

Request for Non-Material Amendment – Summary of Officer Consideration

Planning Permission Ref. ESS/37/08/BTE
PINS Appeal Ref APP/Z11585/V/09/2104804

Site: Rivenhall Airfield, Essex

NMA Application Ref: **ESS/37/08/BTE/NMA2**

DETAILS OF AMENDMENT:

Non Material Amendment of planning permission Ref. ESS/37/08/BTE (PINS Ref: APP/Z1585/V/09/2104804) to allow amended wording of condition 2 (applications details)

The applicant is seeking to add the following sentence to the end of condition no. 2

“...and in accordance with any non-material amendment(s) as may be subsequently approved in writing by the Waste Planning Authority, except as varied by the following condition(s): -“

BACKGROUND

Planning Permission ECC Ref ESS/37/08/BTE (PINS Ref: APP/Z1585/V/09/2104804) for an Integrated Waste Management Facility (IWMF) was granted planning permission by the Secretary of State following a Call In Public Inquiry in Sept/Oct 2009. Planning permission was issued by the Secretary of State in March 2010, subject to conditions, some of which require submission of further details for approval.

The applicant made a previous NMA amendment application in July 2012 which included 5 elements. One element sought the

Inclusion of a clarificatory informative indicating that, where internal layout or IWMF process layout and configuration are shown on the approved plans, they are considered to be “indicative only”, with detail to be submitted and approved under existing condition 19.

The applicant withdrew the NMA application following notification to the applicant that it was likely the WPA would not consider this (or the other 4 elements of the NMA application) to be acceptable as a non material amendment as it was indicated that to say the plans were “indicative only” went beyond what the WPA considered to be intended by the planning permission as a whole.

The applicant sought advice as to how to resolve the potential conflict of details to be approved under conditions of the planning permission conflicting with details under a different condition namely details/plans to be approved under condition 19 conflicting with plans listed in condition 2.

It was suggested to the applicant that the wording of ECC standard condition in relation to application details/plans was such that it sought to address this potential conflict and an NMA application to add the standard end wording to condition 2 could be a possible way forward. Hence the applicant has chosen to make the current NMA application.

CONSULTATION

Due to the public interest shown in the original application and the previous NMA application, while guidance with respect to NMAs suggests that consultation may not be necessary it was considered appropriate to carry out focused consultation involving the main parties represented at the Public Inquiry namely, the Local District & Parish Councils and the Community Group (A local opposition group formed to oppose the IWMF) and who were represented at the Public Inquiry. It was not felt necessary to carry out site/press notices or direct neighbour notification.

BRAINTREE DISTRICT COUNCIL: No objection. As a general point considers that the most appropriate route for such a proposal would have been an application to vary the condition under s73 of T&CPA.

BRADWELL PARISH COUNCIL: No comments received

KELVEDON PRISH COUNCIL: No objection

SILVER END PARISH COUNCIL: No comments received

COGGESHALL PARISH COUNCIL: No comments received

RIVENHALL PARISH COUNCIL: Object, on the following grounds

- Consider this NMA to be one of a series of NMA to change the agreed planning permission issued by the Secretary of State. The details of the application and conditions were agreed by parties at the Inquiry. The applicant's have indicated their intention by previous NMAs to fundamentally change the planning permission. The applicant appears to be fundamentally changing the planning permission which is unacceptable.
- Application seeks to add a part of ECC's standard wording to agreed condition 2 of the planning permission. It is not relevant to do this, because of the previous reason above and the planning permission was given by the Secretary of State based on the SoS reasoning. Conditions are relevant to the circumstances and relevant policies at the time at which they were agreed.
- It is not relevant or necessary to add the ECC standard wording for the reasons claimed by the applicant's because agreed conditions in the consent subsequent to condition 2 do clearly set out a requirement for further details to be submitted, within the overall parameters set out by way of the list of plans in condition 2. Condition 19 is most relevant in this regard. There is no contradiction between the existing conditions, which were agreed by all parties, including the appellants, at the Inquiry.

FEERING PARISH COUNCIL: No comments received

THE COMMUNITY GROUP: No objection, subject to there being sufficient planning checks and controls to ensure future development is in keeping with agreed plans.

REPRESENTATIONS

While no neighbour notification or site/press notice was undertaken, local parish councils would appear to have notified their parishioners and 8 letters of representation have been received. These relate to issues covering the following matters:

Observation

NMA is seeking to change the planning permission in a piecemeal way

Comment

Not a material planning consideration - The Waste Planning Authority cannot control the manner in which planning submissions are made, if an application is valid it must be determined in accordance with planning law and guidance.

