacts would not be significant as the drilling rig would be in place for 9 months
- Lighting would be used for 24 hours a day only during the drilling stage and dependent on the rig to be used will have different visual issues. However, it is considered that a suitable lighting scheme could be designed.
- Public Health England and the County Council's Public Health Team have no objections as they consider the health impacts to be minimal.
- Financial position of the applicant is considered by the Oil and Gas Authority under their licensing regime.

Mr Smith also informed members of two typographical errors with the report which were:-

Paragraph 1246 reference is made to the lighting proposed on site and the end of the paragraph should read that the proposed development is in accordance with Policy DM1 of the emerging Minerals Local Plan, not Policy DM11 and

In condition 36 of the recommended conditions, the condition should read "the internal finished floor level" and not "the internal finished flood level".

Following the introduction members asked questions and made comments as follows:-

- The application does not include fracking operations although the purpose of the exploratory boreholes is a means to an end. There will be no mineral extraction it is an application about exploring the shale resources in the area.
- A reservoir in these terms is about a body of rock containing gas and how large it is.
- Plan 18 shows the flood risk areas and the position of the application site.
- The boreholes for both horizontal and vertical are separate to allow a better understanding of the rock formation.
- The water treatment centres are fit for purpose as the Environment Agency would take this into consideration before issuing a licence.
- Condition 19 set out in the appendix to the report deals with noise pollution and if necessary the operation would be stopped.
- Although adverse effects on a SSSI site is a planning reason for an application to be refused Natural England have not raised an objection and paragraph 194-212 sets out the reasons for this.

- The Oil and Gas Authority have responsibility for monitoring the financial stability of the applicant and so officers do not consider a restoration bond is necessary.

Following the introductory remarks of Mr Smith, there were five special presentations and number of speakers who were given an opportunity to speak and brief **summaries** of those speeches are set out below.

Mrs Jayne Watson and Peter Edwards, representing Misson Parish Council, gave a 10 minute special presentation. During their presentation they highlighted the following issues:-

- The cumulative impact on the community have not been adequately assessed as there are already several developments surrounding Misson. These include Tunnel Tech North to the West, it is on the flight path for the Robin Hood Airport and there are a number of Quarries in the vicinity.
- The village and surrounding area also has to deal with noxious emissions from Tunnel Tech North which affects the quality of life in the area.
- There are many other places that the Gas companies can explore for shale gas and not once again in the Misson area.
- Misson already suffers enough from high levels of environmental stress with three sources of acknowledged negative air quality impacts in existence.
- If this application is approved it will bring further problems with heavy industrial impacts and the village will be hemmed in by industrial works.
- Misson Parish Council do not feel that the evidence is robust enough to justify the applicant's site selection and there is no satisfactory reason why it was chosen.
- Misson residents are overwhelmingly against the proposal.
- The presence of existing access and screening only benefits the applicant as they do not need to provide it.
- We consider this to undermine the credibility of the planning process and sets a dangerous precedent.

There were no questions

Janice Bradley (Nottinghamshire Wildlife Trust) and Simon Gledhill, representing the Misson Community Action Group gave a 10 minute special presentation. During their presentation they highlighted the following issues:-

- The sensitivity of the site has been highlighted by the NWT every step of the way regarding the sensitivity of the habitats and species of the SSSI and surrounding Local Wildlife Sites.
- The scarce Long Eared Owl nests in the area of the SSSI and in the area near Misson.
- The applicant has only recently provided information to help meet some of the concerns of the NWT.

