
EXTRAORDINARY PLANNING COMMITTEE**MINUTES**

Of a meeting held in the Penn Chamber at Three Rivers House, Northway, Rickmansworth, on Thursday 8 February 2022 from 7.30pm to 9.03pm.

Councillors present:

Steve Drury (Chair)	Stephen King
Raj Khiroya (Vice Chair)	Stephanie Singer (for Cllr Chris Lloyd)
Sara Bedford	Debbie Morris
Ruth Clark	David Raw
Lisa Hudson (for Cllr Alex Hayward)	Alison Scarth
Keith Martin	

Also in attendance: Councillors Paula Hiscocks, Alex Michaels and Martin Trevett

Officers: Kimberley Rowley, Matthew Barnes, Claire Westwood, Sarah Haythorpe and Lorna Attwood

PC 112/21 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Alex Hayward and Chris Lloyd with the named substitute Members being Councillors Lisa Hudson and Stephanie Singer.

PC 113/21 NOTICE OF OTHER BUSINESS

None received.

PC 114/21 DECLARATIONS OF INTEREST

Councillor Steve Drury read out the following statement to the Committee:

“All Members are reminded that they should come to meetings with an open mind and be able to demonstrate that they are open minded. You should only come to your decision after due consideration of all the information provided, whether by planning officers in the introduction, by applicants/agents, by objectors or by fellow Councillor’s. The Committee Report in itself is not the sole piece of information to be considered. Prepared speeches to be read out are not a good idea. They might suggest that you have already firmly made up your mind about an application before hearing any additional information provided on the night and they will not take account of information provided on the night. You must always avoid giving the impression of having firmly made up your mind in advance no matter that you might be pre-disposed to any particular view.”

Councillor Steve Drury also provided the following additional statement to the Committee to remind everyone exactly why they were at this extraordinary meeting.

“Members will recall that the Committee deferred the application (21/0573/FUL) last year to seek further consultants views on the impacts of the development on water supply. It had since proved difficult for officers to commission this work as there are only a limited number of companies and a number were unable to assist the Council for a variety of reasons. However, the Council was able to commission a hydrogeologist on 2 December 2021 but had yet to receive their report. In the meantime the applicant had now appealed on the grounds of non determination as was their right. The Committee are therefore required by the Inquiry Procedure Rules to notify the Planning Inspectorate of our Statement of Case and what our decision would have been had we determined the application. Clearly the Council could advise PINS that we could of granted the application subject to the officers report which also recommends a Section 106 agreement and a number of planning conditions. We could also advise the same but with a number of amendments to those proposed conditions if we were so to decide. It was important to remember, the appeal having been lodged, that we are not here to determine the application. However as Members know we have previously considered the merits of the application and only identified the one area for concern “the impact of the development on the water supply.” Members may also find some assistance from the appeal decision in 2019 by Appeal Inspector Lesley Coffey concerning the development of the application site in which the Appeal Inspector dismissed the appeal but only upheld one of the seven reasons for refusal originally relied on by the Council’s Planning Committee.”

The Chair wished to hear any views Committee Members had and any other speaker’s views but advised that they must stick to those matters which are relevant.

PC 115/21 21/0573/FUL - Comprehensive redevelopment to provide 2 no. warehouse Class E(giii)/B2/B8 units comprising a total of 16,115 sqm including 1,882 sqm ancillary E(gi) office space, access, landscaping and associated works, at Development Site, Maple Lodge, Maple Lodge Close, Maple Cross, Hertfordshire

The Planning Officer reported that whilst the consultation period for the application had ended, since publication of the agenda they had received 21 further objection letters. These reiterate objections which are summarised in the report, including objections regarding noise and increase in traffic. There was also reference to a separate planning application pending for an adjacent site.

A Hydrogeological Impact Assessment and GQRA (July 2021) was submitted by the applicant as part of the application and concluded that the risks to the nature reserve were negligible. Notwithstanding the conclusions of the July 2021 report, following the Council’s decision to defer the application in October the applicant prepared an update of the assessment which was submitted to the Council in December 2021. The conclusions have not changed.

In relation to noise, Condition 19 required a noise assessment to be submitted. Having reviewed the condition wording, officers are suggesting an amendment as provided below. Essentially this was to take into consideration that the 2 units could be used by different occupiers and to account for changes in occupiers in the future.

Suggested that Condition 19 to read:

“Prior to the use of Unit 1 and Unit 2 by any prospective tenant (including all subsequent uses by future tenants thereafter in perpetuity), a noise assessment that demonstrates that the rating noise level from any fixed or mobile mechanical plant on the buildings or within the application site and commercial activity including all noise associated with deliveries and vehicle movements within the car park and service yards shall not exceed the background sound level representative of the period being assessed at noise sensitive receptors (such as residential properties within Longmore Close) shall be submitted to and approved in writing by the Local Planning Authority. The noise assessment should be carried out in line with the methodology presented in BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound. The use of Unit 1 or Unit 2 shall thereafter be implemented and operated in accordance with the approved noise assessment including undertaking the required mitigation measures (if required) contained therein (unless those mitigation measures would require separate planning permission from the LPA).

