

DEVELOPMENT COMMITTEE

28th JULY 2011

REPORT OF HEAD OF REGULATORY SERVICES

RECONSIDERATION OF APPLICATION NO. 10/00055/FUL: CONVERSION AND EXTENSION OF EXISTING FARM BUILDING TO FORM ABATTOIR AND ASSOCIATED FACILITIES. FARM BUILDINGS NEXT TO BAYTREE FARM, STYGATE LANE, PICKWELL.

1.0 PURPOSE OF REPORT

1.1 The purpose of this report is to reconsider and determine the above planning application. It was originally considered by the Committee at its meeting of 23rd September 2010 at which time it was resolved to grant permission subject to specified conditions and the completion of a s.106 agreement preventing larger HGV vehicles from approaching the site through Pickwell. This agreement was completed on 13th December 2010 and permission was issued on 20th December 2010.

1.2 The permission was subject to a legal challenge following the identification of a flaw in the recording of the decision and the decision was quashed in June 2011. The grounds for the quashing – which was agreed by the complainant, applicant and the Council, was on the grounds ***“The reasons given for the grant of planning permission do not accurately summarise the reasons why the Committee considered they were granting permission”***

1.2 As a result of the quashing of the decision, it is necessary for the decision to be retaken. However, the new decision will need to be taken in the context of the development plan and material considerations as they prevail now, rather than a re-examination of the position as it stood in September 2010. Accordingly, this report seeks to update the position and address any changes i.e:

- Confirm the position as it stood in September 2010
- Address changes to development plan policy since September 2010
- Report any representations and consultation replies received since September, and advise as to their materiality in terms of the consideration of the issues.
- Report and address other material considerations that have emerged since September, and advise as to their materiality in terms of the consideration of the issues.
- Reappraise the key issues in the light of the changes described above.

2.0 RECOMMENDATIONS

2.1 **It is recommended that the Committee grants planning permission in accordance with the draft decision notice that forms Appendix A to this report.**

3.0 KEY ISSUES

3.1 The position at September 2010

3.1.1 The reports to Committee from September 2010 are attached to this report as Appendices B and C. These include an appraisal of all of the considerations that

were present at the time, including representations received and those from the complainant who brought the legal proceedings against the Council's decision.

3.2 Changes to development plan policy since September 2010

3.2.1 The Development Plan for the area continues to comprise the Adopted Melton Local Plan as referred to above and in the appended reports. However, since September, the East Midlands Regional Plan (EMRP) was reinstated following a decision in the High Court and now needs to be taken into account. The relevant parts of the EMRP are as follows:

Policy 24 – Regional Priorities for rural diversification – seeks to promote the continued diversification and further development of the rural economy, where this is consistent with a sustainable pattern of development and the environmentally sound management of the countryside.

3.2.2 The proposal is directly connected to agriculture and the rural economy and as such would meet with the economic development objectives of the policy. The impact on sustainable patterns of development and environmental impact are considered to relate to the position and design/layout issues associated with the proposal which are addressed elsewhere in this report and in appendices B and C. And which have not altered since September 2010.

3.3 Representations and consultation replies received since September 2010

3.3.1 The Environment Agency submitted comments shortly before the meeting of 23rd September which were not included in the reports at that time (which now form Appendices B and C). These advise that the Agency has no objection to the development but recommends conditions as follows:

- (i) The development hereby permitted shall not be commenced until such time as a scheme to dispose of all foul sewage to a Severn Trent Water Plc treatment works has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.
- (ii) Effluent from vehicle washing is a trade effluent and should be treated as such. This should discharge to a sealed tank for disposal to appropriate treatment facilities or using the above route with the permission of Severn Trent Water.
- (iii) The development hereby permitted shall not be commenced until such time as a scheme to prevent contamination of the nearby ditch by run-off from the dirty yard has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.

3.3.2 These conditions were suggested following the submission of information from the applicant explaining that waste water would be transported away from the site by tanker (this in lieu of connecting to a nearby sewage works, following information regarding its limited capacity). It is considered that the conditions represent the confirmation that the applicant's intentions are acceptable and could be applied to any permission granted.

