

REASONS WHY THIS MATTER SHOULD GO TO THE SCRUTINY COMMITTEE

1. There is an important principle to be decided. Did the County Council respond properly to the Planning consultation on the road (tunnel) application, given that Swindon Borough Council recognised it would have material increase in the volume or the character of traffic and there is no evidence how it was examined in relation to these matters and aspects material to the implementation of the proposal.
2. The responses to the highway aspects of planning application fails to take account of the judgment of Webster J.
3. It is not clear under what heading of the relevant Statutory Instrument the response to the 'tunnel' application consultation was made. This heading should be established whenever a consultation is received.

Planning Condition 99

The question has arisen as to whether under the terms of Condition 99 of the conditional approval for the proposal for the 'tunnel' planning application if Wiltshire County Council said it was not satisfied the requirements of the condition could be met this would seem that the proposal could not go ahead.

In order for Wiltshire County Council to be certain of its position in this matter would it not be best to obtain Counsel's Opinion as to its standing in this matter?

Counsel could be asked to advise:

1. If Wiltshire County Council considered the requirements of Condition 99 of the planning permission could not be met would that view alone be sufficient to prevent the requirements of the Condition being met.
2. If Wiltshire County Council considered the requirements of Condition 99 could not be met and so advised Swindon Borough Council, would the Borough Council have to accept that decision or would it be in a position to ignore that opinion
3. If the County Council advised it did not consider Condition 99 could be met and this was accepted by Swindon Borough Council and it refused to discharge Condition 99 and this led to a planning appeal could this lead to the prospect of Wiltshire County Council having costs awarded against it.

Consultation by Swindon Borough Council on the 'Tunnel' Planning Application

Wiltshire County Council was consulted by Swindon Borough Council about the planning application for the new road which included the tunnel and joined up with Hay Lane.

The consultation arose from a requirement of the Town and Country Planning (General Development Procedure) Order 1955. The Order says that, before granting planning permission for development which, in their opinion, falls within a category set out in the table below, a local planning authority shall consult the authority or person mentioned in relation to that category, except where and three exceptions are set out. Only one is relevant and it says "(i) the local planning authority are the authority so mentioned".

There are two categories that are relevant and they are:

- f) Development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a classified road or proposed highway. In such a case the local highway planning authority concerned should be consulted.
- h) Development which consists of or includes the laying out or alteration of any means of access to a highway (other than a trunk road); or the construction of a highway or a private means of access to premises affording access to a road in relation to which a toll order is in force.

When the County Council's Assistant Director Planning and Development was asked which one or both applied in this case he was not able to answer.

Swindon Borough Council must have considered it was necessary to consult the County Council on this application and it seems likely that it did so under f). It should be noted that this referred to a material increase in the volume of traffic or a material change in the character of traffic entering or leaving a classified road. In these circumstances the Borough Council accepted that the application proposals were likely to result in a material increase in the volume of traffic coming out onto Hay Lane.

The consultation required the County Council to consider this issue of the likely material increase in traffic arising from the proposed road and the wider implications for the Council.

The meaning of "consultation" is well known to planners and reference to it appears at a number of places in the various volumes of Encyclopaedia of Planning Law and Practice. The meaning follows from a High Court case decision of 1986. The Assistant Director Planning and Development did not appear to be aware of the reported case. The relevant part of the Judgment of Webster J in the case of R v Secretary of State for Social Services (1986) dealing with the response of a consulted says:

"By helpful advice, 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. "

It is considered that it is clear from this judgment the consultee should examine the implications of the proposal concerning the implementation of the proposal in relation to its interests.

The Assistant Director Planning And Development has written saying in relation to consultations on planning applications the County Council has to make observations on the proposal as submitted and either object or not object. It can only reasonably defend an objection if it feels certain it can demonstrate that the proposal as submitted will result in certain harm. This is not the way a response to a consultation should be made. It is

accepted that a consultation response must relate to the matter of the consultation but the approach taken by the County Council is far too narrow and does not follow the judgment referred to above.

In the case of the “tunnel” application consultation the implications of the implementation of the proposal were not considered and these were highly relevant.

How has Wiltshire County Council Handled the Croft Road to Hay Lane Link and the Structure Plan

The idea for the Tunnel route may have originated with the Multi-Modal Transport Study done by Halcrows in 2001/2. A diagram appeared on the internet showing option 1 for bypassing Junction 16 with a line drawn to the south of the A3102 and crossing the M4 into the Front Garden area.

The Structure Plan 2011 included policy DP10 providing for the Front Garden development but made no provision for access. This Plan also contained Policy T7 where new developments should not be accessed directly from the national primary route network outside built-up areas. At that time, the route known as the Southern Relief Road from Croft Road to Great Western Way, crossing the railway, was in the Swindon Local Transport Plan. Subsequently it was in the first draft of the Swindon Local Plan 2011.

The Croft Road to Hay Lane Link with tunnel under the M4, came in with the Planning Application for the Front Garden, ahead of the process for determining the Swindon Local Plan 2011 and ahead of consultation on the Structure Plan 2016. (Government guidance is for development to follow the development plans unless material circumstances provide otherwise)

In the autumn of 2003, there was statutory consultation on the Structure Plan 2016. The tunnel route attracted more objections than any other issue. It may be noted that except for the parish of Lydiard Tregoze and the houses immediately adjacent to the proposed roundabout, residents in North Wilts had not been consulted on the planning application. Even residents along Hay Lane were not consulted until they protested. By contrast, Swindon carried out comprehensive consultation within the Borough. Traffic data for Hay Lane was not known at the time the traffic modelling was undertaken to decide on the tunnel route.