Reason: This is a pre-operation condition to ensure that nearby residential properties are not subjected to excessive noise and disturbance having regard to Policies CP1 and CP12 of the Core Strategy (adopted October 2011) and Policy DM9 of the Development Management Policies LDD (adopted July 2013).”

Under Council Procedure Rule 35(b) a member of the public spoke against the application.

Councillor Paula Hiscocks, County Councillor, wished to oppose the application for two reasons. Firstly the chalk aquifer supplies our chalk stream drinking water not only in this area but also in London. Due to the rise in population growth and climate change the Environment Agency predicts that by 2040 we would not have enough water to supply our needs. This development seriously threatens our water supply. The Council should be protecting our water supply as they are legally obliged to do not bartering for short term gains. 3,310 piles will be driven into our chalk aquifer and Affinity Water cannot guarantee that no harm will occur and state that some risks may exist. Should the Council be gambling with this and future generations' ability to have clean water? The County Councillor did not believe, that we have the manpower to adequately monitor and enforce on this development to ensure our drinking water was not impacted. Secondly, the report stated that there would be a reduction in the flow of water to Maple Lodge Nature Reserve. Even a small percentage would have a significant impact causing the loss of important habitats to many vertebras. We should be protecting our green spaces and animals not helping to destroy them. The Forester moth had been found on the site and there was no certain plan that this thought to be extinct moth could move and survive. There was no viable and proven mitigation strategy and therefore this application should be refused. Will this Council be the authority which aids the extinction of the Forester moth? All new developments should have a net gain

of 10% of biodiversity but this application would not deliver this net gain and therefore against the new National Policy. We are risking all this for a warehouse development. Not a new hospital, school or children's centre a development causing an increase in pollution with 695 two way trips every 24 hours. There would be very few jobs due to automation and unsustainable environmental journeys by mainly diesel lorries and vans. For all these reasons the Councillor urged the Committee to think of the health both mentally and physically of the residents and the environmental impact of this application.

Councillor Martin Trevett hoped the Committee would have rejected this proposal if they were able to but were unable to do that tonight. For many reasons which had been said at previous meetings the Councillor wished to speak about noise which had already been raised by the member of public speaking. This site is in close proximity to a number of residential properties with many residents having young children. The general noise generated from any site like this, with vehicle movements and reversing beepers, would cause disturbance to local residents and their children particularly on summer evenings when they are in their garden or have their windows open. The Councillor supported the suggestion by the public speaker that an extra condition be added or the condition be amended on noise, whichever is the correct way, and to limit the hours of operation. The Councillor was not fixated on any particular time but suggested 7am to 7pm/8pm on a weekday evening to allow parents and children to enjoy their homes and to allow children to get a good night's sleep before going to school the next day. The application had been hanging over their heads of the residents for getting on for 3 years, may even be longer, and it was time we removed it and supported their campaign.

The Planning Officer advised that with regards to noise they had suggested in the update an amendment to Condition C19 but otherwise subject to the Conditions suggested they considered that the impacts are acceptable. If Members did resolve, as covered in the Chair's update, that had the appeal not been lodged they would have granted planning permission, Members of the Committee would be aware they can amend or add conditions as long as they justify why. Whilst officers have not suggested this, Members of the Committee could add a condition regarding hours of operation if they consider it to be appropriate. With regards to the discussion on Highways safety they wished to reiterate the points in the report. The County Council, as the Highways Authority, had reviewed the application and did not consider there to be grounds on highways safety to refuse planning permission. With regards to biodiversity net gain, which was raised by a couple of the speakers, details were set out in the report but to clarify, the NPPF refers to providing net gains on biodiversity but there is no percentage or quantum stipulated in the NPPF. The Environment Act proposes to mandate the requirement for 10% biodiversity net gain which was set out in the report. This would be through changes made to the Town and Country Planning Act. The mandatory biodiversity net gain as required by the Environment Act would only apply in England by amending the legislation which was not expected to happen until 2023 so the requirement for 10% biodiversity net gain is not enshrined in planning law at this time. However the report does recognise that our policies, including policy DM6, refer to the provision of compensation measures for loss of habitat. As set out in the report, officers have considered that the measured contributions of £142,800 to achieve a biodiversity net gain

is in line with the current NPPF and our Development Management policies. With regards to drinking water and reference to the provision of drinking water, the officer wished to reiterate that Affinity Water had said the risk can be managed through appropriate conditions and had suggested a number of conditions which were included in the list of conditions as set out in the report and officers felt this was covered. With regards to the Forester moth which was mentioned, as set out in the report, this would be subject to the Section 106 legal agreement to secure a compensatory habitat. Officers believe the application does accord with the relevant policy and would satisfy our duty with regards to the NERC Act and Section 41 species responsibilities.

Councillor David Raw asked about the member of the public comments on air pollution. If the residents had undertaken a test which was three times over the level before any construction had started or finished and was already above Government guidelines had the Council got any data Members can discuss.

