

## **PLANS BOARD**

### **Minutes of a meeting of the Plans Board held on Thursday, 22<sup>nd</sup> January, 2009 at 6.00 p.m. in the Civic Offices, Telford**

**PRESENT:** Councillors I.T.W. Fletcher (Chairman), A.A. Meredith (Vice-Chairman), R.G. Chaplin, J.A. Francis, G.M. Green, H. Rhodes, C.F. Smith (substitute for Cllr F.R Picken) and M.J. Smith

**ALSO PRESENT:** Councillors J. Greenaway, R.T. Kiernan, A. McClements and J.M. Seymour

#### **PB-71            APOLOGY FOR ABSENCE**

Councillor F.R. Picken

#### **PB-72            DECLARATIONS OF INTEREST**

None.

#### **PB-73            W2007/1648 – HUNTINGDON LANE, NEAR LAWLEY, TELFORD, LITTLE WENLOCK AND NEW WORKS**

This application by UK Coal Mining Ltd. was for a surface coal and fireclay mine site with associated operations and restoration to open space consisting of grassland, hedgerows with hedgerows trees, rights of way and open wetland habitat. The applicant had appealed to the First Secretary of State because the Council had not determined the planning application within the prescribed period of time (plus agreed extensions) which had expired on 8<sup>th</sup> November 2008. As a result a Public Inquiry would be held in April and May 2009 when evidence from all interested parties would be presented to an independent Planning Inspector, who would prepare a report and a decision would be made by the Secretary of State on the Appeal. The report to the Plans Board, therefore, considered the position the Council could have taken if it had still had the power to determine the application and the recommended stance to be adopted by the Council at the forthcoming Public Inquiry. The reasons why the Council had not determined the planning application within the prescribed deadline were set out in the report.

The site (93.5ha in total) lay on the western periphery of Telford, about 200m to the south of the M54 between junctions 6 and 7 with the nearest settlements being at New Works (100m to the east) and the Telford suburbs of Lawley (600m to the east) and Dawley/Horsehay (1km to the south east). Some 6.6 hectares of the site lay within the Shropshire Hills Area of Outstanding Natural Beauty (AONB) and a small section of Limekiln Wood County Wildlife Site lay within the site. New Works Wood was designated as a Scheduled Ancient Monument (SAM) on the basis of its historic coal mining remains and there were Scheduled Ancient Monuments on The Wrekin and by Willowmoor House, some 1.9 km and 0.8km to the south-west of the site respectively. Part of the site also lay within an Area for Concentrated

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Biodiversity Enhancement as designated by the West Midlands Biodiversity Partnership. Further environmentally and historically designated areas were identified in the report. The application site was crossed by footpath no. 37 and a Road Used as a Public Path (RUPP) no. 36 and an area of Ancient Woodland lay to the west of and adjacent to the site. As identified on the maps attached to the report, a large section of Area B and a small part of Area A were shown as derelict land on the current National Land Use Data Base, although in was, at the present time, in agricultural use.

UK Coal Mining Ltd. had originally proposed to extract some 900,000 tonnes of coal and 250,000 tonnes of fireclay from Areas A and B) However, they had now calculated that the amount of the best quality fireclay was significantly less than that originally anticipated, although this figure might be higher with blending. After an initial three months to establish the site, 340,000 tonnes of coal would be removed per annum in a phased manner over a thirty-two month period. The fireclays would supply a number of brickworks within the West Midlands and the North-West areas and the proposals would provide employment for 40 people directly and 52 people indirectly. The site would work normal daylight hours (0700-1900) during weekdays and 0700 -1300 hours on Saturdays with no operations taking place on Sundays or Bank Holidays.

Area A (southern area) would be worked first in a south-west to north-east direction followed by Area B (northern area) in a south to north direction. However, the phased working and backfilling of mining voids, once extraction had been completed, meant that only a portion of the site would be exposed to mining operations at any one time. The two areas would be linked by a haul road within the SAM and woodland at New Works Wood and would involve the felling of 180 trees (c.1ha and 7.5% of New Works Wood). In addition, Area A would contain the coal washing plant and processing area, plant bay, office area, main overburden storage area, two water treatment areas, soil storage areas on its flanks, 24 mining strips and the site access on its southern boundary with Huntington Lane. Area B would contain soil storage areas, mainly on its flanks, a water treatment area, a subordinate overburden storage mound and 35 mining strips.

