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## Planning Committee

Thursday 23 August 2012

### PRESENT:

Councillor Stevens, in the Chair.

Councillor Tuohy, Vice Chair.

Councillors Mrs Aspinall (substituting Councillor Vincent), Bowie (substituting Councillor S. Davey), Mrs Bowyer, Churchill (substituting Councillor Darcy), Mrs Foster, Mrs Nicholson (substituting Councillor Nicholson), John Smith, Stark, Jon Taylor and Wheeler.

Apologies for absence: Councillors Darcy, S. Davey, Nicholson and Vincent.

Also in attendance: Paul Westrope – Lead Planning Officer, Julie Rundle – Planning Lawyer, Tim Howes – Assistant Director for Democracy and Governance, Mr Gareth Pinwell – Foot Anstey, Mr Chris Hoare – Foot Anstey, Bob Coomber – Interim Chief Executive and Ross Jago – Democratic Support Officer.

The meeting started at 2 pm and finished at 4.25 pm.

*Note: At a future meeting, the committee will consider the accuracy of these draft minutes, so they may be subject to change. Please check the minutes of that meeting to confirm whether these minutes have been amended.*

### 25. DECLARATIONS OF INTEREST

Name	Minute No. and Subject	Reason	Interest
Councillor Churchill	31 (item 109) Land Adjacent To 64 Wolseley Road Plymouth 12/01079/FUL	Financial interest in the site.	Pecuniary Interest
Councillor Mrs Aspinall	31 (item 85) Rosebery Road, Plymouth. 12/01007/FUL	Applicant is a family friend.	Prejudicial

### 26. MINUTES

Agreed the minutes of the meeting held on the 26 July 2012, subject to the removal of a declaration of interest relating to Councillor Mrs Foster.

### 27. CHAIR'S URGENT BUSINESS

There were no items of Chair's urgent business.

28. **QUESTIONS FROM MEMBERS OF THE PUBLIC**

Four questions had been received from members of the public in relation to matters which in the opinion of the Chair, was relevant to the business of the meeting, in accordance with paragraph 10 of the Constitution –

Question No	Question By	Subject
1 (12/13)	Mr A Ramage	Energy From Waste Plant – North Yard, Devonport.
<p>Should the operators, if the plant is allowed to go ahead, be required to give an alarm to the community when abnormal operations occur take so people, especially those in vulnerable categories, can wear suitable safety masks or take other appropriate measures?</p>		
<p><b>Response</b></p> <p>No, this is not required under the planning permission granted by the previous Planning Committee in December.</p> <p>The Draft Environmental Permit that was reported to the Planning Committee in December 2011 requires the Environment Agency to be notified without delay following the detection of:</p> <ul style="list-style-type: none"> <li>a) any malfunction, breakdown or failure of equipment or techniques, accident, or emissions of a substance not controlled by an emission limit which has caused, is causing or may cause significant pollution;</li> <li>b) the breach of a limit specified in a permit; or</li> <li>c) any significant adverse environmental effects.</li> </ul> <p>Subsequently the Environment Permit was issued on 6<sup>th</sup> March 2012. The Environmental Permitting Regulations require that an operator maintains an Accident Management Plan and implements it in the event that an accident occurs. An Accident Management Plan was prepared as part of the Environmental Permit application and was agreed by the Environment Agency in its granting of the Environmental Permit. This plan will be subject to routine testing for ongoing effectiveness. The Accident Management Plan does <u>not</u> specify the need for sirens or the issuing of the public with gas masks etc.</p> <p>Resident safety concerns about dockyard/industrial-type activities in proximity to houses are understandable. Local Waste Planning Authorities are required to work on the assumption that the relevant pollution control regime will be properly applied and enforced by the Environment Agency.</p> <p>Safety measures that are required in the event of any accidents associated with the operation of the plant are essentially a matter for the Environment Agency to enforce through the Environmental Permit.</p>		

Question No	Question By	Subject
2 (12/13)	Mrs M Ramage	Energy From Waste Plant – North Yard, Devonport.

Additional Air Quality Management Areas have been proposed. Is an additional site advisable if the scheme goes ahead at the higher Chaddlewood area of Plympton as it is in line with prevailing winds from the incinerator and close to Langage Power station?

### Response

Air quality standards are set by government as air quality objectives. The council monitors air quality against these standards throughout the city at 80 locations. Only where an air quality standard is confirmed as being exceeded, is an Air Quality Management Area (AQMA) declared.

Plymouth's existing AQMAs and proposed AQMAS are all in areas where the levels of Nitrogen Dioxide (NO<sub>2</sub>), measured as an annual mean, have exceeded the standard. These are all located on main traffic arterial routes into Plymouth and all the exceedances are traffic related.

The view of the Environment Agency was that emissions from the incinerator will not impact on Chaddlewood.

