



Committee report

Committee **PLANNING COMMITTEE**

Date **28 FEBRUARY 2017**

Title **CALL-IN PAPER REGARDING: P/01235/16 VENTURE QUAYS/TRINITY HOUSE DEPOT AND WHARF/RED FUNNEL MARSHALLING YARDS, LOCATED IN VICINITY OF DOVER ROAD AND, CASTLE STREET, EAST COWES, ISLE OF WIGHT.**

Report of **HEAD OF PLACE**

EXECUTIVE SUMMARY

1. The application was reported to the Planning Committee on the 24th January 2016 with a recommendation of conditional approval subject to the conclusion of a section 106 agreement. The papers for the item can be viewed at: <https://www.iwight.com/Meetings/committees/Planning%20Committee%20from%202013/24-1-17/agenda.pdf?636225939448582273>
2. At the meeting, Members resolved to issue a split decision, resolving to grant approval for the re-development of the Trinity Wharf part of the site (the southern area) with the northern area being refused. The reason for refusal put forward was as follows:

The development of the northern area would result in the loss of employment land, and in particular the Redux building which forms part of a marine cluster with water access. The application fails to recognise the implications to economic development from the removal of this building to the cluster to marine related industries, while also failing to work within the constraints of the existing facilities. The proposed layout of the depot area to the north of the link span would result in vehicles crossing paths compromising safety due to the combination of pedestrian and lorry/freight movements contrary to DM2, DM8 and DM18.
3. Following the vote on the decision, Members were advised by the Head of Place that by virtue of paragraph 65 of the Code of Practice for Members and Officers dealing with planning matters the decision would be called in for further consideration. The reason given for the call-in was because the Head of Place was of the opinion that a decision had been made contrary to policy and could not be sustained under challenge. It was the view of officers that the policy and material grounds given for refusal required further investigation and

consideration. In particular the issues in relation to the sustainability of the decision and the impact upon the local planning authority and the possibility of precedent needed to be addressed. The purpose of this report is to consider the reasons for refusal in more detail and to outline any potential risks associated with the proposed reason for refusal presented by Members at the Planning Committee

4. For clarity, the application P/01065/15 which was refused by Members on 12th April 2016 is currently subject to an Appeal. The Planning Inspectorate have determined that the Appeal should be handled by way of a Public Inquiry. Members must treat this application independently of the Appeal and irrespective of the outcome of this determination (or any subsequent appeal) the Appeal against P/01065/15 will be judged on its own merits. In the event that both schemes are approved, the applicant will have the choice on which decision to implement.

PLANNING DECISION-TAKING

5. To the extent that development plan policies are material to an application for planning permission, the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise. This is enshrined within the Planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004)
6. The National Planning Policy Framework stresses the importance of having a planning system that is genuinely plan-led. Where a proposal accords with an up-to-date development plan it should be approved without delay, as required by the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework.

EVALUATION:

7. Within the debate regarding the reason for refusal relating to the northern area (and in particular the re-development of the Redux building), Members raised significant concerns regarding the loss of employment land with particular emphasis on its importance to the marine sector (policy reference DM8) and with subsequent concerns regarding the failure to work within the constraints of the existing ferry operations (policy reference DM18) and the safety implications of the proposed arrangements (policy reference DM2).

Loss of employment land policy (SP3 & DM8)

8. With regard to the loss of employment land, the first policy consideration must be that of policy SP3 (Economy). Policy SP3 is essentially a positive policy, seeking to support particular types of employment development and establish the overall strategic context for the delivery of employment proposals over the plan period. It has only one negatively worded element which states:

“The loss of large scale employment sites of one hectare or above will be resisted, where they are important to sustaining the economy, or where mixed

use redevelopment will not maintain the scale of employment opportunities on site.”

Members are reminded that neither the northern area (including the Redux building) in isolation, or the total site area subject to this application exceeds one hectare in size. As such, this proposal would comply with policy SP3.