The coal would be transported by road via Huntington Lane, Dog in the Lane, Coalmoor Road onto the A5223 at Horsehay to a number of potential destinations, possibly including existing coal fired stations at Ironbridge and Rugeley. The site would be restored over a six months period to a mixture of pasture and species rich grassland, arable land, new hedgerows laid in a historic setting, reinstated public rights of way, a proposed new public right of way and a new wetland habitat. There would be a five year aftercare scheme with long term management undertaken to ensure lasting natural effects beyond the aftercare period. In total site operations would last forty-one months and UK Coal Ltd. would enter into a legal agreement not to work any other coal and fireclay resources within the south-western Telford area as identified in the Joint Shropshire and Telford & Wrekin Minerals Local Plan, 1996-2006 (The Joint Minerals Local Plan). The proposals also included provision for a Community Trust Fund of £500,000.

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The Head of Planning & Environment drew Members' attention to the tabled errata and then gave a detailed presentation on the proposals and on the associated material planning considerations.

Detailed consultation responses, as set out in the report, had been received from the local Members of Parliament, local parish and town councils, the Telford & Wrekin PCT, and a wide range of local and national agencies and bodies. The response from Little Wenlock Parish Council had been very detailed, evidence of the seriousness in which it viewed the application. In addition over 500 written objections had been submitted to the Council, the main issues being summarised in the report. The detailed responses from the Council's Environmental Health Officer, Historic Environment Officer, Arboricultural Officer, Outdoor Recreations Officer, Environmental Projects Team, and Highways Engineer were set out in the report.

With regard to repeat applications, paragraph 20 of Minerals Planning Guidance (MPG) 3 stated that a Mineral Planning Authority (MPA) might decline to determine a surface mine application if it was made within two years of a decision and there had been no material change in the circumstances. There should also be a general presumption against approving applications where a similar application had been refused previously unless there had been a material change of circumstances. Although this was the fifth application in the last twenty years to work Area B, the last application, Dawley Road 2, had been withdrawn in December 2002. As set out in the report, circumstances had changed since the last application and it was, therefore, appropriate that this application be determined.

When considering this application, the Council had to undertake a balanced approach between the applicant's arguments regarding need and benefits and the potential harm arising out of the development proposal. Officers considered that, given the significant harm arising out of the development in this sensitive location, the applicants had not shown sufficient justification of the need for coal and fireclay other than to suggest there would be a market for it. The current coal demands from the power stations at Ironbridge and Rugeley were already being met from other sources. There were alternative supplies of surface mine coal and fireclay outside of AONBs in the British Coalfield which could be worked in preference providing they were environmentally acceptable sites. With regard to the demand for fireclay, there were alternative supplies available in more substantial quantities e.g. at the Caughley Site near Broseley, Shropshire. Particular attention was drawn to the comments made by Little Wenlock Parish Council on the issue of need, which had considered that the various forms of harm arising out of the development were not outweighed by the need and benefits of the proposals. Therefore, the application was not in accordance with Policies MPG 3 and saved policies M2, M7, and M21 of the Joint Minerals Local Plan.

The Environmental Impact Assessment (EIA) undertaken by the applicant included assessments of noise, blasting and vibration and air quality using MPS2 criteria. The Council's Environmental Health Officer (EHO) had noted that the predicted noise exceeded MPS2 guidelines at two receptors, although

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this would be limited to temporary operations expected to last less than eight weeks. In addition, a noise reading taken in autumn 2008 had indicated that some of the readings provided in the EIA required verification but the information requested had not been provided by the applicant. Further readings had, therefore, been taken for the Council by an external consultant, which, whilst not yet available, were likely to confirm that there were significant differences with the noise readings in the EIA. This raised serious concerns that MPS2 and the relevant saved policies of the Joint Minerals Local Plan M1, M3, M4, and M21 might not have been met to a material degree in respect of certain locations. Further details were being sought on this issue but officers were of the view that that the proposals would result in a breach of noise policy, which would constitute a reason for refusal of the application.

