

Regulatory Committee

Minutes of a meeting held at County Hall,
Colliton Park, Dorchester on 18 December 2014.

Present:

David Jones (Chairman)
Daryl Turner (Vice-Chairman)
Pauline Batstone, Steve Butler, Barrie Cooper, Beryl Ezzard, Mike Lovell, David Mannings,
Margaret Phipps and Mark Tewkesbury.

Officers attending:

Emma Baker (Management Engineer), Andrew Brown (Manager – Traffic Engineering), Ken Buchan (Coastal Policy Manager), Stephen Cornwell (Principal Planning Officer), Phil Crowther (Solicitor), Mike Garrity (Team Leader), Sarah Meggs (Senior Solicitor), Vanessa Penny (Team Manager – Definitive Map), Matthew Piles (Head of Economy), David Northover (Senior Democratic Services Officer) and Andy Wealsby-Hughes (Rights of Way Technical Assistant).

Paul Kimber, County Council Member for Portland Tophill, attended the meeting by invitation for minutes 68 to 70.

Public Speakers

John Gill, local resident – minutes 68 to 70.
Scott Irvine, local resident – minutes 68 to 70.

Apologies for Absence

59. Apologies for absence were received from Ian Gardner, Mervyn Jeffery, Peter Richardson, David Walsh and Kate Wheller.

Code of Conduct

60.1 There were no declarations by members of disclosable pecuniary interests under the Code of Conduct.

60.1 With regard to consideration of the Navitus Bay Wind Park item, several members, namely David Jones, Margaret Phipps, Beryl Ezzard and Steve Butler, drew attention to the fact that they had discussed the application at their respective District Council meetings but, in all cases, their involvement should not be seen to have prejudged the application. Although the County Council was not the final determining authority on this issue, the Senior Solicitor appreciated that those members had taken the opportunity to clarify their position, which would help to satisfy public perception about this.

Minutes

61. The minutes of the meeting held on 27 November 2014 were confirmed and signed.

Public Participation

Public Speaking

62.1 There were no public questions received at the meeting in accordance with Standing Order 21(1).

62.2 There were no public statements received at the meeting in accordance with Standing Order 21(2).

Petitions

62.3 There were no petitions received in accordance with the County Council's petition scheme at this meeting.

Traffic Regulation Matter

Contra Flow Cycle Scheme - Westham Road, Weymouth

63.1 The Committee considered a report by the Head of Highways which provided an assessment of the documents and evidence leading to the proposed order consultation and resulting correspondence relating to the proposed creation of a contra flow cycle lane in Westham Road Weymouth.

63.2 With the aid of a visual presentation, officers explained the principles of the proposal and what it was designed to achieve. It was envisaged that by providing an environment which accommodated a safer cycle route and the widening of the southern footway, the scheme would achieve the following positive benefits and improvements:-

- improve opportunities for undertaking healthy, active travel;
- improve access to the town centre for the sustainable modes of walking and cycling, by enabling the completion of the cycleway route;
- improve real and perceived safety of vulnerable road users,
- by reducing real and perceived road danger, people could be more likely to cycle in and to the town centre;
- improve the footway environment for people with disabilities and mobility impairments who relied on walking aids or mobility scooters;
- provide more opportunities for young and older people to walk and cycle in the town centre;
- ensure that traffic flows were not impeded by parked vehicles;
- retain sufficient loading/unloading facilities for local businesses and their customers; and
- retain (albeit reduced) provision for up to 3 hours parking by Blue Badge holders.

63.3 Members were informed of the cost of the scheme, this being funded from the Weymouth – Dorchester Corridor Local Sustainable Transport Fund. This aimed to support economic growth and reduce carbon emissions by reducing traffic congestion, improving access and facilitating uptake of sustainable travel. Officers reminded the Committee that all of these principles aligned with the Corporate Aims of the County Council.

