



Appeal Decision

Site visit made on 27 June 2017

by Beverley Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 4 August 2017

Appeal Ref: APP/R1010/W/17/3172633

Land at Hilcote Lane, Hilcote Lane, Hilcote, DE55 5NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stephen Mason (Rydberg Development Company Limited) against the decision of Bolsover District Council.
 - The application Ref 16/00437/FUL, dated 8 September 2016, was refused by notice dated 6 January 2017.
 - The development proposed is the construction and operation of a 14MW Peaking Power Generation Plant and ancillary equipment and access.
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Decision

1. The appeal is allowed and planning permission is granted for the construction and operation of a 14MW Peaking Power Generation Plant and ancillary equipment and access at land at Hilcote Lane, Hilcote Lane, Hilcote, DE55 5NS in accordance with the terms of the application, Ref 16/00437/FUL, dated 8 September 2016, subject to the conditions set out in the schedule attached to this decision.

Procedural Matter

2. The description of development in the heading above is taken from the planning application. The Council's decision notice and various appeal documents refer to the development as a 20MW Peaking Power Generation Plant. Therefore, I have sought clarification from the parties on the description of the development. Both parties confirm that all the references to the development proposed should be for a 14MW Peaking Power Generation Plant and ancillary equipment and access. Accordingly, I have considered the appeal on this basis.

Main Issue

3. The main issues in this case are whether, in the context of the relevant development plan policy, the proposed development would be acceptable on the site; and the effect of the development on the character and appearance of the countryside.

Reasons

Description of development

4. The proposed development would provide a Peaking Power Generation Plant (PPGP). It would comprise seven natural gas fired engine-driven electricity

generators that provide a total of up to 14MWe generating capacity and which would be housed in acoustically insulated weather proof steel containers. The electricity would support the local electricity network. There will be an exhaust flue for each engine, measuring 6.0m in height. In addition to the generators, a gas kiosk, switchgear container, four transformers and two lube oil tanks will be located within the plant compound. Provision would also be made to park and manoeuvre vehicles within the compound. The plant compound would be enclosed by a 4.5m high acoustic fence. A combined substation and metering enclosure would be located on the outside of the fence.

5. The documentation indicates that the proposed PPGP would have an operational life of 15-20 years and that thereafter it would be decommissioned and the site reinstated to its original form.

Principle of development

6. The appeal site lies outside the defined settlement framework boundary of Hilcote as defined in the Bolsover District Local Plan 2000 (Local Plan). Accordingly, it lies within the open countryside for planning policy purposes.
7. Policy ENV3 of the Local Plan indicates that outside settlement frameworks planning permission will only be granted for development in certain circumstances and provided that a number of criteria are complied with. The specific circumstances identified include, amongst other things, whether the development is necessary in such a location or it is required for the exploitation of sources of renewable energy.
8. Policy ENV3 of the Local Plan does not elaborate what is meant by '*development which is required for the exploitation of sources of renewable energy*' nor does the supporting text to the policy. The appeal proposal would rely on a non-renewable energy source to provide energy to the National Grid. However, the appellant indicates that flexible peaking power generation capacity specifically forms part of the renewable energy infrastructure being developed to meet the UK's obligations under the EU Renewable Energy Directive, because renewable sources are supplies that are dependent on the time of day and weather conditions. Moreover, the Council accepts that in so far as the appeal proposal is required to provide greater capacity and flexibility in the energy generation network the proposed generators could be described as 'associated infrastructure' that would support the move towards low carbon energy supplied increasingly by renewable energy developments. It seems to me therefore that on balance it is not unreasonable to conclude that the proposed development would constitute development required for the exploitation of sources of renewable energy.
9. The policy requirement is that the proposed development only needs to meet one of the circumstances set out in policy ENV3, there being the word 'or' between each of the specified circumstances, before then being considered against each of the criteria set out in the second part of the policy. Accordingly, in the light of my finding above it is not necessary to also consider whether the proposal meets the other specified circumstances in the first part of the policy, including that which states whether the development is necessary in this location.
10. In relation to the criteria set out in the second part of policy ENV3 of the Local Plan the proposed development would be environmentally sustainable in so far