9. Policy DM8 (Economic Development) also relates to employment development. This is a positively worded policy which seeks to support particular types of development as set out within the policy under 6 categories of development – for each of these development proposals would be expected to ensure that appropriate infrastructure is developed to facilitate the development proposed. There is only one negative paragraph within the policy which is the final element which directly links to policy SP3, which as identified under the assessment of SP3 (see above) only relates to sites of one hectare or more. As neither the northern area (including the Redux building) in isolation, or the total site area subject to this application exceeds one hectare in size, it is officers view that this element of policy DM8 cannot be used as a sustainable reason for refusal.
10. Officers note that within the debate, Members sought to utilise policy DM8 in reverse, to essentially conclude that as the development would not meet one of the six categories identified it could not be supported as it would be contrary to this policy. Members are reminded that they must determine applications in accordance with the policies of the development plan and the manner in which they are written. To seek to apply the policy in the manner identified would be contrary to this duty, and therefore in contravention of the legislative requirement. Officers further advise that the Island Plan is up-to-date and is not silent on the issues relating to loss of employment, and the application would comply with those policies, SP3 and DM8.

Impact on the “marine cluster”

11. Notwithstanding the response provided by Officers at 10 (above), if Members consider that the application would remain unacceptable regarding the impact of the loss of employment, Officers can further advise to the remaining points of the proposed reason for refusal relating to employment. This relates to the inter-relationship between this site and surrounding uses forming what Members consider as a “marine cluster” and concerns regarding the impact of the loss of this building and land upon the cluster.
12. Officers maintain that the proposals for Seaholme Yard and Redux must be considered on their own merits and that they form a clearly defined site as a result of the existing building and boundary fencing. The site does not benefit from direct access to the water, specifically deep-water. The Redux building was vacated by AMC in May 2016 and is currently vacant. Redux actually comprises two smaller industrial units but these have historically been used by single operators as they comprise a single building, and the building has been let on a singular basis. Individually the units are the smallest within Venture Quays, with a combined total of approximately 2,278m² of floorspace.

13. However, it is accepted that these areas have been inter-related with those operations undertaken within neighbouring buildings including Paintshop, Medina, Columbine and in association with the apron area and pontoons as part of the area known as “Venture Quays”. The total floorspace of Columbine, Paintshop and Medina is approximately 10,914m². Any access to deep-water is facilitated by access to the hoist-dock, quayside and pontoons from the Venture Quays apron. Access to the waterfront from Redux can only take place with the agreement of other parties including the owner/operator of the remainder of “Venture Quays” where the hoist-dock, quayside and pontoons are located. Therefore it is accepted that these could be seen as part of a notional cluster in visual and land-use terms.
14. However members need to be mindful that in planning terms there is no legal reason for considering these areas to be a cluster associated with marine employment. There are no planning restrictions regarding their use, and as such, it is quite possible that alternative general industrial uses (not within the marine sector) could be undertaken within any or all of the aforementioned buildings without the need for further grant of planning permission – this must be duly recognised if a marine emphasis is to be included within a reason for refusal. If this matter is considered at appeal, it is officers view that the starting presumption will be that these buildings are considered to be industrial use and not specifically marine related activities. It would be that more generalised industrial use that would be judged.
15. Looking specifically at the impact of the loss of this building and area upon the cluster, Officers would highlight the following:
 - 1) It is accepted that there would be a loss of employment floorspace, and external area. However, it is considered that this would not negatively impact on the wider cluster for the following reasons:
 - a) Redux is physically separated from the other units and could be operated entirely separately from the other units. There are no restrictions over its use and it is therefore quite conceivable that an alternative use not related to the marine sector could occupy the building without further planning permission.
 - b) Redux also comprises two smaller units, the physical size of which individually, and collectively limit the extent of operations which can be undertaken within. It is understood that historically Redux was utilised primarily for warehousing and storage, with only smaller scale manufacturing being undertaken. Whilst it may be beneficial to have such linked activities on-site or in close proximity to the larger scale activities undertaken within the wider “Venture Quays” site, there is no reason why such activities could not be undertaken at another site within the locality or elsewhere on the Island generally and the Councils Employment Land Study 2015 identifies that there is not a shortage of smaller-scale warehouse/storage type facilities.
 - c) Redux is currently vacant, having been vacated by AMC in May 2016, prior to that it was vacant between July 2013 and May 2015 having been used by South Boats for a year between 2012 and 2013. This demonstrates periods where no employment effect is

