

AGENDA SUPPLEMENT (1)

Meeting: Cabinet
Place: The Kennet Room - County Hall, Trowbridge BA14 8JN
Date: Tuesday 14 March 2017
Time: 9.30 am

The Agenda for the above meeting was published on 6 March 2017. Questions have since been received attached to this Agenda Supplement along with the Cabinet members' responses.

Please direct any enquiries on this Agenda to Yamina Rhouati, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718024 or email Yamina.Rhouati@wiltshire.gov.uk

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This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

5 **Public participation and Questions from Councillors** (Pages 3 - 22)

Questions have been received from the undermentioned with Cabinet member responses as attached:

Item not on agenda:

- Caroline Brown
- Emma Darling (Statement)
- Gisela Norman (response to follow)

Item 9 - Adoption Chippenham Site Allocations Plan

- Councillor Chris Caswill
- Richard Hames
- Kim Stuckey
- Marilyn Mackay

Item 10 - A303 Amesbury to Berwick Down Road Scheme

- Winterbourne Stoke Parish Council (Statement)

DATE OF PUBLICATION: 14 March 2017

Questions from Caroline Brown

To Councillor Toby Sturgis – Cabinet member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

Question

The first question relates to The Democratic Process – This question is in regard to planning permission for mobile microwave masts. Why is it that something that is so important to residents cannot be called in to Planning Committee? Request for mast installations are submitted in an 'Application for prior notification of proposed development by telecommunications code system operators.' Why is this handled by permitted development rather than a full planning application?

My next question is about the role of Wiltshire Council as the Planning authority. It seems that Wiltshire Council has little discretion to decide when it comes to mobile microwave masts. If Central Government appear to require a decision in favour of allowing, can these applications actually be refused and on what grounds?

Answer

The Government is committed to supporting the digital economy and the increasing demand for mobile services. It is working to create an environment where the consumer can expect mobile connectivity wherever they are in the UK that is reliable, resilient, secure, affordable and fast. To meet forecast demand from consumers, the government recognises that ongoing investment from mobile network operators to continually improve and grow the digital network is required. To facilitate this, it has granted a national planning permission, called a permitted development right, which operates outside of areas of outstanding natural beauty, conservation areas and world heritage sites. Where this national planning permission exists, network operators only require prior approval from the local planning authority for the siting and appearance of the development and the authority has only a limited time in which to respond that cannot be extended. The limited time that the authority has to respond and the fact that the Government has already granted permission in principle are the reasons why prior approval applications cannot be called to committee. Siting and external appearance are the only matters that the Council can take into account in determination of a prior approval application for telecommunications development.

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Statement by Emma Darling

Objection to proposed telecommunications Mast 17/01497/PNTEL.

This paper describes the concern and objection from a group of residents regarding a planning application for a 15 meter telecommunications mast at the BT exchange, Masons Lane, Bradford on Avon, Wiltshire, BA15 1QZ. We would like to raise the following considerations and requests to the cabinet meeting on the 14th March at County Hall, Trowbridge.

We are concerned that a proposal such as this is not called into the planning application process, but dealt with as permitted development under the Wiltshire Council procedures for prior notice of telecoms permitted developments. This issue is of significant concern to local residents, over 200 for example have signed a petition opposing placement of the mast and many others are active over social media opposing it. We would ask that something of this importance be dealt with by a full planning application process and called into Planning Committee.

We would ask the meeting to explain what power they, as the planning authority, have to oppose such proposed developments, which appear to be broadly supported by government and on what grounds the council can oppose such proposals.

There are two key issues of significant concern to local residents. These relate to the proposed siting of the mast and the health impacts of such a mast.

