

OFFICER REPORT

Application Number: 03/P/09336

Appeal Ref: 18/APPEAL/05/REF

Received Date: 10 November 2003

Proposal: Reclamation of former opencast workings, recover of secondary aggregates and construction of new access road

Site Address: Land at Tir Pentwys, Hafodyrynys, Pontypool, Torfaen

Ward: Wainfelin & Pontnewynydd

Applicant: Peakman Ltd **Agent:** SLR

BACKGROUND

This report relates to the current appeal being dealt with in relation to the Councils refusal of planning permission, and seeks Committee approval for Officers to continue their engagement with the appellant and be authorised to conclude an appropriate S.106 Agreement which would be in place in the event of the Appeal being allowed.

PROPOSED DEVELOPMENT

The proposal involves the removal of aggregate from the spoil heaps associated with open cast coaling at Tirpentwys which ceased in the early 1960's.

The proposal involves the removal of 4.75 million tons of recoverable aggregate at a rate of 250,000 tonnes per annum over an estimated period of 19 years, with the reclamation area being restored following the removal of the useable aggregate.

Access to the site is proposed to be from a southerly direction and includes the creation of an access road through land at Cwm y Glyn, through an identified Ancient Woodland, to the adopted highway on the old Crumlin Road allowing access to the A.472 some 800m to the east of Hafodyrynys, with all HGV traffic being proposed to travel to and from the east.

It was the concern over the impact on the Ancient Woodland that led to the officer recommendation to refuse planning permission

DECISION AND APPEAL

On 24th April 2017 Planning Committee refused planning permission for the above development for the following reason.

“The proposal is unacceptable due to the irreplaceable loss of almost 3 hectares of Ancient Woodland of high biodiversity value. As such the application conflicts with Adopted Torfaen LDP Policies BW1B (iii),(iv) and (v), S2,S7 and Planning Policy Wales Edition 9 and Technical Advice Note 5”

The applicant has appealed against the refusal of planning permission and this is to be considered by Welsh Ministers at a Public Enquiry commencing on 15 January 2019 together with related matters of Common land and Public Rights of Way (submitted to Welsh Government).

The Local Planning Authority in this case, as with all appeals, is required to cooperate to help progress the appeal. On this basis the Local Planning Authority must engage with the appellant without prejudice to their continued opposition to the proposal and present appropriate Conditions and also any proposed Legal Agreements to the appointed Planning Inspector in order for him to determine their suitability in the event the appeal is allowed.

As members may be aware the Local Planning Authority can either enter into a S.106 agreement with a developer or can accept a unilateral undertaking made under S.106 from the developer to cover the necessary planning obligations. A S.106 agreement requires the local planning authority to be a party to it a unilateral undertaking on the other hand does not. It is usual practice in an appeal situation for the Local Planning Authority to agree the content and accept from a developer a unilateral undertaking to cover the requirements of any planning obligations should an appeal be allowed. However, there are cases where a unilateral obligation will not suffice to meet a planning obligation because it also requires some positive action by the local planning authority in these situations the local planning authority is required to be a party to an agreement under s106.

In the current appeal proceedings it is acknowledged by all parties that the planning obligations required should the appeal be allowed will require some positive action by the local planning authority as is noted in the Section of this report entitled “Contents of Agreement”. As this is the case it is proper for the local planning authority to be party to a s106 agreement as opposed to accepting a unilateral undertaking from the developer.

The Local Planning Authority is under a duty to act reasonable in this matter. Members attention is also drawn to the case of R v Secretary of State for the Environment Ex p Wakefield Metropolitan Borough Council (1998) 75 P&CR 78 in which a planning inspector had awarded the costs of a planning inquiry against the local planning

authority stemming in part from the Council's refusal to enter into a planning agreement or alternatively to consider the terms of a unilateral undertaking under s106 of the Town and Country Planning Act 1990.

Welsh Government Ministers consider that the Appeal should be determined by themselves, and the report from the planning Inspector will be considered by Welsh Minister(s) for the final decision.

CONTENTS OF AGREEMENT

As explained above the legal agreement in this case would be under Section 106 of the Town and Country Planning Act 1990

It is anticipated that the Agreement will cover the following aspects:-

- Restoration of The Cut at the end of the development of each phase together with a bond which the Council could access in the event of a default by the appellants;
- a Woodland Management Plan for the Cwm Y Glyn Woodland Area together with provision for a payment to be made by the appellant for covering the costs of carrying out the management plan again the Council could access this amount in the event of a default by the appellants,
- Goods Vehicle Management
- Provision of Footpaths and Bridleways
- Creation and retention of visibility splays.

There is potential that some of the above may, along with other matters ,such as road improvements, dust suppression, noise, hours of operations, and landscaping schemes be dealt with by conditions attached to any permission, in the event of the appeal being allowed.

In 2010 the Community Infrastructure Levy Regulations (2010) came into effect. Reg 122 of these regulations sets out limitations on the use of planning obligations. It sets out three tests that planning obligations need to meet. It states that planning obligations may only constitute a reason for granting planning permission if the obligation is:

- a) Necessary to make the development acceptable in planning terms;
- b) Directly related to the development; site)
- c) Fairly and reasonably related in scale and kind to the development.

The matters referred to above are considered to meet the appropriate tests specified to be incorporated in the S.106 agreement, however Members will note that along with conditions the proposed S.106 agreement would be a matter of scrutiny by the appointed Inspector during the forthcoming Public Inquiry.

RECOMMENDATION:

The Committee authorise Officers to negotiate and complete a Section 106 Agreement covering matters referred to in this report in association with the presentation of evidence at the forthcoming Public Inquiry.