3.4 Other material considerations that have emerged since September

3.4.1 Since the consideration of the application, the following statements have been issued by Central Government. These are considered to be material considerations relevant to the consideration of this application:

- (i) 'Planning for Growth'

The Government has made it clear that significant weight should be placed on the need to support economic recovery through the planning system. The clear expectation is that we move to a system where the default answer to development is 'yes', except where this would compromise the key sustainable development principles. In a ministerial statement, the Minister for State said Planning Authorities should support enterprise and consider the importance of national planning policies aimed at fostering economic growth and employment and give appropriate weight to the need to support economic recovery. He clarified that despite new policies not yet being issued, the content of his statement should be taken into account.

(ii) 'A Presumption in favour of sustainable development'

An additional statement advised that the Government is committed to ensuring that the planning system does everything it can to support long term, sustainable economic growth, and has made it clear that significant weight should be placed on the need to support economic recovery.

(iii) National Planning Policy Framework

The Government has announced that the forthcoming National Planning Policy Framework will enact the presumption in favour of sustainable development. This will expect local planning authorities to plan positively for new development; to deal promptly and favourably with applications that comply with up-to-date plans and national planning policies; and wherever possible to approve applications where plans are absent, out of date, silent or indeterminate.

3.4.2 It is considered that these statements indicate that a new direction is intended by Government which, when enacted, provide added emphasis in favour of development that involve economic activity and job creation. However, they are at relatively early stages of formulation at present and in respect of this application, it is considered they should attract very minimal weight in favour of the proposal.

3.5 Appraisal of key issues in the light of the changes

3.5.1 The key issue upon which this application is considered to be whether there are material considerations present which justify a departure from the Development Plan. The Development Plan presumes against development in the countryside, favouring an approach of focussing development in the town and other settlements where it is more accessible. There are exceptions to this within the Development Plan (for example small scale changes of use of existing buildings under Policy C6 and farm diversification etc), but it is not considered that this development falls within their scope. Accordingly, it is considered to be contrary to the Development Plan and can only be granted if material considerations indicate it is appropriate depart from it.

3.5.2 The view remains that the location of the proposal brings advantages that could not be emulated elsewhere. This is in respect of the fact that the site is currently used for lairage for livestock awaiting slaughter and the location proposed will avoid the need for the livestock to be transported to another location. This, in turn, means that both the number and length of vehicle trips will be reduced and, in similar terms, the number of 'food miles' also reduced, with commensurate benefits for congestion if compared to locations in urban areas such as Melton Mowbray. Given that the reduction of vehicular traffic is one of the key principles for planning (PPS1, para. 13) it is considered that this objective should carry significant weight to counter-balance against the provisions of the Development Plan given the specific circumstances of the proposal. Furthermore, it is considered that site is uniquely capable of achieving this benefit as other suitably located sites – for example, within

industrial areas in Melton or in other settlements – would not bring the same benefits in terms of preventing the haulage of livestock.

