



# Planning Committee

**Wednesday 23 April 2008 7.30pm**

**Council Chamber  
Civic Offices, Addlestone**

## **URGENT AGENDA ITEM**

The Chairman has agreed to deal with this matter as an urgent item due to the timing of the decisions by Surrey County Council and the need to initiate any action through the Courts as soon as possible.

### SURREY WASTE PLAN UPDATE (DTS)

1. **Purpose of Report**

1.1 **To inform the Committee of Surrey County Council's intention to adopt the Surrey Waste Plan and to consider options for High Court challenge.**

2. **Background Information**

2.1 At the meeting of this Committee on 26 February, Members were reminded of the Examination in Public into the Surrey Waste Plan which took place last year and of the publication of the Inspector's Report in December 2007.

2.2 The Inspector found the Plan 'sound' subject to various changes and his recommendations are binding on Surrey County Council, which is the body that formally 'adopts' the Plan.

2.3 Prior to the Public Examination, Surrey County Council recommended that three identified sites - Heather Farm and Martyrs Lane in Woking, and Wisley in Guildford, be deleted as proposed sites for the thermal treatment of waste. This was because an Appropriate Assessment under the Habitats Directive could not conclude no adverse impact on the integrity of nearby designated sites.

2.4 Despite this recommendation, the Inspector recommended that two of these sites - Martyrs Lane and Wisley (Heather Farm was deleted for other reasons regarding availability) remain in the Plan as potential sites for thermal treatment - accepting a counter argument that a smaller sized facility might have no adverse impact on designated sites, or that advanced thermal operations might have a lower impact.

2.5 The County Council's Consultants looked again at the Appropriate Assessment in the light of the Inspector's comments but concluded that there was insufficient data available to conclude no adverse impact.

- 2.6 The County Council therefore faced a dilemma that they could not vary the Inspector's recommendations, but believed his recommendations in respect of thermal treatment facilities at these two sites were contrary to the Habitats Regulations. Their initial view was that they could not therefore adopt the Plan.
3. Report
- 3.1 SCC's Counsel had concerns about the Inspector's approach to the Habitats Directive. He pointed out that the Habitats Directive requirement to ascertain that there are no adverse effects on integrity at the Plan stage has two consequences:
- i) it is not possible to defer a policy for consideration at the project stage if there is uncertainty whether it would pass the assessment;
  - ii) scientific doubt counts against the Plan.
- 3.2 In his view, the Inspector failed to consider, firstly whether the alternative options put forward for incineration were realistic and acceptable on other grounds and secondly the scientific uncertainties on pyrolysis and gasification. He therefore concluded that the retention of the two sites in the Plan fails the Habitats Directive Assessment tests and therefore the Inspector's Report does not follow the purpose of the Directive at the Plan level.
- 3.3 SCC has sought a further view from Leading Counsel which differs in one significant area. He suggests that as the other sites identified within the policy (Clockhouse Brickworks, Capel; Charlton Lane, Shepperton; and Land adjacent to Trumps Farm, Longcross) would provide sufficient thermal treatment capacity, then the objectives of the Plan as a whole can be delivered even if no satisfactory project level assessment is ever made at Wisley or Martyrs Lane.
- 3.4 The SCC report concludes:
- "EU Case Law does make it clear that, unless there are imperative reasons of overriding public interest, if the objectives of a land use plan can only be delivered by the use of a single site and that site might adversely affect the integrity of the European sites, adoption of the Plan would breach the European Directive. However, in the case of the SWP [Surrey Waste Plan], the policy objectives can be met without any of the sites which might adversely affect the integrity of the European sites ever coming forward. Policy WD5 makes it clear that a facility proposed at a WD5 site would only have the support of the Plan if it met the key development criteria. The key development criteria include a satisfactory appropriate assessment under the Habitats Regulations at the project level."*
- 3.5 On the basis of this advice, County Officers are recommending to their Executive on 22 April that the Waste Plan be adopted in accordance with the Inspector's Report and Recommendations. If agreed, this recommendation will be put forward for full Council to decide on 6 May.
- 3.6 The Habitats Regulations make it clear that an appropriate assessment is required at both the Plan and Project (i.e. planning application) stage. The current legal advice that SCC is following appears to ignore the fact that the Plan level appropriate assessment of the impact of thermal treatment facilities at Wisley or Martyrs Lane cannot conclude no likely adverse impact.
- 3.7 In effect, what is being suggested is that the appropriate assessment should be left to the project stage where adverse impact may well be demonstrated. On the face of it, there are concerns about this interpretation of the legislation.
4. Resource Implications
- 4.1 A High Court challenge could be expensive to pursue and if unsuccessful, the Council would have to bear other parties costs. A more detailed estimate will be provided before any decision is made on what action to take.

5. Legal Implications

- 5.1 Further Counsel's opinion is being sought on both the legitimacy of this approach in terms of interpretation of the Habitats Directive and also the point made in the February report to this Committee regarding the retention of the land adjacent to Trumps Farm, Longcross, as a potential site for thermal waste treatment where there was no obvious very special circumstances to allow such inappropriate development in the Green Belt.
- 5.2 It would appear that, if SCC were to adopt this plan in its current form (i.e. as proposed by the inspector) it would be acting outside the bounds of its authority. The strict tests of Article 6(3) could not be set-aside until the project stage as the objective is not to approve until you have ascertained that the plan will not adversely affect the integrity of a Natura 2000 site. It clearly is not a case where one can adopt a plan and consider its ramifications later. There is a clear presumption within all EU legislation to adopt a precautionary approach to the execution of duties by competent authorities within member states and it is made explicit within the Habitats Directive.
- 5.3 If the County Council decide to adopt the Plan, a High Court challenge needs to be made within six weeks of their advertising the intention to adopt.

6. Conclusion

- 6.1 At the meeting of this Committee on 26 February it was resolved that consideration be given to a High Court challenge at the relevant stage of the process.
- 6.2 In view of the likely course of action being pursued by SCC, further Counsel's view is being sought and it is hoped to bring forward a recommendation for appropriate action to the next meeting of this Committee.

**OFFICERS' RECOMMENDATION that -**

**following receipt of further Counsel's opinion and a further report to this Committee, consideration be given to a High Court challenge if Surrey County Council proceeds to adopt the Surrey Waste Plan as recommended by the Planning Inspector.**

**(TO RESOLVE)**

Background Papers

None