- Noise level monitoring has not been undertaken by the applicant to correctly gauge the baseline levels on the SSSI
- Only one of the four rigs that are capable of undertaking the drilling meets the operational noise threshold of 42dBA.
- Birds can be affected by noise in and out of the breeding season as the noise could mask any territorial songs by the birds
- Proposed acoustic mitigation includes storage containers which have not been subjected to a visual impact assessment.
- There is concern that the bats that roost in Springs Cottage will be subjected to excessive noise and interfering with breeding.
- The possibility of additional Nitrogen deposits could have a significant effect on wild plant life.
- Strict enforcement and absolute prohibition against any amendment to conditions is essential if the application is to be granted.
- The NWT are legal beneficiaries of a restrictive covenant that applies to the application area and which prevents the area being used for “noisy, noxious, of offensive trade or business or for any purpose which may be or become a nuisance, damage or annoyance”
- Bassetlaw, Nottinghamshire and National Policies all apply similar approaches to SSSI’s in that significant harm should be avoided if other alternative sites are available.
- As an ex-military base it is not known how many unexploded bombs are in the vicinity of the site and what damage could be caused by the vibration of the drilling.
- The proposed development does not comply with Nottinghamshire’s emerging Mineral Policy DM8 in respect of cumulative effects on Misson.
- The site is in a high flood zone.

In response to questions Janice Bradley (Nottinghamshire Wildlife Trust) and Simon Gledhill responded as follows:-

- There are a number of planes that travel over the site however they are high up and so the noise impacts will not be as high as the drilling will be.
- The cumulative effect would be added to and the potential for additional damage is untested therefore accurate information is not available to be able to quantify this.
- The conditions would be imposed post rather than preventative by which time it may be too late to stop any harm being done to the environment or wildlife.
- Only one of the four rigs would comply with the recommended noise levels and no guarantee can be given it will be available.
- The water levels and water quality in the Gresham Drain need to be monitored regularly to ensure they are not contaminated or reducing in amount needed in order to keep the SSSI from dramatically changing as the drain is the main contributor of water.

Mr Smith commented on the two special presentations as follows:-

- Natural England is the Statutory Consultee with regard to the environmental impact on the SSSI and they have not objected to the application.
- Natural England consider that there will be no permanent damage to the area of the SSSI affected by the proposed development and the predicted reduction in water levels is less than 1cm across the whole of the SSSI.
- Planning conditions would help in the monitoring of the site.
- The site has a membrane already in place due to the nature of its previous use as a missile launch base.
- A statutory consultee, Natural England are the specialists put great weight on their expertise and they consider that they have sufficient information to be able to give an opinion of no objection to the application.

Mr Brian Davey, representing Frack Free Nottingham, gave a 10 minute special presentation. During his presentation he highlighted the following issues:-

- The “great weight” phrase is used throughout the Planning Officers report and it is felt that this is to outweigh the grounds to reject the application.
- The use of fossil fuels will mean that the earth’s temperature will increase by more than 2 degrees Celsius which is at a level that the Government is aiming to reduce rather than increase through the Paris Agreement.
- With the possible increase in the earth’s temperature by 2 degrees it would mean that cities like Lincoln and Hull would change dramatically and also the coastline of the United Kingdom.
- This would also have a massive effect on Pollybell Farms which produce organic vegetables as contamination of the land would bring the organic status of the farm into question.
- If the company folds who will be left to foot the clean-up bill?
- Companies that enter into this type of energy extraction rely on prices increasing as the costs rise to get the gas out of the ground, these costs are always met by the consumer and this can lead to depressing the nation through money worries.
- Property prices around the site will be hit and will have an impact on those local people especially.
- This will have an impact on future generations and could lead to the early deaths of future generations.

Mr Brian Davey responded to questions as follows:-

- It is clear that there will be some methane escape as the application is to drill into the shale.
- Pollybell Farms own large parts of the land to the North and South of the application site.

- This is an exploratory well application, however the outcome is for the extraction of shale gas which is the heart of the matter. It would be a futile waste of time both economically or commercially if there is not to be end reason for this expense.
- The fact that this is an exploratory drilling application should not be the only consideration, this will set a precedent and will subject future generations to early graves, as it is not possible to develop any more fossil fuel energy.

Following the 3 ten minute presentations and before moving on to the two presentations in support of the application, the Chair asked Mrs Clack, Planning Committee's legal representative to clarify the position with regard to the role of the other regulatory bodies.

Mrs Clack stated that the proposed development is part of a multi-regulatory regime, of which this Planning Committee forms part. The duty of this Committee is to consider the application before it today on its merits and in accordance with policies in the development plan unless material considerations indicate otherwise. Any future fracking at this site would be the subject of a separate planning application which would be considered on its merits and in accordance with relevant policy by this committee. The decision of this committee today does not predetermine or prejudice the outcome of any future planning application for hydraulic fracturing at this site or at any other site. In considering the application before them today, Members are not required to have regard to any future application which might or might not be submitted.