The proposed site is within an oasis surrounded by a Conservation Area, which is an area of Outstanding Natural Beauty adjacent to Grade II Listed buildings, dense housing, Christchurch, a large primary school and nursery plus a Residential Care Home. The detail of the detrimental impact of the siting of the mast, including its impact on a conservation area, Christchurch and surrounding homes, has been appropriately raised with the planning officer, however, this cabinet meeting is asked to consider the strength of feeling of opposition that local residents have regarding this application. The soon to be ratified neighbourhood plan for Bradford on Avon (Policy BE3) suggests similar proposals will need a full impact assessment relating to how it would impact aesthetically on an area and to ensure developments are in keeping with the intrinsic character of the area.

Regarding the health impacts, there is significant conflicting academic literature as to the relative safety of these and we draw your attention in particular to the following.

Inaccurate official assessment of radio frequency safety by the Advisory Group on Non-Ionising Radiation by Sarah Starkey (2016) which contests the official guidance currently in use by the government for advice on the safety of radio frequency (The Advisory Group on Non-Ionising Radiation (AGNIR) 2012))

The Government's "Stewart Report" (http://www.mthr.org.uk/documents/meetings/nov_2002/speaker_abstracts/w_stewart.pdf) is very clear in its advisory recommendations; a cautionary approach if siting a mast near schools especially where the beam of greatest intensity falls on a school. And, a logical extension of this, would be no masts near the homes of children or other vulnerable people.

Wiltshire council, through formally deciding to permit this development are accepting of the associated risks. The key issue we would like to raise to the cabinet is that this would mean Wiltshire council are liable for any future health risks associated with these masts and legally held to account. It is important to register that at least one major insurance company Lloyds of London, recognising this as an emerging risk due to the lack of long term studies evidencing its safety, are now refusing to indemnify against such outcomes and have specific exclusions for the effects of non ionising radiation(please see references below). We ask the cabinet to consider whether it has the insurance cover appropriate for this type of mast in this location.

As the governing body responsible for the health and wellbeing of residents we urge this cabinet meeting adopt the cautionary principle as recommended in the governments Stewart report and exert some influence over the current mast application especially in light of its proximity to Christchurch school, local nursing home and a large number of homes.

In summary, given the aesthetic impact of the siting of the mast on the surrounding conservation area, the contravention of the proposals within the draft neighbourhood plan for the area, the significant concern among local residents, the move by insurers away from indemnifying bodies against the future health impacts, we ask this cabinet meeting to consider calling this into a full planning application process to ensure a fair democratic process, or to otherwise oppose this mast being erected in its current proposed location.

<https://www.lloyds.com/~media/lloyds/reports/emerging%20risk%20reports/emf%20final%20November%202010.pdf>

<https://iervn.com/2015/03/27/feb-2015-lloyds-of-london-insurance-excludes-liability-for-electromagnetic-radiation/>

Questions from Gisela Norman

To Councillor Toby Sturgis – Cabinet member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

Question

I understand that Wiltshire Council's obligation generally is to protect the health and well being of the community, from having worked in health care for 40 years or more, that statement I understand. So my question is about health concerns:

It is reported that some Lloyds insurance policies now have specific exclusions for the effects of non-ionising radiation. Does Wiltshire Council have the necessary insurance cover in place or does it have these exclusions? If insurers are excluding these liabilities in policy conditions it would appear that they are concerned about unquantifiable real risks?

Wiltshire Council formally makes these decisions and if, for example, the health concerns expressed by some scientists are later found to be well founded will it be Wiltshire Council who is legally held to account?

Answer

It is standard amongst most insurers that non-ionising radiation is excluded in their policies and this is the case with Wiltshire Council's policies. Therefore Wiltshire Council do not have a policy in place to cover non-ionising radiation.

It is hard to say the reasons why insurers exclude it in their policies but this is likely to be due to the unquantifiable risk in terms of potential costs rather than a 'real' risk.

It is impossible to say if Wiltshire Council would be held to account for a claim against the effects of non-ionising radiation. This will depend on the circumstances of the claim and will only come out over time as cases are brought and settled against Wiltshire or bodies.