Surface coal and fireclay mining sites involved significant amounts of earth movements during excavations and subsequent backfilling and serious concerns had been expressed by the general public relating to the potential risks from respiratory and nuisance dust. Whilst there was no evidence that the proposed site operations would give rise to particulate matter emissions, which were likely to cause breaches in air quality objectives, it was appropriate that monitoring took place and that dust control measures were incorporated into planning conditions should appeal permission be granted. Following a request from the Telford & Wrekin Primary Care Trust, a Health Impact Assessment (HIA) was being commissioned with the results expected in late March 2009 the results of which would help to inform the Public Inquiry.

The applicant had agreed to the requirements laid down by the Highways Engineer, as set out in the report, and it was important that site-attributable HGV traffic did not depart from these designated routes. This could be achieved by a routing agreement that formed part of the Section 106 Agreement. The resultant increases in HGV movements would not, in themselves, constitute a reason for refusal. The proposed bridleway/footpath system, which would be in place after the works had been completed, would provide a new footpath through New Works Wood to link up to other reinstated rights of way. Albeit welcome, it would be of limited benefit as there were alternative north-south routes and links for walkers in the vicinity. During the mining operation, the affected Public Rights of Way would be temporary out of use and the use and enjoyment of Rights of Way and lanes in the vicinity of the site would be affected by the operations. Whilst the proposals in highways terms were compatible with PPG13, Joint Structure Plan saved policy P58, Joint Minerals Local Plan saved policies M3, M4, M8 and M11 and Saved Wrekin Local Plan policy T22, the resulting disturbance would add to the cumulative impact of the proposals.

Officers accepted that the application represented an opportunity to comprehensively work the remaining coal and fireclay resources in this area, subject to environmental constraints, in line with paragraph 13 of MPG3 and saved MLP Policy M30 (Comprehensive Working of Mineral Resources).

The applicant's EIA had concluded that, in terms of landscape, six individual property receptors, the summit of the Wrekin and footpath no. 187A would be significantly visually affected at some point during site operations. It had also stated that none of the eight settlements, key transport routes, two local golf courses and strategic footpaths would be significantly affected by the development. However, these comments resulted from a desk top study with which Council officers disagreed in a number of respects. The southern area of the site could be viewed from The Wrekin and the proposed site operations would detract from the aesthetic qualities and recreational value of the local area surrounding the site. Not only did it take time to work and restore the site, but the after-use would take in excess of fifteen years to mature. In addition, the application site acted as a buffer zone between the urban area and the AONB and the hummocky nature of the open space, the result of underground mine collapses, was an attractive, sensitive and locally distinctive feature of the landscape which would be permanently lost through the surface mining. In contrast, the proposed restoration and after-use, whilst having some positive features, would lose this evolved hummocky landscape and could be achieved by local land owners and farmers irrespective of the current proposals. In conclusion, it was considered that the proposals would have a significant adverse impact on the landscape and would not, therefore, be compatible with Joint Structure Plan saved policies P59, Joint Minerals Local Plan saved policies M1, M21 and saved Wrekin Local Plan policy OL6.

The proposal was considered to impact on the Scheduled Ancient Monument not only from a landscape and visual perspective but also from that of the cultural heritage. Whilst the construction of the internal haul road through New Works Wood was not incompatible with PPG16, Joint Structure Plan saved policies P59 and Joint Minerals Local Plan saved policies M3, M6, officers were of the opinion that the internal haul road would not preserve or enhance the SAM.

Approximately, 6.6ha of the Shropshire Hills AONB was within the planning application area. PPG7 (paragraphs 21 and 22) gave guidance for all forms of development in AONBs, as did MPG3. The Government considered that major developments should not take place in these areas, save in exceptional circumstances and that all minerals development should be demonstrated to be in the public interest before being allowed to proceed. Most importantly, the policy applied to the whole of the AONB with equal force and consideration had to be given to the effect of development on land both within and outside of the AONB. The comments of a number of objectors, in particular the Shropshire Wildlife Trust, together with the on-site evidence, had confirmed the value of this sensitive and valuable area as a tranquil buffer between the west side of Telford and the AONB. Therefore, the detrimental "severance" effect of the mining proposal was a relevant and important consideration. Core Strategy policy CS12 recognised the importance of the Borough's natural environment and paragraph 29 of MPG3 listed certain tests that mineral applications within an ANOB had to satisfy, as referred to in the report. The proposals were, therefore, not compatible with MPG3 (paragraphs 28-29), PPG7 (paragraphs 21 and 22), Joint Structure Plan

policies P59, Joint Minerals Local Plan saved policies M1, M21, and saved Wrekin Local Plan policies OL2.

