
Appeal Decision

Site visit made on 13 July 2020

by Andrew Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal Ref: APP/W3330/W/20/3251284

**Land at Minehead Major Employment Site (Manor Employment Site),
Minehead TA24 5BY**

- 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 John Colombi of Conrad Energy (Developments) Limited against the decision of Somerset West and Taunton Council.
 - The application Ref 3/21/19/099, dated 27 November 2019, was refused by notice dated 25 March 2020.
 - The development proposed is standby gas generator plant and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for standby gas generator plant and associated infrastructure at Land at Minehead Major Employment Site (Manor Employment Site), Minehead TA24 5BY in accordance with the terms of the application, Ref 3/21/19/099, dated 27 November 2019, subject to conditions set out in the attached Schedule.

Preliminary Matters

2. On 1 April 2019 West Somerset Council merged with Taunton Deane Borough Council to become Somerset West and Taunton Council. The development plans for the merged local planning authority remain in place for the former area of West Somerset Council until such a time as they are revoked or replaced. It is therefore necessary to determine this appeal with reference to policies set out in the plans produced by the now dissolved West Somerset Council.
3. I have added a postcode to the site address in the interests of providing the fullest address possible.

Main Issues

4. Whether or not the proposed development would be acceptable in principle, with particular regard to local planning policies relating to the allocation for the site, and carbon emissions.

Reasons

Local plan allocation

5. Although the appeal site is part of an undeveloped parcel of land it is located within an existing industrial area, adjacent to existing commercial and

industrial uses. It forms part of the employment allocation at Manor Employment Site, with reference to Policy EC2 of the West Somerset Local Plan to 2032 adopted 2016 (WSLP). The Policy states that within the site there will be a general presumption in favour of uses in the B1, B2 and B8 use classes. Although the appellant originally took the view that the proposal was in a use class of its own, it is now suggested that it should be considered to fall within the B use classes. Evidence submitted demonstrates a range of very similar development types that are within the B use classes. These energy generating uses are so very similar to the appeal proposal that I consider it reasonable to accept that the appeal proposal is within the B use classes for the purposes of Policy EC2.

6. As set out in the Policy title, the Policy has a clear aim to generate employment at the site. Evidence before me suggests that the proposal would generate very little employment. However, I have established that the use would be compliant with Policy EC2. Furthermore, the proposed use would appear to be entirely compatible with existing uses surrounding the site and would be distant from sensitive receptors. It would also occupy a small part of the vacant site, potentially stimulating the development of the remaining area of the site through the provision of a new 11,000 volt electricity connection and medium pressure gas connection.
7. Notwithstanding this, even if I were to take the view that the proposal is in a use class of its own, the Policy makes allowances for other uses where it can be demonstrated that they would make a positive contribution to the overall vitality and viability of the local economy. Evidence submitted refers to the potential for the proposal to prevent a lights out scenario in the area, whereby the demand for electricity exceeds available supply. I am therefore satisfied that the proposal would support the overall vitality and viability of the local economy by ensuring that a sufficient and reliable supply of electricity is available.
8. In summary, the proposal would be acceptable in principle with regard to Policy EC2 of the WSLP, which sets out a general presumption in favour of uses in the B uses classes at the site, and the acceptability of other uses which make a positive contribution to the vitality and viability of the local economy.

Carbon Emissions

9. Policy CC1 of the WSLP states that energy generating proposals will be supported where they satisfy certain criteria. The proposal would not harm the local natural or historic environment. It would be distant from sensitive residential receptors. Evidence provided demonstrates that noise impacts on the closest residential receptor would be acceptable. The proposal would not have any negative social or cultural impacts. The economic benefits are clear in terms of securing a sufficient and reliable source of electricity, and potentially stimulating the development of the rest of the vacant site.
10. In terms of its environmental impact, the proposal would rely on fossil fuel to generate electricity. This would result in an increase in carbon emissions. Evidence provided demonstrates the level of local need, whereby the Local Distribution Network Operator, Western Power Distribution, needs to rely on flexible assets such as the proposal to meet electricity demand.

11. Although a battery storage facility would not rely on fossil fuels it has limitations as it can only provide power for a limited period, and once batteries have been emptied, they can not be recharged until the incoming supply has stabilised. The Council is concerned that allowing the proposal would perpetuate a cycle in which alternative flexible assets which produce less carbon would remain financially unviable. However, evidence provided demonstrates the particular advantages of a gas powered system, and the role that it plays in securing supply when generation from renewable generating sources is low, and supporting the transition to low carbon electricity generation. It is understood that natural gas will continue to be required as a crucial part of the energy supply until at least 2050.
12. The proposal would be used intermittently when demand dictates, and the appellant has suggested that a condition limiting hours of use would be acceptable. Evidence suggests that by operating up to 2500 hours per year the proposal would be significantly below the threshold for a low emission installation.
13. Policy SD1 is an overarching Policy that sets out a presumption in favour of sustainable development. It links to the objectives of the planning system to achieve sustainable development set out in the National Planning Policy Framework¹ (the Framework). The Council is not satisfied that a proposal that relies on fossil fuel for energy generation can be considered sustainable, however overarching objectives set out in the Framework are broad. The economic objective would be satisfied as the proposal would help to secure a sufficient and reliable source of electricity to support the local economy, which would also satisfy the social objective by providing secure employment and housing that is not subject to power outages. In terms of the environmental objective set out in the Framework, the proposal would not cause harm to the natural, built or historic environment but would make an effective use of a long term vacant industrial site. Furthermore, the proposal would assist in the transition to low carbon electricity generation by providing backup at times when renewable energy generation is low.
14. In summary the proposal would be acceptable in principle with regard to Policies CC1 and SD1 of the WSLP, which set out the Council's approach to non-wind energy generating schemes and its presumption in favour of sustainable development.