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Questions from Councillor Chris Caswill

To Councillor Toby Sturgis – Cabinet member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

Question

1. With regard to the Chippenham Site Allocation Plan (CSAP) modifications, MM18 adds the following grim and callous forecast: "Inevitably there are shorter term impacts before the (Cocklebury) Link Road is completed". These impacts are forecast as a 30% increase in Cocklebury Road traffic and a 55% increase in delays at the Station Hill junction. "This is expected to be a short term impact". Given that the attached build out rate for houses on Rawlings Green does not expect the 200 house trigger for a northern exit to be reached before 2021 or 2022 and that these calculations do not take construction traffic into account, do you accept that a 'short term impact' could mean five years of traffic misery for Monkton Park residents, parents taking children to school, and rail commuters? And that all this is sad contrast to the pious wording in new section 5.18d about the 'sensitivity of traffic levels to residents' and that careful consideration has been given to 'issues such as congestion'.

Answer

These issues were considered during the Examination process and discussed before the Inspector, who is recommending to the Council that the Plan with modification is sound.

2. Will you take this opportunity to apologise in advance to those communities for the problems you have given them by so determinedly pushing this housing allocation?

Answer

The Council has a responsibility to ensure that sufficient housing can be provided to meet the needs of Wiltshire's communities. The Chippenham Site Allocations Plan is ensuring that the Core Strategy housing requirement for Chippenham can be delivered and has involved an examination of the reasonable alternatives to growth at the Town.

3. The optimistic words about future traffic movements in the covering paper depend on the modelling assumptions of the Council's sign-off traffic consultants, Atkins, which have queried and disputed by at least two other professional traffic experts. Will you take this opportunity to state unequivocally that you, the Cabinet, have carefully considered the modelling advice and that it is your conclusion, as part of today's decision, that the claimed traffic improvements for Monkton park will occur?

Answer

Cabinet is satisfied that this issue has been discussed through the examination process. Cabinet is now considering whether to recommend to Council that the Chippenham Site Allocations Plan (with amendments and Additional Modifications as provided with the report), be adopted as part of the development plan for Wiltshire.

4. Embedded within these documents is a serious dispute between your Council administration and Wavin, one of Chippenham's largest and most important employers, over the Council's insistence on driving the Cocklebury Link Road (and perhaps, in the future, the traffic on a full Eastern Link Road) down Parsonage Way, through the middle of the Wavin operational site. You are even contemplating a Compulsory Purchase Order to forcibly achieve what you want, at the Company's expense. If you succeed, Wavin has said this will threaten the sustainability of their investments in the Chippenham site. As an allegedly pro-business Administration, how can you justify this threat to Chippenham's prosperity and jobs?

Answer

I understand that, as local Councillor, officers have briefed you on this issue. However, these issues were also discussed during the examination process and as with any employer, the Council will continue to work constructively to support businesses where it can.

5. MM 26 addresses the completion of the link between Cocklebury Link Road and the B4069. It however allows that this might not need to be delivered if "a set of comparable transport improvement measures is in place". What on earth does this mean? Presumably the Council and the Inspector have something in mind when agreeing to these word, which offer an excuse for not delivering a northern exit at all?

Answer

This matter was addressed in the response to Questions from Mrs Marilyn MacKay to Council on 21 February 2017.

6. The Council's feeble air quality policy allows the Rawlings Green developer to pay a fine and take no other measures to alleviate the extra pollution that will inevitably occur on Station Hill, affecting the many residents and shop workers there. What will the Council do to help them?

Answer

The matter of air pollution was considered at the examination and the Council will continue to undertake its statutory duties in relation to air quality.

7. MM26 provides for the possibility, for the first time, that the Council, and therefore taxpayers across Wiltshire, will provide funding for the Rawlings Green infrastructure. Which budget(s) would this come from? Does this Cabinet motion alone provide the authority for that expenditure at a future date?

Answer

This matter was addressed in the response to Questions from Mrs Marilyn MacKay to Council on 21 February 2017.