The Committee is constrained in what it can legitimately take into account. It cannot replicate matters which are dealt with under separate regulatory regimes. It should be taken as read that the other regulators, such as the Environment Agency and the Health and Safety Executive, will carry out their roles effectively and that regulation and enforcement will be robust.

The meeting was adjourned for lunch at 12.50 pm until 1.30 pm

Mr Ken Cronin, representing UK Onshore oil and gas, gave a 10 minute special presentation. During his presentation he highlighted the following issues:-

- There is a long history of oil and gas extraction and exploration in the UK starting in the mid-1800's, long before North Sea gas came into being.
- Over 45% of the UK's energy is produced by gas and it creates over half a million jobs.
- The UK imports nearly half of its energy from other countries at around £18 million a day which is not generating jobs or tax revenues for this country.

- In 20 years' time the expected increases in use of gas energy for imported gas will be around 80% which will cost the country £10 billion per annum.
- The exploration into shale gas could half the imports and lifecycle greenhouse gas emissions from UK-produced shale would be lower than imported gas.
- Unions in Britain are concerned by the moral and environmental issues raised by transporting gas via oceans and continents.
- It is important to invest in renewable energy.
- The government have committed to safe and sustainable extraction of shale gas.
- There are currently over 500 wells in the East Midlands with 84 currently producing oil and gas.
- There should be comfort from the fact that there are 4 independent regulators that look at every aspect of a development and operational matters, these include the Mineral Planning Authority, Environment Agency, Health and Safety Executive and the Oil and Gas Authority.
- All aspects of drilling are checked on a regular basis to ensure the safety of those around which includes the environment.
- The regulations in this country are second to none and have to be adhered to in the strictest ways possible.
- There will be a significant number of jobs created in this industry.
- There has been a community engagement charter in place for over two years so as to ensure that every community is kept informed of issues surrounding the application.

Mr Cronin responded to questions as follows:-

- It is about the environment and economy so it is relevant to consider the use of the site.
- The industry learns through development and it is developing all the time.
- The US inject water after the gas is removed, the process that will be used in Britain is not the same as technology has again moved on
- GMB were the union that said that there needs to be development and consideration to the needs of the country against the importation of energy.

Mr Smith commented on the presentation and reiterated the application is not about extraction, it is about exploratory drilling.

Mr John Blaymiers, representing IGas, gave a 10 minute special presentation. During his presentation he highlighted the following issues:-

- IGas are dedicated to the assurance of safety and compliance with all regulatory authorities to ensure that the company complies.
- IGas initiated a Community Liaison Group to enable communities to take the journey of the proposal and be informed of developments every step of the way.

- A Community Fund is available to help with local projects in the wider community.
- Nottinghamshire is an important hub of energy production as it was in the 1930's when the first commercial oilfield was opened in Eakring.
- IGas have operated in the area for over 30 years and employ over 70 people in the area.
- The application is to drill 2 exploratory wells; one vertical and one horizontal, on a brownfield site which has had industrial activity for many years.
- IGas are trying to establish the size of the exploratory wells and if the gas reservoirs are of a sufficient size to be worth drilling.

Mr Blaymiers responded to questions as follows:-

- The intention is to publish the baseline monitoring results on a regular basis through the community liaison group and the website.
- Any testing will be undertaken pre, during and post drilling and on a regular basis which would be monthly as a minimum.
- The site choice was because of a number of factors and evidence, some being access, proximity to housing, noise impacts, impacts on nature, geology and formation reports and the fact it is already an industrially used site.
- The drilling rig chosen is dependent on the availability at the time when the drilling can take place.
- The company's finances are all in order and are checked through the Oil and Gas Authority who licence companies within the energy field.
- The cause of the mini earthquake in Blackpool was because the company pumped water into the ground near a "fault" which they did not know about. We however have 3D imaging of the area and can detect any faults in the rock formation.
- The liquid used is 100% recoverable and the only time that oil-mud is used is for the drill head. There are monitors on the drill that will ensure what goes in is what comes out.
- The rigs used for extraction are much smaller than those used for oil extraction.
- These types of applications are scrutinised more than any other industry and have many regulatory bodies to satisfy before any drilling is done.
- It is on the edge of an SSSI, however this has been considered by the relevant authorities and no objections were raised.
- The monitoring that will be in place will detect any errors or breaches and therefore remedial actions can be taken swiftly.
- The 3D seismic report is undertaken through soundwaves building an accurate picture of the rock formations below and will show any faults.

