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## Appeal Decision

Site visit made on 20 May 2020

by **John Woolcock BNatRes(Hons) MURP DipLaw MRTPI**

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

Decision date: 16<sup>th</sup> June 2020

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**Appeal Ref: APP/U1105/W/20/3247638**

**Land at Liverton Business Park, Salterton Road, Exmouth EX8 2NU**

- 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 Liverton Business Park 2011 Limited against the decision of East Devon District Council.
  - The application No:19/1351/FUL, dated 18 June 2019, was refused by notice dated 5 December 2019.
  - The development proposed is the installation of a synchronous gas-powered standby generation facility, plus ancillary infrastructure and equipment and access.
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### Decision

1. The appeal is allowed and planning permission is granted for the installation of a synchronous gas-powered standby generation facility, plus ancillary infrastructure and equipment and access at Land at Liverton Business Park, Salterton Road, Exmouth EX8 2NU in accordance with the terms of the application, No:19/1351/FUL, dated 18 June 2019, and the plans submitted with it, subject to the conditions set out in the Schedule of Conditions attached to this decision.

### Preliminary matters

2. The proposed development comprises four generators each housed in a standard steel profile shipping container, with ancillary equipment, including a 7 m high exhaust stack, mounted on the roof. The proposal would have an installed capacity of approximately 7 MW. The appellant's Design and Access Statement states that the primary function of the proposed development is to provide electrical generation when called upon by the grid operator, with times of generation matching times of peak demand within the local network. The scheme includes security fencing and CCTV cameras. The cleared and vacant 0.17 ha site forms part of the established Liverton Business Park. The nearest residential property lies some 125 m to the south of the site. Gas connection would be to the local transmission system in Salperon Road about 150 m to the south. The proposed development would take up an 11 kV connection offer on to the circuit adjacent to the site and into the 33 kV local distribution network at the appellant's solar park, which is located to the east of the appeal site. The appellant confirmed that the solar park has a capacity of 4.1 MW.
3. East Devon District Council (EDDC) refused the application against officer recommendation for approval. The refusal states that by reason of its reliance on gas to generate electricity, the proposal fails to minimise the use of fossil

fuels and reduce carbon dioxide emissions, and as such the proposal is not considered to represent a sustainable form of development. EDDC considers the proposal to be contrary to Strategy 3 (Sustainable Development) of the East Devon Local Plan 2013-2031, adopted in 2016 (EDLP), as well as guidance contained within the National Planning Policy Framework 2019 (NPPF).<sup>1</sup>

4. The development plan here includes the EDLP and the Exmouth Neighbourhood Plan 2019. National Policy Statements (NPS) Overarching National Policy Statement for Energy EN-1 and National Policy Statement for Fossil Fuel Electricity Generating Infrastructure EN-2 apply to nationally significant infrastructure projects (NSIP) with a capacity of more than 50 MW, but are likely to be a material consideration for smaller schemes. Whether they do so and to what extent will be judged on a case by case basis.<sup>2</sup> For the reasons set out later in this decision, I find that EN-1 and EN-2 are material considerations with a high degree of relevance in this case. I have also taken into account the guidance in the National Planning Practice Guidance (NPPG).
5. Objections to the proposed development at the application and appeal stages largely endorsed and provided additional details in support of EDDC's grounds for refusing the scheme for greenhouse gas (GHG) emissions and climate change reasons. Other concerns were raised about the impact on the residential amenity of nearby occupiers, air pollution, natural beauty, biodiversity, highway safety, drainage, loss of employment land and setting a precedent. East Devon Climate Action (EDCA), a group of local residents concerned about climate change, coordinated the submission of some representations, including those from MJ Horn BSc MSc, R Baga BSc MBA and Dr PAW Bratby on behalf of the Campaign to Protect Rural England (CPRE). Representations in support of the proposal cited the benefits of the proposed standby facility, along with the contribution it would make to energy security, without detracting from investment in alternative technologies. I have taken into account all the representations made during the application and appeal stages.
6. Over 50 submissions were received requesting that the appeal should be dealt with by means of a public inquiry or a hearing. Before deciding about this, I requested written legal submissions from the appellant and EDDC about the proper interpretation of EDLP Strategy 3. EDCA also submitted a response. I also queried some of the planning conditions suggested by EDDC to be imposed were the appeal to succeed. In addition, I undertook an unaccompanied site visit. I have taken into account all the written submissions and responses, along with what I saw at my site visit. I find in the circumstances here that the appeal can properly proceed on the basis of written representations and a site visit. Notwithstanding the significant local interest in this appeal, I am satisfied that the appeal documentation, along with the written submissions and responses, provide clarity about the planning issues here, and that there is no need to test evidence by questioning at an inquiry or hearing.
7. An environmental permit (EP) for the proposed development was issued by the Environment Agency (EA) in September 2019. This permits operation of a medium combustion plant comprising four spark-ignition natural gas-powered engines exporting electrical production to the grid on a merchant basis.