The Planning Officer referred Members to the report at point 7.7.29 where the matter of air pollution was discussed. An Air Quality Assessment was submitted with the application which dealt with two aspects. The first relating to dust during the construction but also increased traffic resulting from the proposed development. The report proposed various mitigation measures some of which would be during the construction to manage that phase which concluded that the impact on local air quality as a result of the additional traffic would be insignificant and therefore details on dispersal modelling to and from the development would not be required. Relevant reports had been undertaken and submitted and reviewed by Environmental Health officers and there are conditions and informatives included in the report but subject to those measures it was considered that the matter was covered.

Councillor Keith Martin had some comments to make on the Conditions set out in Section 8 of the report which needed to be met if the Committee were to be minded to grant approval. These comments were as follows:

Condition C5 – Scheme for compensatory habitat creation – it stated there would be an 8 metre buffer zone which seemed very short to the Councillor and wondered if this could be increased to something more substantial.

Condition C6 - Drainage Scheme – Final Design – it stated that work could not commence until the drainage scheme had been submitted to the LPA but the next Condition C7 (Groundwater Levels) stated that the Groundwater scheme had to be submitted and approved by the LPA before work can commence. Could Condition C6 not say the same as Condition C7 that the scheme had to be submitted and approved because there could be something which came up when work commenced and the scheme was not up to scratch.

Condition C15 - Piling Method Statement – this was the condition which was also relevant to groundwater and the sewerage system and had been mentioned. We have got 3,310 piles going into the chalk base and we had heard from the Chair that a report from the Hydrogeologist had not been received. When the Committee originally refused the application there was an appeal and we had 7 grounds for refusal but 6 of those the Planning Inspector had disagreed with so we were left with only the one ground, on Groundwater. To Councillor Martin this was a key condition so would be interested to see what the Committee may wish to do about this. Last time the Committee had

deferred the application as we wanted to get our own report as we had only seen the reports from the residents and the developer which stated very different things. Members are not Hydrogeologists which was why we wanted to appoint a Hydrogeologist who could then advise the Council on the points we wanted to make.

Condition C19 – Noise Assessment – understood the points raised by the Planning Officer and the proposed amendment to the condition.

Conditions C29 and C30 – Lighting Design and External Lighting – it talked about nocturnal animals but did not talk about residents and the Councillor would be far happier, should the application go ahead, if the lighting design took into account the fact that residents live very close to the development.

The Planning Officer pointed out that a number of the consultees had requested some of the conditions. There were some subtle differences in the requests from the various consultees due to what they are particularly looking at. The officer had included in brackets after the title of each of the conditions the consultee who had requested the condition and who would ultimately be reviewing the information once the details are submitted to us. On Condition C5, with regard to the buffer zone, the 8 metre buffer zone was a standard requirement of the Environment Agency and was their suggested condition. It could potentially be amended by Members but they would need to be cautious because there had been situations whereby conditions are amended which do not meet what the consultee had requested. There could be difficulties when the LPA come to discharge the condition and whether the consultee may say that was not what they had requested and did not meet their requirement. The standard requirement was an 8 metre buffer zone. With regards to Conditions C6 and C7, C6 was requested by the Lead Local Flood Authority (LLFA) who have a slightly different remit from the Environment Agency who requested Condition C7. Rather than trying to merge the conditions the officer had left them as separate conditions so that it was clear when the details are submitted who would be reviewing and discharging the requirements of the conditions. With regard to Condition C19 it was suggested in the update that this condition be amended. With regards to lighting, the requirement for a lighting design is in relation to ecology and neighbouring amenity and Condition C29 reflected the wording suggested by Herts Ecology in relation to biodiversity. Condition C30 is in relation to neighbours amenities rather than ecology and officers thought those two points were covered by both Condition C29 and C30 but Members could amend them if they did not think it was clear. Officers feel that it does pick up both ecology and residential amenity.

Councillor Sara Bedford asked when the Council were likely to hear from the Hydrogeologist in terms of the report and were there any timescales.

The Planning Officer reported that they expected the report at the end of the month (February) but did not have a specific date.

Councillor Sara Bedford said that provided the Committee with an idea of when we might hear from the hydrogeologist in terms of the appeal process. The Councillor wondered if there was anyone at the meeting representing the applicant.

The Planning Officer advised that they understood they were at the meeting to observe but had not registered to speak at the meeting.

Councillor Sara Bedford said as the person in October who moved the request to postpone the decision until we got the Hydrogeologist report they were quite infuriated to see a communication from the applicant's agent to say that the only reason why we had done this was in order to delay the application. The Councillor found that comment a knock on their integrity and the Councillors who supported it. There were other things in the communication which the Councillor found offensive. They should not dismiss the Members of the Committee and say we were acting with ulterior motives. Do not attack our integrity. It was not a good way to get onto peoples side and not good to attack people around the table who I may disagree with on a number of occasions. The Councillor did not believe that anyone around the table made their decision on anything but the best motives.