Following the 5 special presentations there were 3 speakers all of whom spoke against the application. A **summary** of those speeches are set out below

Ms Helen Mitchum, objecting, highlighted:-

- The financial viability of IGas is questionable.

- If they do go into administration, the site could just be abandoned and who would clear up the mess?
- Natural England do have concerns that even if this is temporary it could have a significant effect at the Misson SSSI regarding air quality and noise impacts, they also state there are better alternatives.
- Who can inform the wildlife that the disruption to them will only be 9 months?
- There is nothing safe with this application in both environmental terms and the effect on the local community.

Ms Mitchum responded to questions as follows:-

- There is real concern about the financial viability of the company and this needs to be checked very carefully. Ms Mitchum referred to her personal experience in her work as a ranger for a borough council of large companies going into administration and leaving a lot of debt and site restoration issues to tie up.
- What happens if the company is wound up half way through the tests? Who will clean up the site, these are some of the issues that need to be considered before allowing this application.

In response to issues raised Mr Smith responded as follows:-

- With regard to the financial viability of the company the Oil and Gas Authority are the body which oversee this issue and the authority has consulted with them and no objections were raised.
- IGas are also in possession of a PEDL licence which is held with a number of other companies and therefore the Authority does not feel that a restoration Bond is necessary as a condition as there is a joint liability in place.

Mr Souter, local resident highlighted the following:-

- This application is to establish whether or not there is enough shale gas to warrant the drilling for it.
- If enough deposits of Shale Gas are found then IGas will do one of three things 1 sell the licence 2 sub contract or 3 extract it themselves.
- This type of development will have an effect on climate change something that each Council is required to tackle.
- Policy DM10 of Bassetlaw's Core Strategy which expects proposals to deliver low carbon renewable energy.
- The report states that the development could be sited in a different place, to take account of emergency flood planning.
- The site is unsuitable.

Mrs Jeanie Thompson, representing Frack Free Notts highlighted the following:-

- National Planning Policy Framework, paragraph 144, which says that great weight should be given to the benefits of mineral extraction, this is

one government's view another government would have a different opinion.

- Does the Planning Officer's report give sufficient emphasis to the cumulative effect of the multiple impacts on Misson community.
- IGas financial viability is in question.
- The suitability of the site.
- The site is very close to the aquifer that provides drinking water for millions of people.

In response to questions Mrs Thompson responded as follows:-

- The financial situation of IGas can change and is a concern, currently oil prices are low so the extraction of shale gas would not be viable.
- National policies give great weight to mineral extraction, however this is not something that the Council can consider with this application, but it should be.
- There are also many issues around the safety of the boreholes and the link with earthquakes.
- The policies referred to are the Bassetlaw District Council's Core Strategy Policy DM8 on Heritage; the Bassetlaw District Council's Core Strategy Policy DM9 on Biodiversity and Geodiversity; the Bassetlaw District Council Core Strategy Policy DM12 on Flood Risk; the Notts County Council Policy, , NMLPDM4 on the Protection and Enhancement of Biodiversity and Geodiversity; the Notts County Council Policy NMNLPSP4 on Mineral Provision, referring to, choosing a site of lower flood risk; the Nottinghamshire County Council Emerging Mineral Policy DM8 in respect of Cumulative Development .

Mr Smith responded to the issue regarding the policies adhered to in that all the policies that have been listed are all relevant, are all clearly all set out in the report, and the application has been considered and assessed against those policies.

