

MINUTES OF THE WEST AREA PLANNING COMMITTEE

Tuesday 16 June 2015



COUNCILLORS PRESENT: Councillors Van Nooijen (Chair), Gotch (Vice-Chair), Benjamin, Cook, Gant, Henwood, Hollingsworth, Price and Upton.

OFFICERS PRESENT: Fiona Bartholomew (Planning and Regulatory), Michael Morgan (Law and Governance), Tim Sadler (Executive Director Community Services), David Stevens (Planning and Regulatory) and Jennifer Thompson (Law and Governance)

Chairman's introduction

The Chair welcomed everyone to the meeting, outlined the procedure, and introduced officers and committee members.

Registered speakers confirmed if they wished to make one address covering either application or both applications, or wished to make two addresses, one for each application.

16. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Chairman's introduction
The Chair welcomed everyone to the meeting, outlined the procedure, and introduced officers and committee members.

Apologies for absence were received from Councillor Tanner (substitute Councillor Henwood).

17. DECLARATIONS OF INTEREST

There were no declarations of interest made.

18. EAST WEST RAIL LINK 13/03202/CND & 14/00232/CND- DISCHARGE OF CONDITIONS RELATING TO VIBRATION

The Committee considered a report and appendices detailing two applications for approvals under planning permission TWA/10/APP/01 for the provision of a railway at Oxford (Section H of the scheme).

The Committee also had eight submissions from members of the public and two from the applicant sent to the clerk for circulation after the publication of the agenda. Members also had the presentation from the open technical briefing on the key issues held on 11 June 2015 which five members had attended.

The planning officer introduced the report and highlighted the key issues and points for consideration contained in this. She also highlighted those issues outside the scope of the three applications (the two considered here and the one considered as the next item) which could not be taken into account including HS2; and drew attention to the relevant parts of the Secretary of State's decision and the strict limits this imposed on the Council's discharging of these conditions.

With the agreement of the committee, the Chair extended the time permitted for addresses objecting to and in support of the application to 33 minutes, with a three minute limit for each objector, to allow all those registered the opportunity to make their comments. Consent had been sought and obtained from all concerned save for Keith Dancey to use this opportunity to make comments concerning both this item and the next.

Paul Buckley, Patricia Feeney, Michael Drolet, Caroline Robertson, John Keyes, Keith Dancey, Neil Butterfield, Chris Irwin, and Lyn Bibbings, all local residents, spoke against the application.

Their points included:

- The assumptions, far from being cautious, did not include the heavy stone trains currently running on the line which created noise and vibration significantly in excess of the acceptable VDV's.
- The assumptions were not in line with current practice and published timetabled movements. Network Rail was not forthcoming on future movements and had produced unrealistic assertions.
- Heavy freight trains would exceed the vibration thresholds – the stone trains in particular would exceed these.
- A reasonable planning scenario would assume a similar pattern to the present and that a doubled track would result in increased train movements.
- The inspector imposed Condition 19 to protect residents from unacceptable noise or vibration.
- Measurements were not taken at or near residents' homes or of subsurface vibrations from trains in tunnels and cuttings: the assumptions were therefore wrong. Building parameters used were wrong. Discharging the conditions was a threat to public safety.
- One resident said his house shook every time a train passed despite having a garden between the house and railway. He was disappointed with the small sample size and the number of assumptions and had no confidence in the calculations.
- There was no consideration given to the usability of outside spaces or the need to open windows. Noise and vibration had serious effects on residents' physical and mental health.

- This decision had implications for Section I of the line.
- There should be guarantees that no heavy stone trains would run.
- There should be strict conditions limiting freight trains to below 30mph and stone trains to daytime and below 20mph.
- There was no mechanism for redress if the predictions were wrong and the conditions were not met. Monitoring, mitigation, and ensuring compliance were necessary.
- A properly resourced onsite monitoring and enforcement plan was required.

Three registered speakers considered their points had been adequately covered and did not address the committee.

Andy Milne, representing Network Rail, and Graham Cross, representing Chiltern Railways, spoke in support of the application, and answered questions as requested by the Chair.

Their points included:

- A summary of the work carried out and the changes to the originally submitted scheme.
- Stone trains currently running at night were servicing the construction work at Water Eaton and through to Bicester. There were no plans to route any trains related to HS2 through this line, should HS2 proceed.
- The line would be completely rebuilt to modern standards with an appropriate maintenance schedule.
- This work would improve the railway through Oxfordshire and improve or introduce links between Oxford and High Wycombe, Bicester, London, and eventually eastern cities.
- If the Tata silent rail was approved for this use, it would be used on Section H where it would be of most benefit although they would like to start with trial sections to assess its effectiveness. It should give a 3dB reduction in noise.

Members of the committee questioned officers to clarify their understanding of points in the application, the assessments, and the objectors' representations, and to satisfy themselves as to the constraints on their decision.