63.4 The Committee were shown photographs and plans which provided an illustration of the scheme's relationship with the junctions of adjoining side roads and with retail development and community buildings. How signage would be applied and how the carriageway would be delineated was also explained. Officers explained that whilst Weymouth had an effective walking and cycling network, largely based on a traffic free route, the cycle network terminated short of the town centre, at Westham Bridge. Consequently it proved somewhat difficult to cycle safely and conveniently to and from the town centre without encountering unnecessary obstacles.

63.5 The results of the consultation exercise held into the preferred cycle link into town had comprised three options, with Option 2 - the proposed contra flow scheme – being favoured by the majority. Officers considered that the cycle contra-flow lane would provide a safe, direct route from the Esplanade along the south side of Westham Road to Westham Bridge and link with other safe cycle routes in the town.

63.6 The Committee were informed that the proposals would require some significant changes to parking arrangements along the road but that, overall, this rationalisation would deliver benefits to the way in which the waiting restrictions and their exemptions were applied. Some provision would still be made for loading bays, taxi ranks and disabled parking which would address some of the concerns raised by those objecting to the scheme.

63.7 Whilst the scheme had generated three objections, principally on the grounds of diminishing road safety and the loss of spaces for blue badge holders, officers explained that in making an assessment of the impact of the scheme, the implications for all road users had been taken into account in its design. On balance, officer's considered that the scheme which was proposed provided improvements to the competing demands for road space.

63.8 Members then asked questions about the route chosen for the scheme compared to other alternatives; what the precise signage would be and how it would be applied; what physical features would be put in place to prevent any conflict between cyclists and pedestrians; and what arrangements were to be put in place to assist pedestrians in crossing Westham Road at its junction with Commercial Road.

63.9 Officers provided explanations for each in turn and, in particular, explained that it would be unsafe to route the scheme along the harbour side given the concern over the existing rail track tramlines situated in the road and the hazards these posed for cyclists. The responsibility for the tracks was explained and, as it stood, there was no plan for their removal. Furthermore this was considered to be a more tortuous route than that proposed and, therefore, it was likely that its use would be limited.

63.10 In debating the proposal, members generally had reservations about the relationship between cyclists and pedestrians along this route, especially taking into consideration traffic emerging from side roads. They considered that having been used to the direction of the general flow of traffic, pedestrians would not necessarily expect cyclists travelling in an opposite direction, despite the signage and road markings being proposed.

63.11 As such they considered that this could generate greater confusion and might well compromise road safety to a greater extent than that which already existed, especially given that the route was heavily pedestrianised over its relatively short length. They considered that the relationship of the scheme to the Wilkinson's retail store, around which people tended to congregate, should be borne in mind. Officers explained that a full safety audit had been undertaken on this aspect, which had been taken into account in drawing up the proposals.

63.12 Members also expressed concern at the road being so heavily congested in terms of motorised traffic, being part of a main bus route, without cyclists being encouraged to use the route as well. They asked that if the scheme was to go ahead, and before proposals were finalised, they should be assured of precisely what signage would be used, where this would be placed and what physical constraints might be erected so as to avoid any direct conflict between cyclists and pedestrians, especially around the junction of Westham Road and Commercial Road.

63.13 Whilst members welcomed the principles of what this scheme was designed to achieve, they had reservations on how it could be applied without compromising road safety. Accordingly they were not confident that the scheme would operate as envisaged and had serious misgivings that, if implemented as proposed, it might well increase conflict in the relationship between pedestrians and cyclists, rather than diminish it. Other members

considered the scheme to be wholly appropriate and in accordance with the County Council's Corporate Aims and welcomed it being implemented.

63.14 On being put to the vote, the Committee rejected the recommendation that the Cabinet be asked to approve that the Order be made as advertised, and consequently decided that the Order should not be made, as they remained concerned that road safety would be compromised by the scheme being implemented as proposed.

Recommended

64. That the Cabinet be asked to reject the Order being made as advertised, on the grounds that the Committee were not satisfied that road safety would not be compromised by the scheme being implemented as proposed.

Reason for Recommendation

65. On the grounds of road safety.

Planning Matters

Navitus Bay Wind Park Update and Turbine Mitigation Option

66.1 The Committee considered a report by the Head of Economy which provided an update on proceedings regarding the Navitus Bay Wind Park and the Turbine Mitigation Option which had been submitted as part of the process.