Following the public speaking the Local member Councillor Liz Yates spoke on the application and highlighted the following issues:-

- I have received correspondence both for and against this application and therefore it is a difficult decision members have before them.
- Acknowledged that this is an emotive issue, with differing views on the exploration for shale gas. People have raised concerns over the future for their children and grandchildren but for different reasons. Those in support of the proposal are concerned about the security of energy supply.
- There are many issues regarding energy needs in the future and how this will be addressed.
- The opposition groups established in and around Misson have undertaken this in a very professional manner and are genuinely concerned for future generations.

- The report is a very thorough report and has many conditions attached which could be to the advantage of the community and area as a whole if this application is approved.
- It is hoped that if it is approved that the conditions will be rigorously adhered to and constant checks will be undertaken to ensure the safety of the environment, wildlife and community.

In response to a question regarding a previous application on this site by IGas Councillor Yates informed members that she had not received any complaints about that application or while the work was undertaken.

Chair then stated that a matter had been brought to his attention requiring an adjournment and asked the legal officer, Mrs Clack, to provide details.

Mrs Clack stated that a letter had been passed to officers during the lunch recess which was addressed to the planning officer and had been sent by email. It was dated 5 October 2016 and was from Jake White, the legal adviser at Friends of the Earth and relates to the alleged restrictive covenant on the SSSI and which Friends of the Earth contend constrains the activities which may be carried out at the application site. Previous correspondence on this matter is referred to in paragraph 1393 of the officer's report.

Committee were referred to paragraph 3.1 of the Code of Conduct for Planning & Licensing Committee which contains the following procedure for dealing with very late representations:

"Very late representations cannot properly be considered. Any material information received after the written report has been published but more than 24 hours before the start of the Committee meeting will be presented orally by Officers. Information received within 24 hours of the start of the meeting will only be presented if it is brief and can be readily conveyed to the Committee. If highly significant relevant new information comes to light within the above timescale, the Chairman may, after consultation with the appropriate Officer, defer the item to a later meeting"

The meeting was adjourned at 4.10 pm to allow the Chair and Vice-Chair and officers to discuss how this late representation should be dealt with. Following the adjournment the Chair adjourned the meeting until the planning committee of 15 November, stating that the reconvened meeting would commence at the point at which this meeting was left i.e. at the point whereby members move to debate.

The reason for the adjournment was to allow committee to receive legal advice on the matters raised in the late representation. A copy of the late representation would be passed to all members of committee. Before closing the meeting, Chair reminded members that they were still effectively in committee until it is reconvened on 15 November and that they should retain their papers and observe the usual rules relating to lobbying.

The meeting then adjourned until 10.30 am on Tuesday 15 November 2016.

Planning and Licensing Committee 15 November 2016

The meeting reconvened on Tuesday 15 November 2016 at 10.30am. The Chair formally reopened the meeting and reminded members of the application before them for determination i.e. planning application 1/15/01498/CDM to develop a hydrocarbon wellsite and drill up to two exploratory hydrocarbon wells (one vertically and one horizontally) by use of a drilling rig together with associated ancillary works. The proposed development would be carried out in four phases: Phase 1 – wellsite construction; phase 2 – drilling of up to two exploratory wells for hydrocarbons including potential shale gas (the first one vertical and the second one horizontal); phase 3 – suspension of wells and assessment of drilling results; phase 4 – site decommissioning, well abandonment and restoration. The application is on land off Springs Road, Misson and the applicant is Island Gas Limited.

Before the Committee continued, it was ascertained that there were no apologies for absence from any member from the original date.

The Chair also ascertained that there were no changes in declarations of interest from the adjournment date until today's reconvened meeting.

The Chair also asked for any declarations of lobbying which had arisen since the adjournment on 5 October.

The Chair with the approval of the Committee declared lobbying by various groups on the single agenda item on behalf of all members of the committee

The Chair reminded members that the meeting of 5 October was adjourned to allow consideration of a late representation dated 5 October 2016 from Friends of the Earth (FoE) acting on behalf of Nottinghamshire Wildlife Trust. Following receipt of this letter the meeting was adjourned to allow the committee to obtain legal advice on the matters raised therein.