as it would support the move towards low carbon energy supplied by renewable energy developments, would have a limited operational life thereby allowing for the reinstatement of the site and would not cause harm in relation to noise, air quality or biodiversity subject to the imposition of appropriate conditions. It would have no resultant impact on the vitality of Hilcote village centre. Moreover the production of a stand-by power source to support renewable energy supply to the grid in this area may improve the viability of the village and nearby industrial areas by providing greater security of supply. The proposed development would not materially harm the rural landscape as detailed below. Furthermore given that the land would be reinstated to its original form at the end of the operational life of the PPGP it would not lead to unnecessary urbanisation and sprawl in the longer term. In addition the proposed development would be enclosed within a defined boundary and would be physically and visually separated from the adjacent villages therefore it would not lead to the coalescence of settlements.

11. Consequently, having regard to all of the above I conclude that in the context of the relevant development plan policy the proposed development would be acceptable on the site. It would therefore accord with policy ENV3 of the Local Plan.

Character and appearance

12. The appeal site comprises part of a field which is low grade agricultural land and appears to be used for grazing. It lies within an area defined as open countryside for planning policy purposes but which also contains extensive urban influences.
13. The site displays many of the characteristics of the Settled Coalfield Farmlands and the Coalfield Village Farmlands as defined respectively by the East Midlands Region Landscape Character Assessment April 2010 and the Landscape Character of Derbyshire 2014. It is enclosed to the north by woodland and by the embankment of the M1 motorway to the west which runs in a north/south direction. The motorway passes within 30 metres of the site and the steep motorway embankments and motorway signs and gantries are prominent features within the wider surrounding countryside within which the appeal site lies. I also noted from my site visit that noise from the motorway is constant and is audible from the site and the surrounding area. To the south of the site, beyond the southern boundary of the field within which the appeal site is located, is an area of woodland which surrounds a fish farm and beyond this are areas of industrial development, including a sewage treatment works. To the east of the appeal site lies the village of Hilcote which the evidence indicates is a former mining village.
14. The Council accepts that the appeal proposal would be unlikely to cause significant harm to the wider landscape character of the area. I agree. However, it contends that it would cause harm to countryside character through encroachment and by the visual impact of the development.
15. The proposed development would be partially enclosed by existing mature woodland and the additional planting proposed along the southern and eastern boundary of the compound would further augment this. There would be distant views of the proposed development from the higher ground to the south. However, the development would appear small in scale in relation to the foreground industry and the adjacent motorway. Furthermore, whilst walkers

using the adjacent right of way would experience views of the development these would be localised and would extend only for a short distance.

16. At my site visit I had the opportunity to walk along the public footpath which cuts through the field within which the appeal site lies and crosses the line of the proposed site access. I saw that views from the footpath are dominated by the adjacent motorway and its associated infrastructure. I also saw that when walking in a southerly direction along the footpath the industrial development to the south was readily visible in long distant views. Having regard to all of the above therefore, I consider that the siting of the proposed development adjacent to the motorway coupled with the existing and proposed screening would mean that, even to users of the public footpath, the development would not appear as an overly incongruous extension of built development into the countryside so as to cause significant harm to its character and appearance.
17. The Council does not disagree with the findings of the noise assessment submitted with the planning application or with the comments made by its Environmental Protection Officer which both indicate that the proposed development would fall within acceptable parameters for noise. However, it states that the issue of noise and disturbance is a matter of how the findings of the assessment are applied taking into account the impact upon the noise character as experienced by users of footpaths in the immediate vicinity of the development.
18. I appreciate that the generators would produce an additional source of noise related to their operation. However, given the existing constant noise from the motorway I am not persuaded that the noise associated with the proposed PPGP, which will run intermittently for short periods, would be such as to significantly add to the noise levels in the area so as to detract from the enjoyment of users of the footpath or from the character of the area.
19. To conclude on this issue therefore, I consider that the proposed development would not cause substantive harm to the character and appearance of the countryside. It would not conflict with policy ENV3 of the Local Plan in this respect nor would it conflict with the core planning principle of the National Planning Policy Framework (the Framework) that indicates that planning should take account of the roles and character of different areas and recognise the intrinsic character and beauty of the countryside.

