

Minutes of a meeting of the PLANNING REVIEW COMMITTEE on Wednesday 15 March 2017

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Committee members:

Councillor Fry (Chair)

Councillor Anwar

Councillor Goddard

Councillor Malik

Councillor Turner

Councillor Munkonge (Vice-Chair)

Councillor Brandt

Councillor Kennedy

Councillor Sinclair

Officers:

Philip Devonald, Planning Legal Locum

Patsy Dell, Head of Planning & Regulatory Services

Adrian Arnold, Development Management Service Manager

Fiona Bartholomew, Principal Planner

David Stevens, Principal Environmental Health Officer

Catherine Phythian, Committee Services Officer

23. Apologies for Absence

There were no apologies for absence.

24. Declarations of Interest

There were no declarations of interest.

25. East West Rail Phase 1 - 2 applications

The Committee considered two applications for the Noise Scheme of Assessments: 16/02507/CND for route section H and 16/02509/CND for route section I-1.

The two applications have been called-in to the Planning Review Committee on the grounds that the West Area Planning Committee decision of 21 February 2017 had retained conditions relating to rail damping and restrictions on train services against

officer advice, which argued that approval with those conditions or refusal of the applications was not defensible at appeal.

The Planning Officer presented the report, setting out the background to the applications and the nature of the professional advice from officers. The Planning Officer explained that Network Rail (NR) had resubmitted the approved Noise Scheme of Assessments with additional information so that the issues around the conditions imposed on previous approvals of those schemes concerning rail damping and restricting rail services could be reconsidered. This was regarded as best practice being an attempt to eliminate or minimise outstanding differences between the applicant and the planning authority.

The Planning Officer explained that, in essence, the two decisions before the Committee were to determine:

1. Whether rail damping is reasonably practicable in the current circumstances where noise barriers and noise insulation are already installed
2. Whether it is reasonable to retain a planning condition which restricts the pattern of rail services

The Planning Officer then referred the Committee to the advice from Queen's Counsel:

- The Noise and Vibration Monitoring Policy (NVMP) does not require 'at source' mitigation if the other measures already provided will achieve the objectives of the NVMP (para 77)
- The NVMP does not require any assessments to address any future increases in train services and that these potential changes do not need to be modelled (paragraph 84 of his Advice).
- Network Rail can increase services without being in breach of condition 19 of the deemed planning permission, and do not need to seek further consent (paragraph 85 of his Advice).

In conclusion the Planning Officer explained that the officer assessment was that:

- the existing barriers and insulation meet the requirements of the NVMP (in both route sections H and I-1) apart from at one Noise Sensitive Receptor (NSR) in section H where the residual (post barrier) noise impact is 3dB. Given that at that one NSR the benefit of rail damping would be a 'just-noticeable' noise reduction, the likely costs of providing rail damping make it not reasonably practicable.
- there is no legal basis for the imposition of the condition to restrict train numbers.

The Environmental Health Officer gave a detailed presentation explaining the technical issues relating to the two applications.

The following local residents spoke against the two applications: Caroline Robertson, Greg Kaser, Mike Gotch, Paul Buckley, Jeremy Thorowgood, Adrian Olsen and Keith Dancey.

Representatives from Network Rail, Paul Panini and Ian Gilder, spoke in support of the two applications.

The Committee asked questions of the officers and Network Rail representatives about the details of the two applications.

The Committee discussion noted, but was not limited to, the following points:

- that possible future changes to services as a result of the introduction of HS2 services was not a relevant consideration in determining these applications
- that the use of rail damping in Europe was of interest but not directly relevant due to the number of differences in rail infrastructure and rolling stock between Europe and the UK
- that the cost of rail damping in section H would be about £1.5M
- confirmation that the barriers would be subject to annual checks and monitoring and on-going maintenance – in perpetuity by Network Rail
- confirmation that monitoring would be undertaken at 6 and 18 months after the commencement of services for EWR Phase 1 and again at 6 and 18 months after the commencement of services for EWR Phase 2
- the definition of Best Practicable Means as stated in Section 72 of the Control of Pollution Act 1974
- that the methodology used throughout the planning process for noise measurement was accepted as the international standard
- reservations about the adequacy of the Government's preferred cost benefit ratio software
- that although the risk of an appeal being lodged was not a material planning consideration the monitoring officer report had outlined some of the consequences for the Council if an appeal is lodged
- that officers were satisfied that there was no conflict of interest for Ove Arup in advising the Council
- that neither the SoS deemed permission nor the NVMP states what the noise environment will be or should be
- the performance of the mitigation measures is not judged against a pre-determined noise environment - NR is only obliged to repair/amend its mitigation measures if they do not perform as expected in terms of reducing noise by stated amounts in the modelling

In reaching its decisions, the Committee considered all the information put before it.

The Committee expressed its sympathy with the local residents and registered its frustration with the decision making process which had placed the City Council in an invidious position with regard to these applications.

Decisions

As part of his summing up the Chair referred the Committee to the legal advice from the Monitoring Officer which stated clearly the constraints on the powers of the Council to go beyond Condition 19 of the deemed planning permission. Finally he explained that, if the Committee was minded to vote against the officer recommendation, they would need to appoint a Councillor from the Planning Review Committee to represent the Council at any subsequent appeal.

On being put to a separate vote for each application a majority of the Committee agreed with the officer recommendation in both instances.

26. East West Rail Phase 1 - 16/02507/CND for route section H

The Committee resolved to **approve** application 16/02507/CND application and condition 19 be partially approved in relation to the Noise Scheme of Assessment for route section H for the reasons set out below and following condition:

Reasons:

1. The submitted Noise Scheme of Assessment is considered to be robust and has demonstrated that the required standards of noise mitigation set out in the Noise and Vibration Mitigation Policy (January 2011) will be achieved subject to the installation of the specified mitigation measures.
2. 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 and advice from Queens Counsel and external technical advisors. Any harm that the development would otherwise give rise to can be offset by the conditions imposed.

Condition:

1. Development in accordance with submitted details

Informative (site specific):

1. That Network Rail should liaise with Mr Keith Dancey (resident of Quadrangle House here) to explore possible mitigation measures to address the noise levels at his property (specifically his front door and bedroom window).

27. East West Rail Phase 1 - 16/02509/CND for route section I-1

The Committee resolved to **approve** application 16/02509/CND application and condition 19 be partially approved in relation to the Noise Scheme of Assessment for route section I-1 for the reasons set out below and following condition:

Reasons:

1. The submitted Noise Scheme of Assessment is considered to be robust and has demonstrated that the required standards of noise mitigation set out in the Noise and Vibration Mitigation Policy (January 2011) will be achieved subject to the

installation of the specified mitigation measures.

2. 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 and advice from Queens Counsel and external technical advisors. Any harm that the development would otherwise give rise to can be offset by the conditions imposed.

Condition:

1. Development in accordance with submitted details

28. Minutes

The Committee resolved to approve the minutes of the meeting held on 15 February 2017 as a true and accurate record.

29. Date of Future Meetings

The Committee noted the dates of future meetings.

The meeting started at 6.00 pm and ended at 8.45 pm