Mrs Clack, Legal Advisor, informed members of that advice:-

“(1) The restrictive covenant to which the Site is subject is not a material planning consideration because any grant of planning permission would not override that covenant. The right to enforce that covenant will still subsist in private law, irrespective of any grant of planning permission.

(2) Any release from, or modification of, that covenant, would be a matter to be negotiated privately between the covenantee and the applicant for planning permission. Again, this is not a matter for the planning system. FoE's contention that granting planning permission would automatically result in a breach of covenant and the commission of an “unlawful act” has no merit.

(3) As for FoE's alternative (and unusual) contention that the planning system should be used to give the covenant additional protection “in the public interest”, officers have demonstrated comprehensively in their report why it is in the public interest, on balance, to grant planning permission for exploratory drilling for shale gas on the Site. Officers have explained in their report that they are satisfied that the various impacts of the proposal – including the noise

and air quality impacts highlighted by FoE in its letter – can be appropriately controlled if planning permission is granted. Officers can therefore make clear to members, when the Committee meeting resumes that they are satisfied that the private interest protected by the covenant does not need any additional protection in the public interest under the planning system.

(4) As for FoE's further suggestion that the Section 106 obligation proposed in this case might be "invalid" given the restrictive covenant, again this has no merit. If implementing the Section 106 obligation would arguably conflict with a restrictive covenant, this would again be a matter to be explored in private negotiations between the covenantee and the applicant for planning permission. This could not bear on the validity of the Section 106 obligation itself because a release from, or modification of, such a covenant can always be sought in principle. There is no question, therefore, of the Section 106 obligation being *necessarily* "unenforceable", as FoE suggests.

In summary, the planning system is concerned with regulating the use of land in the public interest. As stated in paragraph 1393 of the officer's report, restrictive covenants are a private property law right and the presence, or otherwise, of a restrictive covenant is not a material planning consideration. Therefore, it is not a matter which Members are required to take into account in determining this application.

Following the advice from the Legal Officer the Chair then asked the Planning Officer to comment on the initial Draft Bassetlaw Plan which was recently published for consultation and inform Committee if there are any draft policies which are material considerations which should be taken into account in Members' determination of the application.

Mr Smith, Planning Officer, in response stated:-

"Bassetlaw District Council has published its Initial Draft Bassetlaw Plan for consultation between 17 October and 9 December. The plan is being prepared to replace the Core Strategy and Development Management Policies development plan document which was adopted in December 2011 and which is referenced throughout the committee report.

The Initial Draft Plan states that it, and the responses to it made during the consultation period, will set the direction for the Bassetlaw Plan but confirms that the principles in the Initial Draft Plan are not fixed. The Initial Draft Plan sets out a vision for Bassetlaw's future and the key objectives that the plan will need to address to work towards this vision. It then proposes an overall strategy to address these objectives and suggests how this might be broken down into specific policy themes. For each policy theme, the Initial Draft Plan sets out a proposed policy approach, which is intended as the basis for the policies in the Draft Bassetlaw Plan. The Initial Draft Plan confirms that it does not contain draft policies and does not identify specific sites for development.

A Draft Bassetlaw Plan containing a set of draft policies and strategic sites is anticipated to be ready for consultation in late 2017 and the final Plan is not expected to be adopted until 2019.

In terms of the weight that should be attached to emerging local plans, the NPPF, at paragraph 216, states that:

From the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to:

- *the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);*
- *the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and*
- *the degree of consistency of the relevant policies in the emerging plan to the policies in this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).*

The guidance in the NPPF refers to weight being given to relevant policies in emerging plans, yet the Initial Draft Bassetlaw Plan confirms that it contains no draft policies but instead contains proposed policy approaches on various issues including economic development, the historic and natural environment, design and responding to a changing climate which are relevant to this proposed development. The planning application has already been considered against relevant policies in the adopted Bassetlaw Core Strategy and the adopted and emerging Minerals Local Plans which cover the issues outlined by these thematic policy approaches. The application has also been considered against the NPPF itself and the Initial Draft Plan confirms that, in order for the Bassetlaw Plan to be successfully developed and adopted, it needs to be in conformity with the NPPF.

