



COTSWOLD DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	PLANNING AND LICENSING COMMITTEE - 8 JULY 2020
Report Number	AGENDA ITEM (9)
Subject	APPEAL AT SCRAP HAULAGE YARD GILDERS, FOSSEWAY, LOWER SLAUGHTER
Wards affected	BOURTON VALE
Accountable member	Cllr. Clive Webster - Cabinet Member for the Planning Department / Town and Parish Councils Email: clive.webster@cotswold.gov.uk
Accountable officer	Andrew Moody - Senior Case Officer Tel: 01285 623523 Email: andrew.moody@publicagroup.uk
Summary/Purpose	An appeal has been submitted against the Council's decision to refuse planning permission for an electric car charging service station (18/01681/FUL) at Scrap Haulage Yard Gilders, Fosseway, Lower Slaughter. The refusal reason relied solely upon the recommendation of the Highway Authority. The Highway Authority has now informed the Council that it is not prepared to defend its recommendation at the appeal. Consequently, the purpose of this report is to seek a decision from Committee as to whether Members wish officers to pursue the appeal or to withdraw from it.
Annexes	Annex A - Committee Report (November 2019) Annex B - Decision Notice Annex C - Letter from Highway Authority dated 11 June 2020
Recommendation/s	<i>Delegated authority is given to the Head of Paid Service to notify the Planning Inspectorate that the Council will not be defending the refusal reason at appeal.</i>
Corporate priorities	Ensure that all services delivered by the Council are delivered to the highest standard and Respond to the challenges presented by the Climate Change Emergency
Key Decision	NO
Exempt	NO
Consultees/ Consultation	N/A

1. BACKGROUND

At the meeting of the Planning and Licensing Committee held on Wednesday 13 November 2019, Members considered an application for the redevelopment of an existing scrap yard and haulage depot at 'Scrap Haulage Yard Gilder', to the eastern side of the Fosseway, Lower Slaughter.

The Officer recommendation was for refusal, and following consideration of the item, Members resolved to refuse planning permission for the following reason:

The proposed development will result in an over-provision of infrastructure at an unsustainable location that has not been sufficiently demonstrated as a suitable location for the delivery of the policies of the NPPF or emerging policy on electric vehicle charging and would generate an unsustainable level of vehicular movement. As such, establishing the level of infrastructure proposed at this location would result in a privately operated facility that over-provides electric vehicle charging infrastructure which would have a wider impact on strategic planning. In addition, the proposed development has failed to provide for freight movements as a non-motorway service station located upon a highway (A429) that has a high proportion of Heavy Goods Vehicle movements. The proposal is therefore contrary to Section 9 of the NPPF, specifically paragraphs 105, 107 and 110, and Policy INF10 of the Cotswold District Local Plan.

A copy of the Committee report and the decision notice are attached as an appendix.

An appeal has subsequently been lodged against this decision, and this is to be determined by the Public Inquiry procedure at a date to be arranged.

2. MAIN POINTS

2.1. Highways Authority Recommendation

- 2.1.1. As Members will note, the decision was made following the recommendation of the Highway Authority. There were no other reasons for refusal, with matters such as landscape impact within the Cotswolds AONB, the impact upon the amenities of nearby residential properties and flood risk / drainage being considered to be acceptable.
- 2.1.2. Following the appeal being lodged, the Highway Authority has reconsidered this matter, and has confirmed that they no longer wish to raise any objection to the appeal proposal. As such, the District Council would no longer have the support of the Highway Authority in the appeal proceedings. A copy of the letter from the Highway Authority, dated 11 June 2020, is attached as an annex to this report that seeks to explain the reasons for this revised position.
- 2.1.3. The procedural implications arising from this are that the District Council has to determine how to proceed with the appeal in view of the change of recommendation by the Highway Authority. The decision to refuse planning permission cannot be amended, and the appeal will still be determined by the Planning Inspector.

- 2.1.4. With regard to the highways re-consideration of the proposal, including the previously recommended reason for refusal, the following comments are now made by the Highways Authority in their letter of 11th June:

‘Safe and Suitable Access

The access form is a ghost lane as defined in CD 123 of the Design Manual for Roads and Bridges. The design appears to fall within the accepted national guidelines and was supported with a Road Safety Audit. The appellant concludes that it is acceptable. The Highway Authority noted that the level of information submitted was insufficient to come to that conclusion, however having exchanged correspondence with the appellants highway consultant, Vectos, details were provided on 1st June 2020 which confirmed that the required splay lines were achievable in the vertical plane, this was also reviewed by the Highway Authority’s safety auditor who also agreed with that finding. It is therefore concluded that the missing information has now been provided which confirms that safe and suitable access in the context of the proposal has been demonstrated. The agreed drawing numbers are 195165/PD01 and 195165/PD05.

Inadequacy of capacity for turning and parking

The applicant has provided tracking details of the site access and internal operations, there is no obvious conflict within the site. The matter of car parking is a considered to be a commercial decision for the applicant and will be led by the market. The Highway Authority considers that it is unlikely that a motorist would wish to park on the A429 given the speed of traffic and volume. The proposal is unusual and has no local donor site to benchmark against. Given the likely dwell time of motorists it is not expected to result in a high of turnover on vehicles which could result in which would strain parking demand. It is therefore concluded that there is no evidence to maintain opposition to the submitted layout.