SoS issued the original planning permission and conditions were agreed between the parties at the Public Inquiry, including the applicants.

Not a material planning consideration - It is acknowledged that all parties agreed the conditions, this matter has only come to be of concern sometime after the planning permission was issued.

The applicant appears to intend to build something different than proposed, but the pre-application discussions have not been fully disclosed by the WPA. "all material considerations" should be disclosed.

Not a material planning consideration - See appraisal

If the applicant wants to build something different other than what is consented they should make a fresh full planning application.

Not a material planning consideration - See appraisal

Not necessary or relevant to change wording of part of the consent to ECC's wording because this was not a planning permission given by ECC. It was the SoS decision based on the Inspectors Report and the considerations of the Public Inquiry.

Not a material planning consideration - While the SoS state dealt with the determination of the application by way of a Call In Inquiry, it is for Waste Planning Authority to deal with subsequent planning matters.

The additional wording is not relevant or necessary to add the standard ECC wording because the agreed conditions subsequent to condition 2 set out the requirement for further details to be submitted. There is no contradiction between conditions.

See appraisal

ECC directly advised of wording that

Not a material planning consideration –

should be used in NMA, consider this See appraisal
unlawful.

APPRAISAL

NEED

Condition no. 2 of the planning permission issued by the SoS sets out a list of the approved plans. The wording of condition 2 is set out in appendix 1 attached.

Other conditions of the planning permission require details to be submitted (conditions . In particular the applicant refers to condition 19 (see appendix 1 for wording) which requires the submission of “*details of the IWMF process layout and configuration*”. It was recognised at the Public Inquiry held with respect to original application that the exact plant and operator were not known at the time of inquiry and therefore the layout and configuration of plant might be different to that submitted within the application and as such condition 19 allowed details of the plant and their layout to be submitted at a later date.

The applicant considers that in submitting details under condition 19 that if approved there could be conflict with other conditions of the planning permission. The first NMA application sought to achieve this by adding a ‘clarificatory informative’ stating that the plans in Condition 2 were ‘indicative only’. The WPA advised the applicant that it was likely that it would not consider this to be a non-material amendment because it did not consider the plans to be indicative and the applicant withdrew the NMA application. However, the applicant remained concerned that certain conditions of the planning permission required submission of details and if submitted and approved, that these could be in conflict with Condition 2 and there could be technical breach. To try to resolve this concern the WPA suggested that potentially an NMA application could be submitted to seek to add the ECC standard end wording added to the approved details/plans condition, the wording as set out within standard condition COM3 is as follows

The development hereby permitted shall be carried out in accordance with the details of the application dated ***, together with drawing numbers/reference **** dated ***, letter(s) from ***** dated *****, e-mail(s) from **** dated ***** and [*the contents of the Design and Access Statement dated ****] **and in accordance with any non-material amendment(s) as may be subsequently approved in writing by the *** Planning Authority, except as varied by the following condition(s):**

The condition when imposed by ECC normally not only lists the plans but all documentation submitted by the applicant in support of their application, this is done for the avoidance of doubt. In this case due to amount of documentation submitted as part of the inquiry, all documents were not listed, only the plans, but other documents are described within the Inspector’s Report dated 22 December 2009 (paragraph 1.6).

The purpose of this wording in the standard ECC condition is intended to address the potential matter of concern to the applicant. That is, that if a condition within the

planning permission requires something different to that within the approved details/plans, then the condition supersedes the approved plans/details. Since October 2010 the reference to non material amendments has been added to reflect the introduction of the Non Material Amendment process by Section 96A of the Town & Country Planning Act.

Concern has been raised by Rivenhall Parish Council and representees that the change is not necessary that in issuing a decision with conditions that required further details to be submitted, then the phrase would have been added at the time. It is acknowledged that it could be argued that if details are submitted and approved that as this would be a decision taken after the issue of the decision and then if there were any conflict between the later and the earlier, the later would logically take precedent and superseded the details within the original decision. This argument only goes to support that the change is non-material, it could be argued it is not necessary and inherent in the original decision.

Braintree District Council have raised no objection to the application.

NON MATERIAL CONSIDERATIONS RAISED BY CONSULTEES AND REPRESENTEES.