66.2 Officers reminded the Committee that the Examination by the Planning Inspectorate into the proposed Navitus Bay Wind Park opened on 11 September 2014 and would close on 11 March 2015. Dorset County Council was a statutory consultee and registered interested party. The Council had already played an active role in the Examination through the submission of written evidence; the scrutiny of evidence from others (principally the Applicant); responding to written questions from the Examining Panel; and presenting oral evidence at the issue-specific hearings.

66.3 The report brought members up to date with progress of the application and the conduct of the Examination. Members were informed that a significant new issue had arisen through the introduction by the Applicant of an alternative scheme - termed the Turbine Area Mitigation Option - which proposed to reduce the number of turbines and increase the distance of the nearest turbines from the shore.

66.4 Officers explained that the Turbine Area Mitigation Option had raised some complex issues which had involved extensive discussions with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee. Members were informed that the Cabinet had considered this issue at their meeting the previous day, 17 December 2014 and had agreed a revised resolution from that recommended in the joint Cabinet / Regulatory Committee Report. Consequently, the views of the Cabinet, and their decision, was reported to the Committee both orally and within the provisions of the Update Sheet provided to members prior to the meeting, and appended to these minutes. This recommended that the Committee agree a revised resolution from that originally proposed in the report to reflect that of the Cabinet, in the interests of presenting a consistent approach.

66.5 With the aid of a visual presentation officers explained the details of the Mitigation Option submitted by the Applicant and the implications of this for the process. Primarily, the Applicant had offered to reduce the number of turbines below the current range of 120-194 to 76 -105 and remove those closest to terrestrial viewpoints. The consequences of this on how the Wind Park would operate and the power it would generate was explained.

66.6 Officers also explained the comparisons between the Mitigation Option and the Application Scheme and what consideration of the mitigation option was being undertaken by the Examining Authority, including the legal implications of this.

66.7 Officers clarified that the Mitigation Option was not a new application, but was, in effect, an alternative scheme within the same site. Nevertheless, this represented a significant variation from the original application and it was still to be determined definitively how the Examining Panel would treat this option. It would be determined on 14 January 2015 whether the Mitigation Option would be accepted.

66.8 What could be determined at this stage however was that whilst the Examining Panel had emphasised emphatically that the Examination remained that of the original application, it was also twin-tracking preparation for consideration of the Mitigation Option, taking into account comments received from interested parties and statutory consultees as part of an extended consultation exercise into the application.

66.9 The position of the County Council regarding the Turbine Mitigation Option was clarified by officers. The Authority had been asked as a statutory consultee on their views about the admissibility of the Turbine Mitigation Option and on the implications and predicted effects if this Option were to be adopted. Officers emphasised though that, ultimately, a judgement as to the admissibility of the Mitigation Option would be a matter for the Examining Panel to determine. Officers advised that, whilst the changes proposed were significant, this did not necessarily mean that the Mitigation Option would amount to a new project. The implications of this and its consequences were detailed in the report, with varying scenarios being illustrated, depending on what decision the Panel came to.

66.10 Members were advised that essentially the material difference was fewer turbines, omitting those closest to the shore. Consequently, the main focus for consideration from Dorset County Council's perspective would be on the visual impact of the Mitigation Option. Whilst acknowledging that the visual significance of the reduced scheme would be less than the original proposal, officers were currently assessing the degree of reduction and its impact, taking into account that a smaller scheme would also inevitably generate less energy and fewer supply-chain and employment opportunities for local firms.

66.11 Officers advised that an assessment of the Mitigation Option by officers, based upon the limited information and time available, was anticipated to conclude that there would still be an adverse visual impact from the Mitigation Option, or from any such scheme proposed in this location off the Dorset coast, albeit that the reduced scheme will have less visual impact than the proposed original.