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<sup>1</sup> EDLP Strategy 3 is set out in full in the Annex to this decision.

<sup>2</sup> EN-1 paragraph 1.2.1 and EN-2 paragraph 1.2.3.

Schedule 3 of the EP sets out limits and monitoring for point source emissions to air. The EP limits operating hours per annum to 2,500, excluding start-up and shut-down periods. The appellant confirmed that the EP does not restrict the hours of operation to any specified operational window.

## **Main Issues**

8. The main issue in this appeal is the effect of the proposed development on GHG emissions and climate change, having regard to relevant policy. I have also considered the effects of the proposal on the amenity of the area.

## **Reasons**

### *GHG emissions and climate change*

9. Submissions opposing the proposed development refer, amongst other things, to the Climate Change Act 2008 (CCA2008), to the UK's obligations under the Paris Agreement (PA) and to EDDC signing up to the Devon Climate Change Emergency Declaration. CCA2008 imposes a duty to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline, and to provide for a system of carbon budgeting. The PA demonstrates global agreement that anthropogenic GHG emissions are resulting in climate change with dire consequences for the environment, along with a global responsibility to address climate change. Signatories to the PA are required to establish, publish and periodically review their Nationally Determined Contributions to the reduction of GHG emissions. To apply these national and international obligations to individual GHG emitting schemes raises difficult issues about assessing cumulative effects. In terms of local commitments, I have not been advised that the Climate Change Emergency Declaration has any specific legal or policy implications for the determination of this appeal, other than setting out local aspirations for GHG emissions.
10. Nevertheless, the Climate Change Emergency Declaration, CCA2008 and the PA collectively provide relevant and important background context for the consideration of this planning appeal. GHG emissions from a particular development proposal are not inconsequential given the local declaration, the UK's national target and the global responsibility acknowledged by the PA. In this broader context it is self-evident that any use of fossil fuels that releases GHGs to the atmosphere will cumulatively have an adverse effect on the Government's climate change objectives and so will inevitably result in some harm.<sup>3</sup> The question is whether that degree of harm is justified in the circumstances having regard to relevant policy.
11. The EP restriction to limit generation to no more than 2,500 hours per annum would permit the standby facility to operate whenever it was commercially advantageous to do so within these hours, subject only to any noise restrictions. Objectors are concerned that the facility would not, therefore, be restricted to providing only back-up or peaking generation. However, the planning system is only one of a number of vehicles that helps to deliver Government energy and climate change policy. EN-1 states that the role of the planning system is to provide a framework that permits the construction of whatever Government – and players in the market responding to rules,

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<sup>3</sup> The environmental objective for achieving sustainable development in NPPF paragraph 8 includes mitigating and adapting to climate change.

incentives or signals from Government – have identified as the types of infrastructure needed in places where it would be acceptable in planning terms.<sup>4</sup> If planning permission were granted subject to the suggested conditions, other commercial and market-based mechanisms in the energy sector would largely determine how the generators operated. It would not be necessary for a planning condition to specify what constituted back-up generation and how it should be achieved. Other means exist that could provide more sophisticated commercial direction for the operation of the standby facility than would be possible to impose in the interests of the use and development of land.

12. Nevertheless, this planning appeal should properly be assessed on a worst-case assumption, which is for the generators to operate for the maximum period permitted. The appellant's assessment does not specifically indicate likely carbon emissions from the proposed generators. However, CPRE refers to this type of facility typically emitting 0.500 kg CO<sub>2</sub> / kWh.<sup>5</sup> The appellant did not comment on this estimate.<sup>6</sup> If CPRE's assumptions are applicable here it would indicate that the facility could emit up to 8,750 tonnes of carbon dioxide a year.<sup>7</sup> Even if this estimate is wrong, it is clear that the proposed development would, cumulatively, result in the emission of a considerable amount of GHG.
13. The significance of GHG emissions from the proposed generators needs to be contextualised in some way to enable the harm to be weighed in the planning balance. However, I have not been referred to any recognised method or metric for doing so. There are no approved local carbon budgets that might provide for an assessment against local targets over time.<sup>8</sup> Furthermore, there is no way of meaningfully relating the resultant GHG emissions from the proposed development, either by itself, or cumulatively with other similar schemes, quantitatively with the national 2050 outcome duty or its associated five-yearly budgets. For NSIP facilities there is no need to assess individual applications in terms of carbon emissions against carbon budgets.<sup>9</sup> Given that non-planning policies are aimed at decarbonising electricity generation, it seems appropriate that this advice should also apply to schemes of less than 50 MW capacity. EN-1, read as whole, does not require the need for the proposed development to be quantitatively assessed for individual NSIP schemes. Again, it seems logical that this should also apply to smaller schemes. It is difficult to quantify climate change harm from individual schemes in absolute terms, and those opposing the appeal scheme highlight various aspects of comparative harm.
14. Objectors to the proposal point out that combined cycle gas turbines (CCGT), pumped storage schemes, biomass and battery installations are superior

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<sup>4</sup> EN-1 paragraph 2.2.4.

