
Meeting: The Rookery South (Resource Recovery Facility) Committee

Date: 13 December 2011

Subject: Infrastructure Planning Commission (IPC) decision to approve Covanta 'Waste to Energy' plant at Rookery South Pit, Stewartby

Report of: Cllr Matthews, Executive Member for Sustainable Communities-Strategic Planning and Economic Development

Summary: In light of the Infrastructure Planning Commission (IPC) decision (see Appendix 1) to approve the Covanta proposal for a 'Waste to Energy' plant at Rookery South Pit, Stewartby, this report considers whether the Authority should object to the Development Consent Order (DCO) by petitioning Parliament.

Advising Officer: Trevor Saunders, Assistant Director Planning

Contact Officer: Roy Romans, Team Leader – Minerals and Waste

Public/Exempt: Public

Wards Affected: Ampthill, Aspley & Woburn, Cranfield & Marston Moretaine, Flitwick, Lidlington, Westoning, Flitton & Greenfield and Houghton Conquest & Haynes

Function of: Executive

Key Decision No

Reason for urgency/ exemption from call-in (if appropriate) To meet the short timescales for a petition to be made.

CORPORATE IMPLICATIONS

Council Priorities:

Managing growth effectively. The provision of new infrastructure to produce energy and the effective management of waste are a critical element of delivering growth effectively and help to ensure sustainable development. 'Waste to energy' plants are one type of infrastructure which can be developed to meet these needs.

Financial:

1. It is estimated that the total cost of the legal and consultancy support required to take forward an objection would be in the region of £120,000. At the IPC Examination, both Bedford Borough and Central Bedfordshire Councils raised objections to the Covanta Waste to Energy proposal and therefore shared the costs of putting forward their case to the IPC. These costs have already been incurred and funded from current revenue budget provision. If both authorities wish to object to the Development Consent Order, the authorities would share those costs on a 50/50 basis. However, if only Central Bedfordshire wished to object, it would carry 100% of the £120,000 cost. This figure is an estimate on a process that the Council has no previous experience of and there is a possibility that this may be exceeded. Bedford Borough Council has decided to petition Parliament against the Development Consent Order. This was agreed at their Executive meeting on 7 December 2011.
2. There is no provision in the Sustainable Communities budget currently and therefore, should a decision be made to object to the Development Consent Order, additional funds would need to be identified from the Council's contingency up to £120,000.
3. If Central Bedfordshire Council petitions, but that petition is unsuccessful it is open to the Special Parliamentary Committee to also consider whether the petition was unreasonable and that the promoter has been vexatiously exposed to costs as a result of opposition to the Order. However, a landowner who at their own risk and cost opposes a private Bill which proposes the acquisition of any part of their property is not liable for any costs in respect of that opposition. Therefore Central Bedfordshire Council as landowner should not be liable for any third party costs.

Legal:

4. The IPC has decided to grant development consent for the proposal. The statutory order implementing this decision has been laid before Parliament. The Council can object to the Order. In these circumstances, the Council's case will be considered by a joint committee of both houses of parliament.

Risk Management:

5. The decision to approve the Waste to Energy plant is an independent, IPC decision. The Council put forward an objective case to the IPC, but the Council's objections were not upheld. If therefore, the Council accepts the IPC has acted reasonably in its decision-making, a decision by the Council not to petition against the Development Consent Order would carry no risk to the Council other than a residual risk to the reputation of the Council from local objectors who could consider the Council should exhaust all avenues available to it in pursuit of its original objections to the IPC.

6. The special parliamentary process is rarely used. It is difficult therefore to predict the Council's chances of a successful petition. In light of the very detailed consideration of the IPC, the Council must determine that it has very clear and sound reasons to petition Parliament against the Development Consent Order. It should not petition purely to avoid the reputational risk outlined above. Appendix 2 sets out the Council's reasons for objecting to the DCO that it submitted to the IPC.
7. It is also clear that any decision of this Committee cannot prejudice the Council's future consideration of bids to the BEaR procurement process. In that light, that issue is being dealt with by a separate Committee to that which will independently consider the BEaR procurement process in future. Members of this Committee will not therefore, be able to participate in the separate decision-making process associated with BEaR procurement.

