Submission by Save Honey Hill

ISH 2 – Principle of Development: Summary of Oral Submissions

6 November 2011

1. Introduction

1.1. This note summarises the oral submissions made on behalf of Save Honey Hill (SHH), an interested party to the examination of the application by Anglian Water Services Limited for an Order granting Development Consent for the Cambridge Waste Water Treatment Plant Relocation project (ref WW010003), at Issue Specific Hearing 2 (ISH 2) dealing with matters relating to the principle of development. ISH 2 took place on 18 October 2023 at the Hilton, Cambridge City Centre.

1.2. Present on behalf of SHH were Ian Gilder and Esther Drabkin-Reiter, of Counsel. Both made submissions on behalf of SHH. The submissions are summarised in the order in which they were made during the hearing.

2. Agenda Item 2: the principle of the Proposed Development

2.1. SHH made the following submissions under Agenda Item 2 concerning the principle of the proposed development.

Whether the project is an NSIP under the Planning Act 2008

2.2. The confirmation from the Applicant that it considers that the project is not an NSIP as it falls below the threshold in s.29 of the Planning Act 2008 was welcomed. SHH agrees that the project is not an NSIP for that reason. The question of whether the project is an NSIP is crucial for the determination of whether ss.104 or 105 of the Planning Act 2008 apply to the determination of the application. Therefore, if the Applicant had not conceded that the project is not an NSIP it would have been necessary for the Examining Authority to make a determination on whether the project falls below the threshold in s.29 of the Planning Act 2008.

2.3. The main difference between the consideration of whether a project is an NSIP or a 'project of national significance' is that it determines whether the NPS has effect for the determination of the application or not (and therefore whether the application should be considered under s.104 or s.105). It is not correct, as the Applicant sought to argue, that if the s.35 direction does not direct a particular procedure, an application should be dealt with in the same way as if it had fallen within the development consent process as a result of s.14 of the Planning Act 2008. Indeed, it is relevant that the Secretary of State chose not to order that s.104 of the Planning Act 2008 should apply to the consideration of the proposed development, notwithstanding he had the power to do so under s.35ZA(5) of the 2008 Act.

Section 35 direction, the Proposed Development and its elements

2.4. There is uncertainty (for example following submissions by the Applicant in OFH 1 on Tuesday 17 October 2023) regarding the relocation of office staff into the proposed development and in particular from where office staff would be relocating and whether it is necessary for such staff to be located in the Proposed Development in a Green Belt location. Clarity is requested as to the role of office staff in the Proposed Development and what proportion of the staff to be relocated are responsible for managing the Applicant's corporate sludge business as opposed to managing activities (including sludge treatment) carried out on site.

2.5. With regard to the Examining Authority's query on whether the Secretary of State was made aware that the site for the proposed Waste Water Treatment Plant would occupy a Green Belt location, there are no references to Green Belt in the Applicant's written application for a s.35 direction. The plan included with that application and mentioned by Ms Barclay in submissions on behalf of the Applicant at ISH 2 identifies the three shortlisted sites at the time that the application for a s.35 direction was made but does not show that the sites are in the Green Belt.

Whether the application falls to be determined under s.104 or s.105 of the Planning Act 2008

2.6. The NPSWW does not have effect in relation to the proposed development and therefore the application falls to be determined under s.105 of the 2008 Act. This is for two main reasons:

2.7. First, and fundamentally, the decision of Mr Justice Dove in *EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWHC 2697 (Admin) establishes that a s.35 direction cannot have the effect of bringing a development which is not an NSIP into the decision-making framework pursuant to s.104 (as set out at para.60 of that judgment, see AS-126 p.44). The effect of the s.35 direction is only to make the Proposed Development subject to the process for examining and making an order granting development consent. That is the only binding aspect of the decision in *EFW.* The decision does not, as the Applicant argues, make any finding as to whether it is possible for a National Policy Statement to determine that s.104 should apply to an application for development which is not an NSIP. Indeed, had any finding been made on this by Mr Justice Dove, it would not have been part of the binding ratio of the case as the NPS at issue in *EFW* did not state that it applied to development which was below the threshold of an NSIP.

2.8. While there is therefore no clear position on the issue in case law, the better view is that s.104 should only apply to projects that Parliament has determined are nationally significant through the thresholds set out in Part 3 of the Planning Act, and it should not be possible to expand the scope of s.104 through a National Policy Statement (as opposed to legislative amendment).