<sup>5</sup> Paragraph 13 of CPRE's *Guidance for assessing planning applications for small-scale battery storage and backup generation facilities*, April 2018. The submission by R Baga refers to 0.460-0.500 kg CO<sub>2</sub> / kWh.

<sup>6</sup> Table following paragraph 46 in the appellant's Statement of Case cites UK Government greenhouse-gas-reporting-conversion-factors-2019 (BEIS) comparison between coal and gas in terms of gross carbon content of the fuel.

<sup>7</sup> 7,000 kW x 2,500 hrs x 0.500 kg CO<sub>2</sub> / kWh = 8,750,000 kg or 8,750 tonnes. This is the tonnage cited in the submission by MJ Horn.

<sup>8</sup> MJ Horn's submission refers to a report commissioned as part of the EDDC Climate Change Strategy 2020-2025 which set a baseline carbon footprint of 30,599 tonnes of CO<sub>2</sub> in 2018/19 and the 8,750 tonnes per annum from the appeal scheme would amount to 28.5% of this baseline.

<sup>9</sup> EN-1 paragraph 5.2.2 and EN-2 paragraph 2.5.2. These refer to the range of non-planning policies aimed at decarbonising electricity generation, such as the EU Emissions Trading Scheme.

alternatives to the proposed facility for managing security of electricity supply and achieving the UK's decarbonisation plans. CCGTs can provide variable output to meet varying demand. Evidence was adduced to show that CCGT generators are currently a major contributor to meeting peak demand. However, national policy provides that the Government does not consider it appropriate for planning policy to set targets for or limits on different technologies.<sup>10</sup> EN-1 adds that there are benefits of having a diverse mix of all types of power generation to help ensure security of supply.

15. The written representations highlight that the scheme makes no future provision for combined heat and power or carbon capture and storage (CCS). The appellant states that there is currently no unmet demand for heat within the business park, but that it would be possible for the appeal site to be re-purposed to meet any future demand if it arose from phases 2 and 3 of the business park. Even if this was feasible, the parties have not suggested the imposition of any planning conditions that would provide for this eventuality. There is nothing to indicate that CCS would be likely to be viable for the proposed generators within their lifetime.
16. EDDC highlights the Committee on Climate Change's emission level limit of 0.100 kg CO<sub>2</sub> / kWh by 2030, and considers that the appeal scheme running as simple generation (as opposed to low utilisation back-up), long after 2030, would not assist in meeting this target and so would not minimise fossil fuel use. CPRE's submission refers to low efficiency gas-fired small scale generators reliant on the Capacity Market preventing the deployment of the national need for high efficiency CCGTs, which are the priority of the Capacity Market.<sup>11</sup> If this is so, it seems to me that it is a consideration best dealt with outside the planning system.
17. It is noted by those opposing the appeal scheme that it is unclear whether the facility would be required to participate in the EU Emissions Trading Scheme or the UK carbon price floor mechanism. These apply a price to carbon emissions from power generation and incentivise electricity production with lower GHG emissions. Objectors argue that if the proposed facility did not participate in these mechanisms it would have an unfair and environmentally damaging competitive advantage over other fossil fuelled generators that are required to participate. However, such financial schemes operate outside, and in addition to, the planning system.
18. Many of the concerns raised by objectors deal with matters for which there are other mechanisms to facilitate necessary regulation and direction. This does not detract from the fact that the proposal would result in significant GHG emissions. On the main issue, taking all the above into account, I find that the proposed development would have an adverse effect on climate change by reason of likely GHG emissions of substantial significance, which should be given considerable weight in the planning balance.

### *Amenity*

19. The EP does not include any controls on noise emissions. The appellant's noise assessment found that night-time operation of the generators would be likely

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<sup>10</sup> EN-1 paragraph 3.1.2.

<sup>11</sup> The Capacity Market aims to ensure the future security of electricity supplies at the lowest cost to consumers.



to give rise to a level of impact considered to be adverse at the nearest residential properties. There is some evidence from the submitted sound survey that background noise levels can reduce significantly after 2100 hours. This is a time when people, especially children, are going to sleep and when intermittent start up noise from the generators might be particularly intrusive. The NPPG advises that people tend to be more sensitive to noise at night as they are trying to sleep and that the adverse effect can also be greater simply because there is less background noise. I consider that it would be necessary to limit the operation of the generators to 0700 to 2100 hours, with any generation outside these hours permitted only in defined emergency situations.<sup>12</sup> This would accord with the policy aim of minimising adverse impacts on the quality of life, as set out in the Noise Policy Statement for England.<sup>13</sup>