Staffing (including Trades Unions):

8. None

Equalities/Human Rights:

9. Evidence on socio-economic matters was presented to the IPC by the Council. The decision to make the Development Consent Order was the responsibility of the IPC. If there is a requirement to follow the special parliamentary process, then it will be the appointed committee that makes the decision.

Community Safety:

10. Not Applicable.

Sustainability:

11. Sustainability issues have been a core part of the Council's objections to the Covanta proposal to date. The Council's key concerns are summarised in Appendix 2.

Procurement:

12. Not applicable.

Overview and Scrutiny:

13. This matter has not been considered by Overview and Scrutiny.

RECOMMENDATIONS:

The Committee is asked to:

1. **note the decision of the Infrastructure Planning Commission (IPC) to approve the Waste to Energy Plant at Rookery South Pit, Stewartby;**
2. **consider the merits of objecting to the Development Consent Order by petitioning Parliament;**

- 3. In the event that the Committee decide to petition against the Order:**
- a) agree that there should be a call on the Council's contingency reserve to cover the cost putting forward the Council's case; and**
 - b) delegated authority is given to the Assistant Director Planning, after consultation with the Executive Member for Sustainable Communities – Strategic Planning and Economic Development to approve the final content of any petitions.**

<i>Reason for Recommendations:</i>	<i>So that the Authority can formally consider the IPC decision to approve the Covanta proposal for a Waste to Energy plant at Rookery South Pit, Stewartby and determine whether or not it wishes to petition against the Development Consent Order now laid before Parliament, through the processes available to it.</i>
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Executive Summary

14. The Council has been objecting to the proposal for a large waste to energy facility in Rookery Pit, Stewartby. A decision has been made by the Infrastructure Planning Commission to allow the development which is subject to a special parliamentary process. The Council needs to decide whether to continue to object and take part in the process.

Background

15. The Covanta 'Waste to Energy' proposal was dealt with by the Infrastructure Planning Commission. It proposes a 585,000 tonne per annum 'waste to energy' and material recovery facility at Rookery Pit, Stewartby. It is proposed that the facility would process residual municipal and commercial waste arising from Central Bedfordshire, Bedford, Luton, Buckinghamshire and adjoining authorities. At the present time, none of these authorities have made a final decision to award municipal waste contracts to Covanta.
16. As the proposal is for an onshore power generating station in England having a capacity in excess of 50 MWe it was not dealt with through the normal planning process and an application was made for a Development Consent Order to the Infrastructure Planning Commission (IPC) in order to authorise its construction and operation.

Current Position

17. The IPC held a Public Examination into the proposal in 2011. The examination of the application began on 18 January 2010 and was completed on 15 July 2011. It was held by an experienced Panel of three independent Commissioners and heard detailed evidence from thirty six parties including:
 - Covanta, the promoters of the development;
 - Central Bedfordshire Council and Bedford Borough Council;
 - 25 town and Parish Councils;
 - British Waterways;
 - English Heritage.

18. Having heard all the evidence, the Panel concluded that the development should be approved. The decision of the IPC is attached at Appendix 1. Subsequently, the IPC has laid a Development Consent Order (DCO) before Parliament. The Order is subject to a Special Parliamentary Procedure (SPP) as it includes the granting of compulsory purchase powers to Covanta to which Central Bedfordshire objected. Some of the land owned by the Council is highway land required for the installation of cabling. The main reason for maintaining an objection to this point has been because the Council objects to the principle of the development and therefore the need for the Order.

19. The principle reasons for objecting to the development are:
 - that the size and bulk of the proposed facility will adversely impact on the amenity of local residents and on the highway network in the vicinity of the site and in other parts of the authority area.
 - the proposed facility is sized so that it needs to source waste from a much greater area than the former county area of Bedfordshire and as such, is contrary to national and local planning policy to handle waste sustainably by using the nearest appropriate facility and to make provision for local waste disposal.

