
Meeting: The Rookery South (Resource Recovery Facility) Committee

Date: 29 November 2012

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

Report of: Councillor Nigel Young, Executive Member for Sustainable Communities - Strategic Planning and Economic Development

Summary: In light of the Council's previous decision to petition Parliament, this report summarises the current situation and possible financial impacts.

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) The parliamentary process is ongoing and a decision not to make provision for funding the Council's case would result in the Council having to reduce its participation in the process.

CORPORATE IMPLICATIONS

Council Priorities:

Enhancing Central Bedfordshire – creating jobs, managing growth, protecting our countryside and enabling businesses to grow; and Better Infrastructure – improved roads, broadband reach and transport. 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 was originally 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. Both authorities have continued to object to the Development Consent Order and are sharing costs on a 50/50 basis.
2. The current and future financial position is set out in detail in paragraphs 24 to 28 of this report.
3. If Central Bedfordshire Council's 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 has objected to the Order. The Council's case is being 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 continue to petition against the Development Consent Order at this stage would carry a 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. It could also result in the Special Parliamentary Committee taking a view that Central Bedfordshire Council's commitment to opposing the development has reduced and consider that evidence given so far, on that basis.
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 has previously determined that it had very clear and sound reasons to petition Parliament against the Development Consent Order and has been aware that it should not continue to petition purely to avoid the reputational risk outlined above.

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, the Council's consideration of the 'energy to waste' proposal at Rookery 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. It is now the responsibility of the appointed Special Parliamentary 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 paragraph 18 of this report.

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 current position of the Council with respect to it's involvement in the Special Parliamentary Process;**
2. **consider the merits of continuing to object to the Development Consent Order by petitioning Parliament; and**
3. **In the event that the Committee decide to continue to petition against the Order:**
 - a) **agree that the current provision to cover the cost putting forward the Council's case should be increased by £50,000 to £150,000.**

<i>Reason for Recommendations:</i>	<i>So that the Authority can formally consider whether or not it wishes to continue to petition against the Rookery South 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 IPC to allow the development which is subject to a special parliamentary process. At the previous meeting of this Committee it was decided to petition against the order. The Council now 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.
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.
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. Having heard all the evidence, the Panel concluded that the development should be approved and the IPC 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.

18. 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; and
 - 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.
19. 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.
20. The petitions presented to Parliament are attached as Appendix A.
21. The authority has engaged external legal support to advise on what is a very specialist and complex process. It has also engaged specialist landscape and design advice to present evidence to the Parliamentary Committee, in addition to that presented by the Council's own officers.
22. Bedford Borough Council has also been objecting to the development and a joint case is being presented to Parliament and the costs shared on a 50:50 basis. At the previous meeting of this Committee, it resolved that there should be a call on the Central Bedfordshire Council's contingency reserve to cover the cost of putting forward the Council's case. The Council has allocated a provision for this financial year of £100,000 to cover the potential costs in the process.

Current Position

23. The Councils have been putting together their case over a number of months and began presenting this to Parliament on 24 October 2012. At the time of this Committee, the Special Parliamentary Committee will have sat for five of the seven days initially allocated for this matter. However, the presentation and cross examination of the evidence is taking longer than initially estimated and there is potential for the process to over run the current timetable.
24. As at 9 November 2012, the total cost of the process was £145,000. Forecasting this forward, based upon the timetable at the time of writing this report, the estimated final costs are £250,000.

25. Therefore, Central Bedfordshire Council's contribution to this would be £125,000. This would be £25,000 in excess of that currently budgeted for. However, there is also a distinct possibility that the timetable will over run and this would lead to additional costs. This is due to the extent of questioning of witnesses by both the Parliamentary Committee and Covanta's legal representative. It is difficult to be clear what these additional costs might be. However, it is estimated that these could be an extra £50,000 in total, which would mean an extra £25,000 for Central Bedfordshire. This would lead to a final Central Bedfordshire contribution of £50,000 over the current allocated budget.
26. In light of the above, the Council need to decide whether to make an additional provision to cover the likely and potential additional costs associated with the process. The alternative will be to present a reduced case based upon the current approved budget. This could mean a reduction in the legal support to the Council's case and the Council not questioning any witnesses presented by Covanta.
27. It is very difficult to predict the likely chances of success in a parliamentary process given that it is seldom used and one which has certainly never been used to examine a DCO.
28. Bedford Borough Council have been asked to clarify it's position on this matter. This was not available at the time of writing the report but will be reported to the Committee.

Conclusion and Next Steps

29. That the Committee decide how to continue taking part in the Special Parliamentary Process. The options are:
 - a) to continue to present the best case possible; and
 - b) to present a reduced case within the current resources currently budgeted for.

Appendices:

Appendix A – The petitions made to Parliament.

Background Papers: (open to public inspection) None