20. A protocol would be necessary to define and report emergency situations, during which the urgent need for electricity generation would outweigh the resultant harm from noise. There is local concern about noise affecting those working in or visiting nearby commercial premises, such as Howdens, which is located on the opposite side of the access road to the appeal site. However, it was evident at my site visit that activities within these businesses generate noise at times, and I do not consider that noise from the proposed generators would be unduly intrusive to commercial neighbours. Given the commercial activity that characterises the local acoustic environment during normal working hours, I am satisfied that local amenity could be reasonably safeguarded by the imposition of a BS 4142 condition requiring noise emissions from the proposed development not to exceed background levels at any sensitive receptor from 0700 to 2100 hours. Subject to the imposition of these planning conditions, I do not consider that the proposal would have an unacceptable adverse effect on the amenity of the area by reason of noise.
21. The EA's letter accompanying the EP states that the EA is satisfied that the proposed activities can be carried out in accordance with the EP without harm to the environment or human health. My decision on this appeal should assume that the pollution control regime will operate effectively. I am satisfied that emissions from the proposed generators would not result in unacceptable air pollution for the area.
22. With the development of the adjoining vacant part of the plot the appeal site would be in a secluded area of the industrial estate. In this location, with suitable boundary treatment, the proposal would not harm the character and appearance of the locality. Given that the site currently comprises bare ground with some spoil heaps, it seems to me that its development would, to some degree, enhance this urban landscape.
23. The evidence submitted demonstrates that the proposed development, either individually or in combination with other plans or projects, is not likely to have a significant effect on any of the four European designated sites that lie within 10 km of the appeal site. The appellant's ecological impact assessment concludes that due to the restricted type and footprint of the proposed

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<sup>12</sup> The hours for EDDC's suggested BS 4142 daytime noise condition would need to be revised accordingly from 0700-2300 to 0700-2100 hours.

<sup>13</sup> The Noise Policy Statement for England is referred to in NPPF paragraph 126 Footnote 27.

development it would not provide opportunities for biodiversity gain, but with the provision of mitigation all residual effects would be neutral.

24. Drainage is a matter that could be addressed by a planning condition. Given the existing estate road access, the scheme would not materially affect highway safety.
25. Subject to the imposition of appropriate planning conditions, I do not consider that the proposal would have an unacceptable adverse effect on the amenity of the area.

*Other matters*

26. The benefits to the wider economy of electricity generation at times of high demand, especially when conditions were not favourable for renewable energy sources, would be significant. The 7 MW capacity of the appeal scheme would be a small, but nonetheless cumulatively important contribution. The proposed generators would contribute to the overall security of energy supply, even if they would have to disconnect via an automatic trip response from the system at times of a significant fault on the local distribution network. During such incidents it would be highly unlikely that the proposed generators could be operated to maintain supply to the local business park. Notwithstanding these limitations, I find overall that the appeal scheme's contribution towards the security of energy supply is a benefit of substantial significance, which should attract considerable weight in favour of the proposal in the planning balance.
27. However, the modest contribution the scheme would make directly to the local economy via construction jobs, along with the three part-time staff when operational, would not weigh much in this balance.
28. There is local concern about the loss of employment land within this industrial and commercial estate. However, the site would remain in employment use, and there is no evidence to indicate a shortage of available employment land. This is not a consideration that weighs against the proposal.
29. The appellant refers to other appeal decisions, but these are not very helpful in determining the appeal before me. There is not enough information available about these schemes to establish that they are directly comparable to the scheme proposed for Liverton Business Park. For example, the Fylde and Peterlee schemes refer to battery storage.<sup>14</sup> In both the Solway and Hilcote schemes the Inspector found that the facility was 'associated infrastructure' for the purposes of applying the NPPF.<sup>15</sup> For the reasons set out in paragraphs 45-47 of this decision, I have concluded that the Liverton Business Park scheme lacks the necessary association with the solar park for it to be considered 'associated infrastructure' as set out in NPPF paragraph 148.
30. The appeal scheme falls to be determined on its own merits having regard to relevant policy. The same would apply to any other proposals for similar generating facilities, and so the determination of this appeal would not establish a precedent for other decisions.

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<sup>14</sup> APP/M2325/W/18/3196360 Fylde. APP/X1355/W/18/3205662 Peterlee.

<sup>15</sup> APP/G0908/W/17/3189773 Solway. APP/R1010/W/17/3172633 Hilcote.