8. MM18 claims that the link between Cocklebury Road and the B4069 will also be assured by conditions on the planning permission. How can that be so when officers recommended, and members supported, a planning application for the site with no such conditions attached? Isn't this therefore an inaccurate and misleading statement which should be deleted?

Answer

The planning application has been deferred pending receipt of the Inspector's report and will come back to Committee for a decision.

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Questions from Richard Hames

To Councillor Toby Sturgis – Cabinet member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

Background

1. On the last day of the EIP Mr Cunningham informed the inspector that the LEP or council WOULD provide finance if the developer was unable to do so. This was a commitment the council was willing to do. This commitment was accepted by the inspector - please see 4 below.
2. Mr Sturgis in his helpful reply to a Question at the last cabinet meeting stated: "The statement of intent from the Council is a last resort and only a wise contingency to guarantee the timely delivery of road infrastructure in order to minimise adverse traffic impacts." Mr Sturgis then went on to explain that the liability of the council was a CONTINGENT liability rather than a COMMITTED liability. This however is ingenuous as the inspector is asking for back stop finance. This therefore means that there is a POSSIBILITY that the council WOULD be required to make payment?
3. The inspector in his final report required the council to change its policy so as to provide for the council AGREEING to provide backstop finance if the developer failed to do so. Also in his report he stated that the cost of the railway bridge and infrastructure was in excess of £3 million, though others have stated at the EIP that they thought this was unrealistically low. The inspector also contemplated the council exercising its CPO rights to purchase land (allegedly owned by Wavin). See MM26 of the Main Modifications.
4. The commitment the council is being asked to give today by approving the inspectors report is COMMITTING to backstop the cost of the railway bridge and infrastructure and if necessary the compulsory purchase of land. As Wavin still consider they own the land in question, despite what ever assurances you may receive from officers, there is always the possibility that the council may have to compulsory purchase the land which will be based on the developers profit and therefore be hugely expensive. The council CANNOT GUARANTEE that the money that is spent upfront will ever be repaid by the developer. Nor do they know the quantum of their liability.

Questions

1. Is the Cabinet aware, that if it approves the inspectors report, it is agreeing to backstop financing the bridge and infrastructure and possibly compulsory purchasing land to build the bridge on?

Answer

Cabinet is aware of its responsibilities in terms of supporting the delivery of allocated sites and the infrastructure required.

2. Is the Cabinet aware that Wavin do not wish the link road to run the length of Parsonage Way through their site but wish it to run along a new road yet to be constructed on the edge of their site? If yes, how do they propose to assist Wavin, a leading employer, given that the CSAP is employment led?

Answer

Yes, Cabinet is aware of Wavin's proposals and as always will work constructively to support businesses where it can.

3. The inspector in this report required 40% affordable housing. Please see para 36 of his report when he raises concern as to whether CP43 can be satisfied? Is the council now amending CP43 and reducing that to 30% given Baroness Scott's comment on the Sunday Politics TV programme on 25 February 2017 or will 40% still be required in Rawlings Green?

Answer

The Council has no intention of modifying Core Policy 43 and still remains on target to achieve the overall Core Strategy target to achieve 30% affordable housing across the County.

Questions from Kim Stuckey.

To Councillor Toby Sturgis – Cabinet member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

Question

1. Could the Cabinet confirm that the paragraphs (including modifications) of the Chippenham Site Allocations Plan are the overarching guidance that individual planning applications for the sites need to meet to be approved?

Answer

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. Once adopted, the Chippenham Site Allocations Plan will become part of the Development Plan alongside policies in the Wiltshire Core Strategy.

2. Could the Cabinet confirm that Wiltshire Core Strategy CP51 Landscape is the Council's main way of protecting the landscape in the planning process, due to the absence of Rural Buffers and Green Belt in North Wiltshire? Will the Council also confirm that CP51 is of utmost priority in determining planning applications in strategic sites with a sensitive landscape in a rural setting?

Answer

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise. Wiltshire Core Strategy (including Core Policy 51) forms part of the Development Plan

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Questions from Marilyn Mackay.