Councillor Raj Khiroya said we consider the applications, the officer's work on them. Their hard work and commitment must be recognised and acknowledged. As far as the October meeting was concerned the Committee could not come to a conclusion and the Council were instructed to appoint a Hydrogeologist and ecologist. Members appreciated and noted that there had been difficulties in obtaining the reports but the fact of the matter still remained so what had changed from October meeting to today. The Committee were being asked to make a decision but we don't have the reports in front of us which made it difficult to try and talk about the same thing. Furthermore, as far as the conditions are concerned the Councillor was sure everyone would appreciate knowing how practicable and enforceable the conditions were. How are we going to put on conditions which we are not able to enforce? Some of the things the Councillor had read had made them uncomfortable and a number of people tonight had mentioned the impact this development would have on the residents on live so close by. 3,310 piles to be driven into the chalk and we do not have a report today to say what impact this would have was a key consideration.

Councillor Debbie Morris was not in attendance at the October meeting when the main discussions had taken place on this application but had read the minutes and looked at the reports and the recent residents emails and hoped was on top of the details as much as everyone else. The Councillor had a number of points to make which included following on from what Councillor Khiroya had said about the continued absence of the Hydrogeologist report which did put Members in a very difficult position. Members at the October meeting felt they could not make a decision in the absence of that report. So why do we now think we can make a decision when we still do not have that report? Unless I disagree with those Members, although I do not feel it would be appropriate to do so as I have not been present for all the discussions, I have to respect that the decision was made wisely therefore we are still in a position of not having the report. With regard to Conditions the Councillor was perplexed still even with the amendment to Condition C19 as they found it a little incomprehensible in terms of readings and the measure by which volumes of noise and increase in noise would be assessed. Residents are concerned that there was not specific numbers about noise levels and what they are being protected from and would like something a bit more meaningful. The amended

condition advised by the officer stated that the noise assessment within the car park and service yard would not exceed the background level representative of the period being assessed. Did that mean someone had taken noise level readings hourly, seven days a week, in one month, in 3 months, at different times of year and what would future noise levels be measured against? It also said that future noise levels would not exceed the background levels now but exceed when? Were we looking at an October morning at 9am or a Monday in July which would be equivalent of the same Monday? There needed to be more certainty so that if noise levels rise we have a measure against which Enforcement officers can target their investigation. People had mentioned operating hours and the Councillor had sympathy with that. Traffic levels would not rise above "xx." but what was acceptable on a Monday lunchtime may not be acceptable on a Sunday lunchtime and thought it was perfectly reasonable to have operating hours as per construction and was something we often have in the informatives in other reports. The Councillor was happy to see slightly longer hours during the week and the residents had accepted 7 to 7 which was beyond normal construction hours but weekend hours should be curtailed. On Condition C11 - the Dust Management Plan - it stated that the plan should include best practicable means to be incorporated to minimise dust caused by the permitted operations and to prevent the emission of dust from the site. What would happen if that plan does not work could we require a change in the plan post permission if the application was to get permission? What would be the air quality they are monitoring against – would there be a measure and if the dust rises above that level would there need to be a change in the plan or some mitigation. This did not seem to be adequately covered. Condition C28 refers to a Landscape and Ecology Management Plan which was limited to 15 years. The Councillor understood the person drawing up the plan could not envisage what would happen in 15 years' time but could we not include that the plan be reviewed in 15 years? Condition C37 stated that: "There shall be no operation of refrigerated HGVs or of tug units without prior details being submitted to and approved in writing by the Local Planning Authority which demonstrate that the proposed operation would not give rise to unacceptable noise levels." But unacceptable to who: the closest neighbours? Surely if we are referring to noise levels we should somehow reference what is acceptable under Condition C19 - the noise assessment scheme? The Councillor felt Condition C37 looked insufficient. On the Groundwater issue in point 7.14.19 of the officer report it highlighted that Affinity Water consider that the risk to public water supply still remains due to the proximity of the development to the pumping station but felt that these risks can be managed provided the agreed plans are adhered to. But managing risk was not the same as mitigating or overcoming risk and it was not sufficient to say that the risk can be managed. We need to have a greater assurance and for the Councillor this was the biggest flaw in the report and officer recommendation. They did not feel that we could risk public health by allowing this to go ahead with the current provisions as stated when a consultee had stated that the risks remain.

The Planning Officer responded that the comments from Affinity Water had been read out to Members and the risk can be managed in their view. Members are aware that we are at an appeal and the Committee are not determining the application tonight but resolving to consider how they would have determined the application. Members have to bear in mind that on the basis that Affinity