### *Development plan*

31. I am required to determine the appeal in accordance with the development plan unless material considerations indicate otherwise. Development plan policies should be interpreted objectively in accordance with the language used and read in their proper context, having regard to their purpose.
32. Part 1 of the EDLP sets out strategic policies. These policies set the strategy for the rest of the plan and are of key relevance in the determination of planning applications. The EDLP requires decision makers when considering a planning application to assess whether the proposal accords with the strategic policies and to look at the proposal in the light of the more detailed development management policies in Part 2 of the plan.
33. EDLP Strategy 3 states that the objective of ensuring sustainable development is central to EDDC's thinking, where sustainable development is interpreted to mean that certain issues (Issues a) to e) below) and their interrelationships are taken fully into account when considering development. In determining this appeal in accordance with the development plan, I am required by Strategy 3 to follow the same process, with the same aims.
34. In considering Issue a) Conserving and enhancing the environment, the site is a cleared and vacant area within an established industrial and commercial estate. The proposed development, subject to appropriate conditions, could be undertaken in a way that minimised landscape and biodiversity harm. Development of the cleared site could, to some extent, enhance the quality and character of the landscape. However, the proposal would not provide scope to enhance biodiversity. An approved drainage scheme could require appropriate sustainable drainage systems.
35. Issue b) Prudent natural resource use, includes minimising fossil fuel use and therefore reducing carbon dioxide emissions. The fact that there are other means of generating standby electricity that would produce the same output with lower carbon emissions than the appeal scheme lends support to the argument that the proposal would not minimise fossil fuel use. However, this issue can also be considered in a broader context where energy needs are to be met by a mix of technologies in a complex energy sector. Determining how the operation of the proposed generators would fit within this complexity is not straightforward. It is too simplistic just to say that the proposed technology is less efficient than other means of generating an equivalent quantity of electricity. I have found that the appeal scheme would result in the emission of GHG and so would harm climate change objectives, resulting in an adverse impact that should be given considerable weight in the planning balance. But this finding does not necessarily mean that the scheme would be at odds with Issue b) on the grounds that it would fail to minimise fossil fuel use. The proposal would not materially be at odds with the other aims of Issue b) regarding resource consumption, reusing materials and recycling. It would gain no support from the encouragement in Issue b) for renewable energy development.
36. The proposal would not directly promote social wellbeing (Issue c)) in terms of providing healthcare, affordable housing, recreation space and village halls. However, in generating electricity for the grid at times of high demand it would provide a facility to meet people's needs. The security of the electricity supply at these times is an important element of social well-being. The imposition of



- appropriate noise conditions would reasonably safeguard the well-being of those living and working nearby.
37. The modest contribution the appeal scheme would make to the economy, especially in terms of securing only three part-time jobs, would do little to encourage sustainable economic development (Issue d)). However, energy security is crucial to the economy. Whether the appeal scheme would encourage sustainable economic development raises again the considerations set out in Issue b) above.
38. Issue e) requires that I take a long-term view in deciding this appeal. The significant GHG emissions from the proposed generators would, cumulatively over time, add to the problems that future generations will face due to climate change (Issue b)). Nevertheless, energy security is important in maintaining a high-quality environment (Issues c) and d)), and especially one in which jobs, facilities, education and training are readily available.
39. There is local concern that the proposed facility would become a stranded asset as renewables and low carbon generation is encouraged to come on line. However, if the proposal is at odds with Issue b) to some extent due to the use of fossil fuels, then this would be insufficient, in my judgement, to bring the scheme into conflict with the overall sustainable development aims of Strategy 3, given the energy security benefits of the proposal regarding Issues c) and d)). The inability of the scheme to enhance biodiversity would similarly fall short of resulting in an overall conflict with Strategy 3.
40. I consider that Issues a) to e) and their interrelationships are taken fully into account in the above analysis. Furthermore, in my consideration of the proposed development, I have had regard to these findings as an important element that is central to my thinking about the merits of the proposal. On this basis, I find compliance with EDLP Strategy 3.
41. Policy D1 in Part 2 of the EDLP deals with Design and Local Distinctiveness. It states that proposals will only be permitted where, amongst other things, they incorporate measures to reduce carbon emissions and minimise the risks associated with climate change. Insofar as this policy applies to a scheme for electricity generation that would emit a considerable quantity of carbon dioxide over its lifetime, it seems to me that compliance would depend on whether the scheme aided the transition to a low carbon economy. Within the ambit of this appeal it is not possible to definitively answer this question in the affirmative. But the scheme has the potential to help this transition, and in the absence of convincing evidence that it would not do so, I find no conflict with Policy D1.
42. Strategy 39 of the EDLP provides that renewable or low-carbon energy projects will in principle be supported and encouraged. The appeal scheme is not a renewable energy project. The EDLP Glossary definition for renewable and low carbon energy states that low carbon technologies are those that can help reduce emissions (compared to conventional use of fossil fuels).<sup>16</sup> Gas-powered generation is a conventional use of fossil fuel. The proposal would not, therefore, help reduce emissions compared to conventional use of fossil fuels. The appeal scheme is not a low carbon technology for the purposes of applying the EDLP. Strategy 39 does not apply to the proposed development.

