



23 May 2013

Agenda Item: 7

**REPORT OF CORPORATE DIRECTOR POLICY, PLANNING AND
CORPORATE SERVICES**

RUSHCLIFFE DISTRICT REF. NO.: 8/12/00856/CMA

PROPOSAL: APPEAL AGAINST NON-DETERMINATION - RESUBMISSION OF APPLICATION FOR THE CONSTRUCTION OF A LEISURE MARINA COMPRISING MARINA BASIN WITH 553 LEISURE MOORINGS AND ANCILLARY BUILDINGS, ASSOCIATED VEHICLE PARKING, LANDSCAPING AND INFRASTRUCTURE AND THE INCIDENTAL EXCAVATION AND REMOVAL OF MINERALS.

LOCATION: RED HILL MARINA, RATCLIFFE-ON-SOAR

**APPLICANT / : RED HILL MARINE LTD
APPELLANT**

Purpose of Report

1. An appeal has been received by the County Council as the Minerals Planning Authority (MPA) relating to an application for the extraction of minerals and construction of a marina at Red Hill Marina, Ratcliffe-on-Soar. The appeal is on the grounds of non-determination of the application.
2. The purpose of the report is to inform Committee of the appeal and to seek its endorsement to support the view of Officers that, had the application been brought before Committee prior to the appeal being lodged, it would have been refused planning permission on the grounds of insufficient information.

The Site and Surroundings

3. Red Hill Marina lies within the Green Belt adjacent to the River Soar at Ratcliffe-on-Soar. A detailed description of the appeal site and surroundings is set out within the Appeal Statement which is attached as Appendix A. Plan 1 shows the proposed site location.

Proposed Development

4. The planning application, which is accompanied by an Environmental Statement, seeks permission for the construction of a leisure marina comprising marina

basin with 553 moorings, ancillary buildings, parking for 244 cars and the excavation of some 860,000 tonnes of material. A detailed description of the proposed development is contained within the Appeal Statement (see Appendix A). Plan 2 sets out the layout of the proposed development.

Consultations

5. A summary of the consultation responses and representations made by members of the public and businesses is set out in the Appeal Statement (see Appendix A).

Publicity

6. A summary of the publicity undertaken is set out in the Appeal Statement (see Appendix A).

Observations

7. A resubmitted planning application for the creation of a marina through minerals extraction was received by the MPA in April 2012. A number of issues had to be resolved preventing the application from being validated until 14th May 2012. The application remains undetermined.
8. Throughout the application processing period there have been significant objections from a wide range of bodies including, although not limited to, Rushcliffe Borough Council, Natural England, English Heritage, the Environment Agency and East Midlands Airport. Many of the consultees considered the level of information insufficient, inadequate, missing or out of date. The full summary of consultation responses is contained within Appendix A.
9. The responses received from consultees have been passed on to the applicant to ensure that they were aware of the additional information which needed to be submitted and to give them the opportunity to prepare and submit any necessary reports or assessments. The only consultation response that the applicant responded to was from Rushcliffe Borough Council which objected to the development on the grounds that it is inappropriate development in the Green Belt.
10. Policy M3.1 of the Nottinghamshire Minerals Local Plan (Information in Support of Planning Applications) states that planning permission will not be granted unless sufficient information is provided to enable a balanced assessment of all relevant factors. The policy goes on to list the type of information that would be considered necessary, where relevant. The application is not in accordance with this policy.
11. On the 28th January 2013 the Government announced the initial preferred route for the High Speed 2 (HS2) rail line from the West Midlands to Leeds. It showed the preferred route running centrally through the application site. A route map of the relevant section is attached within the Appeal Statement at Appendix A.

