

The purpose of this report is to enable the Planning Committee to further consider whether the terms of a Section 106 (S106) obligation which the applicant is prepared to enter into and which involves the routing of vehicles are acceptable and grant planning permission for the retention of an agricultural building for the chopping and storage of miscanthus (application reference 13/00245/FUL), subject to the obligation being completed within an agreed period of time, or alternatively refuse that application.

The site lies within the open countryside and within an Area of Active Landscape Conservation all as indicated on the Local Development Framework Proposals Map.

**RECOMMENDATION**

**(1) Subject to the applicant entering into a S106 obligation by 31<sup>st</sup> July 2015 that secures a routing agreement for vehicles transporting miscanthus to and from the building referred to in application 13/00245/FUL along the lines indicated in the discussion section of this report and subject to further consideration as to whether a condition can be imposed that restricts the routing of vehicles transporting miscanthus to and from an adjoining, unauthorised, building:**

**Permit that application subject to the following conditions:-**

**a) Within two months of the date of the planning permission details of the re-grading and landscaping of the excavated material or its distribution elsewhere in the site is to be submitted and approved, and implemented within four months of the date of that approval; and**

**(b) Existing site access to be resurfaced in a bound material for a minimum distance of 10 m rear of the highway boundary and maintained as such; and**

**(2) That, should the obligation referred to in (1) above not be secured in the specified period, the Head of Planning be authorised to refuse the application on the grounds that, in the absence of such an obligation, the development would have a detrimental impact upon highway safety and the amenity of the locality including the enjoyment of the national cycle route, and the character of the Conservation Area through which Tyrley Road passes; or, if he considers it appropriate, agree to extend the period of time within which the obligations can be secured.**

**3) Unless the applicant entering into a S106 obligation by 31<sup>st</sup> July 2015 that secures such a routing agreement for vehicles the Council's solicitor be authorised to issue enforcement and all other notices and to take and institute on behalf of the Council all such action and prosecution proceedings as are authorised by and under the Town and Country Planning Act 1990 to secure removal of the building within 6 months.**

**Reason for recommendation and the taking of enforcement action**

Whilst the applicant has indicated a willingness to enter into an obligation which restricts the routing of the vehicles associated with the use of the building that is the subject of application reference 13/00245/FUL the indication is that they would not be prepared to agree to restriction relating to vehicle movements between the building and land within the agricultural holding (identified by reference to a plan and involving a number of parcels of land to the south and south west of Market Drayton). It is acknowledged that there may be some difficulties in avoiding the restricted routes for some of the identified parcels of land within the holding and journeys would be considerably increased in length if such restrictions are imposed. However there are other parcels of land where alternative routes, avoiding the restricted routes, are possible. As such it is considered that there is justification that the routing restriction should not apply to all land within the holding. Provided that a suitably worded obligation is secured within a limited, specified period of time it is considered that planning

permission can still be issued and that any highway safety concerns arising from that development would be suitably addressed.

In the absence of an obligation restricting the vehicular movements associated with the building it is considered that the development has the potential to have an adverse impact upon highway safety and the amenity of the locality including the enjoyment of the national cycle route, and the character of the Conservation Area through which Tyrley Road passes. Enforcement action is therefore justified unless such an obligation is secured.

Whilst it has already been concluded that enforcement action could not be taken against another, unauthorised, building that is located adjacent to the building the subject of this application further consideration is being given as to whether a routeing restriction for vehicles to and from this building can be secured by condition.

### **Background Information**

Application 13/00245/FUL for the retention of an agricultural building for chopping and storage of miscanthus was reported to the Planning Committee meeting of 4<sup>th</sup> June 2013 and reported back to Committee on 16<sup>th</sup> September 2014. The resolution of that Committee as set out within the minutes is as following:

- (i) Subject to the applicant entering into a Section 106 Agreement by 7 October 2014, to secure a routeing agreement, to permit 13/00245/FUL subject to the two conditions set out in the report. If a Section 106 Agreement is not secured by the due date, refuse for the reason set out in the report unless the Head of Planning has extended the period.*
- (ii) That, unless the applicant enters into a Section 106 Agreement by 7 October 2014 to secure a routeing agreement for vehicles transporting miscanthus to and from the unauthorised building, enforcement action should be taken to seek removal of the building referred to. If the building is immune from action, the matter should be reported back to the Planning Committee.*