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<sup>16</sup> This is the same definition as in the NPPF.

Neither does Policy EN4 of the Exmouth Neighbourhood Plan, which concerns new renewable energy generation. Subject to the imposition of appropriate planning conditions, I find no conflict with EDLP Strategy 5 concerning the environment.

43. Taking all the above into account, I find that the proposal would accord with the development plan considered as a whole.

*NPPF and NPPG*

44. Paragraph 8c of the NPPF includes moving to a low carbon economy as part of an environmental objective for achieving sustainable development. The planning system should, amongst other things, support the transition to a low carbon future in a changing climate, help to shape places in ways that contribute to radical reductions in GHG emissions and support renewable and low carbon energy and associated infrastructure.<sup>17</sup> The Glossary to the NPPF defines 'renewable and low carbon energy' in the same terms as the EDLP. For the reasons set out in paragraph 42 of this decision, the appeal scheme is not a low carbon technology for the purposes of applying the NPPF, and so would not benefit from national support for low carbon energy infrastructure.
45. Whether the proposal constitutes infrastructure associated with the nearby solar park for the purposes of the NPPF depends on the circumstances that apply here. The appellant's Design and Access Statement (DAS) section on site selection only mentions a requirement for grid connection availability and a potentially interested landowner. The DAS section on alternative sites refers to carrying out a comprehensive search of gas infrastructure maps to find a location where acceptable gas infrastructure was in the same proximity as the 11 kV and 33 kV connection points. There is no specific reference to an association with the solar park itself in the evidence submitted about site selection.
46. The appellant's Statement of Case notes that the appellant is contracted to supply all of the energy produced from their nearby solar park first, such that the proposed facility could not be used in place of the solar park. However, it would be unlikely to do so for commercial reasons. On the other hand, if the available grid connection here is 7 MW, the solar park generating electricity at its 4.1 MW capacity would leave some spare grid connection that could be utilised by the proposed generators.
47. No convincing evidence has been submitted to indicate a functional relationship between the solar park and the appeal scheme other than that they would use the same grid connection. The link with the solar park is too tenuous for the appeal scheme to amount to infrastructure associated with renewable energy for the purposes of applying the last part of NPPF paragraph 148. The proposed development does not benefit from NPPF support for renewable and low carbon energy and associated infrastructure.
48. Paragraph 150 b) of the NPPF provides that new development should be planned for in ways that can help to reduce GHG emissions. But neither the NPPF nor the NPPG include any guidance about how standby generating capacity squares with the transition to a low carbon economy. I find that the

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<sup>17</sup> NPPF paragraph 148.

proposal would not conflict with the NPPF when read as a whole, or with the guidance in the NPPG, but neither would it gain any support from them.

*National Policy Statements EN-1 and EN-2*

49. The 7 MW capacity of the appeal scheme would fall far short of the 50 MW threshold for NSIPs in the energy sector. Nevertheless, the proposal is a form of development that could be readily repeated elsewhere. If this occurred the cumulative consequences for GHG emissions could be significant resulting in substantial harm to climate change objectives. There is evidence in the appeal documentation that this is a relevant consideration. The appeal decisions cited by the appellant for four gas-powered facilities would together have a combined capacity of 82 MW, and so cumulatively would exceed the threshold for the purposes of applying NPS.<sup>18</sup> I find, therefore, that EN-1 and EN-2 are material considerations with a high degree of relevance to the appeal scheme, notwithstanding that its capacity is below 50 MW. Some objectors to the scheme argue that NPS dealing with energy are out-of-date, do not adequately take into account policies on climate change and do not encourage the use of Best Available Techniques for efficient generation, and so should be reviewed. However, EN-1 and EN-2 remain extant Government policy unless and until reviewed or found by the Court to be unlawful.<sup>19</sup>
50. A section is included in EN-1 on the transition to a low carbon economy. This states that the UK economy is reliant on fossil fuels, and that they are likely to play a significant role for some time to come. It adds that some fossil fuels will still be needed during the transition to a low carbon economy, but that dependency on unabated fossil fuel generating stations must be reduced to meet emission targets, and that fossil fuel generating capacity should become low carbon. EN-1 notes that some renewable sources are intermittent and cannot be adjusted to meet demand, so more renewable generating capacity will require more generation capacity overall, to provide back-up at times when the availability of intermittent renewable sources is low. "If fossil fuel plant remains the most cost-effective means of providing such back-up, particularly at short notice, it is possible that even when the UK's electricity supply is almost entirely decarbonised we may still need fossil fuel power stations for short periods when renewable output is too low to meet demand, for example when there is little wind."<sup>20</sup> The 'cost-effectiveness' for standby generation will be dependent on the commercial and market mechanisms that operate in tandem with the planning system.
51. EN-1 goes on to state that there are a number of other technologies that can be used to compensate for the intermittency of renewable generation, such as electricity storage, interconnection and demand-side response, without building additional generation capacity. Such technologies will play important roles in a low carbon electricity system. But the development and deployment of these technologies at the necessary scale has yet to be achieved and the Government does not therefore consider it prudent to rely solely on these technologies to meet demand without the additional back-up capacity. EN-1 notes that it is

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<sup>18</sup> APP/R1010/W/17/3172633 Hilcote 14 MW. APP/G0908/W/17/3189773 Solway 8 MW. APP/M2325/W/18/3196360 Fylde 20 MW. APP/X1355/W/18/3205662 Peterlee 40 MW.