The officers' advice in response is summarised as:

- Limiting the services run or imposing speed limits are outside the scope of this application. Considering the impact of any proposals which did not have consent was outside the scope of this application. Current use of the railway, for example for construction freight, was outside the scope of the application. The mix of trains was part of the assumptions used to model the impact and the committee was not asked to sanction or require a particular set of train movements. The committee could not challenge or change or speculate on the Secretary of State's assumptions or decision, including the decision to delegate this matter. The committee's attention was directed to the paragraphs in the Secretary of State's decision covering alternative mitigation measures and the role of the local planning authority.

- The assumptions used in the calculations were set out in the appendices to the report; the council had obtained the required independent advice that these were cautious and reasonable; there was no expert evidence that these were in fact unreasonable. Freight trains varied greatly in their size, weight, type, and impact and the assumptions covered this variety. Individual heavy stone trains might be expected to be at the upper end of the scale but modelling had to account for a reasonable range and not focus on one end of this.
- Calculations both by the council's expert and Paul Buckley gave VDV's close to, but below, acceptable limits. It was acknowledged that the VDV as a unit was sensitive to changes in types of trains. There were no detailed measurements for particular train types.
- The Tata silent rail reduced noise but not vibration. The strength of vibration required to cause structural damage was far in excess of that created by trains.
- The Secretary of State's decision stated that only the effectiveness of mitigation could be monitored: if there was no mitigation then no monitoring could be required. If there was no breach of the VDV limits then no mitigation could be required. The council as the local planning authority was responsible for planning enforcement in the normal way.

The Committee debated the applications, taking into account the officer's report, supporting appendices, and advice from officers. A motion to accept the officer's recommendation with two further conditions was proposed and seconded.

The conditions proposed were:

1. It is confirmed that the calculations for the Noise and Vibration policy Jan 2011 and the Noise and Vibration Mitigation Policy and the Schemes of Assessment for Noise and Vibration were based on an operational pattern of 8 passenger train movements per hour at peak times and 8 freight train movements per day between 11.00pm and 7.00am. Any variation from this operational pattern will require a new application to Oxford City Council for approval under the Transport Works Act and deemed approval under the Town and Country Planning Act 1990 Section 90 (2a).
Reason - to ensure compliance with Condition 19.
2. Continuous monitoring will be required of both vibration and noise levels at agreed positions throughout section H with a minimum of ten dual monitoring points on the Eastern side and five dual monitoring points on the Western side of the railway, to be installed by Network Rail in positions agreed with Oxford City Council. Buildings calculated to be at particular risk of excessive vibration and/or noise levels will have dedicated monitors. Network Rail will report to Oxford City Council at intervals of six months and eighteen months and at yearly intervals for a further five years after train services start, the results of monitoring – to enable a comparison of theoretical and actual levels of vibration and noise. If actual levels exceed maximum levels laid down in British Standard 647-1 2008 (*vibration*) and the Transport Works Order /10/APP/01 then Network Rail will take immediate remedial action – to be approved in writing by Oxford City Council and completed within 6 months. If the remedial measures are not successful, then Network Rail will take further

measures until full compliance with the Noise and Vibration Mitigation policies is achieved.

Reason - to ensure compliance with Condition 19.

The legal adviser said these conditions could not be imposed as proposed, and advised that the committee should understand that such conditions cannot be legitimately imposed.

Committee members were of the view that the applications could be approved but as the modelling relied so heavily on assumptions, and in the case of vibration compliance was marginal, they considered it reasonable to require monitoring of the actual vibration created by trains on the line to establish whether the limits were breached either at the outset or in the future. Without monitoring there would be no evidence to support or refute the view that vibration was below the threshold, and no evidence to support any assertions that vibration levels exceeded the limits and mitigation was required. Committee members were also of the view that for the same reasons train movements should be restricted to those assumed in the calculations. They remained of the view that the two conditions proposed, albeit amended, should be added.

An amendment was proposed and agreed to add the two further conditions in amended form; and to authorise the planning officer to amend the wording in consultation with the legal adviser, Chair and Vice-Chair to result in these being effective conditions and then to issue the decisions.

The Committee **resolved** that condition 19 be partially discharged in relation to the vibration schemes of assessment for section H (applications 13/03202/CND and 14/00232/CND) subject to the following three full and summary conditions, and to authorise the planning officer to amend the wording of conditions 2 and 3 (above in full; below in summary) in consultation with the legal adviser, Chair and Vice-Chair and then to issue the decisions:

1. The development is to be carried out strictly in accordance with the documents titled "East-West Rail; Phase 1 Chiltern Railways Company Limited Plain Line Vibration Assessment and Mitigation" (ref 5114534- ATK-VIB-RPT-80001 rev P07) dated 16 January 2014; "East-West Rail; Phase 1 Chiltern Railways Company Limited Vibration from Switches & Crossings – Assessment and Mitigation" (ref 5114534-ATK-VIB-RPT- 80003 rev A01) dated 21 January 2014; the ERM letter to the Council dated 29 April 2015 (including the Atkins Technical Note titled "East West Rail Phase 1: Vibration Assessment for Proposed Relocation of Switches and Crossings in Section H" dated 28 April 2015); and drawing numbers 0221083_SecH_Sheet24_Ver1, 0221083_SecH_Sheet25_Ver1, 221083_SecH_Sheet26_Ver1 and 0221083_SecH_Sheet27_Ver1 all dated May 2015. In the event of conflict between these drawings and other documents the four May 2015 drawings shall prevail and as between the other documents the later produced document shall prevail.

