

# The Regulation Committee

Minutes of a meeting of the Regulation Committee held on Thursday 10 January 2019 at 14.00 in the Meeting Room, Taunton Library.

## Present

Cllr J Parham (Chairman)

Cllr M Caswell

Cllr J Clarke

Cllr S Coles

Cllr N Hewitt-Cooper

Cllr M Keating

Cllr A Kendall

The Chairman welcomed everyone to the meeting, outlined the meeting procedures, referred to the agendas and papers that were available and highlighted the rules relating to public question time.

### 1 **Apologies for Absence** – agenda item 1

Cllr N Taylor

### 2 **Declarations of interest** – agenda item 2

Reference was made to the following personal interests of the members of the Regulation Committee published in the register of members' interests which were available for public inspection in the meeting room:

Cllr Caswell

Member of Sedgemoor District Council

Cllr S Coles

Member of Taunton Deane Borough Council  
Member of the Devon and Somerset Fire and Rescue Authority

Cllr N Hewitt-Cooper

Member of Mendip District Council

Cllr A Kendall

Member of South Somerset District Council  
Member of Yeovil Town Council

Cllr J Parham

Member of Member of Mendip District Council  
Member of Shepton Mallet Town Council

Cllr N Taylor

Member of Mendip District Council  
Member of Cheddar Parish Council

**3 Accuracy of the Minutes of the Meeting held on 8 November 2018 – agenda item 3**

The Chairman signed the Minutes of the Regulation Committee held on 8 November 2018 as a correct record.

**4 Public Question Time – agenda item 4**

(1) There were no public questions on matters falling within the remit of the Committee that were not on the agenda.

(2) All other questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

**5 Wildlife and Countryside Act 1981 - Section 53, Schedule 14 Applications to:**

- **Upgrade Part of Footpath CH 7/39 to a Restricted Byway, and Add Restricted Byways in the Parishes of Combe St Nicholas and Broadway (630M, 632M and 633M); and**
- **Vary the Particulars of Part of CH7/39 (862M) - Agenda Item 5**

(1) The Case Officer, with the use of maps, plans and photographs, outlined the applications involved which were as follows:

- three applications for orders to amend the Definitive Map and Statement (DMS) by upgrading part of footpath CH 7/39 to a restricted byway and to add the routes described in Paragraph 2.3 of the report as restricted byways
- a fourth application relating to the route between points A and B on appendix 1 to the report which sought to vary the particulars relating to the width of the route.

(2) The applications were based on documentary evidence, with the applicant having supplied a number of documents with the applications, as listed in Paragraph 2.1 of the report.

(3) Maps and other documentary evidence sources examined as part of the investigation included inclosure awards; tithe maps; Parish Council records, Ordnance Survey documents, and Highway Authority records. Consultations regarding the claimed routes had been undertaken with all landowners and relevant local and national user group organisations. The report interpreted the documentary evidence and set out the responses received from landowners and consultees. It also set out responses received to a draft of the report circulated to interested parties, which included submissions from South Somerset Ramblers Association and the applicant.

(4) The Case Officer further highlighted

- there was insufficient user evidence for a public right of way to be reasonably alleged at Common Law or under Section 31 of the