The application has been considered against the adopted Bassetlaw Core Strategy, the adopted and emerging Minerals Local Plans and the NPPF as detailed in the committee report. Given the infancy of Bassetlaw's new Plan and the absence of draft policies in the document out to consultation at the present time, it is recommended that negligible weight is afforded to the Initial Draft Bassetlaw Plan."

In response to a question raised, Mr Smith replied that there are no new approaches in the Draft Local Plan document that were not taken account of within the body of the officer's report.

The Chair asked Mr Smith if any further late representations received since the meeting on 5 October 2016

Mr Smith responded informing Committee that a further 24 letters of objection had been received and set out below are summary of the objections received:-

The issues that have been raised and which officers consider have already been assessed in the committee report are:

- A general opposition to fracking due to its impacts on climate change and global warming;
- Support for renewable energy and non-carbon or methane generating energy sources;
- Concerns that the application is contrary to planning policy;
- Issues with the selection of the site;
- The need to apply the precautionary principle;
- Cumulative impacts with other developments close by;
- Water contamination, including to the aquifer, pollution, groundwater protection and flood risk, including that the site has failed the sequential test;
- Noise pollution;
- Impact on the Misson Training Area SSSI and on wildlife and ecology in general;
- Impacts on health and wellbeing;
- Increases in traffic, including HGVs and the unsuitability of local roads;
- The use and transportation of harmful chemicals and hazardous substances;
- The unnecessary use and transportation of large quantities of water and the disposal of contaminated water;
- The industrialisation of and impact on the countryside, the environment and agricultural land;
- Landscape and visual impact;
- Light pollution;
- Air pollution and the release of toxic gases;
- Problems caused by vibrations;
- The impact on recreation and tourism;
- The impact on listed buildings;
- Drilling might detonate unexploded ordnance;
- Doubts over future monitoring and restoration and the need for a restoration bond;
- Concerns about the financial instability of IGas;
- Concerns about the proposed horizontal well;
- The presence of a restrictive covenant (which the legal officer has already dealt within her earlier statement); and
- Impacts on house prices.

Mr Smith also reported that there had been an objection with regard to whether the applicant company has a legal interest in the site but, as confirmed by the planning application forms submitted with the application, IGas has notified the landowners, L Jackson and Co, of the submission of the application which is all that they are legally required to do as part of the planning application process.

There were also further objections on the grounds of financial position of IGas and the need for a restoration bond to be in place if the application was to be approved. Mr Smith informed Committee that this is not considered necessary as officers are were satisfied that sufficient controls and checks are in place as part of the Oil and Gas Authority's functions and so, on this basis, a restoration

bond attached to any grant of planning permission is not considered necessary, particularly as this would duplicate the regulatory function of the Oil and Gas Authority.

Mr Smith also informed members of the committee that during the adjournment, the Council received a further letter from the Vice-President of Nottinghamshire Wildlife Trust. This is dated 9 November 2016, however, an email copy was received on the afternoon of 10 November and a hard copy on 14 November. The writer requests that a copy of the letter is provided to Committee. Given the length of the letter and that it was sent so close to the date of today's reconvened meeting, it is not considered appropriate for officers to summarise the letter.

The Chair adjourned the meeting at 11.05 am to allow the Committee to read the letter. The meeting reconvened at 11.25 am.

Members asked questions with regard to the information received and Mr Smith responded as follows:-

- The matters raised in all of the objections received since the adjournment have already been considered and answered within the original report.
- Other sites have been considered by the applicant, however this is the site they have applied for not the other sites.

The Chair asked if the consideration of the alternative sites could be taken into account as material consideration. Mrs Clack asked for a short adjournment to consider the question, the Chair adjourned the meeting at 11.30am until 11.50 am to allow officers to consider the question.

Following the short adjournment, Mrs Clack informed Committee:-

The answer to the question depends on the context in which alternatives are considered.

In considering whether the development is acceptable and compliant with policy, YES it is permissible to have regard to the robustness of the site selection process and weigh that in the balance along with all other material considerations. This is what the Committee Report has done.