Water have not objected to the planning application it would be very unlikely that they would be supporting the Council at an appeal as they have said it can be managed by conditions. The Officer understood the points that had been made but considered that it can be managed by conditions. With regard to the refrigerated HGVs/tug units and the condition on this, the reason why this was included was due to the noise assessment which was submitted. It had made assumptions regarding there not being either refrigerated HGVs/tug units and was why the condition was there as they had not been taken into consideration in the noise report. The officer felt that the wording was appropriate but if Members wanted to suggest amendments to the condition they could do that and also to the Landscape Management Plan although officers felt the wording and time limit were appropriate and was the standard wording in terms of what we would expect for this application. If Members were to resolve that they would have approved the application subject to conditions and any amendments to them these were details which can be presented to the Planning Inspector. It was the Planning Inspector who would ultimately decide what conditions would be attached if the appeal was allowed. With regard to the Dust Management Plan that was largely to do with construction and was requested by the Environmental Health officer who had reviewed the application. The condition proposed various mitigation measures during the construction works. It was concluded that with those mitigation measures in place the residential impact from the construction phase would not be significant. It would be Environmental Health officers to review the Dust Management Plan when it was submitted. With regard to the operating hours the officer had nothing further to add and had not suggested a condition. If Members wanted to suggest a condition regarding operating hours then they can do so but needed to advise why they felt it was appropriate. On Condition C19 the officer appreciated the wording was reported as part of the verbal update at the meeting tonight. The officer was not an Environmental Health officer but they considered it was appropriate and in accordance with the methodology to achieve the end result and ensure that the amenity of neighbours was safeguarded. Whilst Members can make amendments to that condition the officer was not in a position to suggest what would be appropriate having not discussed this with the Environmental Health officer

Councillor David Raw referred to Councillor Morris's concerns about noise level and said they had the same level of concerns about air pollution. Children lived across from that development and two towns were very close by. The Councillor was not convinced that the air pollution tests covered anywhere near the requirements especially when residents had advised that they had tests done which had been three times above the level of the Government requirements and construction had not started yet.

The Chair wished to draw the Committee back to what they were here for this evening because whilst we are looking at the conditions and possibly changing some of those conditions we still have the water issue which most Members had wanted to discuss.

Councillor Sara Bedford wished to suggest that whatever else Members may wish to decide tonight we cannot make a decision of any kind on the water issue until the Council had received the report that we had commissioned. Otherwise it was pointless to ask for a report and make a decision before it was received.

We would therefore have to delegate that part and to make a decision once that report was received. Following on from the previous Councillors remark on Environmental Health, and having been under their portfolio a few years ago, one of the things which the Councillor did was to try and bring in a clean air zone in the area. It was advised that this cannot be done without the support of Hertfordshire County Council. There is already too many people in this District which have been subjected to far too high levels of emissions PM2.5, nitrogen and other gases that should not be happening. This was a side issue but was something we should be doing something about and asking the County Council so that we can have a low emissions zone in this area and improve the air quality. A vast majority of the air quality problems come from road traffic and this needed to be looked at and runs alongside this application. The Councillor had heard the residents' concerns but we are not able to reduce what is already there.

The Chair said that maybe we ought to write to the County Council to ask if this can be put in place as it is clear the air quality it is not very good at the moment and needs to be improved.

The Head of Regulatory Services reported that in terms of air quality the Council do have a legal obligation to monitor air quality throughout the District and this monitoring was undertaken by Environmental Health officers who submit our annual status report to DEFRA which had just been published for the last year. The issues in Three Rivers were particularly generated from vehicle emissions rather than from large polluting industries. This was measured by diffusion tubes as part of our monitoring. Environmental Health officers are looking, following the last status report, to increase the number of diffusion tubes but at the current time and with all the evidence we have (which includes DEFRA evidence and baseline details) there was no current exceedance of the relevant air quality levels from the monitoring that we are doing. The officers are very aware of the local concerns, particularly in Maple Cross, and we have worked with the residents previously on this. Some Members would be aware that we did come back to a Committee previously on the issue of air quality in Maple Cross. It is a much wider issue throughout the District and was something that the Council do have to monitor. We do have an air quality management area at the Chorleywood motorway junction which was designated because of the previous data we had. We had a previous area on another motorway junction which got removed because it was no longer considered to exceed air quality. The Head of Regulatory Services wished to provide some reassurance that Three Rivers are doing what they need to do in terms of annual monitoring and are looking at placing more diffusion tubes going forward but we are fulfilling our legal obligation.

Councillor Sara Bedford understood everything the officer had just said and agreed with it but because we are currently meeting the legal obligations does not mean it is necessarily good enough was the Councillors point.

Councillor Raj Khiroya sought clarification with regard to the time of the Hydrogeologist report. Members had been told that the report was expected by 28 February but the fact of the matter remains what happens if we don't get the report? We would be back to square one and felt the Committee were in an impossible position here. How much weight were we putting on this report

– in their view a lot? As a Ward Councillor for the area with local knowledge I feel the pain of the local people and this application was going to affect so many people's lives. The Councillor asked if the Water Framework Directive was an important consideration or not.