#### Highways Act, 1980

- while there was strong evidence that N - K was a public highway prior to inclosure these rights were legally stopped-up by the inclosure award. Although there was some evidence that other small sections of linear way corresponding with parts of the application routes may have existed prior to inclosure there was insufficient evidence to reasonably allege these carried public rights. The majority of the application routes came into physical existence as a result of two inclosures (1818 and 1833) and were clearly set out as private roads without public rights over them at that time
- there was very little post-inclosure evidence for the existence of public rights over the application routes
- there was post-inclosure evidence that weighed against public rights over the application routes, or parts thereof
- many documents (including OS maps, tithe records and the 1910 Finance Act Plans) depicted the routes in a way that was entirely consistent with them being private roads set out for multiple users by an inclosure award
- post-DMS evidence in favour of the application routes having the reputation of public rights of way was a little stronger, but still weak
- the evidence from adjacent landowners was mixed and although several supported the existence of public rights of way over the routes (or parts of them), some also had mentioned permission being granted, or obstructions
- The 1974 County Planning Office letter and 1981 Parish Council minutes are in favour of public rights, but it is unknown on what basis they held their belief and they can be given little weight.
- overall, therefore, there was strong evidence that private vehicular rights existed over the application routes and based on the available evidence it could not be reasonably alleged that a public right of way of any kind existed over those parts of the application routes which were not already recorded on the Definitive Map. A-B was already shown on the Definitive Map as a footpath. On the balance of probabilities, no higher rights existed over this part of the application route
- although there was insufficient evidence to upgrade application route 632M between A and B, evidence had been discovered relating to the width of, and limitations on, footpath CH 7/39 between A and B. There was little evidence for a limitation in the form of a gate at point A, but strong evidence for a gate in the northern casing line of Hamway Lane at point B where CH 7/39 left the enclosed linear way and turned north-west into the adjacent field.

(5) The Committee heard from Sarah Bucks, South Somerset Bridleways Association - the applicant - who covered: legal processes/issues, a likely appeal if an order was not made and the applicant's interpretation of the evidence in support of the applications as follows:

- the routes, certainly Hamway Lane and Charmoor Lane, were public routes prior to inclosures

- none of the routes, except for a short section of the original route of the south-east section of Charmoor Drove, were stopped up by either of the inclosure awards
- the fact that a short section of one of the existing routes was stopped up (and an alternative route awarded) indicated that the other sections of route continued to carry the rights they had before inclosure
- the two inclosure awards were undertaken 15 years apart, and neither would have left dead-end routes which historically led from Neroche Forest to the next parish and beyond
- all evidence post-inclosure was consistent with public vehicular rights
- the ford on Charmoor Lane was the only recognised crossing point of the River Ding for two and a half miles
- no evidential weight had been given to the letter from the County Planning Officer in 1974 that stated: "It is significant that many parish councils missed off their survey for the definitive map seemingly obvious lanes and droves that they may have assumed did not need to go on a 'footpath map'. Other seemingly obvious lanes not included on the definitive map in this area are Charmoor Lane and Charmoor Drove."
- no notice had been taken of the Judge Turner ruling in the Scriven case (1985)
- the Highways Agency carried out consultations when considering the possibility of dualling the A303 past Combe St Nicholas. It was concluded that the evidence indicated bridleway status and agreed that these routes would become definitive bridleways
- no evidential value had been given to letters from adjacent landowners
- the Association had found riders who had used the route but were unwilling to put their names forward at this stage for fear of retribution, although they might be willing to do so for a Public Inquiry.

(6) The Chairman read out a letter from Carl Earl, Area Footpath Secretary, Somerset Ramblers asking the Committee to note the following key points which supported the Ramblers' view that the applications should be approved:

- Charmoor Lane and Hamway Lane existed prior to inclosure and were not stopped up at inclosure, thus they remained as through routes and all the evidence since was consistent with public vehicular status
- some parishes, including Combe St Nicholas, thought they were only to record public footpaths and omitted higher category rights of way when the original definitive map was drawn up.

(7) The Committee proceeded to discuss with the Case Officer, in response to issues raised by Sarah Bucks on behalf of the applicant, Somerset Ramblers and Committee members, referring to the insufficient evidence to support the existence of public rights.

(8) Cllr Hewitt-Cooper, seconded by Cllr Caswell, proposed the recommendations by the Strategic Commissioning Officer - Economy and Planning set out in the report.

(9) The Committee RESOLVED

(a) that the applications to upgrade the record for part of CH 7/39 between A and B to a restricted byway, and to add application route 632M between B and C, application route 633M between F and H and application route 630M between D and N as restricted byways, as shown in Appendix 1 to the report be refused.

(b) that:

- (i) an order be made, the effect of which would be to vary the particulars of the Definitive Statement to record that part of Footpath CH 7/39 between A and B as having a width of 4.87 metres and to record a gate at point B where the footpath leaves Hamway Lane;
- (ii) if there are no unwithdrawn objections to such an order it be confirmed;
- (iii) if objections are maintained to such an order, it be submitted to the Secretary of State for Environment, Food and Rural Affairs.