66.12 Accordingly based on evidence before the Committee on the adverse impacts of the original scheme, debate within the Council, at both Planning and Regulatory Committees and at the Cabinet, officers recommended that the position of Dorset County Council in opposing the development as submitted in the Application should be maintained and that the Committee should reaffirm its commitment to this.

66.13 One possible standpoint might then be taken that Dorset County Council remained opposed to any form of wind farm development within the allocated zone but recognised that if the Secretary of State was eventually minded to approve a wind farm off the Dorset coast, this Mitigation Option would be preferable to the original Application scheme, without prejudice to the need to secure suitable mitigation for any residual adverse impacts.

66.14 The Committee were informed that the view of the Cabinet the previous day had been to reaffirm its opposition to the scheme in principle, but to recognise the significance of the Mitigation Option and the implications of this. Accordingly they had resolved that:-

- the position of the County Council be reiterated, that it is opposed to wind farm development in the allocated zone.
- the Turbine Mitigation Option put forward by the applicant raises significant issues as to the adequacy of public consultation and the examining authority should therefore consider carefully whether the applicant should be required to submit the mitigation option as a fresh application.
- whilst the County Council recognises that the Turbine Mitigation Option appears to have less adverse impact off-shore, it would have the same on-shore impact.
- That the final wording of the response to the Examining Authority's question be delegated to the Head of Economy, after consultation with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee.

66.15 The Committee were asked for their views on both the content of the report and the views made by the Cabinet. Members were concerned that because of the chronology of the meetings there was little scope for them to be able to influence the process other than to endorse what the Cabinet had decided the previous day. Officers pointed out to members that this was the opportunity for the Committee to have input into the response to the Examining Authority, as well as the Cabinet. However they did recognise that the extended consultation on this did provide an opportunity for the County Council to achieve what best they could to benefit Dorset.

66.16 Members therefore acknowledged that they should contribute to the discussion so as to ensure that the interests of Dorset were safeguarded as far as possible. They considered that this should be based on visual, economic and environmental considerations and how Dorset was affected by these.

66.17 They acknowledged that the Mitigation Option would lessen somewhat the visual impact of the development but that there would still be a presence which they considered would go a long way to compromising the environmental status of the coastline, not least how it might affect the UNESCO World Heritage Site status of the Jurassic coast. The considerations which had formed the basis of the previous submission to the Planning Inspectorate were outlined and the Committee considered that these still applied.

66.18 In addition, the Committee considered that the timescale of the extended consultation period was too limited for any meaningful analysis of the Mitigation Option or its implications to be made and that any contribution would too be limited.

66.19 Some members considered that the development should be supported as a means of supplying much needed renewable energy and wind power was one way of achieving this. They felt that any opportunity for achieving this should be taken and the benefits this brought.

66.20 However other members, whilst acknowledging the need to embrace the principle of renewable energy, considered that wind power was not necessarily the most efficient way of achieving this. In particular they considered that this scheme would, on

balance, prove to be detrimental to the character of Dorset and not necessarily bring the benefits that were envisaged by the applicant and was inappropriate the circumstances

66.21 Accordingly, on being put to the vote, the Committee decided that the views of the Cabinet, as set out in minute 66.14 above, should be endorsed and that the Committee's opposition to the development, in principle, should be maintained.

66.22 The Chairman took the opportunity to express his appreciation, on behalf of the Committee, for the work undertaken by the predecessor Planning Committee, and in particular its Chairman, Mike Lovell, on the Navitus Bay application.

Resolved

67.1 That the position of the County Council be reiterated, that it is opposed to wind farm development in the allocated zone.

67.2 That the Turbine Mitigation Option put forward by the applicant raises significant issues as to the adequacy of public consultation and the examining authority should therefore consider carefully whether the applicant should be required to submit the mitigation option as a fresh application.

67.3 That whilst the County Council recognises that the Turbine Mitigation Option appears to have less adverse impact off-shore, it would have the same on-shore impact.

67.4 That the final wording of the response to the Examining Authority's question be delegated to the Head of Economy, after consultation with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee.