The Head of Regulatory Services had heard what Members had said but the applicant had appealed against non determination. If they had not done that the Council would probably have delayed coming back to Members until we had all the information which was requested of officers. Officers had done everything they can to get the information in a timely manner, but for a number of reasons concerning the difficulty of instructing those specialists in particular, that information was not with us. The applicant had appealed against non determination and officers urged Councillors to make a resolution tonight. We have got to submit a Statement of Case to the Planning Inspectorate before the end of February and was why the meeting had been called. Previously, on lots of other applications, it was suggested that there is not sufficient evidence or it had not been demonstrated and that option was available to the Committee tonight on what decision you would have made had you been able to determine the application. If the Committee don't make a resolution then officers are going to have prepare a Statement of Case which gives the Council no basis on which to defend the opinion of this Council. Officers acknowledge the challenges and difficult situation that we are in but would urge Members to make a resolution tonight.

Councillor Debbie Morris asked if officers do an initial statement of case by 24 February and the report does come in after they add the additional information and provide the Hydrogeologist report as additional information as an addendum/appendix. If we get the Hydrogeologist report after the Statement of Case could Members direct the Director of Community and Environmental Services to consider the findings of that report and either come back to another Extraordinary meeting of the Planning Committee or to follow the recommendations/guidance/conclusions of that report.

Yes, the Planning Solicitor advised that as the Head of Regulatory Services had explained it was imperative that officers be in a position to be able to set out in the Statement of Case what the Committees Reasons for Refusal would have been. If as matters stand the single reason for refusal relates to the absence of the Hydrology evidence then that would form that single reason for refusal and when that report was provided then that could either be dealt with under delegated powers or returned to the Committee for their consideration in light of the Hydrogeologist findings.

The Chair said having listened to Committee Members, Ward and County Councillors and the member of the public who spoke they would put forward the following proposal to the Committee to consider which was part dependent on the Hydrogeologist consultant report which had not been received yet:

"The Director of Community and Environmental Services is delegated to advise the Planning Inspectorate that the Council could have Approved the application if the consultant's report was received prior to the deadline of 24 February and does not indicate there would have been an unmanageable/negative hydrogeological impact on any interests of acknowledged planning importance. If however the report does suggest there would be a negative impact then the

Director is delegated to advise the planning inspectorate that the Committee would have refused the application accordingly. If the consultant report is not received before the Planning Inspector deadline of 24 February statement of case then the Planning Inspectorate be advised that Members are not persuaded by the evidence submitted by the applicant with regard to the potential impact on water supply and the Council have commissioned its own independent advice which is still awaited. Accordingly the Council are unable to support approval of the application as it stands for that reason alone.”

The Chair asked if Members had any comments on this proposal as they were prepared to put this proposal to a vote.

Councillor David Raw did not feel the proposal covered everything after what they had heard tonight and did not feel that even if the Hydrogeologist report does come back it was not enough and does not cover all the areas of concerns from residents and Members.

The Chair realised that but the meeting this evening was to discuss the hydrology point and if at some point we do get the Hydrogeologist report back we can then look at the other conditions and maybe impose some other conditions or strengthen them.

Councillor Debbie Morris referred to the last part of the proposal read out by the Chair about being able to support approval and asked if this should be phrased to “unable to determine or support approval/refusal as the presumption of what you just said indicates that we would be inclined to approve” which the Councillor did not think was the mood of the meeting. When we get the report could it then come back and the Committee can discuss conditions if we were heading for approval. Would that be within the timeframe in which we were discussing conditions tonight?

Councillor Sara Bedford said surely the Council proceed to the appeal that it had not been demonstrated. When we get the Hydrogeologist report and if it says it should not be granted we have a very good reason for refusal for the appeal or we may get a report stating it is fine and the water will be fine. It is not down to the Council to set the conditions this is down to the Appeal Inspector. The Council loses its power once the application goes to appeal. The applicant can go to appeal to appeal conditions if they feel they are too onerous, such as operating hours. The conditions maybe agreed between the two sides at appeal but the Council has no power to set them now.

The Planning Officer said that was correct in what Councillor Bedford had advised. . Ultimately the Council have to submit as part of its Statement of Case suggested conditions so have the opportunity to suggest conditions without prejudice should the appeal be allowed. . A discussion on conditions was a standard part of any appeal hearing/inquiry so there would be a discussion where all the conditions would be gone through in detail. Ultimately it was for the Planning Inspectorate appointed to determine what if any of the conditions they attach in the event that they allow the appeal.

Councillor Sara Bedford said following the officer comments and having listened to the Member comments tonight if we were to make points about operating hours etc. could those points be drawn up and circulated afterwards because we are not able to sit here and do that tonight. This would be a starting

point for the appeal and at least then Members feel that they have had some input into that discussion but understanding that we have lost the ability to impose them. I am sure Members would feel they would like to have some input into that before it gets as far as the Inspector's table.

Planning Officers were not proposing to circulate conditions but obviously they are set out in the report and had been making notes of the points Members had raised and where they had requested that conditions be clarified and details on an additional conditions, in particularly regarding operating hours. These points can be taken on board by officers as part of the preparation of the Statement of Case and details on the conditions in due course.

The Head of Regulatory Services said dependent on the resolution/decision of the Committee tonight if it was to approve with recommendations for conditions PINS would be sent the minutes and Members had made their points clear tonight.

