

OVERVIEW AND SCRUTINY MANAGEMENT COMMITTEE
15th MARCH 2006

CROFT ROAD/HAY LANE LINK ROAD AND M4 JUNCTION 16**Purpose of Report**

1. To review a previous request from Mrs. Groom to the Overview and Scrutiny Management Committee, following deferment at the previous meeting on 13th January 2006, taking into consideration developments since that meeting.

Background

2. In the report considered by the Committee on 13th January 2006, a copy of which is attached at **Appendix A**, it was resolved:-

To defer the item to the next meeting on 15 March when Mrs. Groom would be present and to ask the Director of Environmental Services to report at the meeting on the most up to date position, with suitable explanations

3. Since the last meeting of the Committee Members have resolved to proceed with the formal adoption of the Wiltshire and Swindon Structure Plan 2016.
4. A meeting was convened with Mrs. Groom and the Chairman and Vice Chairman of the Committee (Mr. Deane was also in attendance) on 1st March so that the focus of the request for this Committee could be reviewed and clarified in the light of the imminent adoption of the Structure Plan. It is anticipated that the Structure Plan will be adopted on 1st April 2006, following the statutory public notification of intention to adopt.
5. At the meeting on 1st March, Mrs. Groom posed six specific points. These have been formally submitted and are set out in the attached **Appendix B**. This report does not seek to address the first three points in Mrs. Groom's notes. Also attached is an illustrative plan which was omitted from the Appendices attached to the report of the 13th January meeting (**Appendix C**).

Consideration of the six points**Point 1**

6. *Why did WCC not insist in 2003 that alternatives were looked at? It should be noted that:*
 - (a) *The Swindon Local Plan Inspector commented in his report that it seemed that a comprehensive comparison of alternative routes had not been carried out;*
 - (b) *The EU Directive of 2003 stipulates the need to consider all alternatives in order to have sustainable development;*
 - (c) *The Judgment of Webster J shows that planning authorities have to look at issues as they affect the area as a whole.*

Response

7. The issue here revolves around the alternative road route between Croft Road and the A3102 to the north of M4 Junction 16.
8. The application as submitted was accompanied by an environmental assessment which considered a road route crossing over the railway line to meet the A3102 north of the motorway junction which was dismissed on environmental impact grounds. It is for the local planning authority (Swindon Borough Council) to be satisfied on this point. It was not a matter for the consulted highway authority to challenge the environmental impact assessment on this point as it is not qualified so to do. Rather, as consultee, the highway authority needs to consider the consultation on its merits, and if sufficient justification to recommend refusal cannot be articulated, then objection cannot reasonably be made.
9. The view of the Planning Inspector was reported after the planning permission had been granted.
10. The Directive referred to was a matter upon which the local planning authority had to be satisfied.
11. The Webster judgement referred to relates to consultation, and what constitutes reasonable and appropriate consultation, both in terms of content, and availability of information and timing.
12. The High Court has pronounced upon what "consultation" requires. In *R v Secretary of State for Social Services, ex parte Association of Metropolitan Authorities* [1986] 1 All ER 164, Webster J. said:

"In any context the essence of consultation is the communication of a genuine invitation to give advice. In my view it must go without saying that, to achieve consultation, sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful advice. Sufficient time must be given by the consulting to the consulted party to enable it to do that and sufficient time must be available for such advice to be considered by that consulting party. "Sufficient", in that context, does not mean ample but at least enough to enable the relevant purpose to be fulfilled. By helpful advice, in this context, I mean sufficiently informed and considered information or advice about aspects of the form or substance of the proposals or their implications for the consulted party, being aspects material to the implementation of the proposal as to which the Secretary of State might not be fully informed or advised and as to which the party consulted might have relevant information or advice to offer."

13. Swindon Borough Council is understood to have made reasonable endeavours to consult properly with the County Council. As a consultee, the County Council cannot reasonably be expected to consult others, except insofar as is necessary to achieve the objectives of making a reasoned response to the consulter.

Point 2

14. *Scrutiny need to ask why the County Council's Assistant Director, Planning and Development, did not know the answer to the question:*

Under which of the two headings were WCC consulted about this project? and

Why did he not know about the Judgment of Webster J?

Response

15. It is not reasonable to expect an officer of the Council, whose principal responsibilities lie in the management of a division of the Environmental Services Department, to respond to questions about specific reasons why Swindon Borough Council consulted the highway authority, or in relation to particular judgements (as quoted above) without first having been given a reasonable notice of intention to raise questions about such matters. These are not day to day matters, and it would be surprising if most lawyers were familiar with the issues. The Department has responded since to questions about the two issues following a reasonable opportunity to gather documents and research the matters.