Retention and Infilling of Material, Restoration of Land and Relocation of Permissive Footpath at Disused Railway cutting at land at the south of Park Road, Easton Portland

68.1 The Committee considered a report by the Head of Economy on planning application WP/14/00041/DCC for the retention of fill material, addition of further fill material consisting of quarry overburden and its grading and restoration of land to nature conservation use (calcareous grassland) and the relocation of a permissive footpath over the filled area at part of disused railway cutting, land south of Park Road and adjacent to ex-Bottomcombe Masonry Works, Easton, Portland, Dorset. The Committee were also provided with an Update Sheet relating to the provisions of the application.

68.2 The Chairman explained to the Committee that there was currently an application to record the public right of way over part of the application site. Although that application was pending, this Committee meeting was considering only the planning application.

68.3 The Solicitor took the opportunity to advise that, as the Committee's predecessor, the Planning Committee, had visited the site on 30 May 2014 to see at first hand what the application entailed, members who had not attended that visit should determine for themselves whether they considered that they had sufficient knowledge and information about the site to take part in discussion of the application and come to a decision. Whilst it was strongly recommended that members should attend site visits so that they all had the same opportunities to gain an understanding of the issues at hand, there was no absolute legal bar to them taking part in the decision making process if they had not attended. Members understood the implications of this. The Chairman indicated that both he and the Vice –Chairman had seen the site accompanied by the planning case officer from the Rights of Way Team.

68.4 With the aid of a visual presentation officers explained the application, which sought planning permission for the retention of material already placed on site and the placement of further material to provide for restoration to nature conservation use. A permissive footpath was proposed to be formed over the area. Revised plans had been submitted which showed an improved gradient along the route of the proposed permissive path. Officers explained that the material used to infill the cutting would consist of quarry overburden and it was not intended to fill in any further section of the cutting beyond grading the material into the existing butterfly bank.

68.5 As it stood, the infill material had left a steep face towards the remaining part of the cutting and it was proposed that this should be graded and re-profiled to gradually merge it into the adjoining bank and lessen its gradient. The intention was to link the in-filled area with a 'butterfly bank' that had been developed on the northern slope of the cutting to encourage native species. A capping layer was to be spread over the tipped material to create favourable conditions for growth and the ground would then be sown with an appropriate seed mix with the whole area being managed under a conservation management plan.

68.6 Officers clarified that the application being made was for retrospective planning permission, as the works had commenced without consent. Whilst not condoning the apparent breaches of planning control, officers confirmed the good working relationship with the applicant to resolve the issue, which had been conducted in a positive and proactive manner, resulting in a conditional grant of planning permission being recommended.

68.7 Officers confirmed that the application was in general accordance with the development plan and there were no material considerations that suggested the permission should be refused. Due regard had been also given to the presence of a claimed public right of way across the site, the status of which remained uncertain, but it was not considered that the grant of planning permission would in any way prejudice the full determination of that claim.

68.8 Archaeological and ecological evaluation of the site had been made and duly assessed. Officers were not suggesting that the site had no ecological value before the works took place, but, on balance, considered that the extension to the butterfly bank outweighed any loss due to the works. Details of amendments to the proposed conditions were set out in the Update Sheet, with particular provision made for the bird nesting season to be taken into account when the works were undertaken, requiring a time limit for completion of nine months instead of six and for the retention of the three iron fencing posts which were considered to be of some archaeological value.

68.9 The report set out consultations undertaken and representations made, including Portland Town Council objecting to the scheme on the grounds of loss of both a footpath and a natural habitat. They strongly requested that fill material already present should be removed as soon as possible. The Update Sheet provided for a summary of all late representations received.

68.10 The Committee heard from John Gill expressing his concern over how he considered the status of the footpath might be adversely affected by the proposal and what provision was being made to safeguard it. He thought that the evidence for a public right of way was indisputable. He had misgivings over the way in which Portland had been despoiled previously by stone working and quarrying and did not wish to experience the same at this site. He considered that the County Council should take action to prevent this.

68.11 The Chairman asked the Team Manager to clarify the position over the footpath. She confirmed that any grant of planning permission would, in no way, prejudice that claim.