created and supports the view that this unit is not needed either in isolation or to support neighbouring buildings. As the building is currently vacant, there would not be a net reduction in employment levels.

- d) Seaholme Yard is currently used as a parking area for staff vehicles, and also benefits from a temporary planning permission for use as a dropped trailer area for Red Funnel up to 31st May 2018 (P/00280/15). The loss of this space would not detrimentally affect the ability of the remaining area of "Venture Quays" to function.

In view of the points summarised under a) to d) above, Officers consider that the loss of employment floor space would be acceptable and there is no evidence to demonstrate that the loss of this floorspace would have a negative effect on the cluster.

- 2) Remainder of "Venture Quays" including Paintshop, Columbine and Medina lie outside of the application site boundary, and would not be affected directly or in-directly by this proposal.
 - 3) The existing vehicular access arrangements (via Dover Road and via Castle Street) would be retained as existing albeit with relatively minor modifications associated with changes to alignments to allow the proposed dropped-trailer area and pick-up/drop-off area to be included. These changes would continue to allow accessible arrangements which would be suitable for the short, medium and longer-term operation of the remaining parts of Venture Quays. These access arrangements would be controlled and managed by a combination of planning obligations (including conditions), and third-party agreements.
 - 4) Visually, there is currently a separation, as seen on site, with a roadway (which would be retained) running between Redux and the neighbouring buildings which are adjoined to each other. There is also a fence with gate which delineates the boundary between the larger Venture Quays site and Seaholme/Redux. The Seaholme Yard is currently used for parking and would continue in such use if this proposal were to be approved and therefore visually the only change would be the removal of the Redux shed and its replacement with the dropped-trailer area. Whilst this would be a change, it is not considered to be detrimental to the function of the cluster, particularly in employment terms.
 - 5) The demolition of the Redux building could occur without the need for specific planning permission.
16. Having considered the site as part of a notional cluster, and the effect on this cluster, officers do not believe that this would provide a policy-based, material, or evidenced based refusal of the part of the application as proposed. The Island Plan is an up-to-date policy base, and contains policies relating to loss of employment which this proposal would be in accordance with, namely SP3 and DM8.

Failure to work within the existing constraints of the ferry operations

17. Again, notwithstanding the advice at paragraph 10, reference is made within the proposed reason for refusal to a failure of the proposal to work within the constraints of the existing ferry operations, with policy DM18 cited as the relevant policy. Officers have evaluated this aspect of the proposed reason.
18. Policy DM18 requires proposals to demonstrate how they will meet three specific criteria with criterion one being specifically related to the proposed reason for refusal. This states:
“Development proposals.....will be expected to demonstrate how they will..”

“Lead to optimisation and efficient use of the existing terminals, particularly in relation to peak demand. Within the short to medium-term, proposals are expected to be within the boundaries of the existing foot passenger and vehicle ferry terminals.”