Concern has been raised by Rivenhall PC and representees that the underlying purpose of this change to the condition is to allow development of something different to that permitted by the planning permission issued by the Secretary of State. The applicant requested pre-application confidential discussions on potential changes to the proposals, the authority advised on the basis of the options put forward that the applicant would be required to make a further full planning application. The applicant chose to submit the first NMA, which sought a number of changes, the WPA advise it was unlikely to consider these as non-material and the applicant withdrew the NMA application.

There has been a request for disclosure of these pre-application submissions and discussions, but the authority has declined as the applicant prefers for them to be remain confidential. Guidance on such matters makes it clear there is no requirement to release pre-application discussions until such time as proposals of the nature discussed by the applicant come forward by the applicant. That was not the case with respect to the NMA1. Pre-application correspondence with respect to the NMA2 has been disclosed. The Waste Planning Authority is fully aware of what the details of planning permission granted for the IWMF. At this stage no formal submission has been made with respect to the outstanding conditions and the WPA is not aware when these submissions will be made. If and when any submissions/applications with respect to the Rivenhall IWMF are submitted the authority would follow due process to ensure they are considered appropriately in accordance with planning law and guidance and accord with the planning permission for the IWMF.

As the applicant has not submitted the details required by other conditions of the planning permission to the Waste Planning Authority, the determination of whether this non material amendment is appropriate can only be based on the submitted information

and ensure its approval would not give rise to a material change in the planning permission.

Rivenhall PC and representees have also raised concern that the WPA has colluded with the applicant to bring forth a change to the planning permission that might allow a different development to that permitted and also that suggesting the wording at pre-application stage was unlawful. The sentence suggested to be used as explained previously is part of a standard specimen condition, a copy of these conditions is publicly available on the web and therefore it is not considered that suggesting a wording used as best practice by ECC can be seen as 'collusion'. Also as explained previously any subsequent submissions by the applicant will be dealt with appropriately.

CONCLUSION

Guidance with respect to non materials is set out in central Government document "Greater Flexibility for planning permissions" (October 2010). The guidance states "There is no statutory definition of 'non-material' ". This is because it is so dependent on the context of the overall scheme – what may be non-material in one context may be material in another. The local planning authority must be satisfied that the amendment sought is non-material in order to grant an application under s.96A.

The guidance states that an NMA application can be used to make a non-material amendment to conditions such that conditions can be altered, deleted or added.

It is considered that the addition of the sentence onto condition 2 would not materially change the planning condition or the permission; it would simply provide clarification that if plans were submitted and if approved would supersede those previously submitted.

It is therefore considered that the suggested additional wording for condition 2 is 'non material' and could be approved.

Approval

I am of the opinion that the amendment is acceptable as non-material amendments and recommend that they should be approved. The key reasons for this are set out above:

Case Officer:

Signed.....

Date:.....

Formal Decision of Head of Environmental Planning

I have assessed the proposed changes and recommendation and consider that the amendment should be approved

Comments:

Signed:.....

Date:.....

Wording of condition 2 of planning permission ECC Ref ESS/37/08/BTE & PINS Ref APP/Z11585/V/09/2104804

2. The development hereby permitted shall only be carried out in accordance with drawing numbers:

- 1-1: Land Ownership & Proposed Site Plan
- 1-2: Proposed Planning Application Area
- 1-4: Access Road Details
- 1-5A: Typical Arrangement and Architectural Features of the eRCF
- 1-8: Schematic Arrangement of Woodhouse Farm
- 1-9: eRCF Simplified Process Flow
- 1-10: eRCF Integrated Process Flow
- 3-3: Site Plan Layout
- 3-8C: eRCF General Arrangement
- 3-12C: eRCF Detailed Cross-Sections
- 3-14A: eRCF Upper Lagoon & Wetland Shelf
- 3-16: Services Plan
- 3-19B: eRCF General Arrangement
- 8-6: Landscape Mitigation Measures
- IT569/SK/06: Proposed Improvements to Site Access Road Junction with Church Road
- IT569/SK/07: Proposed Improvements to Site Access Road Junction with Ash Lane
- 19-2B: Tree Survey
- 19-3B: The Constraints and Protection Plan
- 19-5: eRCF Base Plan Woodhouse Farm

Wording of condition 19 of planning permission ECC Ref ESS/37/08/BTE & PINS Ref APP/Z11585/V/09/2104804

No works to install process equipment or plant within the IWMP shall commence until details of the IWMP process layout and configuration have been submitted to and approved in writing by the Waste Planning Authority. The development shall be implemented in accordance with the approved details.