Councillor Keith Martin said the scenario is that if the report was received after the appeal had concluded surely it would then be in the interest of our residents to stipulate conditions as clearly as we can and as forcibly as we can at this stage. The other scenario is that the report comes through and they say everything was fine. The other things we raised before were shot down at the first appeal. Their recollection was we listed 7 sets of objections but at appeal 6 were shot down and we only ended with one on water which was why we are back here. If the Hydrogeologist report says everything is pristine and the water was going to be wonderful all we have got then is what we decide now and after the meeting via circulation on the conditions. We must make them as strong as possible to protect the residents as much as we can.

The Head of Regulatory Services thought the Councillor had summarised things correctly. If the resolution of the Committee this evening was to refuse as there was insufficient evidence been provided to Members to make a decision on the hydrology aspect, when that report comes in and if it supports the applicant's case then essentially we would have to update the Planning Inspectorate. We would have to submit the report and could then recommend conditions. If Members have specific comments on the conditions then they need to be minuted tonight. However, if Members want to make suggestions on the conditions or additional conditions then Members need to be more specific including the reasons behind them. The Planning Officer is not an Environmental Health officer and cannot be more specific in regard to the noise condition. A number of the conditions have been imposed by statutory consultees and officers do not want to dilute those conditions and don't want to be in a position where those statutory consultees would not consider those conditions in the future because they feel that they have been diluted or have been taken outside what they would deal with so need to be mindful of that when making suggestions.

Councillor Keith Martin said this seemed to be a delicate drafting operation and not something they would feel comfortable for the Committee to resolve this evening and need to go away and have a think about. The Councillor had listed a number of things they were concerned about with the conditions, particularly Condition C15. We can't make a decision tonight simply because we don't have the Hydrogeologist report. We need to go away and very carefully draft

those conditions so we don't negate any of the conditions inadvertently already there and that we can make suggestions for amendments to other conditions so that they are as strong as we can get them so that the residents are protected as much as they can be should this end up being approved.

The Head of Regulatory Services said a resolution had to be made by the Committee tonight to determine the application. Members have to be very specific on those conditions tonight so that they are minuted and as the Planning Officer had advised we can suggest conditions but as we know the Planning Inspectorate would impose model/standard conditions and do not generally follow our wording but we can make suggestions and provide any additional conditions. However we are not going to be able to open up this debate again in another meeting. Members have to have had that discussion tonight and for officers to draft the Statement of Case for 24 February. Members are able to send their suggestions on conditions to the Planning Officer to incorporate but that had to be done in dialogue with yourselves or discussed tonight. We are unable to get statutory consultees involved and there is not the opportunity for suggestions to come in subsequently from the public, they have to write to PINS themselves. It is unusual but the best way for Members to get their comments in if they feel they need to think about suggested conditions for an appeal is to go through the appeal process and through the Statement of Case and subsequent appeal statement. Everything should at least be commented on tonight so it was minuted. We don't know what weight or how the Planning Inspector was going to assess the application so if Members are referring to conditions and it was minuted officers can assist with the wording.

The Chair wished to raise hours of operation as a condition.

Councillor Sara Bedford asked what the Committee should be moving to tonight was some form of delegation to the Director in consultation with Group Spokespersons so that a decision can be made when the report is received and also taking into account the comments made by Members on the conditions. Draft conditions would be laid down as part of the appeal so there is some very fine tuning required as part of that. The Councillor felt the proposal should include the delegation on the conditions and was a good as the Committee could get tonight.

The Chair supported that request and just needed some wording to be included on the delegation of the conditions before the application goes to appeal.

The Planning Officer wished to raise one other point which was that the officer recommendation was to approve. In the event that the appeal was not lodged, the permission recommended would have been to approve subject to the completion of a Section 106 agreement. The report sets out in more detail the securing of some financial contributions both in relation to the biodiversity net gain and also the travel plan monitoring. It was anticipated by officers that the legal agreement would be agreed during the course of the appeal to secure those contributions however that had not been completed at this time. In the event that Members were resolving to refuse the application had they been able to officers would be advising them that there would be two additional reasons for refusal suggested in relation to the absence of the Section 106 agreement and those could essentially replicate the reasons which are set out at

Paragraph 1.2 at bullet point 2 and 4 and were part of the reason for refusal of the previous application with the only change being the NPPF needs to be updated to refer to 2021. It was expected that the objections would fall away during the appeal following the completion of the legal agreement because the principal of the agreement was not objected to by the appellant and was a technical thing as it had not been signed and agreed at this time.

The Chair said technically the Committee do need to include this in their resolution tonight.

The Planning Officer said as it had not been otherwise raised by Members the assumption of officers was that Members are satisfied that as set out in the report the contributions are required but officers are suggesting that until the legal agreements was signed there would be an objection.

Councillor Debbie Morris said when the Chair read out the options to the Committee the Chair was assuming that the report from the Hydrogeologist would be quite conclusive and definitive on whether there was harm or no harm or risk or no risk. The Councillor would guess there was a possibility that despite the work that goes into this report the conclusion may not be definitive or clear in which case where do we go.