It should be noted that short to medium-term is defined within para 7.287 of the supporting text, as being up to 2020, and the text also highlights the need for further investigation into longer-term requirements.
19. Officers would wish to advise Members that sufficient information has been presented to demonstrate how this proposal would result in efficiencies and improvements to the ferry operation as identified within the original papers. The proposals seek to provide additional capacity which would offer significant benefits to the management of vehicles associated with peak demand, with the creation of additional space within the yards beyond that required to facilitate the loading of the current sailing. The proposals also seek to accommodate a period of short to medium-term growth, which extends beyond the same period as defined by policy DM18 and para 7.287 of the Island Plan, but which is responsive to the market trend in increasing numbers of vehicle movements on and off the Island.
20. One of the key constraints to the ferry operation is the current nature of the yards both as a result of their physical constraints (size, shape, useable area etc), their separated nature (being intersected by roads) and also their relationship with the existing linkspan. Officers advise that these factors limit the range of options available to optimise use and furthermore, consideration has been given to the potential for a decked solution. A decked approach was first considered during the development of the 2007 Masterplan options-testing, before being discounted. Similarly, a decked approach has been previously considered by the applicant and this has been discounted for a variety of reasons including efficiency of land-use, visual impact, cost implications, and impacts on operational efficiency both during construction and post-completion.
21. Officers do not consider that a decked solution would be appropriate within this location. None of the current areas are considered to be of sufficient size to accommodate a decked solution. Such a solution could realistically only be achieved on an expanded Trinity Yard (assuming Trinity Wharf demolished) owing to the separation created by Dover Road and Castle Street. It is

considered that there would be no (or limited) benefit to providing a decked solution as an alternative in terms of marshalling footprint. On the contrary, the visual impact of such a structure would be considerable owing to the necessary heights required between the lower and upper level(s) – likely to be a minimum of 5.7m to enable HGVs and coaches to be accommodated at the lower level - and would also require larger ramped elements to address gradients. This in street-scene terms would not sit comfortably within the established context, would impact on the setting of the Grid Iron building, as well as having a visual impact on views of this part of East Cowes from Cowes, the water and the approach from the ferry.

22. In addition, to accommodate a decked solution which generated a benefit to operational efficiency and capacity, which was responsive to the constraints and opportunities presented by the site, would be likely to require a wholesale review and reorganisation of the ferry terminal including the position of the linkspan and berthing arrangements, terminal relocation, check-in facilities etc. This is not proposed through the current application. Such a holistic solution would be likely to require a larger-scale approach to all of the issues, and which is also unlikely to be a realistic short to medium-term option owing to the inherent costs that would be involved.
23. The proposal would work with the constraints of the existing arrangements in physical terms of the position of the link-span, and would enable operational improvements and efficiencies to take place, facilitated through the provision of additional marshalling capacity which in turn would provide benefits to the operation of the existing highway network and the surrounding environment.
24. Officers have re-evaluated the proposal against the requirements of policy DM18 and maintain that the scheme as a whole would be compliant with this policy. Officers note that Members proposed reason for refusal only related to the northern area and not Trinity Wharf, and as such, there are concerns regarding the consistency of approach. Members are reminded that the policies of the development plan must be applied consistently, and failure to do so could represent unreasonable behaviour liable to an award of costs or a potential for legal challenge. Officers therefore conclude that the proposed reason for refusal relating to a failure to work within the existing constraints of the ferry operations based upon policy DM18 would not represent a sustainable ground for refusal.

Safety impacts resulting from the layout of the depot area to the north of the link span

25. Again, notwithstanding the advice at paragraph 10, reference is made within the proposed reason for refusal to concerns regarding safety resulting from the layout of the northern area, with particular regard to the potential safety concerns arising from the combination of pedestrian and lorry/freight movements and crossing paths, with policy DM2 cited as the relevant policy. Officers have evaluated this aspect of the proposed reason.
26. Members will be aware that the relevant policy for matters relating to safety is policy DM2 (Design Quality).