<sup>19</sup> EDCA refers to the letter from the Secretary of State dated 23 March 2020 stating that the Government is already actively considering whether it is appropriate to review all or parts of the Energy NPSs.

<sup>20</sup> EN-1 paragraph 3.3.11.

therefore likely that increasing reliance on renewables will mean a need for more total electricity capacity, with a larger proportion being built only or mainly to perform back-up functions.<sup>21</sup>

52. Fossil fuel generation can be brought on line quickly when there is high demand and shut down when demand is low, thus complementing generation from nuclear and the intermittent generation from renewables.<sup>22</sup> I read 'complementing' here as meaning fossil fuel generation providing some additional feature in a way that improves the outcome, where that outcome encompasses both security of electricity supply and decarbonisation objectives. Paragraph 3.3.4 of EN-1 adds that until such time as fossil fuel generation can effectively operate with CCS, such power stations will not be low carbon. However, there is nothing within EN-1 to indicate that this statement necessarily precludes some fossil fuel electricity generation, in certain circumstances, from helping with the transition to a low carbon economy.
53. Notwithstanding the overall thrust to reduce dependency on unabated fossil fuel combustion, EN-1 provides for some fossil fuel generating capacity to provide back-up and to help with the transition to low carbon electricity generation. EN-1 also states that it is important that such fossil fuel generating capacity should become low carbon, through development of CCS, and that there is a need for carbon capture ready (CCR) fossil fuel generating stations.<sup>23</sup> However, in this case there is nothing to indicate that the appeal scheme would be CCR, and without effective CCS the proposed development would not be 'low carbon' for the purposes of applying EN-1.
54. Nevertheless, the appeal scheme could potentially assist in the transition to a low carbon economy if the standby capacity it provided did facilitate the provision of more renewable energy capacity than would otherwise be so, such that overall the net contribution to GHG emissions would be reduced. This is a different consideration from that raised in MJ Horn's submission about the combination of high carbon generation for short periods with renewables for long periods constituting a low carbon energy supply.<sup>24</sup> I concur that it would be unacceptable for higher GHG emitting technologies to come forward and to let others in the sector take the burden of decarbonisation, so that net GHG emissions would increase.
55. Whether a particular standby scheme would facilitate the provision of more renewable energy capacity than would otherwise occur, with a resultant net benefit for the reduction of GHG emissions, is difficult to establish. Given the complexities involved it is not an assessment that realistically could be undertaken for every individual scheme. It is, however, a consideration where Government policy can be influential. EN-1 provides for fossil fuel use to complement intermittent generation from renewables, and so gives such a policy steer. I find that the proposed standby facility gains some support from EN-1 because it could, in accordance with national policy, help with the transition to a low carbon economy by complementing renewable capacity. Whether it would do so depends on other mechanisms, including the "rules, incentives or signals" referred to in EN-1, determining how the standby facility

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<sup>21</sup> EN-1 paragraph 3.3.12.

<sup>22</sup> EN-1 paragraph 3.3.4.

<sup>23</sup> EN-1 paragraph 3.6.8.

<sup>24</sup> MJ Horn's written submission at paragraph 5.5.

would operate. But it is reasonable to assume that these will be effective in achieving the Government's objectives for energy security and decarbonisation.

### *Planning balance*

56. The planning balance that applies here is a straight weighing of the benefits of the proposed development against the harm. The overall assessment in this case is finely balanced. The benefits of electricity generation at times of high demand should attract considerable weight in favour of the proposal. The harm to climate change objectives due to GHG emissions from the facility should be given considerable weight against allowing the proposed development. The other matters considered do not weigh significantly in the planning balance. In my judgement, the support the proposed development gains from EN-1, which is a relevant material consideration here, notwithstanding that the scheme is not an NSIP, is sufficient to tip the planning balance in favour of the proposal.
57. I have taken into account all other matters raised in evidence but have found nothing to outweigh the main considerations that lead to my conclusions.