Other matters

20. There is no substantive technical evidence to indicate that subject to the imposition of appropriate conditions the proposed development would cause harm in relation to noise, air quality, biodiversity or highway safety.
21. Interested parties have raised concerns regarding recent levels of development that have taken place in the local area and contend that the proposed development would set an undesirable precedent. I have considered the appeal proposal on the basis of the development applied for and on its own merits having regard to the relevant planning policy and the context of the site and its surroundings. Given that I have concluded that the appeal proposal would be acceptable I can see no reason why it would lead to harmful developments on this or other similar sites. The courts have taken the view that planning is concerned with land use in the public interest, such that the

protection of purely private interests such as the impact of a development on the value of a neighbouring property is not a material consideration.

22. Concerns have been raised regarding the Council's handling of the publicity of the planning application. However, this is not something that I can comment upon or consider in an appeal made under section 78 of the above Act.

Conditions

23. The Council has not suggested any conditions that it considers would be appropriate were I minded to allow the appeal. However, it has indicated that it considers the draft conditions suggested by the appellant as reasonable and necessary if I were to allow the appeal. Accordingly, I have had regard to these as well as those conditions suggested by consultees on the planning application.
24. A condition to ensure the development is carried out in accordance with the submitted plans is necessary to ensure certainty. In the interests of highway safety a condition is necessary requiring the submission and approval of the details of the access before the development commences and the laying out and construction of the access in accordance with the approved details before the commencement of construction on the main PPGP compound. I agree with the County Highway Authority that a condition is necessary in the interests of highway safety to address the provision within the site for the storage of plant and materials, site accommodation, loading, unloading and manoeuvring of employees and visitors vehicles during the construction period. A condition requiring the submission, approval and implementation of a construction method statement would suitably cover these matters and would also address the hours of demolition/construction works. Such a condition is therefore necessary in the interests of highway safety and the living conditions of residents of neighbouring dwellings. Conditions are also necessary in the interests of highway safety to ensure satisfactory provision is made within the site for the parking, loading, unloading and manoeuvring of vehicles and to control the siting of any gates or barriers.
25. In the interests of safety conditions relating to coal mining legacy issues and any gas risk on the site are also necessary. To ensure a satisfactory appearance a condition requiring the submission of sample materials to be used in all external wall and roof areas is necessary. A condition controlling the general parameters of layout, scale and landscaping and requiring woodland and hedgerow planting and mitigation measures to be implemented in accordance with the submitted drawings is necessary in the interests of character and appearance of the countryside and to ensure the retention of habitats and biodiversity. In the interests of the living conditions of residents of neighbouring dwellings conditions are necessary to ensure the noise protection measures are retained. A condition to ensure the retention of the adjacent public footpath during construction and operation of the PPGP is necessary in the interests of local amenity.
26. The PPG indicates that where the proposed development complies with the development plan, as is the case here, a condition limiting the use to a temporary period would rarely pass the test of necessity. Accordingly, I have not included a condition which restricts the time period of the operation of the PPGP but rather one which requires that at the end of the operational life of the

PPGP the plant should be decommissioned and the land and modified access reinstated in the interests of the character and appearance of the countryside.

Conclusion

27. For the reasons set out above and having had regard to all other matters I conclude therefore that the appeal should be allowed.