Locational Sustainability

The Highway Authority has stated that they consider that there may be more suitable sites which are linked to infrastructure opportunities for travel not reliant on single occupancy vehicles. Additionally, does not have sufficient evidence to qualify this location as safe, accessible and convenient, especially with a low attributed daily flow and lack of surrounding infrastructure allowing this to operate as anything other than standalone. Having given further scrutiny to this comment it is concluded that there is no evidence to support an argument as to what location is suitable or unsuitable for this use. As such the Highway Authority does not wish to challenge the location of this site.

Freight Movements

The decision notice indicates that the site fails to provide for freight movements. The A429 is a heavily trafficked route, however there is no identified capacity short fall and the proposed access arrangement is suitable to cater for larger vehicles. The Highway Authority therefore concludes that there is no evidence to challenge the suitability of the proposal to address the needs of larger vehicles.’

- 2.1.5.** The letter proceeds to state that *'In conclusion the applicant has provided further information since the formal recommendation of the Highway Authority was issued. The Highway Authority is satisfied that the proposal does not result in a severe impact or an unacceptable impact on Highway Safety, therefore it does not wish to offer any evidence to challenge the appellants submission.'*
- 2.1.6.** Members will note that the letter nevertheless recommends two conditions, to include adherence to the submitted plans and a Construction Management Plan.
- 2.1.7.** In view of the Highway Authority's revised position, and having regard to the Council's adopted Scheme of Delegation, consultation has been carried out with the Group Manager - Legal Services and Monitoring Officer, Chair of the Planning and Licensing Committee and Ward Member, and it has been requested that this matter be referred back to Members of the Planning and Licensing Committee for further consideration.
- 2.1.8.** There are two options for Members, which are either to a) inform the Planning Inspectorate that the District Council will not be defending the appeal and submit to the Inspector's judgement; or b) proceed with the appeal and appoint a consultant to appear and present evidence in respect of the refusal reason.
- 2.1.9.** With regard to option a), the Inspector would determine the appeal having regard to national and local planning policies, in addition to other material considerations. This does not necessarily mean that the appeal would be allowed, as the Inspector would form his/her own opinion upon the proposal and would still have the ability to dismiss the appeal if that was the conclusion of their assessment.
- 2.1.10.** Having regard to option b), it is important to state that if the recommendation from the Highway Authority had raised no objection at the time of the application being reported to Committee in November 2019, then the Officer recommendation would have been for planning permission to be permitted, subject to conditions. As such, the recommendation to refuse was wholly reliant upon the specialist advice of the Highway Authority. Without the support of the Highway Authority in defending the decision to refuse the application at the appeal, the Council would clearly be at high risk of costs being awarded against it. Although seeking a specialist transport consultant to represent the Council's case is an option, it cannot be guaranteed that one would be prepared to accept the case or that a consultant would, in any event, be able to avoid costs. Employing a consultant would also result in an additional financial cost to the Council, which would not be guaranteed to be reclaimed from the appellant regardless of the appeal outcome.
- 2.1.11.** As the application was determined by the Council, Members should be aware that the purpose of reporting this matter back to Committee is not to re-issue or amend the decision made previously, for example, to add extra refusal reasons or to permit the development, as this will now be a matter for the appeal Inspector. The purpose of this report is therefore to seek authority from the Committee not to pursue defence of the Council's refusal of the application at the pending appeal (Option a) as explained above).

- 2.1.12.** In considering that the original Officer recommendation to Committee, and the subsequent decision to refuse the application, were based solely upon the advice provided by the Highway Authority, with assurances provided by the Highway Authority to the Council that they would appear at any future appeal proceedings to defend the decision on the Council's behalf, the absence of such support at the appeal proceedings requires Members to further consider this matter in light of the risks to the Council of pursuing a defence.

3. FINANCIAL IMPLICATIONS

- 3.1.** Risk of costs being awarded against the Council following the Public Inquiry, plus additional cost of using a highways consultant to assist in defending the appeal.

4. LEGAL IMPLICATIONS

- 4.1.** None.

5. RISK ASSESSMENT

- 5.1.** None.

6. EQUALITIES IMPACT (IF REQUIRED)

- 6.1.** Not applicable.

7. CLIMATE CHANGE IMPLICATIONS (IF REQUIRED)

- 7.1.** In light of the fact that refusal of the application was based solely upon the recommendation of the Highway Authority and for no other planning reasons, it may be considered that the proposed development would help to encourage more sustainable modes of transport, thereby being beneficial to the objectives of addressing climate change.

8. ALTERNATIVE OPTIONS

- 8.1.** That the appeal is pursued by the Council with the inherent risk (as explained within this report) of being unable to defend its Refusal of the application.

9. BACKGROUND PAPERS

- 9.1.** The following documents have been identified by the author of the report in accordance with section 100D.5(a) of the Local Government Act 1972 and are listed in accordance with section 100 D.1(a) for inspection by members of the public:

- i) Related Officer Report to Planning & Licencing Committee of 13 November 2019.
- ii) Decision Notice to Refuse.

These documents will be available for inspection at the Council Offices at Trinity Road, Cirencester during normal office hours for a period of up to 4 years from the date of the meeting. Please contact the author of the report.

(END)