12. The applicant submitted an appeal to the Planning Inspectorate (PINS) on 14th March 2013 for non-determination of the application. The appeal method is currently written representation, which involves the submission of written statements setting out the relevant position of each party involved in the appeal for consideration by an independent Planning Inspector. Should the Planning Inspector deem it necessary the appeal could escalate to a Hearing or Public Inquiry at a later date.
13. In defending the appeal the MPA has prepared an Appeal Statement, which was submitted to PINS on 9th May 2013 in line with their strict timetable. The Appeal Statement is attached as Appendix A. The MPA has the opportunity to submit a final statement by 30th May 2013, commenting on any further information submitted by the Appellant.
14. The Appeal Statement provides a comprehensive description of the site location, the proposed development and the issues that have been raised during the consultation process to date. It goes on to explain that the reason a determination had not been reached was because of outstanding information, including the need for additional ecological survey work which, being seasonally dependent, could not commence until Spring 2013. The MPA's intended course of action was to request a single submission of the outstanding information under Regulation 22 of the Environmental Impacts Assessment Regulations. Notwithstanding this, the individual responses received were forwarded to the applicant providing the opportunity to consider its response.
15. The MPA was reluctant to refuse the application because of insufficient information, instead seeking to give the applicant generous opportunity to consider its response to the necessary information so that a full and proper decision could be made based on the relative merits of the development, accordance with policy, consultation responses and representations and any other material considerations. This approach is in line with the requirement to work positively and proactively with applicants, as set out in the National Planning Policy Framework (NPPF).
16. The Appeal Statement concludes that had the application been taken to Planning and Licensing Committee for determination prior to the appeal being lodged, the report would have recommended that the application be refused on the grounds of insufficient information.
17. This report is therefore seeking the retrospective endorsement of the recommendation for refusal, the outcome of which will be reported to PINS in the final comments to be submitted by the 30th May 2013 deadline.
18. PINS also require the submission of a list of any conditions or limitations that the MPA would wish to see imposed, should the Inspector be minded to allow the appeal. Notwithstanding the view that there is insufficient information to determine the application favourably, a list of suggested conditions/topic areas has been compiled and is set out within the Appeal Statement (see Appendix A).

Other Options Considered

19. The report relates to an appeal against the non-determination of a planning application. The only realistic option available to the County Council is to defend the appeal.

Statutory and Policy Implications

20. 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.

Financial Implications

21. In certain circumstances a costs award can be made in appeal cases. A costs award, where justified, is an order which can be enforced in the Courts. It requires one party to pay the costs of another party, in full or part, which have been incurred during the process for reaching the Inspector's or Secretary of State's decision on the appeal.
22. Either of the main parties, the appellant or the MPA, can apply for costs if they consider the other party has behaved 'unreasonably'. Any interested third parties in an appeal can also apply for costs if, for example, a hearing or inquiry is cancelled, as a result of 'unreasonable' behaviour by the appellant or the MPA. In the event of an award of costs being issued against the County Council, members are advised that such costs would be met by a contingency fund held centrally to cover such circumstances.
23. An award of costs is always at the Inspector's or Secretary of State's discretion. But he/she would normally make an award if:
 - (i) one of the parties has applied for costs at the appropriate stage *and*
 - (ii) a party has behaved 'unreasonably'; *and*
 - (iii) this 'unreasonable' behaviour has caused the applicant for costs to incur or waste expense unnecessarily.

Human Rights Implications

24. The relevant issues arising out of consideration of the Human Rights Act have been assessed in accordance with the Council's adopted protocol. Rights under Article 8 and Article 1 of the First Protocol are those to be considered. In this case, 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

25. This report relates to the retrospective endorsement of a recommendation. No planning determination is being made. There are no implications for sustainability and the environment, although the recommendation that planning permission would have been refused on the grounds of insufficient information reflects the fact that further detailed information is required before any decision to support the proposals can be assessed in terms of sustainability and environmental impact.

Conclusions

26. There have been a wide range of objections to the planning application from consultees, with a number of objections relating to insufficient, inadequate, missing or out of date information. The County Council is of the view that there was insufficient information to make a determination on the application other than a refusal. This is in accordance with Policy M3.1 (Information in Support of Planning Applications) of the Nottinghamshire Minerals Local Plan.
27. The County Council intended to make a single formal request for the outstanding information although the applicant has had ample opportunity to provide the information, having been made fully aware of consultee responses. However, an appeal for non-determination has been submitted. As such, it is recommended that the Planning Inspectorate is informed that the County Council seeks dismissal of the appeal on the grounds of insufficient information and had the application been determined prior to the appeal being lodged it would have been refused.

RECOMMENDATIONS

28. It is RECOMMENDED that Committee endorse the position that planning permission would have been refused on the grounds of insufficient information contrary to Policy M3.1 of the Nottinghamshire Minerals Local Plan had a decision been made prior to the appeal being lodged.
29. It is FURTHER RECOMMENDED that the Minerals Planning Authority informs the Planning Inspectorate that Committee supports the dismissal of the appeal.

JAYNE FRANCIS-WARD

Corporate Director Policy, Planning and Corporate Services

Constitutional Comments

“Committee have power to decide the Recommendation” [SHB.14.05.13]

Comments of the Service Director - Finance

“Financial implications are set out in the report.” [SEM 15.05.13]

Background Papers Available for Inspection

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

Electoral Division(s) and Member(s) Affected

Soar Valley – Councillor Andrew Brown

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

APPENDIX A - APPEAL STATEMENT