In January 2004, Swindon Borough Council was minded to grant permission for the Front Garden with the tunnel route subject to condition and legal agreements and to referral on account of it being a large greenfield site. In May 2004, the Secretary of State declined to intervene.

In June 2004, the Panel for the Examination in Public accepted that the Croft Road to Hay Lane Link was a local and not a strategic route. It was therefore not allowed to be debated. James Gray MP, who had collected letters from residents of Wootton Bassett, was not allowed to speak on their behalf.

At the EiP, consultants for the developers were heard explaining to the Panel of Inspectors that the planning application had informed the Structure Plan!!!

In January/February 2006, despite many objections, SBC and WCC adopted the Structure Plan 2016 with the Croft Road to Hay Lane Link in it. It was moved from Policy T12 to Policy T2 Swindon Principal area Transportation Package.

It is being said that as it is now adopted in the Structure Plan the matter cannot go to Scrutiny.

Questions regarding Wiltshire County Council's role as a joint structure plan authority:

1. How has the community been involved and what account has been taken of their comments?
1. Has there been consistency in calling the road local or strategic?

2. As Hay Lane forms the border between the Borough of Swindon and North Wiltshire District, should more have been done to debate the road issue in the early days of the Structure Plan process? Should a report have been prepared for a WCC committee? Have the implications for traffic and for Lyneham and other settlements been considered?
3. Why was possible conflict with Policy T7 not addressed in response to objections?
4. Has Wiltshire County Council acted in the best interests of the residents of Wiltshire?
5. Will any decision of Cabinet after the Wootton Bassett meeting have to be ratified by Full Council?

List of Misinformation & Misleading or Inappropriate Actions

- (i) Reasons given for not being able to build the rail bridge for the SRR by DPDS (Consultants to the Developers) and also the Lead Member: presence of Greater Crested Newts, light pollution, proximity of the railway line to Great Western Way, high voltage electricity lines, water topography, presence of residential property on rising ground (all mentioned in a letter of November 2004 to Georgina Inchcape from the DPPS), ransom – **none of these reasons prevent the rail bridge from being feasible, and the Newts are not even in the area of the proposed bridge (see ahead further information on ransom).**
- (ii) No proper traffic assessments of Hay Lane had been done by SBC at the time of the decision to go ahead with the Tunnel Route
- (iii) Alternative routes were not compared by the Planning Authorities. The Inspector said so in his report – ‘There does not appear to have been a comprehensive comparison of alternative road schemes for the SDA’ (Southern Development Area, or locally known as Front Garden)
- (iv) **At the Examination in Public (June 2004), the Panel accepted that it was a local and not a strategic road, so the matter was not debated even though there had been more objections to this road than to any other issue, and the Local Member having requested at an Environmental Advisory meeting that this local road should not go into the Strategic Structure Plan. No one was allowed to speak about the Tunnel, not even James Gray. It is questioned why WCC never found the Tunnel Route was in conflict with their own Policy T7. Under two years later (February 2006) WCC and SBC insisted on including the Tunnel Route in their Joint Strategic Structure Plan.**
- (v) The Local Plan Inquiry was held from January - April 2005 and SBC signed the Legal Agreement with the Developers, in May 2005, before the Local Plan Inspector’s Report could be written. Objectors had had to insist on their right to be heard at the LPI.
- (vi) The County Council engaged Halcrow’s to do the Report on the Tunnel Route. They already had conflicts of interest (see Information Report– point 4). Wiltshire County Council agreed to engage a second consultant.
- (vii) Extracts from Alan Feist letters:
 - (a) In a letter dated the 19th April 2004, A.F. wrote to Charmian Spickernell ‘the flows predicted to enter J16 are relatively similar whether the development’s western access point is via Great Western Way (SRR route) or Hay Lane (Tunnel Route)’;
 - (b) In a letter dated 1st September 2005, he again wrote to Charmian, ‘the developer’s agents made it quite clear that a link to Great Western Way was not achievable’;
 - (c) 30th November he writes to Georgina Inchcape: ‘ I acknowledge that there will be more traffic movements through J16 of the M4 Motorway with the approved network (Tunnel Route) than would have been the case with a link to the A3102 north of the Motorway -SRR);

- (d) 13th December 2005 he writes further to Georgina Inchcape 'An argument might be advanced that by providing a high quality, high capacity and more direct link to the A3102 (SRR), closer to the town, the pressure to use public transport could be prejudiced'.

All these letters show a high degree of inconsistency to say the least!

- (viii) Proposal to build a mega new school on the 1800 acres owned by SBC south of the M4 – see earlier report – despite assertions all round that there 'are no plans to develop south of the M4'
- (ix) Strongly argued that permission had to be completely granted on the Tunnel Route, with Conditions met, before Network Rail would lift the ransom on the rail bridge - INCORRECT – see earlier Information List -Chippenham private meeting.).
- (x) Assertion at the Full Council Meeting by the Leader that even if the County Council does not agree the Conditions, SBC can still sign off the Conditions and so allow Planning Permission. This is very likely to be wrong, especially as WCC administer and own the land.
- (xi) **Tenders (transport engineering) were sought for J16 recently (as advised by John Orchard of Scott Wilson). A question about this was put to Swindon and it was claimed there had been no tendering.**
- (xii) A huge number of people, both inside Swindon and outside Swindon, have objected consistently (over 1200 signatures collected alone). Residents at the Croft Road end of the Tunnel Route have objected as strongly as residents in North Wilts. Wootton Bassett Town Council and the Parishes of Lydiard Millicent, Lydiard Tregoze and Broad Town have all voted against the Tunnel. No account has been taken of these objections. **The development plan has been 'informed' by the planning application as far as the road is concerned, rather than community involvement leading to consensus about what should be in the forward plan.**