27. The area around the terminal (including the linkspan) and the area identified as the northern area is highlighted within the supporting documentation as an area of existing conflict, as a result of movements associated with vehicles and pedestrians. Examples of existing conflicts between movements include:
- Vehicles (including cars, vans, and articulated lorries) accessing “Venture Quays” – The entrance to the industrial site is gated and managed at this point, to this point it is public highway.
 - Vehicle pick-up/drop-off occurs within the public highway in front of the White Hart with limited formal parking space for waiting, taxis etc. This conflicts with both other road users, pedestrians accessing the terminal, loading/un-loading ferries, and access to Venture Quays.
 - Pedestrians crossing from the footway on the northern side of Dover Road, and also across the slipway and front of the linkspan from the west
 - Vehicles accessing or egressing from the linkspan – This is managed by Red Funnel staff. It should also be noted that all dropped trailer movements are undertaken by Red Funnel staff.
28. It should also be noted that the Seaholme Yard benefits from a temporary permission to allow the use of the area for the storage of 15 dropped trailers.
29. On review of the safety impacts resulting from the northern area, it is considered that the proposals represent a significant benefit in safety terms from the current “ad-hoc” arrangement. The improvements can be summarised as follows:
- The proposal separates dropped trailers from general ferry traffic, reducing “double movements” thereby reducing conflicts and potential safety hazards when compared to the existing arrangement. Dropped trailers would be taken directly into the dropped trailer yard through the existing access arrangement which currently provides access to the temporary dropped trailer yard and thus there is an existing level of impact at this point. The management of the operation would continue to be subject to Red Funnel’s health and safety policies and terminal operations policies, and these would also be further controlled by the recommended conditions.
 - The provision of a purpose built and dedicated pick-up/drop-off location away from the public highway and next to the terminal building represents an improvement over the existing arrangements that will reduce conflicts and potential safety hazards. There would be direct pedestrian access to the terminal via defined routes. Whilst this increases vehicles travelling between the pub and terminal building this has been examined and is considered to be technically acceptable and would be a significant improvement upon the existing, removing conflicts from Dover Road, and providing a more manageable environment. The delivery and retention of this facility, as a significant benefit of the scheme, would be secured by planning obligations.

- The proposed layout of the northern area has been designed to create a series of “priority junctions” to avoid conflicts between dropped trailer movements, movements associated with Venture Quays, and movements associated with the pick-up/drop-off area, with appropriate levels of visibility being provided. These arrangements have been checked using appropriate tracking and swept path analysis. Access to Venture Quays would remain in a similar fashion to the existing arrangements and the remodelled arrangement would not prejudice its ability to function (including gated accesses with security controls). Access to Venture Quays is subject to third party agreements, and would also be subject to controls within the recommended planning obligation. It is expected that management of the manoeuvring of larger vehicles in connection with Venture Quays, to avoid conflict with ferry traffic would continue to be a matter for the relevant parties, as it currently is, and in essence these arrangements would not change.
- The proposals include improved crossing facilities on Dover Road that will improve the safety of pedestrian access to the ferry terminal from the town centre and the Floating Bridge, and between the White Hart pub and terminal building. This is deemed to be technically acceptable to Island Roads. In addition to providing safety enhancements, this would improve accessibility and connectivity for the terminal (and between it and the town centre and floating bridge) and would aid in the promotion of travel to the ferry by sustainable means. Appropriate conditions are recommended to ensure these enhancements are delivered.

30. The following images seek to visually depict the improvements that would occur in regard to the inter-relationship between vehicle and pedestrian movements, and shows the current movements within the area identified, and those which would result from the proposals:



Figure 1: As current



Figure 2: As proposed

31. The proposals have been fully evaluated by Island Roads. No objection has been raised with from Island Roads as the relevant technical consultee regarding highway safety.
32. In addition to this, it is important to appreciate that the safety implications where they relate to or are associated with the physical changes to the adopted highway would also be further re-evaluated through a Stage 1 Road Safety Audit as part of the required assessments in connection with the section 278 agreement to facilitate the works within the highway. Therefore there is a further mechanism for review, which would further ensure that the layout produced (in particular that around the terminal/White Hart area) is safe in highway safety terms.
33. Whilst there would still be potential for conflicts resulting from the proposed arrangement (but accepting there would be improvements to layouts etc) in a similar fashion to those which currently exist, it must be remembered that such conflicts are only likely to occur within the loading/un-loading window which is approximately 20-25min every hour. Outside of this period, the potential for conflict is much lower. As such, Officers do not consider that such an effect would be harmful or sufficient to evidence a reason for refusal.
34. Officers have also re-evaluated the “carriageway” and the ability to access “Venture Quays”. It is noted that currently “Venture Quays” has two vehicular access points, one from Castle Street (gate controlled) and one from Dover Road (gate controlled). To enter “Venture Quays” from either of these routes, there is a further controlled gate which must be opened. These access arrangements would remain almost as they are presently, with the Castle Street gate providing access for smaller vehicles, and the Dover Road access being for all vehicles including larger lorries. Owing to the alignment, priority (including surface treatment and signage) and visibility of the junctions

proposed for the dropped trailer area and the pick-up/drop-off area, it is considered that this arrangement would be compliant and appropriate for the nature and frequency of vehicles which utilise this route.

35. It must also be acknowledged that the scheme taken as a whole would also offer other benefits in relation to safety which must be afforded weight as part of the planning balance. These would include:
- Removal of the public footpath crossing Trinity Yard and improvement of pedestrian route to the terminal via Castle Street/Dover Road. This would also have the effect of reducing the number of pedestrians accessing the terminal across the front of the link-span, particularly around departure times when foot-passengers can come into conflict with vehicles.
 - Increased capacity would reduce queuing on Ferry Road as Phoenix Yard is used for check-in and stacking. This will aid the operation of the local highway network improving road safety, including those attempting to reach the Floating Bridge whilst cars are queuing for access to Phoenix Yard.
 - Relocating the slipway removes the conflict and potential safety hazard presented by members of the public attempting to use the slipway alongside ferry embarking/disembarking and the adjacent public highway.
36. For clarity, the proposal would deliver physical improvements to pedestrian crossing points in Dover Road, and between the terminal/White Hart pub. The detail of these would be secured both by proposed conditions, and also the requirements of highway legislation (S278 agreement). It should be noted that there are currently 2 existing crossing points within the northern section of Castle Street, which are considered to be sufficient to continue to provide a safe means of connection between the nearest bus-stop and the terminal.
37. The following image seeks to visually depict how the proposed arrangement would ensure an integrated approach to the management of pedestrian and vehicle movements in and around the Dover Street/terminal area and how this would offer beneficial improvements to accessibility and connectivity associated with proposals to formalise the pick-up/drop-off facility:

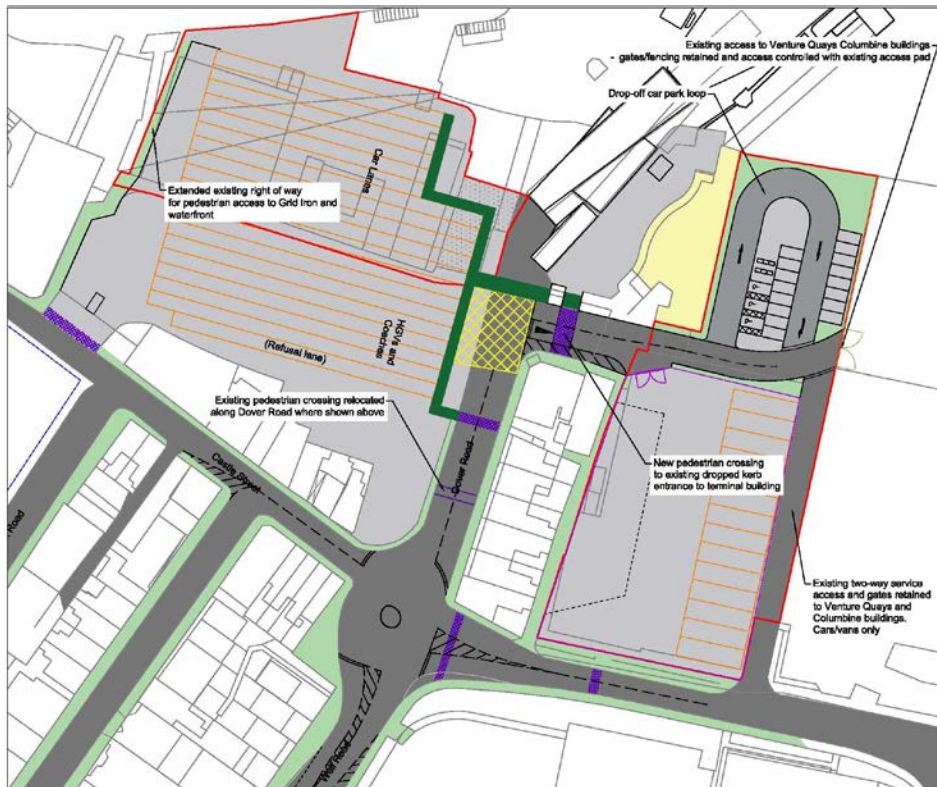


Figure 3: Proposed arrangement of northern area with connectivity

38. In light of the above, Officers consider that the scheme as a whole is acceptable with regard to safety considerations. Further, having re-appraised the northern area with particular regard to the safety concerns identified by Members during the debate, officers reaffirm that this would not represent a sustainable basis for refusal given the existing levels of conflicts that currently occur and the improvements that would result as a consequence of the scheme. Officers do not consider that there is any evidenced basis to conclude that the proposed arrangement would be detrimental in safety terms and

FINANCIAL / BUDGET IMPLICATIONS

39. The financial and budget implications relate to Members resolution to refuse the application, either in part or in totality.
40. In the event an Appeal were to proceed against any refusal, the Council would incur additional costs as a result of having to seek to defend the refusal. These costs would relate to both Officer time through preparation of papers etc, and additional external support as may be required.
41. In addition, at Appeal, the Council could be subject to a costs award if the Inspector considers that the Council has acted unreasonably, and the unreasonable behaviour has directly caused another party to incur unnecessary or waste expense in the appeals process. Costs applications may relate to events before the appeal or other proceedings, and behaviour

and actions at the time of the planning determination may be taken into consideration by the Inspector in determining whether to award costs or not.

42. Unreasonable behavior in the context of an application for an award of costs may be either procedural (relating to the process) or substantive (relating to the issues arising from the merits of the appeal)
43. A costs award may be made in full or in part depending on the reason given for awarding the costs. A full award of appeal costs means the party's whole costs for the statutory process, including the preparation of the appeal statement and supporting documentation. It also includes the expense of making the costs application.
44. In deciding whether to award costs, the planning inspectorate will have regard to the planning practice guidance. This says that

“Local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- (a) *preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.*
- (b) *failure to produce evidence to substantiate each reason for refusal on appeal*
- (c) *vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*
- (d) *refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead*

45. In order to mitigate the risk of a costs award it is essential that the Council must be able to demonstrate that the proposal would be contrary to the policies contained within the Development Plan and substantiate each and every reason(s) for refusal with evidence. If the Council cannot fulfil this requirement for each or all the reasons given then, it is likely that costs would be awarded at Appeal. The relatively recent Inspectors decision to award costs against the Council at Blanchards stated:

“The web-based Planning Practice Guidance lists preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations; and making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, as areas where a Local Planning Authority may be exposed to an award of costs.”

46. For information, the Blanchard's appeal was a Written Representation appeal and resulted in an award of costs of circa £22k. It should be noted that this does not include any of the Councils costs. Comparatively, the costs award in

association with the Asheby Road Public Inquiry (the route likely to be taken in relation to this application due to the current appeal), exceeded £100k not including any of the Council's costs of defending the appeal.