68.12 The Committee then heard from Scott Irvine who was concerned at the adverse environmental and ecological impact the proposal would have on an important wildlife area. He was concerned that the cultural heritage of the area would be harmed by destroying what little of the railway was left. He explained that the area already sustained a rich palette of wildlife which would be compromised by implementing the proposal and that action should be taken to prevent any further destruction of the area.

68.13 The County Council member for Portland Tophill was then invited to share his views. Whilst he recognised that being asked to approve a retrospective application was unsatisfactory, he appreciated the efforts made by the applicant and officers to resolve the issue in a way in which he considered to be now acceptable. Whilst he acknowledged the problems previously experienced with quarrying operations on the island, the advent of the Minerals Liaison Committee had gone a long way to addressing some of those longstanding issues. He considered that what was being proposed now satisfactorily addressed the issue and was happy to support it.

68.14 Members also questioned where spoil from the stone workings might be deposited if it were not to be located in the cutting and asked if there was capacity on site for it to be backfilled and retained. Officers confirmed that the material was not needed to restore the area from which it had come and the application was aiming to facilitate the butterfly bank extension. In light of this being a retrospective application, some members were of the view that the application site should revert to its former character, as favoured by the Town Council, with the fill material already present being removed as soon as possible. Other members made reference to concerns on how some stone working operations had been conducted in the past and that these should be addressed.

68.15 Officers confirmed that regardless of this being a retrospective application, the Committee should treat it in the same way as any other application they were asked to consider, with members being obliged to consider it solely on its planning merits and not to base their decision on any other justification or presumption. Officers advised that if members considered the application to be acceptable on planning grounds, then they should be minded to grant permission. If the Committee were to refuse planning permission, any concerns over breaches of planning control could be addressed by enforcement action if necessary.

68.16 Taking into account the advice provided by officers, members were of the view that any decision taken should be on the merits of the application. Accordingly some members saw this as an opportunity to regulate a practice which had taken place and that improvements could be made to the way in which it was managed.

68.17 Other members however had reservations on what this proposal was designed to achieve and felt that it was either better left as it was or that the infill be removed completely to expose the cutting once again. One member, who served as Chairman of the Borough's Planning Committee, considered that the views of the Town Council were interesting, bearing in mind the economic benefits the stone industry had brought to the island over the years.

68.18 Having had an opportunity to consider the application before them and hear all the evidence and debate for and against the proposal, some members who had not

attended the site visit on 30 May 2014 considered that they still did not have sufficient knowledge to be able to come to a decision and chose to take no part in the vote.

68.19 Whilst the Committee expressed their reservations at the principle of being asked to determine retrospective planning applications, on being put to the vote, it was decided that planning permission should be granted on the grounds that the application accorded with the provisions of the Development Plan and on planning grounds in order to regulate that practice which had taken place and to best enhance and improve the environment and ecology of that area.

68.20 At the request of Members, officers agreed to write to the applicant encouraging it to contact officers in the future before any works were carried out.

Resolved

69. That planning permission be granted, subject to the conditions set out in Section 8 of the Head of Economy's report and taking into account the provisions of the Update Sheet, as appended to these minutes.

Reason for Decision

70. As summarised in paragraphs 6.42 to 6.45 of the Head of Economy's report.

Rights of Way Matter

Proposed Definitive Map and Statement Modification Order – Footpath 111, Marnhull

71.1 The Committee considered a report by the Director for Environment and the Economy proposing to modify the definitive map and statement of rights of way to correct the recorded route of Footpath 111 Marnhull, between Mill Lane and Musbury Lane.

71.2 With the aid of a visual presentation, officers explained the background to this case. The Committee were advised about how this drafting error anomaly had arisen, how it had come to light and what steps were being taken to address the matter. Analysis of the documentary and user evidence relating to the route was set out in the report, together with the analysis of evidence or representations both in support and against the proposal which had resulted from the consultation exercise into it.