With regard to hydrology (surface water) concern had been expressed that the proposals might exacerbate flooding in the Arleston and College Wards, the water levels in the historic pools near to the site, the water quality of site discharge into water streams and the source of water to wash the coal. However, surface water issues had been addressed in the EIA and a flood risk assessment had been carried out in accordance with the requirements of PPS25. The Environment Agency had not objected to the proposals. With regard to hydrogeology the owner of Willowmoor House was concerned as to the effect of the proposals upon his private water supply from a spring. This issue had been addressed in the EIA and it was considered, on balance, that there should not be a problem but no guarantees could be given. Concern had also been expressed that the quality of the surface water would be affected, particularly by iron contamination from old workings but, following extensive analysis in the EIA, this could be addressed with mitigation measures. Overall, the proposals were considered to be compatible with Joint Structure Plan policies P58, P59 and Joint Minerals Local Plan saved policies M1, M3, M4, M21.

Given the history of mining on the application site, claims had been made that livestock had been lost down open mine workings and that one of the benefits of the proposal was that surface mining would remove these. However, no evidence had been presented that any humans or animals had been killed or injured by falling down crown holes or mine shafts within the application site area as all mine entrances had been sealed off. The lack of such evidence, therefore, undermined the appellants' arguments regarding the benefits of removing old abandoned mine workings through surface mining.

Engineering Management had expressed concerns that the exposure of old mine workings to oxygen could cause spontaneous combustion, leading to underground heating that could potentially last for years. However, the proposals for dealing with this issue were compatible with MPG5, MPG12, PPG14, Joint Structure Plan saved policies P59, Joint Minerals Plan saved policies M3 (ix), M8, M21A(iii), M27, and saved Wrekin Local Plan policies EH14, T22.

A small area of Limekiln Wood County Wildlife Site lay within the site but there were no other statutory or non-statutory designated conservation sites within the application site area. However, there were collectively many County Wildlife Sites, SSSIs and Local Nature Reserves within 2km, together with a designated ancient woodland area to the west of the application area. The applicant's EIA had concluded that none of these statutory designations would be significantly adversely affected by the proposals. Notwithstanding the benefits set out in the EIA, and as summarised in the report, a number of objectors had raised concerns, in particular the Shropshire Wildlife Trust. If members did not consider that they had sufficient information as to how protected species and their habitats would be protected, this could be a reason for refusing the application. With reference to the concerns raised by SWT, it was considered that the development proposal would have a material,

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adverse impact upon biodiversity and, therefore, the proposals were to be considered in terms of biodiversity effects against Joint Structure Plan policies P58, P59, Joint Minerals Plan policies M1, M3, M4, M7, M21 and saved Wrekin Local Plan policies OL12.

Members' attention was drawn to paragraph 12 of MPS2 and paragraph 18 of MPG3, which required MPAs to take cumulative impact into account when determining planning applications for coal and related development. This meant the impact of the proposed operation when added to other such or similar operations which were also having an impact upon the area. Little Wenlock Parish Council had referred to this cumulative impact in their consultation response in respect of previous open cast mining sites within the vicinity of the application site and officers also considered that the proposal would give rise to an adverse cumulative impact.

In addition the report dealt with the General Cumulative Impact and made reference to the appropriate Judicial reasoning, which, in essence, stated the position that a number of areas of potential impact which might not necessarily individually be regarded as reasons for refusal could, when taken together, constitute a reason for refusal. This principle of cumulative impact could be applied to the current proposals in terms of need, noise, dust, blasting, impact on highway/public rights of way users, landscape and visual impact, the Shropshire Hill AONB, the cultural heritage, and biodiversity, as detailed in report.