**6 Section 73 Application to Amend Conditions 2 (Approved Plans and Specifications), 3 (Noise Mitigation) and 5 (Dust Control) in Respect of Planning Permission 2013/2083 for the Construction of Anaerobic Digestion Plant at Unit 22, Evercreech Junction, Shepton Mallet BA4 6NG - Agenda Item 6**

(1) The Case Officer, with the use of maps, plans and photographs, outlined the application which involved variations to a previously approved anaerobic digestion facility on the Evercreech Junction industrial estate.

(2) The Committee were informed that the main issues for consideration were: landscape and visual impacts; amenity impacts - noise, dust and odour; and traffic generation and the highway network.

(3) Planning permission 2013/2083 was granted on 10 February 2015 for the construction of the anaerobic digester plant following consideration by the County Council's Regulation Committee on 12 December 2013 and construction had commenced prior to the deadline of 31 December 2016 imposed by Condition 1 of that permission. Applications to discharge Conditions 3 (Noise Mitigation) and 5 (Dust Control) were accompanied by the required schemes and approved in December 2016.

(4) The technology provider had since changed and following a review of the plant specification and consequent changes to its design and appearance the

current application had been submitted in November 2017 under Section 73 of the Town and Country Planning Act, 1990 seeking the variation of Conditions 2, 3 and 5 of the 2015 permission. The applicant had subsequently further refined their design through revised proposals submitted in December 2018, with the main differences from the November 2017 drawings being the addition of a digestate evaporator, a reduction in the footprint of the reception building and clamp and repositioning of various plant within the site. While the currently approved scheme proposed that the tanks would be reduced in level through excavation of the site, the revised proposals involved installing the tanks at existing ground levels but with the height of their domes reduced.

(5) The variation of Condition 2 (Approved Plans and Specifications) sought to alter some of the drawings and documents listed in the existing condition to reflect the changes to the plant.

(6) The report listed the changes from the 2015 approval to the current December 2018 scheme.

(7) These changes had implications for the noise and dust impacts associated with the plant and the applicant had revised their previously approved dust management plan and noise impact assessment. The application therefore sought the variation of Conditions 3 (Noise Mitigation) and 5 (Dust Control) to refer to the revised scheme. While the original Condition 3 required consideration of a revised layout to screen noise from the CHP (combined heat and power) units, the revised noise impact assessment concludes that acceptable noise levels at residential properties could be achieved based on the proposed layout subject to mitigation measures including an acoustic screen around the CHP units.

(8) While permission 2013/2083 had not placed any limit on the throughput of feedstock materials, an annual capacity of 55,000 tonnes had been anticipated. However, the revised technology and design proposed through the new application was expected to increase the volume of feedstock to be managed each year to 95,000 tonnes, with the quantity of digestate exported from the site increasing from 46,750 tonnes to 80,750 tonnes, making it one of the largest anaerobic digestion facilities in Somerset.

(9) The applicant did not proposed to change the general types of feedstock materials that the plant would manage (food waste and maize). While the introduction of a digestate evaporator would not alter the quantity of digestate that was generated, the increase in the proportion of digestate that was liquid would enable the applicant to explore other options for its management that might lead to a reduction in exports by vehicle. These options might include discharge of treated liquid digestate to sewer or watercourse.

(10) The revised technology would enable the injection of gas into the national gas grid as well as generating increased electricity.

(11) It was considered that the current application did not constitute EIA (Environmental Impact Assessment) development and therefore no EIA had been carried out.

(12) The Case Officer reported on the responses received to the consultation on the proposed variations to planning permission 2013/2083 from external consultees: Mendip District Council; Evercreech Parish Council; Environment Agency; internal consultees: Transport Development; Scientific Services (Noise and Dust); Ecologist; and the public. One objection had been received from the occupier of a nearby farm, on grounds including dust; highway safety; noise from vehicle movements; light pollution; odour; and biosecurity risk. Consultation on the revised proposals submitted in December 2018 had involved: Mendip District Council; Evercreech Parish Council and the occupier of the farm referred to above.