- 3.5.3 The applicant has been criticised for not examining a range of alternative sites that could accommodate the proposal. However, the application is not being promoted on the basis that any *general* rural location is required, but the specific advantages of the application site. Similarly, the application is not being promoted on the basis of ‘unfulfilled need’ for which the best available location is sought and there is no planning policy requirement that demands need to be demonstrated, and for need to then be balanced in judgment against any harm. The application is promoted on the basis that the benefits described at 3.5.2 above are unique to this location and could not be emulated elsewhere (either rural or urban locations), as no other location would not interact with the lairage located at the application site.
- 3.5.4 The application was accompanied by information that explained the movements that are associated with the abattoir. These show a significant number of trips between Pickwell and Melton Mowbray transporting livestock and other movements associated with the abattoir (e.g. staff and supplies), in a range of vehicle types including sheep lorries, which have amounted to over 100 per week, of which 35% are HGV’s. The proposed location would remove this interaction between Pickwell and Melton and with it these trips, which would clearly contribute to the objective of reducing freight journeys and would contribute to efforts to reduce congestion in Melton Mowbray. Similarly, animal welfare objectives seek to reduce the distances animals travel and this agenda would also benefit from the reduction in transportation.
- 3.5.5 The statement that an industrial location may not be ideal for an abattoir has been questioned. It is considered that an abattoir is viewed by many as outside of the mainstream of industrial activity that may normally be anticipated in an industrial area. It is regarded by some as a ‘bad neighbour’, arising from concerns over odour, noise, traffic and appearance, and could act as a deterrent to other forms of business setting up in such areas.
- 3.5.6 In terms of physical impact, the development would be partly accommodated within existing buildings. Whilst this is not considered to fall within the remit of Policy C6 (which requires development to be incorporated into new buildings without significant alteration or extension), it nevertheless makes use of an existing building and as such would not represent the first introduction of a building into an otherwise undeveloped landscape. This, in combination with the agricultural nature of the design proposed, would result in the objectives of Policy C6 (to prevent widespread new buildings in the countryside) being met.
- 3.5.7 The application presents a series of other issues which are technical in nature (e.g drainage, access, appearance etc). However, it is considered that these can each be addressed through conditions and/or the s106 agreement so as to prevent unacceptable impacts or detracting from the benefits described above. The application was screened under the Environmental Impact Regulations 1999 when submitted and found not to require a Environmental Statement. This has been revisited and this conclusion stands.

3.6 Conclusion

- 3.6.1 The decision taken in September 2010 relied on:
- (i) the existence of material considerations which, in the Committee’s judgement, were sufficient to justify a departure from the development plan and;

(ii) satisfaction that the impacts of the proposal (e.g. design, access, traffic impact, landscape and waste disposal) would either be acceptable in amenity and environmental terms or could be controlled to ensure this. It is considered that these considerations remain present and in physical terms, the development remains the same as in September 2010. Additional comfort is derived from the Environment Agency's response (see para 3.3 above). The policy changes (see 3.2) and Government statements (3.4) are considered to be supportive of development that support the economy and weigh in favour of the development. Accordingly, it is considered that the balance of the issues has shifted further in favour of the proposal and the recommendation to approve (as per Appendix B) remain appropriate.

3.6.2 In view of the changes addressed in this report, it is considered that the detail of any permission granted requires updating and for clarity, a revised draft permission is appended to this report as Appendix A taking account of these changes.

4.0 POLICY AND CORPORATE IMPLICATIONS

4.1 There are no wider Council policy implications in this report beyond the matters of planning policy addressed at paras. 3.2 and 3.5above

5.0 FINANCIAL AND OTHER RESOURCE IMPLICATIONS

5.1 There are no financial implications in this report

6.0 LEGAL IMPLICATIONS/POWERS

6.1 The quashing of the planning permission originally granted in December 2010 is an example of an opportunity available to all parties if they consider decisions have erred in law.

6.2 S38(6) of the Planning and Compulsory purchase act requires that decisions should follow the Development Plan unless material considerations relevant to the application indicate that it is inappropriate to do so. In this and any other example, the Committee should only grant permission if it is satisfied that other material considerations are present that weigh against the Development Plan and are of sufficient importance to justify a departure from it.

7.0 COMMUNITY SAFETY

7.1 There are no community safety implications in this report.

8.0 EQUALITIES

8.1 There are no equalities issues implications in this report.

9.0 RISKS

9.1 The risks associated with this report are common with those for all applications considered by the Committee, i.e. risk of appeal if refused and judicial review if approved. Both can be mitigated if the decision is founded on bona-fide planning grounds and is supported by evidence.

10.0 CLIMATE CHANGE

10.1 There are no climate change implications in this report beyond the matters of planning policy addressed at para. 3.5 above

11.0 **CONSULTATION**

11.1 The application has been notified and publicised in accordance with procedures set out in law and policy. In addition, this application has been further publicised following the submission of amendments and additional information, and again for the purposes of reconsideration that this report addresses.

12.0 **WARDS AFFECTED**

12.1 Somerby

Contact Officer: Head of Regulatory Services

Date: June 2011

Appendices : Appendix A - Draft permission
Appendix B – Committee report for 23rd September 2011
Appendix C- update report to Committee for 23rd September 2011

Background Papers: Planning Application 10/00055, representations and consultation replies.