Reason – the vibration scheme of assessment has been prepared upon the basis of these drawings and the potential for deviation from them would not

result in the achievement of the standards of vibration mitigation required by the Noise and Vibration Mitigation Policy (January 2011).

2. A condition giving effect to condition 1 above, to restrain the pattern of train movements to those assumed in the assessments.
Reason - to ensure compliance with Condition 19.
3. A condition giving effect to condition 2 above, to require monitoring of both vibration and noise levels at agreed positions with reporting of results over an eight year period, and should this show exceedance of the maximum levels to require mitigation to ensure compliance.
Reason - to ensure compliance with Condition 19.

and with the addition of the following informative:

1. The Applicant is advised that its offer to monitor vibration effects of the development is regarded as highly desirable and the results should be provided to the local planning authority and publicised generally.

19. EAST WEST RAIL PHASE 1: 15/00956/CND - DISCHARGE OF CONDITION 19 OF TWA/10/APP/01 IN RESPECT OF NOISE MITIGATION

The Committee considered a report and appendices detailing an application for approval under planning permission TWA/10/APP/01 for the provision of a railway at Oxford (Section H of the scheme).

The Committee also had eight submissions from members of the public and two from the applicant sent to the clerk for circulation after the publication of the agenda. Members also had the presentation from the open technical briefing on the key issues held on 11 June 2015 which five members had attended.

The planning officer said that all matters were covered in the introduction to the previous item.

Keith Dancey, local resident, spoke against the application. His points included the need for higher barriers; good quality barriers with advice taken from agencies which used these; and monitoring to check effectiveness well into the future.

Andy Milne, representing Network Rail, and Graham Cross, representing Chiltern Railways, said all matters were covered in their statements on the previous item.

Members of the committee questioned officers to clarify their understanding of points in the application, the assessments, and the objectors' representations, and to satisfy themselves as to the constraints on their decision.

Officers referred the Committee to their previous presentation and advice.

The Committee debated the applications, taking into account the officer's report, supporting appendices, and advice from officers. A motion to accept the officer's recommendation with three further conditions was proposed and seconded. Committee members were of the view that the applications could be approved but that the same arguments applied to this application as to the two previously considered, and so the same additional two conditions should be added to this permission. After debate and clarification of the mitigation measures proposed an amendment to add the first two conditions only and not include the third was agreed.

These were:

1. Condition 2 on permissions 13/03202/CND and 14/00232/CND as finalised by officers.
Reason - to ensure compliance with Condition 19.
2. Condition 3 on permissions 13/03202/CND and 14/00232/CND as finalised by officers.
Reason - to ensure compliance with Condition 19.

The Committee **resolved** that condition 19 be partially discharged in relation to the noise scheme of assessment for section H (applications 15/00956/CND) subject to the following full and summary conditions, and to authorise the planning officer to attach the agreed wording of conditions 2 and 3 (above in full; below in summary) in consultation with the legal adviser, Chair and Vice-Chair and then to issue the decisions:

1. The development is to be carried out strictly in accordance with the documents titled "Noise Scheme of Assessment for Route Section H" (ref 0221083/11/H06) dated 6 March 2015; the ERM further technical note submitted to the Council on 5 May 2015 titled "Technical Note to Provide Information on the Effect of Relocating the Woodstock Road Crossover (ref 0221083/H07) and drawing numbers 0221083_SecH_Sheet24_Ver1, 0221083_SecH_Sheet25_Ver1, 0221083_SecH_Sheet26_Ver1 and 0221083_SecH_Sheet27_Ver1 all dated May 2015. In the event of conflict between these drawings and other documents the four May 2015 drawings shall prevail and as between the other documents the later produced document shall prevail

Reason – the Noise Scheme of Assessment has been prepared upon the basis of these details and deviation from them would not necessarily result in the standards of vibration mitigation required by the Noise and Vibration Mitigation Policy (January 2011) being achieved

2. Within three months of this partial approval under condition 19 of the deemed planning permission, proposals shall be submitted for the written approval of the local planning authority showing how at-source noise attenuation by rail dampening to at least the standard achievable by the use of Tata Silentrail can be incorporated into the scheme. The development to which this approval relates shall not be brought into operation EITHER without that written approval having been obtained and other than in

accordance with such approved details OR without the Council having given written confirmation that it is satisfied that the provision of such rail dampening is not reasonably practicable.

Reason - The local planning authority is not satisfied that rail dampening as an at source mitigation measure has been shown to not be reasonably practicable in the absence of any attempt on the part of the applicant to secure approval for the use of such a measure.

3. Condition 2 on permissions 13/03202/CND and 14/00232/CND as finalised by officers.

Reason - to ensure compliance with Condition 19.

4. Condition 3 on permissions 13/03202/CND and 14/00232/CND as finalised by officers.

Reason - to ensure compliance with Condition 19.

The meeting started at 6.30 pm and ended at 9.00 pm