

WEST AREA PLANNING COMMITTEE

13 October 2015

Application Number: 15/01978/CND

Decision Due by: 26 August 2015

Proposal: Details submitted in compliance with condition 3 (Individual scheme Sections) of TWA ref: TWA/10/APP/01 (The Chiltern Railways (Bicester to Oxford Improvements) Order - deemed planning permission granted under section 90(2A) of the Town and Country Planning Act 1990).

Site Address: Chiltern Railway From Oxford To Bicester **Appendix 1**

Ward: Summertown, St Margaret's, North, and Jericho and Osney

Agent: Mr Andrew Deacon

Applicant: Mr Rob Mole

Recommendation:

APPLICATION BE APPROVED

REASONS FOR APPROVAL:

- 1 The planning controls available within the split sections would be the same as those available within the original consent for Section I as a whole.
- 2 Officers have considered carefully all objections to these proposals. Officers have come to the view, for the detailed reasons set out in the officers report, that the objections do not amount, individually or cumulatively, to a reason for refusal and that all the issues that have been raised have been adequately addressed and the relevant bodies consulted.
- 3 The Council considers that the proposal accords with the policies of the development plan as summarised below. It has taken into consideration all other material matters, including matters raised in response to consultation and publicity. Any material harm that the development would otherwise give rise to can be offset by the conditions imposed.

CONDITIONS:

None

Main Local Plan Policies:

Oxford Local Plan 2001-2016

CP6 - Efficient Use of Land & Density

CP10 - Siting Development to Meet Functional Needs

Core Strategy

CS13 - Supporting access to new development

CS27 - Sustainable economy

Other Material Considerations:

- National Planning Policy Framework
- National Planning Policy Guidance
- Environmental Information
- Other comments representations and submissions made in connection with the applications
- The deemed planning permission of 23 October 2012 and documents related to it including the Noise and Vibration Mitigation Policy (January 2011)

List of Appendices:

1. Site plan and scheme sections
2. Proposed Sections I1 and I2
3. Letter from ERM dated 8th July 2015
4. City Council's letter of 5th March 2015
5. ERM's letter of 12th February 2015
6. Letter from NR of 4th February 2015
7. ERM's email and table of 21st July 2015
8. NR's letter and table of 20th July 2015

Background and Purpose of the Report

1. On 7th May 2013, approval was given under delegated powers for the proposed development sections of East West Rail as required by condition 3 of the deemed planning permission of 23 October 2012 (reference 13/00918/CND).
2. Condition 3 reads as follows:

"3. Development sections

No development shall commence until a scheme (which may be amended or varied in whole or part from time to time with the approval of the local planning authority) setting out the division of the development into Individual Sections has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all land to be occupied permanently or temporarily during the construction of each section.

Reason: *To identify Individual Sections for the purpose of these conditions".*

3. Within Oxford, as shown in **Appendix 1**, Section H starts at the northern boundary of the administrative area of Oxford City Council and ends at Oxford North Junction (in the vicinity of St Edwards School playing field); section I continues down from section H to just north of the Station; and section J extends over the station area.

4. The Committee is being asked to consider and determine the acceptability of splitting the approved section I into two parts: I1 and I2 as shown in **Appendix 2**. It is proposed that section I1 extends from Oxford North Junction down to the Aristotle Lane crossing; and section I2 extends from there down to the original end point at section J just north of the Station.
5. The reason given by Network Rail (NR) for this change is:

“to facilitate a revised phasing of the construction programme within the area previously defined as Section I”.
6. This reason was elaborated in a letter of 8th July (**Appendix 3**).

Representations Received:

7. Objections have been received from:
 - The Rewley Park Management Company;
 - The Waterways Management Company;
 - The William Lucy Way Residents Association;
 - Residents of Plater Drive: numbers 30, 32 and 59; The Crescent: numbers 2, 45, 47, 51 and 53; and 27 Rutherway.
8. In summary the objections are as follows:
 - if this change is allowed NR will carry out the work in Sections I2 and J as permitted development which will deny local residents in those areas the right/entitlement to/eligibility for, the noise and vibration mitigation set out in the original planning permission. These areas experience the same level of train movements as other Sections and so should have the same mitigation;
 - NR's assertion that the work in section I2 can be carried out as permitted development is not accepted: this point is one of form rather than substance and is not the kind of technicality upon which a public body like Network Rail should be relying. It would create unequal treatment as between people suffering exactly the same levels of noise and vibration as a result of their work
 - in its letter of 5th March 2015 (**Appendix 4**) responding to ERM's letter of 12th February (**Appendix 5**) the City Council said that mitigation is needed for the whole of Section I – this stance should be upheld in the strongest terms, not to do so in the light of NR's record of managing projects would be foolhardy. The Local Planning Authority has the power to consider whether the proposal would 'injure the amenities of the neighbourhood';
 - this is an underhand attempt to by-pass the democratic process to the detriment of local residents;
 - new conditions should be imposed to achieve noise and vibration

mitigation and monitoring; noise attenuation fencing should be constructed in Section I2, as promised by NR in the vicinity of Waterways (**Appendix 6**);

- work has already started in Section I in contravention of the planning permission (because pre-commencement conditions have not been discharged) – enforcement action is requested;
- there is a primary school adjacent to the line in Section I2 as well as residential properties and this needs to be taken into consideration.
- Comments were additionally submitted challenging the correctness of the decision notices for the Condition 19 approvals given in Section H by this Committee in June – these comments are not relevant to the consideration of this case.