The two conditions referred to relate to the re-grading and landscaping of excavated materials or its distribution elsewhere in the site; and surfacing at least the first 10m of the access from the highway boundary in a bound material

This application has been reported to Committee within the quarterly reports on extensions to time periods within which obligations under Section 106 can be entered into, most recently to the meeting of 23<sup>rd</sup> June. The latest report, in as far as it relates to this matter indicated that although a signed agreement was received in March, further alterations were being sought. The report indicated that the applicant had proposed the inclusion of a plan the effect of which your officers considered contrary to the position of Committee and upon being advised of this, the applicant's agent sought additional time to obtain instructions. The report stated at that time the period for the completion of the S106 had been extended until 25<sup>th</sup> June.

A revised draft S106 was forwarded to the planning service on 25<sup>th</sup> June 2015.

As indicated above the Planning Committee also resolved, on 16<sup>th</sup> September 2014, to take enforcement action against an unauthorised building that is located adjacent to the building which is the subject of this application unless the applicant entered into a S106 obligation to secured the routeing agreement for vehicles associated with its use. A further report on the unauthorised building was brought to the Planning Committee meeting of 28<sup>th</sup> April 2015. That report concluded that the breach of planning control related to operational development as there had been, in the opinion of your officer, no material change of use. As such the development became immune from enforcement action if no action was taken within four years of substantial completion. Members accepted the recommendation noting that evidence available to the Council suggested that the building in question was substantially completed more than 4 years before and as such was now immune from any enforcement action.

### **Discussion**

In seeking to agree the wording of the S106 obligation your Officer has sought to ensure that the requirements of the obligation restrict the route of all HGVs transporting miscanthus to and from the building that is the subject of the application following the resolution of Planning Committee on 16<sup>th</sup> September 2014. The Solicitor acting on behalf of the applicant has indicated that the applicant is only prepared to enter into an obligation that restricts the routing of vehicles between the building and land other than that within the agricultural holding, identified by reference to a plan and involving a number of parcels of land to the south and south west of Market Drayton (defined as the Site in a draft S106 received from the applicant on 26<sup>th</sup> March 2015). This plan will be available for Members to see at the Committee meeting. Concern has been expressed by your officers to the applicant's Solicitor that this would undermine the purposes of the routing restrictions as a large number of vehicle movements would not be the subject to the restrictions. There has been no response from the applicant to that concern, but a draft S106 has subsequently been submitted which includes the plan referred to.

Given that an impasse has again been reached and in the interests of progressing this matter to a conclusion further consideration has been given to the terms of the S106. It is acknowledged that there may be some difficulties in avoiding the restricted routes for some of the identified parcels of land within the holding and journeys would be considerably increased in length if such restrictions are imposed. However there are other parcels of land where alternative routes, avoiding the restricted route, are possible. As such it is considered that there is justification for the view that the routing restriction should not apply to all land within the holding identified on the submitted plan. This has been put to the applicant and a response is awaited.

If the applicant is not prepared to enter into an obligation which defines the Site as suggested by your Officer (including some but not all of the parcels of land within the holding as identified on the submitted plan) it is considered that planning permission should be refused as the harm arising from the development would not be suitably mitigated. Enforcement action is therefore recommended in such circumstances.

The representation received, reported below, makes reference to another unauthorised building referred to in the final paragraph of the 'background information' section above. The representation argues that the building in question is not immune from enforcement action. However, as indicated above, consideration has been given to this issue within a report to Planning Committee at its meeting on 28<sup>th</sup> April and it has been concluded that enforcement action could not be taken against the building. The comments received do not raise anything new that should be considered further and could lead to a different conclusion.

The representation does, however, suggest that conditions could be imposed on any permission that may be granted to 13/00245/FUL (for a different building) that would secure a vehicle routing arrangement for that other building as well. It has previously been indicated to Committee (when recommending that enforcement action should be taken against this unauthorised building if the applicant was not prepared to enter into a S106 obligation in connection with this building) that the matter could not be addressed through the imposition of conditions. However it is considered that the use of conditions be further explored and as such it is proposed to provide an update on this issue before the meeting.