To Councillor Toby Sturgis – Cabinet member for Strategic Planning, Development Management, Strategic Housing, Operational Property and Waste

Question

How does the Cabinet defend the adequacy of statutory Statement of Community Involvement (SCI) relating to the Rawlings Green proposals, included in CSAP?

It has not been 'adequate or fair' and the SCI entitled the local community to expect there would be full consultation before adopting the CSAP. It is thus open to challenge.

This relates to later discussions with the Inspector, addressed to infrastructure, which was conducted beyond the public consultation on 'main modifications'. The Inspector had drawn attention to this tendency in a letter (15th November 2015): *'in the eyes of the local community, the issue has not been satisfactorily addressed by the Further Main Modifications. In my opinion, their views carry weight.'* And in another letter stated:

'delivery of the development must be coordinated with infrastructure provision so that there is no significant and lasting adverse impact on the existing community.' There are at least three additional issues brought to this development AFTER the public consultation at the EiP on Rawlings Green;

(a) **an offer of 'council/LEP funding** was offered verbally by Alistair Cunningham' and non-transparently expressed later within the text of CSAP final report. When asked at the last Council meeting what budget allowance had been made for this, the reply again lacked transparency. This would be public money, which opposes the earlier official undertaking that 'developers' would be entirely responsible for infrastructure funding. Community views on this matter are entirely reasonable, yet have been denied.

(b) regarding the **link road from Rawlings Green to A350**, the Inspector had commented:
... 'The council's proposal for "construction of a completed link road from Cocklebury Road via Darcy Close to Parsonage Way and the B4069" would fall far short of a complete link.'

Again, AFTER community consultation, the council has proposed some wording which evades this issue by saying there will be **"a set of comprehensive transport improvement measure of equivalent benefit"**.

When asked at the last Council meeting to be specific about this 'transport improvement measure', the reply indicated this traffic measure is yet to be

ascertained. What confidence can the local community have for this proposal, and why no further consultation on this matter.

(c) **the TIMING of access arrangements from the north** of the Rawlings Green site, remain uncertain. Initially it related to completion of 199 houses to require this to be in place, but later, and AFTER the latest public consultation, there is mention of 'in the first phase' of development.

What precisely is 'the first phase'? Will the rail bridge and infrastructure of Cocklebury Link Road be completed "in the first phase" and what is this timing? There is an annual trajectory for housing deliveries listed in an Appendix, but of course these cannot be totally reliable as there is no sanction for failing to meet this.

CONCLUSION: there are at least three significant issues on which there has been a failure of SCI, and thus open to challenge, and it is premature for Cabinet to 'adopt CSAP' at this time.

Answer

The regulatory requirements for consultation as part of the preparation of a Local Plan is set out in Town and Country Planning Local Planning (England) Regulations 2012. The Council's Statement of Community Involvement, approved in July 2015, was prepared in accordance with these Regulations. The extent of community engagement required when preparing a Local Plan is illustrated in Diagram 2 (page 17). Throughout the preparation of the Chippenham Site Allocations Plan the Council has complied with these requirements.

The Inspector carried out the Examination of the Plan in accordance with the Procedural Practice in the Examination of Local Plans published by the Planning Inspectorate in June 2016. This states at paragraph 5.27 that:

in very limited circumstances, the Inspector may be satisfied that no party would be prejudiced by a possible new MM (or the amendment of one that has already been publicised) that he/she is contemplating towards the end of an examination; for example, this may be because the scope of the consultation that has already been undertaken on related MMs has adequately addressed this point or because a matter is being deferred to another plan.

The Inspector's letter of 4 January confirms that this is the situation here:

I have, as far as possible, used text provided through the Council's own evidence documents, or arising from discussion at the hearings and they do not, so far as can be foreseen, result in any adverse consequences for interested parties that were not aired fully at the hearings.