Statutory and Internal Consultees:

None

Sustainability:

9. In granting deemed planning permission for Chiltern Evergreen 3 (now East West Rail Phase 1), the Secretary of State concluded that there is a compelling case to increase rail capacity between Oxford and London, and that the scheme would bring substantial transport benefits in terms of reduced travel times, better public transport connectivity, and better rail network capability. In the decision, the Secretary of State weighed these sustainability benefits against the potential adverse impacts that the scheme might cause. Those considerations gave rise to several of the planning conditions dealing with the natural environment and residential amenity.

Officers Assessment

Issues:

- The principle of the split.
- The practical outcome of the split.

The principle of the split

10. Condition 3 of the original planning permission for the scheme, requires that the local planning authority approves the development sections; and then, if necessary, determines the acceptability of any subsequent amendments to those sections.
11. The 'planning' purpose of condition 3 is not affected by the geographic extent of the sections. In other words, the precise extent of the sections has no impact on the City Council's ability to discharge or enforce the requirements of any of the conditions of the permission.

12. The split of Section I into two parts is therefore acceptable in principle in that it does not impair the environmental controls embodied in the conditions attached to the planning permission.
13. In this connection, residents in their comments point to the City Council's letter of 5th March 2015 (**Appendix 4**) responding to ERM's letter of 12th February (**Appendix 5**). At that time there was no proposal to split Section I and yet NR was proposing to carry out work in the northern part of Section I without having fulfilled the requirements of Condition 19 in Section I. The City Council's letter did not say that mitigation is needed for the whole of Section I, rather the Council pointed out that if any work authorised by the Transport & Works Act Order was to be carried out in Section I, even if only in a small area, then Condition 19 needed to be fulfilled for the whole of the Section not just the small part in which construction was to take place. The Council was emphasising that Condition 19 refers to whole "sections" not parts of sections.
14. In effect that exchange of letters has given rise to this application to split Section I and will enable NR to fulfil its obligations under the planning permission in the more restricted northern part of Section I (the proposed Section I1) while taking an alternative approach in the southern part of Section I (proposed Section I2). This is explained below.

The practical outcome of the split.

15. NR no longer intends to implement an additional track and spur (through Section I and into the Station) which were part of the original permission (known as Works Numbers 3 and 3a). East West Rail will now use the existing track (renewed) through Section I, while the new track (from Bicester down to Section H) will connect with the existing main line in the proposed Section I1. Signalling improvements in the Oxford area which were not available at the time of the original planning permission have made this scheme change possible.
16. NR asserts that the work currently taking place and envisaged in proposed Section I2 (track renewals) is permitted development: those works are different from the permitted scheme and do not rely on, or need the sanction of the original permission. Effectively they are normal operational work. Further, in NR's view, none of the conditions of the planning permission for East West Rail Phase 1 need to be discharged in proposed Section I2.
17. Residents consider that as a result of this change of approach by NR, they are being denied the noise and vibration mitigation to which they are entitled, even though their local environment will be subject to the increased levels of rail activity brought about by the construction and operation of East West Rail Phase 1. Residents are requesting that enforcement action be authorised against the works currently taking place in Section I without, in particular, Condition 19 being discharged; and are requesting that additional conditions be imposed to bring about noise and vibration mitigation.
18. Officers have challenged the views of NR on its permitted development rights

but NR maintains its views as set out in **Appendix 7** (from ERM on behalf of NR) and in **Appendix 8** (from NR). In those circumstances, enforcement action is not available and there is no scope for adding conditions to development which is permitted development. Outside of the planning system however NR has been asked to look into the provision of noise attenuating fencing or full noise barriers to help overcome local concerns.

Conclusion

19. Officers conclude that there is no justifiable basis for refusal of this application because, as explained above, the planning controls available within the split sections would be the same as those available within the original consent for Section I.
20. It is not the splitting *per se* of Section I into I1 and I2 that allows NR to assert that they may use permitted development rights to carry out the railway developments in proposed Section I2. It is the changes to the configuration of the scheme and the associated ability of NR to assert their rights to classify the reconfigured elements as permitted development outside of and not reliant upon the original planning permission.

Human Rights Act 1998

Officers have considered the Human Rights Act 1998 in reaching a recommendation to grant planning permission, subject to conditions. Officers have considered the potential interference with the rights of the owners/occupiers of surrounding properties under Article 8 and/or Article 1 of the First Protocol of the Act and consider that it is proportionate.

Officers have also considered the interference with the human rights of the applicant under Article 8 and/or Article 1 of the First Protocol caused by imposing conditions. Officers consider that the conditions are necessary to protect the rights and freedoms of others and to control the use of property in accordance with the general interest. The interference is therefore justifiable and proportionate.

Section 17 of the Crime and Disorder Act 1998

Officers have considered, with due regard, the likely effect of the proposal on the need to reduce crime and disorder as part of the determination of this application, in accordance with section 17 of the Crime and Disorder Act 1998. In reaching a recommendation to approve this application, officers consider that the proposal will not undermine crime prevention or the promotion of community safety.

Background Papers: 13/00918/CND and 15/01978/CND

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Date: 25th August 2015