With regard to national, regional and Development Plan Policy, Members noted the Council's response to the comments made by the Regional Assembly and Government guidance on opencast coal applications, as set out in paragraph 8 of MPG3. The Government took the view that, subject always to local plan procedures, normal rights of appeal and the provisions of this guidance, MPA's assessments of the environmental acceptability or otherwise of individual proposals should normally prevail. Further, the Government had also confirmed AONBs as having the highest status of protection in relation to landscape and scenic beauty and, therefore, the need for their conservation should be given great weight in planning policies and development control decisions in these areas. Major developments should not take place in these designated areas, except in exceptional circumstances and should be demonstrated to be in the public interest before being allowed to proceed. In addition, planning authorities should ensure that any planning permission granted for major areas should be carried out to high environmental standards through the application of appropriate conditions where necessary.

In conclusion, there could be no doubt that, from the consultation responses received, the community of Telford & Wrekin was overwhelmingly opposed to this application. Surface coal and fireclay extraction had been going on in the south-western Telford area between the 1940s to the mid 1990s and, in particular, between the 1980s and the mid 1990s. Although the current LDF Core Strategy did not contain a minerals policy and there was no adopted Minerals DPD, saved Policy M21 of the Joint Minerals Local Plan (Coal and

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Fireclay Working) included Inset Map 2 (south-western Telford) and additional requirements for working within this area. Whilst this was not the same as the specific requirements of paragraph 38 of MPG3, it did indicate specific requirements which an application must meet to gain planning permission for surface mines in the south-western Telford area. It was considered that the general requirements of Policy M21 (A-C) were not satisfied by the proposals. The final balance was to weigh all the objections against the benefits and need and, in this case, the objections clearly outweighed the benefits and need for the development. The proposals, therefore, did not satisfy the policies of the development plan including saved policy M21 (Coal and Fireclay Working) of the Joint Minerals Local Plan.

This was the third and fifth application to work surface coal and fireclay within Area A and Area B respectively in the last twenty years, which demonstrated the complexity of the current proposals and the need for thorough analysis. The image of Telford was as a growth point in the West Midlands and as an attractive area to live and work, which would be adversely affected by the proposal. In addition to the impact of the proposal, there was no proven strategic need for the coal and fireclay and it was considered that no exceptional circumstances existed in this particular case.

In addition to the report attached to the agenda, additional information, as referred to in the report, had been made available in the Members' Room and a site visit had taken place prior to the meeting.

Councillor J.M. Seymour, one of the two Ward Members for Wrockwardine, the location of the application site, addressed the Board and spoke as both the local member representing the views of her constituents and as a resident of the area. In particular, she drew attention to the cumulative impact this application would have, if approved, given the numerous other similar sites in a relatively small area. The intensity of activity in the area over the previous seventy years had been unprecedented and Wrockwardine had suffered the effects and consequences of noise, dust, vehicles, and the spoiling of the landscape and it was time a halt was called to any further mining. The cumulative effects of the application would not only impact upon residents but also upon the wildlife, specifically the badgers, as included in the responses from organisations such as the Shropshire Wildlife Trust and Natural England. In conclusion she made reference to MPG3 and the presumption for refusal set out therein and said that UK Coal Ltd. had not made the case for this application to be considered as exceptional.

Councillor Seymour's comments were endorsed by Councillor R.T. Kiernan, her fellow ward member, who also referred to the long period of time during which local residents had had to endure mining operations and to the impact of the current proposals on their quality of life. The proposals, if approved, would also impact upon the future development of Telford as residents were unlikely to want to purchase properties adjacent to an open cast coal mining site. In addition, it was important that this land was protected for future generations.

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His comments were reinforced by Councillor J. Greenaway, Ward Member for Lawley & Overdale, which was adjacent to the proposed Site B. She referred to the prevailing winds which would carry dust and pollution from the site to the vicinity of the local primary school. She emphasised that Telford was a regional growth point and the detrimental visual impact that the application would have on the Lawley Sustainable Urban Extension, which would provide additional social and affordable housing for residents. No proven need for the coal had been demonstrated by the applicant but there was a proven need for such housing in the borough.

Councillor A.D. McClements, Ward Member for Arleston, also spoke on the impact upon the health and wellbeing upon residents of that area, together with the concerns expressed regarding the potential for flooding in Arleston. She recommended that the Council should give serious consideration to the work of various experts in order that its arguments to the Planning Inspector were as robust as possible.