Furthermore, the Inspector's Report of 21 February has been prepared in the full knowledge of all comments submitted during plan preparation and made during the public hearings in 2016 and concludes:

Following the examination hearings, the Council prepared a schedule of proposed MMs and carried out sustainability appraisal of them. The MM schedule was subject to public consultation for six weeks. I have taken account of the consultation responses in coming to

my conclusions in this report and in this light I have made some amendments to the detailed wording of the main modifications and added consequential modifications where these are necessary for consistency or clarity. None of my amendments significantly alters the content of the modifications as published for consultation or undermines the participatory processes and sustainability appraisal that has been undertaken.'

The references included in Mrs Mackay's question were made during the Examination period, before the Inspector has concluded his Examination. In publishing his final report the Inspector has set out how any outstanding concerns relating to soundness have been resolved.

Turning to the question of the completion of the link road from Cocklebury Road to the A350, it has always been an intention of the Plan (paragraph 4.19) to secure the delivery of this link road. It is therefore not a new proposal. The phrase "*a set of comprehensive transport improvement measure of equivalent benefit*" was introduced by the Inspector to Policy CH2 to ensure that the Plan has been positively prepared and therefore sound (paragraph 99, Inspectors Report and letter of 4 January) and to ensure consistency with proposals at South West Chippenham (Policy CH1). The Council suggested an amendment to paragraph 5.18b in its letter of 13 January to ensure consistency between the policy and the supporting text, an amendment accepted by the Inspector.

For clarification the phrase 'first phase' of development was also introduced by the Inspector in his letter of 4 January to refer to completion of the first 200 homes, defined in the first bullet of amended policy CH2. This 'first phase' of 200 homes has always been a policy requirement.

In conclusion, the Council has complied with the Statement of Community Involvement and responded to the Inspector's request for additional changes which did not alter the substance or intent of the Plan. With these Main Modifications the Inspector has found the Plan sound and legally compliant, which includes an assessment of whether the Council has complied with the Statement of Community Involvement (paragraph 146, Inspector's Report.)

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Statement by Cllr Dr Andy Shuttleworth, Chairman of Winterbourne Stoke Parish Council

Winterbourne Stoke Parish Council's Response to the A303 Stonehenge Scheme Public Consultation

1. Winterbourne Stoke Parish Council was unable and unwilling to offer Highways England (HE) a route preference for the Winterbourne Stoke bypass in order to reflect the complex views of villagers volunteered to us when the Parish Council conducted a door-to-door survey. Some distrusted the whole consultation process believing it to be a charade, some wanted north, some wanted south, some wanted one of the longer surface routes rejected by HE early in the process, many didn't care whether it was north or south so long as we got a bypass, some didn't want a bypass at all and nearly all expressed the view that they wanted much more information before they felt they could make a sensible choice. Their words, not ours.
2. We had believed, from the initial responses of Highways England, that questions posed by the Parish Council and parishioners alike, would be answered quickly, expansively and informatively. Instead, we have been met with delay, denial and obfuscation. Despite a considerable amount of effort, not a single question has been answered in a way that would allow us to put more information in front of parishioners
3. Whilst as individuals we can all have a preference based on our own imperative concerns, views and opinions, no official information has been provided to answer the most basic question of: "How might each of the proposed routes affect me, my family and my village". The best Highways England have to offer is from the top level of their economic model which claims that there is little to choose between the two options. Like all models, it is a case of garbage in and garbage out and HE have used a model whose granularity is such that it conceals what are likely to prove significant differences between the northern and southern routes.
4. Make no mistake, the majority of our villagers and the Parish Council want a bypass, but not one at any cost. That is why we are pressing for an extension to the consultation period to allow Highways England to collect the data we believe essential, to allow them to present it to parishioners in a way that addresses their legitimate questions and concerns and lets them and us make an informed choice.
5. We invite Wiltshire Council to support us in our request for a delay now, when it will have minimal effect, rather than have one imposed at a later stage when it could have a rather more dramatic effect.

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