The Environment Agency will regulate the operation of the incinerator once it is operational. They have issued a permit for that operation. This permit requires the plant to have stack monitors that will continually monitor all the emissions. In addition Plymouth City Council already has a monitor for NO<sub>2</sub> at one location in the Chaddlewood area. This monitor will be capable of detecting any changes in NO<sub>2</sub> level in that area.

South Hams District Council also monitor at three locations in Chaddlewood for NO<sub>2</sub> and monitor for Sulphur Dioxide at Sparkwell. These sites were set up to assess emissions from Langage Power Station however they are capable of detecting changes in that area created by any source. PCC can access the data from the South Hams Council monitoring sites.

All monitoring results in the Chaddlewood area are currently showing air quality standards comfortably and consistently below the National Air Quality Standards and consequently the Council will not be declaring an AQMA in that area.

Question No	Question By	Subject
3 (12/13)	Sarah Elvin	Energy From Waste Plant – North Yard, Devonport.

The whole process is corrupt, non-transparent, non-democratic and we are not allowed to be part of it. None of our questions are being answered. Why has this been allowed and why are our hands still being tied? 37 words v 3000 pages plus.

<p><b>Response</b></p> <p>Any evidence of corruption in the planning process should be reported immediately to the Council's Monitoring Officer and/or the Police.</p> <p>Planning decisions must always be evidence based and determined in accordance with the development plans. The process is democratic and Councillors may decide to vote against Planning Officer recommendations, if there are relevant planning grounds.</p> <p>I (the Chair) have personally pledged to bring openness, transparency and trust back into Plymouth's Planning committee and I expect to be held to account for this.</p>
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Question No	Question By	Subject
4 (12/13)	Mr Spargo	Energy From Waste Plant – North Yard, Devonport.
<p>Why was planning permission granted for an incinerator when, for the same money, a plasma gasification plant could be built at Coypool or Lee Moor which would process four times the amount of waste and generate a profit for Plymouth City Council of approximately £10 per tonne?</p>		
<p><b>Response</b></p> <p>A planning application has not been received by Plymouth City Council's planning department for such a development proposal but if it were then it would be considered and appraised against relevant national and local planning policies to decide whether an application could be recommended for approval.</p> <p>In terms of a long term solution for Plymouth City Council's residual waste, again no such proposal was received as part of Plymouth City Council's procurement with the South West Devon Waste Partnership.</p> <p>This Planning Committee can only decide on applications submitted to it.</p> <p>I (the Chair) can't say why the incinerator was given planning permission as I voted against. The question as to why it was approved should be directed to those who voted for it.</p>		

29. **ENERGY FROM WASTE PLANT - INDEPENDENT LEGAL ADVICE**

The Assistant Director for Democracy and Governance introduced Mr Gareth Pinwell and Mr Chris Hoare who had been engaged to provide the council with independent legal advice, Mr Pinwell reported that –

- (a) Foot Anstey had been asked as to whether planning permission for the energy from waste facility granted on the 3 February 2012 could be revoked;
- (b) advice had been provided in accordance with section 97 of Town and Country Planning Act 1990;
- (c) the site was not one which was in the Waste Development Plan. However PPS10 guidance stated that other sites should be considered favourably when consistent with national policy and authorities waste plans. The site was in accordance with policies w7 and w8 of the Waste Development Plan. When assessed and subject to the consideration and treatment of amenity issues the site was acceptable;
- (d) the need to provide a facility to divert waste from landfill was undisputed and was a relevant consideration to apply;
- (e) the choice of facility was in accordance with the waste plan. Its ability to be efficient and deliver heat was an important and appropriate consideration. The energy benefits, good overall efficiency and section 106 provisions were appropriate advantages subject to consideration of amenity and health issues;
- (f) flood risks, transportation and access issues have been addressed appropriately through plans and improvements to infrastructure to mitigate impact;
- (g) the merits of the applicants design, landscape design, effect on landscape character, visual amenity, impact on the historic environment and impact on natural environment had been subject to a logical and reasoned assessment and the judgements of the committee were reasonable;
- (h) appropriate considerations were applied regarding the impact of noise during the construction phase and the operational phase of the plant;
- (i) the committee considered advice from competent authorities regarding the plant's impact on air quality. The plant had been issued a permit from the environment agency and the council's public protection service had provided further advice. The committee had appropriate consideration of the issues;
- (j) safety concerns had been addressed by appropriate management plans. The issue was also considered by the environment agency as part of the issue of a permit;
- (k) neither the Health Protection Agency or the Plymouth Primary Care Trust recommended the rejection of the proposal and the committee had taken a reasonable approach to issues of health and wellbeing based on the evidence and documents available to them;

- (l) the committee had given due consideration to Human Rights;
- (m) the polytechnic report which had often been referred to was commissioned by the council in 1991 in connection with a gas fired power station in the prince rock area of the city. As the report was with regard to a facility which differed from the North Yard facility in terms of location, nature and technology it could not form a consideration that would justify a revocation;
- (n) the application had been subject to a previous unsuccessful judicial review. Having paid regard to the development plan, other material considerations and the financial consequences, the independent advisers could not identify any grounds on which warranted revocation of the consent.

