

CABINET
30 OCTOBER 2007

**SWINDON SOUTHERN DEVELOPMENT AREA – CROFT ROAD TO HAY LANE
LINK M4 MOTORWAY JUNCTION 16 – CONDITION 99**

Executive Summary

The planning permission for a major urban expansion of Swindon at the Southern Development Area (SDA) (also known as Wichelstowe) was conditional upon, inter alia, Condition 99, which, in broad terms, prevents the occupation of any dwelling on the site unless and until:

- (i) The proposed arrangements to re-configure M4 Junction 16 have been consulted on with the three highway authorities responsible for the local and trunk roads, and
- (ii) The condition has been discharged by the local planning authority, Swindon Borough Council.

The proposed works at Junction 16, and the approach road from the development (the Croft Road to Hay Lane Link) have been locally controversial for the duration of consideration of the planning application and beyond. The local Member, Mrs Groom, local pressures groups, and others have sought to change the now permitted proposal for the western access to the site.

Although Cabinet, at its 22nd November 2006 meeting, resolved to approve the principal and operational arrangement for the junction, delegating remaining issues to the Director of Environmental Services, this decision was referred back to Cabinet as a result of a Motion to County Council at its meeting on 8th May 2007. County Council was persuaded that there was additional information available for consideration, (principally in the form of a final report from Halcrow dated February 2007, an electronic copy of which is **appended** for Cabinet Members and a copy is available in the **Members' Room**).

An Agenda Item considered by Cabinet at its meeting on 26th June 2007 resulted in Members removing the delegation and calling for a further report when sufficient detailed proposals necessary to sign off the Condition had been addressed. This report advises that a position has been reached whereby the planning process relating to the junction can now move forward. In previous reports to Members, officers have generally advised that the position in relation to the planning permission granted by Swindon Borough Council is clear, and that the issues to be addressed in order to discharge Condition 99 are effectively technical matters. The Leader has expressed the local concerns to Swindon about the consequences of the Hay Lane connection, and sought assurances that an additional connection to the SDA would be pursued.

Proposal

That Cabinet endorse the Director's advice that the technical requirements to recommend discharge of Condition 99 have now been adequately addressed, subject to an extension of the Hay Lane footway, on the basis of drawings and reports, as amended, submitted to the local planning authority, and that Swindon Borough Council be notified accordingly.

Reasons for Proposal

The report sets out some of the extensive background activity that has occurred as part of the process of dealing with the need to resolve outstanding technical requirements to enable delivery of an objective response to the consultation from Swindon Borough Council in relation to the discharge of Condition 99 of planning permission S/02/2000. The technical submissions have been carefully reviewed, and officer advice is that these now reasonably satisfy the requirements of the condition. There are significant potential risks to the authority if an objection is made and upheld by the local planning authority, unless such an objection has the support of a robust and explicit reasoned justification. Officers are not able to offer such justification.

GEORGE BATTEN

Director of Environmental Services

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SWINDON SOUTHERN DEVELOPMENT AREA – CROFT ROAD TO HAY LANE LINK
M4 MOTORWAY JUNCTION 16 – CONDITION 99

Purpose of Report

1. To advise Members that the technical requirements for the discharge of Condition 99 have now been achieved, and that the local planning authority, Swindon Borough Council, may be advised accordingly.

Background

2. Planning permission was sought for development at Swindon Southern Development Area (SDA) (Wichelstowe) in 2002 (planning application S/02/2000). The County Council was consulted as highway authority on the planning application. The application proposed the Croft Road to Hay Lane link. The accompanying environmental statement dismissed the option of a western access route to Great Western Way. Officers responded to the consultation on the basis of the proposal. The optional route was not pursued on the basis of its dismissal on environmental grounds. The fundamental concern from a highways perspective was the impact development would have at Junction 16 of the M4 motorway.
3. A position was eventually reached between the three highway authorities involved in the planning consultation that allowed for a conditional recommendation to approve the proposals.
4. Planning Permission was granted, subject to conditions by Swindon Borough Council for development at the Swindon SDA (Wichelstowe) on 19th May 2005, following consideration for call-in by the Secretary of State. One of the conditions, number 99, attached to the permission, required, inter alia, further details of proposed changes at Junction 16 of the M4 motorway to be submitted for approval by the local planning authority in consultation with the Highways Agency, and the local highway authorities, Wiltshire and Swindon.
5. During the course of the determination of the planning application the Wiltshire and Swindon Structure Plan was in process of review. The Swindon SDA and its associated east-west link road was an issue of challenge, but not affected in terms of outcome.
6. Throughout the period the planning application was under consideration, and since, the Wichelstowe development proposal has attracted a considerable degree of opposition from the Campaign to Protect Rural England (CPRE) and Transparency in Local Councils (TLC), as well as local communities. The single most controversial issue relates to the east-west distributor road for the site which links Croft Road to Hay Lane, and its associated tunnel breaching the M4 boundary. Local anticipation was that the link road, at its western end, would connect with the Great Western Way on the north side of the motorway, as had previously been envisaged in local (Swindon) transport strategy documents.