The Board members spoke in support of the views expressed by the Ward Members. Councillor H. Rhodes said that the disbenefits outweighed the advantages and that the demand for coal could be met from elsewhere rather than damage the environment locally. Councillor C.F. Smith stressed the adverse impact that the proposal would have on the Schedule Ancient Monument, the SSSI, the ancient woodland and the AONB. The landscape that would be affected by the proposal had developed over centuries and should be left untouched for the benefit of residents and for the wildlife. He also expressed concerns about the impact of the additional heavy vehicle traffic on the narrow roads that ran through populated areas of the borough.

Councillor R.G. Chaplin spoke of the vast and dominant size of the application site. She considered that the principle of development in such an environmentally sensitive site should not be supported and agreed that no proven case for the application being considered as exceptional had been demonstrated. In conclusion she raised concerns as to the impact of the dust and noise on the quality of life of local residents and to the fact that approving coal mining in a developing town would be a retrograde step and something which would alter the character of what people were trying to build in Telford. Councillor A.M. Meredith stressed the need to protect the AONB and Councillor G.M. Green supported the comments made by other members on the detrimental effect upon the development of Lawley, as did Councillor M.J. Smith.

On being put the vote, the Board voted unanimously in support of the recommendation set out in the report.

**RESOLVED - that at the forthcoming Public Inquiry, the Council should oppose the current application and recommend to the First Secretary of State that the appeal should be dismissed for the following reasons:**

- 1. The proposed development represented major development which would have an unacceptable and significant adverse impact**

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on the Shropshire Hills Area of Outstanding Natural Beauty and adjoining areas of countryside, their use and enjoyment. The proposals therefore failed to meet the tests of paragraph 8 (iii) of MPG3 by virtue of not being environmentally acceptable, the additional tests of paragraph 28 and 29 of MPG3 for an Area of Outstanding Natural Beauty, Policy QE1 of RSS11, saved Policy P59 of the Joint Structure Plan, saved policies M3, M7 and M21 of the Joint Minerals Local Plan, and saved Wrekin Local Plan policy OL2.

2. The general cumulative impact of the proposals set out in paragraph 10.19 of this report would be significant and in conflict with MPG3 and MPS2, and saved policies M2, M3, M4, M7 and M21 of the Joint Minerals Local Plan.
3. The noise impact of the proposals, as described in paragraphs 8.1 (1) and 10.3 of the report would be unacceptable and contrary to MPS2, and the relevant saved policies of the Joint Minerals Local Plan M1, M3, M4, and M21.

**PB-74            URGENCY RESOLUTION – SECTION 100b(4) LOCAL GOVERNMENT ACT 1972**

The Chairman of the meeting made the following statement:

“I am of the opinion that the following items of business should be dealt with as a matter of urgency at this meeting in order to avoid any unnecessary delay.”

**PB-75            EXCLUSION OF PRESS AND PUBLIC**

**RESOLVED** – that the press and public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 1 of Schedule 12A of the Local Government Act 1972.

**PB-76            UPDATE ON PUBLIC INQUIRY/COUNSEL’S OPINION**

The Head of Planning & Environment presented a report in respect of a planning application made for the demolition of an existing dwelling and redevelopment of a site to provide twelve dwellings at The Paddocks, Arleston Lane

Following the initial delegated refusal by a planning officer, the applicant had lodged an appeal and the matter was listed for hearing at a Public Inquiry in February 2009. The local Town Council had objected to the scheme and letters of objection had been submitted by neighbours from the adjacent residential development.

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The report referred to Counsel's Opinion in respect of this application and the officers' response. In conclusion, this previously developed site was in a sustainable location and it was considered that the Council was unlikely to be successful in defending the refusal decision at the Inquiry. Members were informed that a contribution was being offered in respect of leisure/open space.

Members were in agreement with the proposed course of action set out in the report subject to the applicant being requested to make a Section 106 contribution towards leisure/open space in the vicinity of the application site.

**RESOLVED – that the Head of Planning & Environment be granted delegated authority to pursue the following option:**

**That the Local Planning Authority offers no evidence to the Inspector and invites the Inspector to grant planning permission, subject to the appellant entering into a Section 106 obligation to provide an appropriate financial contribution for leisure/open space in the vicinity of the application site, and subject to the appropriate conditions being attached.**

The meeting ended at 7.45 p.m.