2.9. Second, without prejudice to SHH's first submission, even if the Applicant is correct to say that one must look to the NPS to determine whether s.104 or s.105 applies, there is nothing in the NPSWW to indicate that it 'has effect' for development which is below the threshold of an NSIP. SHH agrees with all the points raised by the Examining Authority at ISH 2 in this regard, in particular the reference to the NPSWW being the primary basis for deciding applications for waste water projects within the definition of an NSIP in para.1.1.1 of NPSWW, and the very different form of wording used in the NPS on national networks which specifically states that the NPS does have effect for development which is subject to a s.35 direction. Footnote 6 does not have the effect of bringing development subject to a s.35 direction into the scope of the NPS. This interpretation is also supported by para.3.1.2 NPSWW – which refers to 'infrastructure of the types covered by this NPS' and then 'waste water NSIPs' in the same sentence (with no

reference to applications subject to a s.35 direction), and para.1.4.4 of NPSWW which refers to the population equivalent threshold in the Planning Act 2008 when considering the main negative effects of the NPS. If the NPS had effect for applications below the population equivalent threshold in the Planning Act 2008 one would again expect that to be identified in para.1.4.4. Indeed, footnote 6 is the only reference to s.35 directions in the whole NPSWW.

2.10. With regard to the differences for reporting on and consideration of an application under s.104 and s.105, SHH welcomed the concessions of the Applicant that (a) the presumption in favour of granting development consent where the application is in accordance with the NPS does not apply and (b) need for the development must therefore be demonstrated by the applicant. A further important difference between the application of s.104 and s.105 is that for applications to which s.105 applies the adopted development plan should be the primary consideration, rather than the NPSWW. But for the s.35 direction, that is what the proposed development would have been tested against and there is no legal provision which requires a different approach to be taken where a s.35 direction is made. Treating the adopted development plan as the primary consideration under s.105 was the approach taken by the Examining Authority in the *EFW* case and it is appropriate to apply the same approach in the present case. The NPSWW remains an important and relevant consideration but is secondary to the adopted development plan.

Relevant national and local policy

2.11. On the weight to be afforded to emerging policy, SHH disagrees with the position taken by the Applicant and the local planning authorities. Emerging policy should be given very limited weight in the determination of the application for the reasons set out below. It should be noted that this is the Cambridge City Council and South Cambridgeshire District Council position also. See for example the Officers report to the CCC/SCDC Joint Development Control Committee, 18 October 2023, in relation to the Merlin Place application 23/00835/FUL, which is within the NECAAP area, at para 5.15: 'The Proposed Submission AAP has not been the subject of publication and consultation, it therefore currently attracts "limited" (i.e. little) weight as a material consideration in planning decision making and advice'.

2.12. First, both the NEC AAP and the GCLP are at an early stage of development, having not yet proceeded to Regulation 19 stage or been subject to independent examination. This should reduce the weight to be given to those draft plans, applying para.48 NPPF by analogy.

2.13. Second, the uncertainty surrounding the future development strategy in Greater Cambridge generally and with regard to North-East Cambridge more specifically is emphasised in the Development Strategy Update report published in January 2023 and referred to in the Applicant's Planning Statement (see AW 7.5, AS-128 paras.2.3.8 and 2.3.9). For example, the report identifies constraints in terms of water supply and housing delivery which may restrict the amount of housing that can be provided and/or require a rethinking of the spatial distribution of additional growth (Development Strategy Update report paras.3.25 to 3.29). There is therefore a reasonable likelihood that the spatial strategy set out in the emerging plans will change.

2.14. Third, and in any event, the emerging policy does not require relocation of the WWTP but is predicated or contingent on it. Essentially, the emerging plans do not say that the DCO should be approved but rather proceed from the basis that the DCO has been approved. The decision

on whether or not the CWWTP should be relocated is left to the Examining Authority and, ultimately, the Secretary of State. In this regard it is telling that there is no recognition or consideration in the emerging plans of the impact of relocation on the Green Belt or any justification for Green Belt release: this can be contrasted with the treatment of the potential Green Belt release at Cambridge Biomedical Campus, where a very special circumstances case for such release is being explored (see for example Development Strategy Update report para.4.3.3).

2.15. Finally, the suggestion made orally at ISH 2 by the local planning authorities and the Applicant that less weight should be given to objections to the AAP because the production of an AAP for North-East Cambridge is required by the adopted development plan is flawed and incorrect: the relevant development plan policies do not require a particular solution (such as relocation) but envisage a number of possibilities for North-East Cambridge area to be explored through an AAP process and by undertaking further feasibility studies. In that situation, there is no basis for reducing the weight to be given to objections to the principle of relocation, given the adopted development plan does not require that outcome.

Definition of the proposed development, its scope and whether sufficiently addressed

2.16. The Examining Authority indicated that this item would be dealt with through written submissions. SHH will expand on its position, summarised at RR-035 section 5.2, in its Written Representations.