Councillor Sara Bedford said surely at that point it becomes a reason for refusal that it had not been demonstrated to the satisfaction of the LPA and it was a clear answer to turn down the application.

The Chair said the Hydrogeologist could come back with a report which was in favour of this as they don't think there is an issue but if they come back and say we are not sure then that would be grounds for refusal. They are the experts and that's what we have asked the experts to do to say is it safe or not.

Councillor David Raw said if the Hydrogeologist comes back and says it is safe and the warehouses are built there would be no conditions.

The Planning Officer said the application is going to appeal so it would be a matter for the Planning Inspector to determine at the appeal. Members are here to consider what grounds the Committee would have refused the application which seems to be on this single ground dependent on the Hydrogeologist report but it would be the Planning Inspector who would make the decision on the appeal.

Councillor Debbie Morris said surely we would not be defending the appeal if we had no basis to do so and would go through undefended.

The Planning Solicitor stated that the purpose of tonight's Committee meeting was for Members to resolve how they would have determined the application if they still had the power to do so. Therefore it was imperative that if there was a reason for refusal Members express it and that would then inform officers when it comes to drafting the Statement of Case. There are Rule 6 parties who can and we believe have already made an application to be represented at the public inquiry and the Inspector would obviously hear from them and they can make representations to the Planning Inspector, as part of the public inquiry, and could include why planning permission should not be granted for reasons that Members have not resolved this evening.

Councillor Raj Khuroya felt pressurised and uncomfortable in making a decision on something which we are none the wiser on. Why do we have to keep on asking the same thing how can we grant this application when we don't have the report?

The Chair said we don't have the report but we do have to make a decision this evening on what our resolution would have been had we been able to determine the application. If we get the Planning Appeal and we still don't have the report then that would be taken into consideration. If we get the report prior to the Planning Appeal Statement of Case submission on 24 February then that's where it will be detailed. The appellant wishes to go against the decision the Council made in October

The Chair moved the following motion to the Committee, seconded by Councillor Stephen King:

"The Director of Community and Environmental Services is delegated to advise the Planning Inspectorate that the Council could have Approved the application if the consultant's report was received prior to the deadline and does not indicate there would have been an unmanageable/negative hydrogeological impact on any interests of acknowledged planning importance. If however the report does suggest there would be a negative impact then the Director is delegated to advise the planning inspectorate that the Committee would have refused the application accordingly. If the consultant report is not received before the Planning Inspector deadline of 24 February then they be advised as follows: that Members are not persuaded by the evidence submitted by the applicant with regard to the potential impact on water supply and the Council have commissioned its own independent advice which is still awaited. Accordingly the Council are unable to support approval of the application as it stands for that reason alone. That members look at the possibility of changing or tightening up conditions between now and that point in the future."

The Chair said if we don't have the report back then we would turn it down as we don't have the report.

The Planning Officer advised the Committee of the conditions they had made a note of which were discussed by Members and referenced so that this can be checked. The officer had mentioned at the start of the meeting an update on Condition C19 and there had been discussion that Members would have requested an additional condition on limits on activity on the site i.e. not 24 hours operation. Councillor Martin had referenced Condition C5 and queried the buffer zone and also referenced Conditions C6, C7 and C15 (piling method statement) and sought clarification on Conditions C29 and C30 with regard to lighting to ensure they deal with both ecology and residential amenity issues. Councillor Morris referenced Condition C19, Condition C11 (Dust Management plan) Condition 28 - landscape management plan and Condition C37 regarding tug units and refrigerated HGVs.

The Chair advised Members would like officers to look at adding a condition on hours of operation.

Councillor Keith Martin was happy with condition C7 but was referencing if Condition C6 could say what C7 was saying but noted they were from two

different bodies but wanting nothing to take place until officers had approved Condition C6.

Councillor Debbie Morris was still unclear about how the noise is being measured, will be measured, when it is considered acceptable, when it will be measured, comparative data if noise increases and what are we comparing against. The drafting was confusing but understood we need to distinguish between units 1 and 2 but was confused about the measurement criteria.

The Chair said officers could provide some clarification on noise before we look at the condition which officers advised was acceptable.

RESOLVED:

That the Director of Community and Environmental Services is delegated to advise the Planning Inspectorate that the Council could have Approved the application if the consultant's report was received prior to the deadline (24th February 2022) and does not indicate there would have been an unmanageable/negative hydrogeological impact on any interests of acknowledged planning importance.

If however the report does suggest there would be a negative impact then the Director is delegated to advise the Planning Inspectorate that the Committee would have Refused the application accordingly.

If the consultant report is not received before the Planning Inspector deadline of 24 February then they be advised as follows:

That Members are not persuaded by the evidence submitted by the applicant with regard to the potential impact on water supply and the Council have commissioned its own independent advice which is still awaited. Accordingly the Council are unable to support approval of the application as it stands for that reason alone.

That Members look at the possibility of changing or tightening up conditions between now and that point in the future.

That Planning Permission be Refused due to not having a Section 106 agreement.

Chair