7. A raft of reports relating to the link road has been considered by Members over the past few years. The subject was referred to, and considered by, the Overview and Scrutiny Management Committee. Members will be familiar with the issues.
8. County Council, at its meeting on 8th May 2007¹, considered a Motion put by Mrs. Groom in relation to the County Council's position, as the local highway authority, on the matter of a recommendation to Swindon Borough Council in relation to the discharge of Condition 99. Council unanimously accepted an amended Motion and agreed:

That Council asks the Leader of the Council to refer the matter back to Cabinet at the appropriate time.

9. Mrs. Groom's Motion to County Council on 8th May 2007 was predicated partly on the basis that there were material changes of circumstance that justified Cabinet reviewing their former (22nd November 2006² Cabinet meeting) resolution on the matter of the Council's recommendations to Swindon Borough Council regarding the discharge of Condition 99. The Director of Environmental Services' advice to County Council was that this was not the case. In particular, reference was made at Council to the report from Halcrow issued in February 2007, (which had not been widely circulated), which essentially summarised those matters considered and discussed at the presentations at Wootton Bassett and to Cabinet prior to the 22nd November 2006 meeting.
10. At Cabinet on 26th June 2007³, further consideration was given to an Agenda Item on the matter, Cabinet resolved:
 - (i) *To revoke the previous decision to authorise the Director of Environmental Services to agree the outstanding technical issues, as set out in (iv) above*.*
 - (ii) *To ask the Director of Environmental Services to present a further report to Cabinet when sufficient details have been submitted by the developer and officers are in a position to make a final recommendation in relation to the discharge of Condition 99.*

*The full Minute is available on the County Council website.

11. Officers have continued to liaise with the objectors' group throughout the process, making information on progress available as and when sought. The group recently informed the County Council that it wished to submit a report from its consultants, Scott Wilson, on the most recent submission documents, for inclusion on the Agenda. Late submissions by the developer's consultants have prevented timely completion and submission of their report. Should it be received prior to the meeting it will be circulated to Cabinet and a copy placed in the **Members' Room**.

¹ <http://194.72.162.210/documents/dscgi/ds.py/View/Collection-1299>

² <http://194.72.162.210/documents/dscgi/ds.py/View/Collection-1218>

³ <http://194.72.162.210/documents/dscgi/ds.py/View/Collection-1329>

Main Considerations for the Council

12. The Halcrow report dated February 2007 is available electronically with the web version of this agenda. Cabinet members will have had the opportunity to consider whether there are any material considerations that could cause them to come to a different conclusion from that resolved in November. A hard-copy of the Halcrow report will be available in the **Members' Room**.
13. Some additional concerns were raised at Council. On the issue of the Council's policy regarding the suggested 'alternative' western junction of the link road (a point raised by Mr. Coleman), it would be inappropriate to continue to argue that the proposed route is unacceptable, especially in view of the Structure Plan Panel's view on its lack of strategic status, and the fact that the route has planning permission. Cabinet has previously resolved to press for the consideration of an additional link to serve the SDA. This sets the policy position. The objection to a breach of the motorway boundary and associated concerns of coalescence is an issue not to be confused with, and kept apart from, the issues of the technical capabilities to address traffic congestion at Junction 16.
14. Members also heard at County Council that the proposals at Junction 16 are contrived and inappropriate for a rural area, and more suited to an urban street environment (the views of TLC/CPRE's consultant). Whilst it is accepted that the designers had to contrive a solution to suit a challenging problem, it is not accepted that the solution is artificially intricate. Its appropriateness to location is a matter of opinion, and not a technical reason to offer an objection to discharge the condition. (An Inspector's decision on a previous planning application for a motorway services area adjacent Junction 16, involving layout changes to the junction, dismissed objections by the highway authority in relation to junction complexity and 'readability', albeit on a less radical layout change than that currently under consideration).
15. In April 2007 the developers submitted a comprehensive package to Swindon Borough Council, comprising drawings and reports covering the outstanding technical issues, to secure discharge of the condition. Subsequently meetings have been held with other parties, including the Highways Agency, the developers, and their respective agents, as well as with Swindon officers. The Director of Environmental Services is now satisfied that all issues have been addressed to a satisfactory standard to enable the condition to be discharged. Three issues presented some difficulty, viz the signing of lane destinations; the buildability and maintenance of the scheme, in particular because of proximity of works to the junction's southern side highway boundary; and the provision afforded for non-motorised users of the road.
16. Issues around signing have been resolved, in principle, through the anticipated use of gantry signing to inform of destinations and reinforce lane discipline. Site boundaries have now been defined and offer confidence that the alterations can be constructed, albeit with significant retention structures, within the highway boundaries.
17. Provision of facilities for cyclists and pedestrians is specifically referred to in Condition 99. It has not been possible to achieve a solution that provides facilities that would normally be expected in locations where non-motorised users were encouraged and anticipated in significant numbers. However, the facilities to be incorporated are considered to better the existing facilities, in particular in the vicinity of the areas where the main alterations to the junction are proposed. The junction will remain a somewhat hostile environment for the pedestrian and cyclist, but demand is