Whether there is a demonstrable need for the Proposed Development

2.17. When considering the role of the s.35 direction in the principle and need context, it is important to recognise – as conceded by the Applicant – that need for the relocation has to be demonstrated. The s.35 direction cannot establish need as this would be in conflict with the finding in the *EFW* judgment that the effect of a s.35 direction is only to establish that the procedure for granting development consent should be followed, but a direction does not have any substantive consequences. In the present case the s.35 direction was made simply on the (untested) basis set out by the Applicant in its application. That case and evidence is what will be tested through the present examination process.

2.18. With regard to the reliance of the Applicant and the local planning authorities on the grant of HIF funding as demonstrating or supporting a need case, the lack of information around the application for the grant and the terms of the funding contract are a substantial issue that has confronted SHH in responding to the Applicant's case. It would be very helpful, as the ExA has requested, if all of the relevant HIF documents, with as little redaction as possible, including the business case, contract and related documents are made available to the ExA and interested parties. The Applicant has agreed to provide these in conjunction with Cambridge City Council and Homes England.

2.19. Responding to points raised by a representative of Homes England, Mr Denton, SHH made four comments, and indicated that it would expand further in its Written Representation.

2.20. First, the adopted development plan recognises extensive opportunities to provide business, life sciences and other research development on the land within NECAAP around the existing works. Mr Denton had failed to recognise the substantial local plan policy support for employment development on the NECAAP area, if the waste water treatment plant remains in situ.

2.21. Second, applying the Government's definition of affordable housing in a market like Cambridge, where the price: average earnings ratio is over 13:1, would not result in delivery of housing in North-East Cambridge that will be genuinely affordable for those in everyday jobs.

2.22. Third, it is not the case that the local planning authorities are intending to provide anything less than high quality and sustainable places, with the same requirement for affordable housing as at NECAAP on the other strategic sites in the adopted or emerging local plans. Policies on sustainability and affordability apply to all such sites. The focus on North-East Cambridge as the only or most sustainable strategic location for housing and place-making in the Cambridge area relies on a very limited view of sustainability, which is not supported by reliable evidence.

2.23. Finally, there are other concerns around the funding and certainty of redevelopment as set out in RR-035 Sections 4.4 and 11.

Degree of certainty that redevelopment of the existing WWTP site will take place

2.24. With regard to the Applicant's reported obligation to enable housing development to start on the existing CWWTP site by a certain date, SHH has seen a redacted version of the Grant Determination Agreement which fixes an end date of 31 March 2028.

2.25. SHH will provide a more detailed view in its Written Representation of where else sites already identified in the emerging GC Local Plan might be brought forward for housing development if the relocation did not take place. These total well in excess of 14,000 dwellings, which may be in the order of 24,000. It is noteworthy that 'hostile planning applications' are already being made on sites within the NECAAP boundary, including the major Brookgate Land Ltd development that is currently subject to appeal against non-determination. The LPA was minded to refuse this application. It involves the 'Gateway site' from Cambridge North station northwards to the boundaries of the existing WWWTP.

2.26. There is an ongoing strategic water resources crisis in Cambridge and South Cambridgeshire, with the revised draft Cambridge Water Company Water Resources Management Plan September 2023, being subject to substantive objections by the Environment Agency. There is no certainty about when or how a new strategic water supply for Cambridge is to be provided and this will not happen until the 2030s at the earliest. Major housing applications are being delayed or refused by the LPAs on water supply grounds (see, for example, the Officers report to the CCC/SCDC Joint Development Control Committee, 22/02528/OUT application for up to 1,000 dwellings at Darwin Green, at paras 16.34 and 27.1).

Implications of the Court of Appeal's recent judgment in R (Ashchurch Rural Parish Council) v Tewkesbury Borough Council [2023] EWCA Civ 101 for the application

2.27. The implication of the *Ashchurch* judgment is that demolition, site clearance and remediation and redevelopment of the core CWWTP site for housing should have been analysed in the body of the Environmental Statement and not simply given cursory treatment in the Cumulative Effects chapter. As emphasised by the Applicant orally in ISH 2, the relocation project is 'inextricably bound' into the redevelopment of the existing CWWTP site for housing. The relocation would not be happening were the redevelopment of the site for housing not proposed. Therefore the demolition and redevelopment of the core site, at least that part owned by the Applicant, are part of the 'project' for the purposes of the Infrastructure Planning

(Environmental Impact Assessment) Regulations 2017 SI 2017 No 572 and should have been assessed as such in the Environmental Statement.