Point 3

16. *If the terms of reference for the consultants are tightly drawn to accord with the wording of the Lead Member's amendment concerning rat runs, why is this so when they should have included evaluating traffic flow from the bridge over the railway route and the difference in traffic flows resulting from the tunnel under the motorway route?*

Response

17. The resolution of Council in May 2004, when a Motion by Mrs. Groom was considered was:-
- (i) *To appoint an independent traffic consultant to evaluate the detailed design of the proposed improvements at Junction 16 (M4) to ensure the Southern Development does not materially increase the traffic through the Lydiards, Wootton Bassett and other villages, as a result of capacity provision at Junction 16.*
 - (ii) *To present the findings of the consultant to a public meeting in Wootton Bassett to inform members of the Council before they make a decision to recommend that the submitted scheme satisfies condition no. 99 in the draft planning permission (or equivalent in the permission when granted) submitted to the Secretary of State.*
18. The resolution was clearly aimed at achieving mitigation at Junction 16 as a result of the Hay Lane link. There was no intention at the time that an alternative scenario, which was not being considered by Swindon Borough Council's Planning Committee, would be addressed by the consultant appointed by the County Council to advise on the matter. Draft Condition 99, recommended in the planning officer's report related only to the proposed development under consideration. There can be no reasonable suggestion that it should address alternative road route proposals.

Point 4

19. *Why was an issue as important in this case as responding to the planning application delegated to officers? Why has there never been a report on the tunnel route versus the rail-bridge route?*

Response

20. Highway responses to planning applications have been a delegated responsibility for many years. The matter was reviewed at the meeting of the Environment and Transport Committee on 13th December 2000, when it was resolved, inter alia, to:-
- (vi) *express confidence in present arrangements whereby County Council officers provide professional advice in respect of new development, and*
 - (vii) *make no changes, therefore, to current delegated authorities to officers in respect of responses to referred planning applications*
21. The planning application for the Southern Development was under consideration for many months. It was submitted in 2002 and determined in 2005. At no time was any request made for the matter to be referred to either Regulatory Committee or Cabinet for consideration. The proposal to provide the Croft Road to Hay Lane link was clear from the outset and the planning application received much local publicity. Had a request been received to refer the matter through Cabinet, this could have been arranged. Likewise, there was no early Motion put in place to request that a report should be produced to evaluate the merits of one route against another.

Point 5

22. *Were Councillors misled over the adoption of the Structure Plan?*
- (a) *Was it correct to say that Swindon could sign off the Condition 99, regardless of any objection from WCC? Does WCC own and administer part of Hay Lane and Wharf Road to M4 J16?*
 - (b) *Was it correct to say that if the Structure Plan were delayed there would be many applications for development in different areas?*

Response

23. Transcripts of the meetings when the Structure Plan was considered for adoption are not available to test the suggestion that Members might have been misled. However, it is understood to be correct that Swindon Borough Council could discharge Condition 99 even if there were to be an objection from a statutory consultee. However, such a decision would not be taken lightly and judicial process could be considered if such an eventuality were to arise.
24. The County Council is the highway authority for the local road network at Junction 16 and for Hay Lane to a point coincident with the County administrative boundary. It is not the highway authority for Wharf Road and cannot exercise powers in relation to the latter.
25. If the Structure Plan adoption were to be delayed, it is a matter of speculation as to the potential consequences. Delaying adoption of the Structure Plan will have effects across the whole of the County. The Structure Plan provides the policy context for a range of other planning processes. This is not simply a Swindon issue. The ability of planning authorities to resist undesirable development is much strengthened where up to date adopted Development Plans exist. Furthermore, an adopted plan, for the period up to 2016, becomes a 'saved' plan under the transitional arrangements and strengthens the County's position on the emerging Regional Spatial Strategy. The Swindon Southern Development has planning permission and will be able to commence when requisite agreements are signed and pre-commencement conditions discharged.

Point 6

26. *Please see attached second audit report from Halcrow [sic]. I have asked for terms of reference given to independent consultants and also for the independent consultants to be named.*

Response

27. The commissioning terms for consultants to undertake a review of the Halcrow reports have not yet been finalised. Three companies have been identified as potential tenderers but have not yet been approached. Mrs. Groom has been privately advised of the names of these companies.

Proposal

28. That Members of the Overview and Scrutiny Management Committee consider the merits of proceeding to adopt the request.

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

None