demonstrably low, and not anticipated to grow materially as a result of the development, which is beyond normal walking distance from the site to the facilities local to Junction 16. It is the Director's view, therefore, this arrangement though not ideal be accepted. One point of concern relates to the extent of footway that the developer is prepared to provide on Hay Lane. This is a matter that should be recorded as an issue to be rectified prior to the discharge of the condition. The developer has agreed to pay the costs of a missing length of footway on the north side of the junction. The County Council can secure this in the eventual s278 Agreement

18. Subject to Cabinet's final decision, the Director has indicated to the developers and the local planning authority that he is in a position to inform the Cabinet that he can offer technical advice that Cabinet may now resolve to recommend that the essential requirements of Condition 99 have been satisfied, and that no objection is offered to the local planning authority in relation to its discharge.

Environmental Impact of the Proposal

19. None arising as a result of either of the stated options.

Equalities Impact of the Proposal

20. There are no equalities impact issues arising from the proposal.

Risk Assessment

21. If **Option (a)** is adopted then the principal risk is that the groups that have challenged the County Council's position as a consultee throughout the process of dealing with the planning application and the subsequent discharge of Condition 99 may pursue their threat to seek to judicially review the Council in relation to their actions. It is difficult to see what such action would achieve given that the County Council is merely one of a number of statutory consultees in this process and the operative decision-maker is Swindon Borough Council as the local planning authority.
22. If **Option (b)** is adopted, the Council will need to have a very clear and defined rationale to justify any position that might cause the County Council to be seen to be undermining the planning process, or acting vexaciously, or seeking to frustrate the development at Wichelstowe. Without such justification, should the local planning authority accept the County's advice, the County Council may be vulnerable to a legal challenge, again through judicial review, but this time from the developer, Taylor Wimpey Developments Ltd. Given the material potential financial loss that could arise as a result of failure to discharge the condition this is potentially a significant risk for the County Council.

23. There is a possibility that the developer could seek to circumvent problems arising from the potential consequences of Option (b) by way of an application to vary the restrictive condition that would otherwise lead to such loss (no dwelling occupations until Condition 99 has been discharged). This course of action would be likely to have the knock-on effect of delaying their ability to complete the works before being caught by a further restrictive condition, Condition 79.
24. Condition 79 of the planning permission reduces the risk of congestion to which users of the M4 Junction 16 might be exposed, insofar as it restricts the number of dwellings allowed to be occupied to 1,100 before the junctions works have been completed in accordance with the requirements of the Highways Agency and the local highway authorities.
25. The actual works will, in due course, need to be undertaken under the provisions of a formal agreement with the County Council (s278 agreement). There is case law (Powergen v Warwickshire CC) that indicates that the County Council should not seek to decline to enter into such an agreement, on a point of principle, when it is required.
26. Officers understand that Swindon Borough Council, in the event of any unreasonable delay in response on the part of the highway authorities, would review the matter independently, and perhaps discharge the condition, having now undertaken the consultation required by the planning permission. Given the progress made on resolving the outstanding issues, this is not thought to be a risk that would have serious consequences, as full detailed arrangements will need to be established prior to the signing of the s278 agreements.

Financial Implications

27. Although not quantified, there are potential costs associated with the above options if a legal challenge to the Council's actions is made. A minimum consequence, should a judicial review be sought, would be for the Council to be represented in defending such proceedings. Costs would have to be found from within existing budgets as no specific provision has been identified within the Medium Term Financial Strategy (MTFS) or current year budgets.

Options Considered

Option (a)

28. Having reviewed the matters raised through County Council and this report, Cabinet may, on advice from the Director, that the essential requirements of Condition 99 have been satisfied, resolve to recommend the discharge of Condition 99, subject to the other highway authorities expressing their satisfaction with the proposed arrangements, and the issue of the extent of footway provision on Hay Lane being resolved.

Option (b)

29. Cabinet may take the view that there are outstanding issues to be resolved with the developer, or that they have new evidence that has come to light, and that the local planning authority should be advised that Condition 99 should not be discharged.

Conclusion

30. Cabinet have been advised in previous officer reports of the position of the County Council as a highway authority consultee to Swindon Borough Council. Members are now advised that the Director considers the requirements to discharge Condition 99 have been reasonably met, and Cabinet should offer a positive recommendation to the local planning authority accordingly.

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The following unpublished documents have been relied on in the preparation of this Report:

None