(13) The Case Officer reported on the late papers received which comprised:

- a communication from Evercreech Parish Council recommending that the application to vary conditions of planning permission 2013/2083 be refused, stating concerns about: dust and odour emissions; the significant increase in traffic movements; lighting; and the need for further monitoring, restrictions and a right-turn lane from the A371/modifications to the existing site entrance layout in the event of the application being approved
- a communication from Mendip District Council in response to the drawings and supporting information comprising the revised proposals confirming that the authority had no further comments to those it had already made on the application.

(14) The Committee heard from Jane Stewart, Head of Planning for Qila Biogas and agent for the applicant, who was accompanied by the company's CEO, the Evercreech Project Manager and the Head of Feedstock. Jane Stewart pointed out that:

- without changing the footprint or making significant changes to the site layout or design, or having any significant adverse environmental, visual or highway impacts and satisfying all technical consultees, the proposals would significantly enhance the renewable energy and waste treatment potential of the site
- the company had been very careful to keep design changes to a minimum. For example, there were no changes to the existing landscaping, items of plant were still in the same areas and the taller structures were no higher than approved. Nor were there increases in odour or dust emissions and all digester tanks remained covered
- the lighting was required for health and safety and would not typically be required outside of operational hours (6.00pm weekdays closing time)
- the production of more renewable energy would require more feedstock

- to ensure the feedstock was available a number of commercial studies had been undertaken and discussions held with potential suppliers, all within the 30 mile radius that the 2013 application had been considered against. Qila's own technology also allowed more agricultural wastes to be used in the feedstock mix, which would benefit local agriculture and discussions with local farmers and agricultural contractors had been very positive
- the company appreciated local concerns about traffic and had not sought to amend the right-turn lane in the permission
- while feedstocks would increase, the traffic increase would not be significantly different from those previously assessed. The company's studies had shown that commercial and industrial feedstocks would be delivered in much higher loads than would have been the case for the original Tamar Energy proposal
- as a low carbon technology that reduced greenhouse gas emissions, diverted waste away from landfill and drove it up the waste hierarchy, the development of anaerobic digestion was strongly supported by both national and local policy
- the site was suitably located on previously developed land on an industrial estate next to the strategic highway network. Maximising the use of the land was a sustainable way of providing additional renewable energy and waste treatment capacity. It also supported the economies of the development.

(15) The Committee proceeded to debate during which members discussed matters including: impact on local residents; the principle of the development having already been established; the industrial estate being an appropriate location for the development; odour and noise and the difficulty of assessing levels/types of odour; local concern about vehicle movements and recent accidents in the vicinity of the site; no restriction on the number of vehicle movements; mitigation of visual impact of the site and lighting; colour of the storage tanks; economic benefits; value in sustainability terms; treatment/discharge of liquid digestate. The Case Officer responded to the issues raised, as did a representative of Qila to that involving the disposal of liquid digestate, with the Chairman's consent.

(16) The Committee concluded that - in line with the Case Officer's assessment - the effects associated with the proposed changes to the previously approved scheme would be avoided, minimised or mitigated through the imposition of planning conditions/signing of a Section 106 Agreement to the extent that they were within acceptable levels, consistent with Policy DM3 of the Somerset Waste Core Strategy, and should not therefore prevent the granting of planning permission. The conditions/legal agreement would include requirements for the provision of a right-turn lane on the A371 opposite the industrial estate junction and other highway works. It was noted that the applicant anticipated that the total number of daily operational vehicle movements would only increase from 100 to 115. It was also noted that no objections had been received from specialist consultees or Mendip District Council.

(17) Cllr Hewitt-Cooper, seconded by Cllr Caswell, proposed the recommendations by the Strategic Commissioning Officer - Economy and Planning set out in the report.

(18) The Committee RESOLVED that, subject to a Deed of Variation to reiterate the terms of the Section 106 Agreement dated 4 February 2015, planning permission be granted subject to the conditions set out in Section 8 of the report, and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Strategic Commissioning Manager - Economy & Planning.

(The meeting closed at 15.11)