

## PLANNING AND HIGHWAYS COMMITTEE SPECIAL MEETING 24 JUNE 2014

### SUPPLEMENTARY INFORMATION

**Planning Application:** 13/01682/FUL

**Address:** Site of Betafence Wire Factory, Lock House Road, Sheffield S9 2RN

**Proposal:** Erection of a non-food retail unit (Class A1) with ancillary customer restaurant and bistro, and provision of associated car parking, landscaping works, servicing and access and highway works

### Erratum

Paragraph 7.31 – the turnover figure should be £45.9 million (not £49 million)

Paragraph 7.41 – the turnover figure should be £45.9 million (not £46 million)

Members should note that the above figures represent the applicant's estimate of turnover. Your officers have assessed a higher estimate of £68 million based on the Council's own consultant's view so these minor errors have no bearing on the assessment that has been presented in the original report.

### Revision to Directives

**Directive 2** – replace the word 'should' with 'is advised to'.

**Directive 4** – remove – the highways service would undertake a dilapidation survey as part of the overall highways works so this is unnecessary.

**Directive 7** – remove as there are no noise sensitive receptors adjacent to the site.

### Additional Representations

IKEA have sent their own 'Briefing Note' to Members of the Planning Committee and this has been forwarded to officers for information. This is IKEA's own interpretation of their case. The committee report before Members already covers these issues in detail and represents the officer view on these matters.

Since the publication of the officer report, two additional representations have been received. One of these representations is from 'Client Earth' and one is from the owners of Meadowhall Shopping Centre (MSC Property). Their views are summarised below:

#### Client Earth

- Client Earth is a not-for-profit organisation committed to using law to protect human health and the environment. They are the claimant in an ongoing case against the UK government concerning breaches of air quality law.

- They believe that any decision to grant this planning permission would be unlawful and susceptible to judicial review on the basis that it would breach EU and UK law on air quality.
- They point out that the deadline for compliance with the EU limit values for nitrogen dioxide was on 1 January 2010 and that the Sheffield Urban Area did not meet the annual limit values by the required deadline. As such it is currently in breach of EU and UK law in relation to levels of nitrogen dioxide.
- Reference is made to Sheffield's Air Quality Action Plan (AQAP) which recognises that exceeding national air quality targets means not complying with EU law and acknowledges that poor air quality is estimated to account for up to 500 premature deaths per year in Sheffield (with a bigger impact on life expectancy than road traffic accidents and passive smoking). The AQAP states that the Council will introduce and enforce a planning policy to ensure that for significant developments appropriate mitigation will be put in place and actions will be supported that make a positive contribution to air quality.
- A review of NHS statistics for 2012/13 shows that around twice as many children under 4 were admitted to hospital with respiratory related problems in Tinsley than the Sheffield average.
- They believe that the conclusions of the applicant's air quality assessment are flawed and trivialise the impact by averaging the increases in concentration of pollutants, for which there is no provision in the relevant legislation. This is because if any single receptor is not in compliance then the whole zone is in breach.
- They do not believe that the mitigation measures proposed will be effective
- The applicant's submission is incorrect in its statement that compliance with limit values is the duty of central government rather than local authorities. It is clear that Local Authorities must share and take responsibility for this duty and this is further embedded in the Localism Act 2011. The Secretary of State has the power to pass on any fines imposed as a result of the infraction of EU law to local authorities. Client Earth believe that this could make approval of this application 'ultra vires' and susceptible to judicial review
- They believe that the application is contrary to the adopted development plan and to approve the application would be irrational and also vulnerable to judicial review on this basis.
- They conclude that, in their opinion, granting planning permission would be unlawful and susceptible to judicial review. The development could cause air quality to worsen in an area already in breach of the EU standards and they urge the committee to refuse permission.

#### MSC Property

- They do not object to the principle of the proposal but have an outstanding objection in relation to the highways mitigation proposed (this is already covered in detail in the officer report).