The other points raised within the representation on the draft obligation will be addressed by your officer as part of the process of agreeing the wording to secure an obligation that accords with the resolution of the Committee.

**Policies and proposals in the approved development plan relevant to this decision:-**

Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (CSS)

Policy ASP6: Rural area Spatial Policy  
Policy CSP1: Design Quality  
Policy CSP3: Sustainability and Climate Change

Newcastle-under-Lyme Local Plan 2011 (NLP)

Policy N17: Landscape Character – General Considerations  
Policy N18: Areas of Active Landscape Conservation

**Other Material Considerations include:**

National Planning Policy

National Planning Policy Framework (March 2012)  
Planning Practice Guidance (March 2014)

Supplementary Planning Guidance/Documents

Planning for Landscape Change: Supplementary Planning Guidance to the Staffordshire and Stoke-on-Trent Structure Plan 1996-2011

Relevant Planning History

Planning permission was granted in 2009 for a crop storage barn, specifically for the storage of crops that would be used at the Biomass Station at Eccleshall (reference 09/00137/FUL). A S106 obligation was entered into relating to the routeing of all heavy commercial and other vehicles travelling to and from the site and the Biomass Station.

Planning permission was granted for a building similar to that within the current, undetermined, application, 13/00245/FUL, but with a different orientation in 2012 (reference 12/00146/FUL).

An application for the retention of use of part of a farm office to an office for use associated with a renewable energy business was permitted in 2013 (reference 13/00244/FUL).

Representation

A letter of representation has been received regarding the planning application and the wording of the draft S106 which are summarised as follows:

- Seeking authority from Planning Committee to negotiate the terms of the S106 is an alternative to the refusal of planning permission.
- The purpose of the routeing restriction is to minimise the effect of vehicle movements on the cycle route and the Conservation Area and the absence of a routeing agreement would have a detrimental impact on highway safety and amenity of the locality. The consideration of amenity of the locality and conservation is of importance as they encompass 5 Grade II Listed Buildings and 11 residences with direct access out to Tyrley Road.
- The revision to the areas of land to which the routeing restrictions apply to that proposed by the applicant is welcomed.
- The definition of HGVs within the S106 does not include tractors or tractors and trailers and as such the problem is not addressed. There are currently enormous tractors, trailers and HGVs using the route. The definition should therefore include large tractors and tractors pulling trailers over a certain weight.
- The restrictions should apply to the building which is the subject to the application, and the adjoining larger building.
- The use of the building(s) should be carefully referred to and should be worded to ensure that it is clear that only miscanthus produced on the site may be stored in the buildings. There is objection to the inclusion of the words *'or any other activity relating to the operation of the site'* and the draft would be better amended to read *'or any other activity relating to the agricultural operation of the Site'*
- The routeing clause does not make sense as it presently deals with delivery of crops from outside the site (land in the agricultural holding defined by reference to a plan) but the definition of use is supposed to limit it to crops produced within the site.
- The Council can enforce against the large building and its non-agricultural use is not immune and steps should be taken because otherwise there is a risk of the building being used for the purposes of storage from the wider holding which would give rise to the same traffic problems the Council are seeking to limit. There is power to impose conditions or obligations on a

broader operation site when considering an application for a new use on part of the site. When a retrospective application was submitted for the unlawful construction of the large shed the applicant stated that there was no objection to a S106 specifying a route for all lorries coming to and from Old Springs.

- Enforcement action can be taken against the larger building as a material change of use of the land has taken place from a purely agricultural use to a use for storage of material grown outside the planning unit, and on the agricultural unit. In the case *Fuller* [1988] the Court of Appeal indicated that scattered parcels could not be regarded as within the same planning unit and it followed that a building for the storage of grain could not be used lawfully for storage of grain grown on another part of the holding. As the building was built without planning permission for a use which was itself a change of use from pure agricultural use, the period for the taking of enforcement action is 10 and not 5 years.
- In any event there would be no need to issue formal enforcement proceedings provided that appropriate conditions were imposed on the use of the building and that could be by imposing them on the building (the subject of this application) as the LPA are not bound to look at the building which is the subject of the application the LPA can and must look at the planning unit concerned.

### **Background Papers**

Planning File referred to  
Planning Documents referred to

### **Date report prepared**

8<sup>th</sup> July 2015