### **Conditions**

58. The appellant and EDDC have agreed suggested conditions that would be necessary if the appeal were to be allowed. I have considered the need for these and their wording in the light of the advice contained in the NPPG.
59. The standard commencement condition would be appropriate here (Condition 1). Otherwise than as set out in the decision and conditions, it would be necessary that the development was carried out in accordance with the approved plans to ensure that it accorded with the scheme considered at appeal (Condition 2).
60. For the reasons set out in paragraphs 19 and 20 of this decision it would be necessary to restrict operation of the generators between 2100 to 0700 hours to emergency situations in accordance with an approved protocol (Condition 3) and to impose noise controls during daytime hours (Condition 5). An approved Construction Management Plan would be required to safeguard biodiversity (Condition 4).
61. It would be necessary to approve the colours of buildings in the interests of the appearance of the area (Condition 6). Approval would also be required for the details of boundary treatment, acoustic fencing, lighting, security infrastructure, drainage and earthworks to safeguard the amenity of the area (Condition 7). Appropriate surfacing would be necessary for similar reasons (Condition 8). A condition would be necessary to specify use only of natural gas as fuel for the generators, as that is the basis on which the effects of the scheme have been assessed (Condition 9).
62. The EP restricts operation of the generators to 2,500 hours per annum. This is a matter that is covered by another regulatory regime, which should be assumed to operate effectively. It would not, therefore, be necessary for this requirement to be duplicated by the planning system. For similar reasons, it would not be necessary to impose a condition to require compliance with the appellant's air quality assessment as emissions to air are subject to requirements set out in the EP.

## **Conclusions**

63. I find no conflict with the development plan considered as a whole. The proposed development would not conflict with the NPPF and would gain some support from EN-1. In my judgement, the planning balance falls in favour of the proposal. For the reasons given above, I conclude that the appeal should be allowed.

*John Woolcock*  
Inspector



### Schedule of Conditions 1-9

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans.
  - 1791/D002 rev v.h Site Plan dated 18 June 2019
  - 1791/D003 rev v.b Generator Elevation dated 25 June 2019
  - 1791/D004 rev v.b Location Plan dated 18 June 2019
  - 1791/D005 rev v.a Fence and Gate Elevation dated 18 June 2019
  - 1791/D006 rev v.a DNO Elevations dated 18 June 2019
  - 1791/D007 rev v.a LV Room Elevations dated 18 June 2019
  - 1791/D008 rev v.a Gas Kiosk Elevations dated 18 June 2019
  - 1791/D009 rev v.a Natural Earth Resistor Elevations 18 June 2019
- 3) The generators hereby permitted shall not operate between 2100 to 0700 hours except in emergency situations. No development shall take place until a protocol for emergency situations has been submitted to and approved in writing by the local planning authority. The protocol shall set out what would constitute an emergency situation for the purposes of this Condition, along with details for reporting the date, time and duration of any operation of the generators during emergency situations. The development hereby permitted shall operate at all times in accordance with the approved protocol.
- 4) The development hereby permitted shall be undertaken in accordance with the 'Mitigation, compensation and enhancement' section of the Ecological Impact Assessment, produced by EAD Ecology, dated 18 May 2019, which refers to a Construction Management Plan (CMP). No development shall take place until the CMP has been submitted to and approved in writing by the local planning authority. The CMP shall be implemented as approved.
- 5) The rating level of noise from the generators hereby permitted between 0700 to 2100 hours shall not exceed the background noise level at any nearby noise sensitive development existing or with planning permission at the date of this permission. The measurements and assessment shall be made according to BS 4142:2014+A1:2019.
- 6) Details of the external colour of all buildings to be constructed on site shall be submitted to and approved in writing by the local planning authority prior to their installation. Development shall be carried out in accordance with the approved details and thereafter retained.
- 7) Prior to their installation, details of boundary treatment, acoustic fencing, lighting, security infrastructure, drainage and earthworks shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and thereafter retained.
- 8) Surfacing of the site shall at all times comprise compacted permeable bound gravel conforming to Specification for Highway Works cl. 803, Type 1.
- 9) The generators hereby permitted shall be fired on non-other than natural gas.

### Annex – EDLP Strategy 3

“The objective of ensuring sustainable development is central to our thinking. We interpret sustainable development in East Devon to mean that the following issues and their interrelationships are taken fully into account when considering development:

- a) Conserving and Enhancing the Environment - which includes ensuring development is undertaken in a way that minimises harm and enhances biodiversity and the quality and character of the landscape. This includes reducing the risk of flooding by incorporating measures such as sustainable drainage systems. Developers should maximise the proportion of their developments that take place on previously developed land.
- b) Prudent natural resource use - which includes minimising fossil fuel use therefore reducing carbon dioxide emissions. It also includes minimising resource consumption, reusing materials and recycling. Renewable energy development will be encouraged.
- c) Promoting social wellbeing - which includes providing facilities to meet people's needs such as health care, affordable housing, recreation space and village halls.
- d) Encouraging sustainable economic development - which includes securing jobs.
- e) Taking a long term view of our actions - Ensuring that future generations live in a high quality environment where jobs, facilities, education and training are readily available.”