If, having done that exercise, the conclusion is that the development is acceptable and compliant with policy, NO it is not appropriate then to refuse permission on the basis that some hypothetical alternative proposal elsewhere would be more acceptable”.

Following the speakers and comments by the officers and legal advice, members debated the item and the following issues were raised:

- This application is NOT for fracking although many of the issues raised may be relevant in consideration of any future application.
- This is a multi-regulatory regime and this application is a small part of the approvals needed by the applicant before any work is undertaken on the site.

- There have been other sites considered which might have less impact on the SSSI, however it is not known if they would have any other negative impacts on the environment and the surrounding community.
- There should be more monitoring with regard to the SSSI site and the ground water to ensure safeguards are in place if anything is discovered.
- The Community Liaison Group should be strengthened to ensure all parties are involved and information is shared.
- Councillors have had a site visit and a shale gas workshop which included groups and organisations from the regulators and other interested parties.
- Natural England have not objections on ecological grounds to this site being used as the preferred site for exploratory boreholes.
- Highway safety is a very important issue and consideration should be given to Lorries will follow HGV routes.
- Misson Springs is a significant and unique area of SSSI and it cannot be said that the noise, dust, vibration and transport issues will not have an effect on the area
- This is a precursor to a fracking application on this site.
- There are obviously major concerns voiced by the local community about the company finances and compliance with the conditions attached to any grant of planning permission
- Additional strong conditions relating to noise and air quality monitoring should be added to those already considered and set out in the appendix attached to the report.
- The application is for exploratory boreholes and this means it is not permanent and Natural England have no significant objections.

Mr Smith responded to the issues raised by Members:-

- A liaison committee could be included in the legal agreement to provide certainty that the existing committee will continue in the future.
- Concerns regarding the impact on the SSSI are noted but again it is confirmed that Natural England has not objected to the application.
- Officers are satisfied that the Oil and Gas Authority would carry out the necessary financial checks. However, it is accepted that Government guidance allows for a restoration bond to be provided in exceptional circumstances, including where there are financial concerns relating to the application. Members could require a restoration bond on these grounds.
- As IGas has chosen this site for the proposed development, the alternative sites considered as part of the site selection process have not been the subject of the same level of assessment as the application site itself.

It was agreed that the resolution would be amended as follows:

1. Wording to tighten the monitoring requirements in draft conditions 19 (noise monitoring) and 25 (air quality monitoring);
2. Correction of a typographical error in condition 36 so the word 'flood' is changed to 'floor';
3. Provisions to secure a financial restoration bond from IGas;

4. Provisions to ensure the continuation of the Community Liaison Group;
5. Provisions to provide for off-site monitoring of water levels in the Gresham Drain.

On a motion by the Chair seconded by the Vice Chairman it was:-

RESOLVED 2016/062

That the Corporate Director – Place be instructed to enter into a legal agreement under Section 106 of the Town and Country Planning Act 1990 (as amended) to secure:

- a) A designated route for all HGVs using the site; and
- b) A driver code of conduct; and
- c) A pre-condition survey of the approved vehicle route and the making good of any damage to the highway, over and above normal wear, as a result of vehicles associated with the approved development, and
- d) A financial restoration bond; and
- e) The establishment of the Community Liaison Group for the life of the development; and
- f) A scheme for off-site monitoring of water levels in the Gresham Drain.

That subject to the completion of the legal agreement before the 5th January 2017 or another date which may be agreed by the Team Manager Development Management in consultation with the Chairman and the Vice Chairman, the Corporate Director – Place be authorised to grant planning permission for the above development subject to the conditions set out in Appendix 1 of this report (subject to the amendments to conditions 19, 25 and 36 agreed in Committee). In the event that the legal agreement is not signed by the 5th January 2017, or within any subsequent extension of decision time agreed with the Team Manager Development Management in consultation with the Chairman and Vice Chairman, it is **RECOMMENDED** that the Corporate Director – Place be authorised to refuse planning permission on the grounds that the development fails to provide for the measures identified in the Heads of Terms of the Section 106 legal agreement within a reasonable period of time.