Mr Hoare provided the committee with advice on the contractual arrangements. It was reported that –

- (o) a withdrawal from the Joint Working Agreement (JWA) and the Project Contract was theoretically possible, it would however be prohibitively expensive and the levels of compensation could potentially exceed £400 million;
- (p) withdrawing from contractual arrangements risked one or more parties seeking to challenge by way of judicial review;
- (q) any decision to withdraw needed to be proportionate, robust and based on the “Wednesbury principles”.
- (r) withdrawal from the JWA and/or the Project Contract would not necessarily stop the facility being built at North Yard.

In response to questions from the committee it was reported that –

- (s) MVV Environment had provided a supporting document on the reasons for choosing the site. Plymouth’s waste plan caters for that circumstance under policies W8 and W7;
- (t) in respect of air monitoring, environmental officers had advised the committee. In the section 106 agreement negotiated there was a schedule confined to air quality. MVV environment had submitted an air quality management plan. There were also provisions within the environmental permit;
- (u) the £400 million possible compensation payable from breaching or withdrawing from the contract was twice the annual net revenue budget of the council. If that payment was to be made it would mean that no services would be provided by the council at all for two years. The Council would be unlikely to secure borrowing to cover such a liability;
- (v) the withdrawal from contract and revocation of planning consent were

separate issues however, the natural consequence of revocation would be a breach of contract and would likely result in a judicial review;

- (w) procedural aspects of the consent being given was not a consideration for revocation by the committee but an issue for a judicial review. Any new challenge on that basis would be deemed out of time for a new judicial review.

Councillor Wheeler proposed that the committee receive a further report on which to consider revocation. The report would provide expert analysis on site allocation, the use of waste policy W7 and W8, the Naval Base safety case, Health and Safety Executive guidance and inadequate considerations of noise.

The proposal failed to secure a seconder and was declared lost.

Agreed -

- (1) to note the report;
- (2) that the committee receive regular reports from the Assistant Director for Planning on the compliance of planning conditions with recommendations for appropriate action where there is evidence of non-compliance.

### 30. **PLANNING APPLICATIONS FOR CONSIDERATION**

The Committee considered the following applications, development proposals by local authorities, and statutory consultations submitted under the Town and Country Planning Act, 1990, and the Planning (Listed Buildings and Conservation Areas) Act, 1990. An addendum report was submitted in respect of minute number 30.2.

#### **30.1 HAMPTON COTTAGES, REGENT STREET, PLYMOUTH. 12/00896/FUL**

(Mr D Wraighte)

Decision:

Application **GRANTED** conditionally subject to a S106 Obligation, with delegated authority to refuse in the event that the S106 Obligation is not completed by 05 September 2012.

#### **30.2 282 OUTLAND ROAD, PLYMOUTH. 12/00515/FUL**

This item was withdrawn.

### 31. **PLANNING APPLICATION DECISIONS ISSUED**

The Committee received a report of the Assistant Director of Development (Planning Services) on decisions issued for the period 17 July 2012 to 13 August 2012, including –

- Committee decisions
- Delegated decisions, subject to conditions, where so indicated

- Applications withdrawn
- Applications returned as invalid

(Councillor Mrs Aspinall declared a prejudicial interest and Councillor Churchill declared pecuniary interests on the above item)

32. **APPEAL DECISIONS**

The Committee received a schedule of decisions made by the Planning Inspectorate on appeals arising from the decisions of the City Council.

33. **EXEMPT BUSINESS**

There were no items of exempt business.

**SCHEDULE OF VOTING** (Pages 1 - 2)

\*\*\*PLEASE NOTE\*\*\*

A SCHEDULE OF VOTING RELATING TO THE MEETING IS ATTACHED AS A SUPPLEMENT TO THESE MINUTES.

## PLANNING COMMITTEE – 23 August 2012

## SCHEDULE OF VOTING

Minute number and Application	Voting for	Voting against	Abstained	Absent due to interest declared	Absent
29 Energy from waste plant. (independent legal advice on revocation of planning consent)	Councillors Churchill, Nicholson, Stark, Mrs Bowyer, Mrs Foster, John Smith, Mrs Aspinall, Jon Taylor, Bowie, Tuohy and Stevens.	Councillor Wheeler.			
30.1 Hampton Cottages, Regent Street, Plymouth. 12/00896/FUL	Unanimous.				

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