Beverley Doward

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No. RDCL-01 Location Plan, Drawing No. ENQ 6540-11-1001-D-C Issue C Site Boundary, Drawing No. ENQ 6540-11-1002-D-C Issue C Lease Boundary, Drawing No. ENQ 6540-11-1003-D-C Issue C Site Layout, Drawing No. ENQ 6540-11-1004-D-B Issue D Site Elevations, Drawing No. ENQ 6540-11-1005-D-A Issue A Switch Gear Container, Drawing No. ENQ 6540-11-1006-D-A Gas Kiosk, Drawing No. ENQ 6540-11-1007-D-A Left Handed Gas Generator, Drawing No. ENQ 6540-11-1008-D-A Right Handed Gas Generator, Drawing No. ENQ 6540-11-1009-D-A Issue A WPD; Combined GRP Enclosure and Metering, Drawing No. ENQ 6540-11-1010-D-A Lube Oil Tanks, Drawing No. ENQ 6540-11-1011-D-B Issue B Single Acoustic Fence Panel, Drawing No. ENQ 6540-11-1012-D-A Issue A Transformer, Drawing No. ENQ 6540-11-1013-D-A Transformer Bund, Drawing No. 04 Rev A Mitigation Measures included in the Hilcote Lane Peaking Power Generation Plant, Hilcote Land, Derbyshire – Landscape and Visual Assessment, 17th October 2016.
- 3) Notwithstanding condition 2 (i.e the condition requiring that the development is carried out in accordance with the approved plans) no development shall commence until details of the modifications to the existing access to Hilcote Lane, including the surfacing materials to be used and the visibility splays to be provided, have been submitted to and approved in writing by the local planning authority. The access shall be laid out and constructed in accordance with the approved details before the commencement of construction on the main Peaking Power Generation Plant compound.
- 4) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking and manoeuvring of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 5) Before the commencement of the development hereby approved, a scheme of investigation to establish the exact situation regarding coal mining legacy issues on the site, including a scheme of intrusive site investigations, shall have been submitted to and approved by the local planning authority. The approved scheme shall be implemented as approved and a report of the findings arising from the intrusive site

- investigations and any recommended remediation works shall be submitted to the local planning authority for approval and any scheme of remedial works approved shall be implemented as approved.
- 6) Before the commencement of the development hereby approved, a gas risk assessment to assess the risk from former mine workings and ground gas shall be carried out and any remediation proposed where necessary. The assessment and any necessary remediation proposals shall be submitted to the local planning authority for approval and any necessary remediation measures incorporated into the development in accordance with the approved scheme. Any gas protection measures necessary shall be carried out by a suitably qualified person and an independent verification report submitted to the local planning authority for approval before the development is first brought into use.
 - 7) Before construction commences on the erection of any building or wall representative samples of the materials to be used in all external wall and roof areas shall first have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved sample details.
 - 8) The application shall follow the general parameters of layout, scale and landscaping set out and illustrated in the proposed layout (shown on Drawing No. ENQ 6540-11-1003-D-C Issue C Site Layout) and landscaping details (shown on Drawing No. 04 Rev A Mitigation Measures). In particular, the new Native Woodland planting around the plant compound and Native Hedgerow planting along the access track shall have been planted no later than the first available planting season after the facility is operationally ready, using species specified on Drawing No. 04 Rev A Mitigation Measures.
 - 9) Before the PPGP hereby approved first becomes operational space shall be provided within the site for the parking, loading, unloading and manoeuvring of vehicles in accordance with details which shall have been submitted and approved in writing the local planning authority. The parking, loading, unloading and manoeuvring provision should be retained thereafter for the operational life of the plant.
 - 10) The rating sound levels specified within the acoustic report 'Inacoustic Hilcote Lane Peaking Power Generation Plant BS4142:2014 Assessment for Planning Application 10th September 2016' must be achieved at all times that the development is operational at all noise sensitive receptors. All sound levels should be measured at or calculated to, a position representing the boundary of the nearest residential dwelling which may suffer a loss of aural amenity from sound associated with the development. The measurements and assessment shall be made in accordance with BS4142: 2014 Methods for rating and assessing industrial and commercial sound.
 - 11) Footpath No. Blackwell FP5 as shown on drawing number ENQ 6540-11-1001-D-C shall remain open and unobstructed during the construction and operation of the development hereby permitted.
 - 12) There shall be no gates or other barriers within 20m of the nearside highway boundary and any gates shall open inwards only.

- 13) Within 6 months of the end of the operational life of the PPGP hereby approved the plant shall be decommissioned, all items, structures, hardcore and any underground apparatus or concrete shall be removed from the site within the red line application site identified on Drawing No. ENQ 6540-11-1001-D-C Issue C Site Boundary and the land shall be subsequently restored to its undeveloped state in accordance with a scheme which shall have previously been submitted to and approved in writing by the local planning authority. The modified access to Hilcote Lane shall also be reinstated to a standard which shall have been agreed in writing by the local planning authority.