71.3 Accordingly, members were being asked to decide whether:-

- A right of way not shown in the definitive map and statement subsisted or was reasonably alleged to subsist (in the respect of the proposed route C – F – D – E) as this route was not currently recorded with public rights.
- There was no public right of way over land shown in the map and statement as a highway of any description (in respect of the route shown A – B).

71.4 Officers considered that the documentary evidence supported the proposed modification very strongly. However if members were not satisfied that the documentary evidence showed, on balance, that a public footpath exists along the proposed route C – F – D – E, officers advised that they should consider whether the documentary evidence, in conjunction with the user evidence constituted an inferred dedication, or whether the user evidence alone was sufficient to demonstrate a deemed dedication under Section 31 of the Highways Act 1980.

71.5 The Committee considered that, on balance, a presumed dedication under Section 31 of the Highways Act 1980 was considered to be satisfied, with 20 or more years use of the way by the public. Therefore there was, on balance, sufficient evidence to demonstrate that public rights existed along the proposed route and not on the recorded route and therefore an order should be made.

Resolved

72.1 That an Order be published to modify the Definitive Map and Statement of Rights of Way to correct the route of Footpath 111, Marnhull from the recorded route as shown A – B to that shown C – F – D – E on Drawing 14/04/1 (Appendix 1) in the Director's report.

72.2 If the Order was unopposed, or if any objections were withdrawn, it be confirmed by the County Council without further reference to the Committee.

Reasons for Decision

73.1 The available evidence showed, on balance, that the recorded route of Footpath 111, Marnhull required modification as described.

73.2 The evidence showed, on balance, that the correct route of Footpath 111, Marnhull was as proposed. Accordingly, in the absence of objections the County Council could itself confirm the Order without submission to the Planning Inspectorate.

Decisions on applications for definitive map modification orders ensure that changes to the network of public rights of way comply with the legal requirements and achieves the Corporate Plan objectives of:

Enabling Economic Growth

- Ensure good management of our environmental and historic assets and heritage

Health, Wellbeing and Safeguarding

- Work to improve the health and wellbeing of all our residents and visitors by increasing the rate of physical activity in Dorset
- Improve the provision of, and access to, the natural environment and extend the proven health and other benefits of access to open space close to where people live
- Enable people to live in safe, healthy and accessible environments and communities

Questions

74. No questions were asked by members under Standing Order 20(2).

Meeting duration: 10:00am – 12.40 pm

Update Sheet – Regulatory Committee - 18 December 2014

Minutes 65-67

Navitus Bay Wind Park – Update and Turbine Mitigation Option

Summary of late comments: None.

Corrections/amendments to main body of report:

Amend paragraphs 3.2 and 3.3 (factual corrections):

- 3.2 On 5 November 2014, the Applicant published ~~its response a document entitled~~ Response to Deadline III - Appendix 43 which, ~~While~~ while maintaining its original position and reasserting its view that the significant benefits of the Project will outweigh the identified adverse impacts, ~~the Applicant has~~ stated that:

“In the event that the Secretary of State decides that the proposal does not strike the right balance between benefits and impacts, the Applicant believes that it may assist the Secretary of State to at least have available the option to reduce the number of turbines, removing those closest to terrestrial viewpoints”.

- 3.3 ~~The Applicant could have replied simply ‘yes’ or ‘no’ to the question but instead chose to present~~ In effect, at this early stage in the Examination the Applicant has introduced a fallback position which they have it has called the Turbine Area Mitigation Option. The press has simply dubbed it ‘Plan B’.

Corrections/amendments to planning conditions: None.

Corrections/amendments to Appendices: None.

Change to recommendation:

The Turbine Area Mitigation Option has raised some complex issues which have involved extensive discussions with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee. At its meeting on 17 December 2014 Cabinet agreed a revised resolution from that recommended in the joint Cabinet / Regulatory Committee Report.

It is recommended that the Committee agrees a revised resolution from that originally proposed in the report to reflect that of Cabinet, in the interests of presenting a consistent approach.