LEGAL IMPLICATIONS

47. The key legal implication is whether the Planning Committee is making a decision in accordance with the requirements of the Planning Acts.
48. The Local Planning Authority have a statutory duty to make decisions in accordance with the development plan unless there are material considerations that indicate otherwise.
49. Additionally, where a proposal accords with an up-to-date development plan it should be approved without delay, as required by the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework.
50. Should Members fail to apply the above duties, there is a risk of a decision being allowed at Appeal and a costs award being made.
51. Officers reaffirm that the Island Plan represents the adopted up-to-date development plan and Members must use the policies in the manner that they are written. To seek to utilise the policies in another fashion (for example reversing a supportive policy to appear negative) would not follow this requirement and would not represent a lawful decision-making process

RISK MANAGEMENT

52. Officers have re-evaluated the resolution made by Members on the 24th January, and do not consider that the reason for refusal presented represents a sustainable, evidenced or substantiated ground for refusal. As such, Officers consider that there is a high risk that an appeal would be allowed, and that an award of costs would be likely.
53. Officers also consider that in particular regard to the loss of employment land, the "tests" for this stem from the 1hectare threshold established by policy SP3 which in turn links to policy DM8. As this site would not result in a loss of employment land of 1hectare or above (either individually or collectively), the loss of employment land is considered to be acceptable set against the policy requirement. To determine this matter in any other way, would be contrary to the development plan and could result in a high likelihood of the decision being challenged.

OPTIONS

54. The options are set out as follows:
 - 1) Resolve to continue with the existing resolution made on the 24th January:-

To issue a split-decision, approving the re-development of Trinity Wharf (the southern area) and refusing the northern area based on the reason for refusal listed as follows:

The development of the northern area would result in the loss of employment land, and in particular the Redux building which forms part of a marine cluster with water access. The application fails to recognise the implications to economic development from the removal of this building to the cluster to marine related industries, while also failing to work within the constraints of the existing facilities. The proposed layout of the depot area to the north of the link span would result in vehicles crossing paths compromising safety due to the combination of pedestrian and lorry/freight movements contrary to DM2, DM8 and DM18.

Or

- 2) To resolve to grant planning permission as recommended at para 8.1 of the report presented to the Planning Committee on the 24th January - <https://www.iwight.com/Meetings/committees/Planning%20Committee%20from%202013/24-1-17/agenda.pdf?636225939448582273>
- 3) To resolve an alternative motion, which if for refusal would provide clear, policy based or material, and sustainable reasons for refusal.

CONCLUSION

55. Officers have reviewed the resolution made by Members on the 24th January, and in particular have re-evaluated the reason for refusal that was provided relating to the northern area.
56. As set out within this report, Officers do not consider that the reason for refusal would be sustainable. For the reasons set out within this report, Officers consider that there is either a lack of policy basis for the refusal, or insufficient evidence upon which a refusal could be demonstrated and sustained.
57. Officers have also considered if there are any other potentially sustainable grounds for refusal and continue to advise that there are no sustainable, or evidenced reasons as the proposals would be in accordance with the development plan and acceptable with regard to all material considerations.
58. The proposals must be considered against the policies of the development plan, and the manner in which they are written. Officers maintain that the scheme as a whole is compliant with the Island Plan Core Strategy and that there are no sustainable grounds for refusal. Failure to determine the application in accordance with the development plan would represent a significant risk to the Council in regard to both the lawfulness of the decision, but also the ability to defend any subsequent appeal and a potential award of costs on grounds relating to unreasonable behaviour.

59. Officers therefore conclude that the proposed resolution made on the 24th January is not sustainable and that Members should make another, sustainable decision.

RECOMMENDATION

Option 2, to resolve to grant planning permission as recommended at para 8.1 of the report presented to the Planning Committee on the 24th January -
<https://www.iwight.com/Meetings/committees/Planning%20Committee%20from%202013/24-1-17/agenda.pdf?636225939448582273>

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