

Thomas, Claire

From: Eilish Loftus [Eilish.Loftus@indigoplanning.com]
Sent: 23 February 2010 18:21
To: Lewis, Chris
Cc: Cane, Keith; Sean McGrath; Michael Dowds
Subject: Committee procedure in relation to the AA
Importance: High
Attachments: Option 2.doc; Option 1.doc

Chris

I write further to paragraph 9.8 of the Officers Supplementary Report which states that the Council "have no realistic alternative than to adopt the *Appropriate Assessment prepared for it by BV*. Once the council have accepted the BV report as its *Appropriate Assessment under the Habitat Regulations*, it must take this into account in reaching its decisions on the planning applications. Legal advice is that the council can only then grant planning permission in the light of the conclusions of the assessment if Members have ascertained that the development will not adversely affect the integrity of the European sites. Legal precedent indicates that when approaching that question, Members must be satisfied 'beyond reasonable scientific doubt'. In other words, Members would need to be satisfied that there were no reasonable prospects that BV were right in its conclusions. The difficulty is for Members to demonstrate in evidential terms that there is no scientific doubt remaining in connection with the applications not effecting the integrity of the European sites. In essence, Members would in those circumstances be agreeing with the evidence submitted by LAA and its advisors and rejecting the independent advice of its own advisors, BV, Natural England and KCC".

In the event that Members wish to grant planning permission, I understand that your legal advice is that Members can adopt the negative AA and still grant planning permission if they wish. In this circumstance would you be relying on Regulation 54 (3) of the Habitat Regs that conditions and limitations could be put in place to avoid any adverse effect?

Our view is that if Members decide that the evidence submitted demonstrates beyond reasonable scientific doubt that there would be no adverse affect on the SPA, then Members do have an alternative to the current AA before them and that is to amend the AA. Members could either adopt an amended AA on the night or resolve that they are minded to adopt subject to revisions to the AA.

We will shortly be submitting to you a table of amendments to the AA, and it is our opinion that Members could either adopt the AA as amended by this table or resolve that they are minded to adopt subject to the AA being amended in accordance with the table. The former approach would allow Members to go on and resolve to grant whilst the latter (option 2) would result in Members granting delegated authority to Officers to adopt the BV AA once it has been amended. The next resolution in the option 2 approach would be that, subject to the AA being amended, Members are minded to grant planning permission and accordingly they grant delegated authority to Officers to grant the permissions once the AA has been amended and the section 106 has been signed.

As you will probably agree, option 2 is not the preferred route, as there is a risk that the applications would have to go back to Committee should they receive a number of representations (which is likely). It would have to be agreed that the applications would only be taken back to Committee should there be new material representations presented to the Council.

It is important that we agree how to approach this issue before 3 March 2010. Therefore, I have attached two suggested alternative recommendations should Members wish to support the applications. However, it would seem that the Report suggests a third option, being the adoption of the BV AA, with Members resolving to grant based on Regulation 54(3). Given the importance of

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