- They maintain that the application should not be approved unless the mitigation works that MSC Property have proposed (and agreed to part fund) to the Sheffield Road / Vulcan Road junction are secured as part of any planning approval.
- They are concerned that their views and those of other objectors, specifically in relation to the highway impact, appear to have been ignored and that the highways impact has not been adequately addressed. They disagree with your officers' conclusions on the highways impact and believe that the impact will actually be 'severe' and contrary to the NPPF unless additional mitigation is put in place.
- They point to the 'peak events' described in paragraph 8.31 of the officer report and conclude that the proposal will result in significant congestion which will have a severe impact on existing businesses in the Lower Don Valley, including Meadowhall, and impact on any future proposals in the Enterprise Zone.
- They are concerned that Section 8 of the report (Transport Issues) points out that J34(S) of the M1 is nearing saturation (as evidenced in the Strategic Transport Initiatives Study), that already committed development could increase congestion on some roads in the area by as much as 50% and that IKEA have underestimated the committed development traffic in the presented scenarios.
- They find it difficult to believe that the 2023 network will operate better with IKEA than without it and suggest that a false impression is given by the diversion of so many trips away from the area. They are concerned that the IKEA model has not been validated properly and that the Council's own model omits large development flows, resulting in a model that is not robust.
- They are disappointed that their objection has not been given greater weight and remain concerned about the traffic impact of the proposal. They believe it would be irrational for the current proposals to be approved. At the very least they believe that the application should be deferred to allow further consideration of the highways issues and possible mitigation measures and they maintain their offer to meet and discuss an appropriate solution.

## **Officer Response to Representations**

### **Client Earth**

It is considered that the officer report is already clear on the air quality impact of the proposed development and this is covered extensively in Sections 9 and 10 of the report. This covers many of the points raised by Client Earth.

Your officers' do not agree with the Parsons Brinckerhoff report which indicates that compliance with limit values is an issue for central government rather than local authorities. It is agreed that the Council must be mindful of such in its decision making.

Whilst it is correct that the Localism Act 2011 gives the Secretary of State power to pass fines imposed as a result of an EU financial sanction on to local authorities, a requirement to make such a payment may only be imposed on the local authority if the Secretary of State has made an Order formally designating the authority for these purposes. To date, Sheffield City Council has not been designated by Order for these purposes. Further, any

finances can only relate to activities carried out by the authority after the Order has been made and therefore a decision on this application could not be subject to a fine retrospectively should an Order be made designating the Council in the future. The Council would not therefore be in breach of the fiduciary duty owed to taxpayers should this application be approved.

The Council does have power, in certain circumstances, to determine an application that is contrary to its own policies. It is the long established position that all planning decisions should be made in accordance with the development plan unless material considerations indicate otherwise. Members should also be aware that when making a decision, the development plan must be considered as a whole. Whilst a proposal may be in conflict with one, two, or any number of policies, it may also be compliant with one, two, or any number of other policies. Any policy conflicts do not mean that a refusal should automatically follow and a balanced view must be taken. Officers have considered all relevant policies in the development plan together with all material considerations and have taken a balanced view on this application. On this basis it is not felt to be an irrational recommendation.

## MSC Property

The majority of issues that are raised in this representation are already covered extensively in Section 8 of the committee report, as many of the points have been raised as part of MSC Property's previous representation.

Your officers accept that J34 of the M1 is nearing capacity, however the Strategic Transport Initiatives Study referred to in the representation (which dates back to 2005) does go on to state that it is necessary for a number of vehicles to be diverted away from J34 if more traffic is to be introduced to the network as a part of future development. The role of the Tinsley Link, which is now on site and follows on from that study, will divert a significant number of vehicles away from J34.

The Transport Assessment that was completed as part of the Tinsley Link Road application indicates that the roads which have the higher increase in flows (the 50% referred to in the representation) are limited in number and are generally roads on which the flows are already at low levels.

The issue of committed development has been explored at length. Your officers have reviewed both the Waverley Transport Assessment and the River Don District application and it is their view that scenario 4 (IKEA's favoured scenario) is a realistic assessment of the committed development that is likely to come forward but that this has been sensitivity tested using scenario 3 (with a greater amount of committed development) to give the degree of robustness required.

It also your officers' view that there will be some inevitable double counting of trips in the individual junction assessments, which would result in a higher level of traffic being predicted (in the model) than will actually be the case.

The Transport Assessment includes a Local Model Validation Report undertaken by Aecom so the representation on this issue is without foundation. Furthermore, the Council

has run its own model to assess the traffic impact and is satisfied that the committed development that was input was reasonable and robust.

Your officers' view is that the additional mitigation measures suggested by MSC Property are not necessary and, as such, it would be unreasonable for these measures to be a condition of this development.

### **Conclusion**

Having reviewed the additional representations received since the publication of the committee report it is still your officers' balanced view that the recommendation should remain as published.

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