20. The matters of objection and on which the Council made detailed submissions to the IPC are attached as Appendix 2.

21. In addition to a petition of general objection, it is possible to present a petition for amendment of the Order. The Council did argue for a number of amendments to the original draft order that have not been included in the final DCO. The main issues suggested for amendment concerned catchment area restrictions, the provision of canal infrastructure and a definition of residual waste.

22. The Order was laid before both Houses of Parliament on 29 November 2011. The deadline for petitions is 5.00pm on Monday 19 December 2011. The authority therefore needs to decide if it wishes to continue to argue its case by petitioning against the Order in either or both Houses of Parliament.

23. If, in light of the IPC decision, the authority does not wish to object, then no further action needs to be taken.
24. If however, the authority does decide to object, then this would require it to engage external legal support to advise on what is a very specialist and complex process. It is also likely that the authority would need to engage specialist landscape and design advice to present evidence to a Parliamentary Committee, in addition to that presented by the Council's own officers.
25. It is very difficult to predict the likely chances of success in a parliamentary process given that is seldom used and one which has certainly never been used to examine a DCO.

The Basis for and against a Petition to Parliament

26. Whilst the precise nature of any objections and/or amendments included in any petition would need to be determined in the light of any retained advice, the main thrust of the Council's arguments would be the same or very similar to those made to the IPC Examination.
27. The Commissioners appointed by the IPC were required to make their decision within the framework provided by National Policy Statements (NPS) on energy, principally EN1 and EN3. These were only recently approved by Government in July 2011. What is not clear at this time, is the extent to which a Special Parliamentary Committee (SPC) may or may not be constrained by these statements or may be able to place a different weight on the matters raised. If so, then clearly, there is a possibility of the Committee coming to a different decision to that of the IPC.
28. There are a number of matters covered by the NPSs which constrained some of the arguments put forward by the Council to the IPC. The first of these is that the IPC should assess all applications for development consent for the types of infrastructure covered by the energy NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the need for new renewable energy generation projects is urgent. This restricts the consideration of alternative waste management capacity put forward by the Council. It is unclear to what extent a SPC would be able to give a different weight to the Council's case that the need for the facility is an overriding factor in its considerations.
29. The NPS EN1 further states that other matters that the IPC may consider both important and relevant to its decision making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for the purposes of IPC decision making given the national significance of the infrastructure. This restricts the weight that can be given to conflict with local policies. The SPC may have a different view on the weight to be given to any conflict with local policies and this may contribute to them making a different decision.

30. NPS EN-3 advises that commercial matters are not likely to be an important matter for IPC decision making. This affects the degree to which the Council is able to argue the merits of a catchment area restriction and the deliverability of the proposal. The SPP may not consider itself as constrained as the IPC in its decision making and therefore be able to take a different view.
31. For an objection to be successful, the Special Parliamentary Committee would need to be persuaded of the range and significance of essentially local adverse impacts from the proposed development and that these should override the national need for this type of facility. Whilst the IPC was not persuaded that the weight of adverse local impacts would override the need/benefits of the facility, the Special Parliamentary Committee may take a different view and find the case not proved or that amendments are necessary.

Possible Joint Petition with Bedford Borough Council

32. Bedford Borough Council has agreed that it wishes to pursue its objection to the Development Consent Order by petitioning Parliament. It is expected that the basis upon which Bedford Borough Council wishes to pursue any objection/amendment will be similar but not necessarily completely the same as Central Bedfordshire Council.
33. The main difference in the arguments of the two councils to date has been that Bedford Borough Council has objected to the technology of the proposed facility and Central Bedfordshire has not. It is expected that this would continue to be the case.

Conclusion and Next Steps

34. Further action is only required should Members consider that it is in the public interest to pursue the Council's objections to the DCO through the SPP. If this is the case, officers will prepare the detailed objections which will form part of the petition for submission. This will be done by parliamentary agents appointed by the Council.

Appendices:

Appendix 1 – The IPC Decision, dated 13 October 2011 (**Circulated Separately**)

Appendix 2 - Outline of Central Bedfordshire's Objections to the Rookery South Development Consent Order

Background Papers: (open to public inspection) None