Cabinet – Draft Resolution:

‘Resolved:

2. That the position of the County Council be reiterated, that it is opposed to wind farm development in the allocated zone.
3. That the Turbine Mitigation Option put forward by the applicant raises significant issues as to the adequacy of public consultation and the examining authority should therefore consider carefully whether the applicant should be required to submit the mitigation option as a fresh application.

4. That whilst the County Council recognises that the Turbine Mitigation Option appears to have less adverse impact off-shore, it would have the same on-shore impact.
5. That the final wording of the response to the Examining Authority's question be delegated to the Head of Economy, after consultation with the Cabinet Member for Environment and the Economy and the Chairman of the Regulatory Committee.'

Minutes 68 - 70

WP/14/00041/DCC – Retention and Infilling of Material, Restoration of Land and Relocation of Permissive Footpath at Disused Railway Cutting at land to the south of Park Road, Easton, Portland

Summary of late comments:

Three additional letters have been received from local residents (two identical) noting the following:

- Unable to attend meeting but have been involved from start and wish to summarise concerns.
- Applicant asked path be considered as a permissive path when in fact used by public since 1970s and this supported by over 50 people in application to Rights of Way.
- Application says work carried out to benefit habitat of small blue butterflies. Original dumping obliterated many species of flora and fauna.
- Essential nature of path is that of a sunken area creating unique eco-climate.
- Applicant poured other material over sides of cutting since original incident causing further destruction to environment.
- Local people not consulted prior to any action taking place.
- Question companies general record on acting without appropriate consent and community replies on county and district councils to uphold laws and regulations.
- Officer's report acknowledged path already degraded near new houses. This earlier loss of path was not subject to any consultation with local the community. Accordingly that loss should not be used to support further loss of path now.
- Path been blocked by large stones since incident and despite requests to County Council they are still there. Consequently path has not been open for 15 months.
- Dorset CC risks being brought into disrepute by favouring business over public claim that right of way been blocked for 18 months.
- Obstruction of path is illegal and consider have enough evidence to substantiate this in court of law.
- My understanding is applicant owns mineral rights not land itself so not entitled to undertake actions associated with this development.
- Open space being eroded as result of proposal.
- DCC would be wrong in adopting recommendation as printed without considering opening up whole path to benefit of community and visitors alike.
- By refusing to acknowledge statements of many residents council acting against wishes of people and therefore bring DCC into disrepute.

Corrections/amendments to main body of report: None.

Corrections/amendments to planning conditions:

The applicant has expressed a concern regarding the 6 month compliance time set out in proposed Condition 5 (Capping and Seeding of Overburden). It has been suggested that the capping should take place in one operation after all other earthworks have been completed. These earthworks should be undertaken when the ground is dry, after the bird nesting

season and when reptiles are not hibernating. The earthworks should therefore not start until August/September.

The Councils Head of Natural Environment agrees that the work should be held off until after the bird nesting season. It is therefore proposed to change the wording of proposed Condition 5 to refer to 9 months instead of 6 months.

The support of the archaeological officer made reference to securing certain features by condition. Only the iron fence posts are located within the application site. It is proposed to add a new condition to secure their retention.

Corrections/amendments to Appendices: None.

Recommendation:

Grant planning permission subject to conditions set out in the report as modified below:

5. Capping and Seeding of Overburden

Within 9 months of the date of this permission the site (excluding the proposed path) shall be capped to a depth of 0.5 metres with free draining limestone scalplings such as Portland Slat. In the event that any material other than Portland Slat is to be used the prior agreement in writing of the mineral planning authority shall be obtained for the use of such material. In that situation only the agreed substitute material shall be used.

Reason

To protect the ecological value of the surrounding area and maximise opportunity for the creation of habitat of ecological value having regard to Policy DM1 (Key Criteria for Sustainable Minerals Development) of the adopted Bournemouth Dorset and Poole Minerals Strategy.

11. Retention of Iron Fencing Posts

The three iron fencing posts which are located on the southwest boundary of the application site shall be retained.

Reason

To protect a feature recognised as a heritage asset having regard to Policy DM7 The Historic Environment of the adopted Bournemouth, Dorset and Poole Minerals Strategy.