Other Matters

15. The site is located within Flood Zone 3. A site specific Flood Risk Assessment (FRA) is before me, which shows that the risks would be very low. The Council is satisfied that the sequential test is met and I see no reason to disagree. In accordance with the recommendations of the Environment Agency I have added the mitigation measures within the FRA to the approved plan condition.

Conditions

16. I have had regard to the planning conditions that are included within the Council's submission, which are also suggested in the appellant's final comments. I have considered them against the tests in the National Planning Policy Framework and the advice in the Planning Practice Guidance.

¹ National Planning Policy Framework 2019 para 8

17. I have imposed a condition specifying the approved plans as this provides certainty.
18. I have not imposed part a of the suggested noise condition as the submitted noise assessment report suggests that the proposal would give rise to a rating noise level that is equal to the measured background sound level of the closest residential receptor of the site during the daytime. This part of the condition is therefore not necessary. I have imposed parts b and c of the suggested condition to restrict night time operations and ensure that actual operational noise levels are acceptable, to safeguard the living conditions of the closest residential receptor.
19. Although not suggested by the Council, with reference to the appellant's statement I have imposed a condition to limit operation to 2500 hours within a 12 month period. This is in accordance with the back up nature of the proposal and would limit carbon emissions.
20. I have imposed a condition relating to external lighting to ensure that any lighting installed at the site does not harm the potential for the site to serve as a foraging route for bats, and a condition to ensure that nesting birds are not disturbed during construction works. I have also imposed a condition to ensure that any vegetation clearance at the site does not harm nesting birds, reptiles or badgers. This needs to be a pre-commencement condition to ensure that vegetation clearance is carefully managed before the permission is commenced.
21. I have not imposed the suggested condition relating to invasive non-native species found at the site. I am not satisfied that this is necessary as it would only serve to rectify an existing problem at the site which was not created and would not be exacerbated by the proposal.

Conclusion

22. For the reasons above, the appeal is allowed.

Andrew Tucker

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out in strict accordance with the following submitted plans: MHD-PB-01 Rev A Site Location Plan, MHD-ESP-01 Rev A Existing Site Plan, MHD-PSP02 Rev A Planning Layout, MHD-EP-01 Rev A Elevation View (Planning), and the mitigation measures detailed within the Flood Risk Assessment by Clive Onions dated 27 November 2019 V1.
- 3) Once operational the development shall not operate for more than 2500 hours in any 12 month period.
- 4) Once operational the development shall not operate during the night-time (23:00 – 07:00) for more than 20 hours in any 12 month period.
- 5) An acoustic commissioning test and report detailing the audio impacts of the operation of the site shall be submitted to the local planning authority within three months of the full commissioning of the site. Once agreed in writing by the local planning authority, any changes or mitigation required shall be fully adhered to by the site operators.
- 6) Before any external lighting is installed at the site details of such lighting shall be submitted to and approved in writing by the local planning authority. Details shall show how and where external lighting will be installed (including through the provision of technical specifications) and that it has been designed to reduce impacts to bats utilising the area for foraging purposes. All external lighting shall be installed in accordance with the specifications and locations set out in the submitted details, and these shall be maintained thereafter in accordance with the submitted details.
- 7) No removal of hedgerows, trees or shrubs shall take place between 1 March and 31 August inclusive, unless an ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation to the local planning authority that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds at the site.
- 8) Prior to the commencement of ground works any vegetation in the construction area should initially be reduced to a height of 10 centimetres above ground level by hand. Brushings and cuttings should be removed and the remainder left for a minimum period of 48 hours in fine warm weather (limited rain and wind, with temperatures of 10 degrees centigrade or above) before clearing to minimise the risk of harming or killing any reptiles that may be present and to encourage their movement onto adjoining land. This work, which will also identify any constraints posed by badgers or their setts, may only be undertaken during the period between 1 March and 31 August inclusive under the supervision of an ecologist. Once cut, vegetation should be maintained at a height of less than 10 centimetres for the duration of the construction period. Details to confirm these operations, and findings of reptiles or badgers and any mitigating actions required shall be submitted and if necessary approved in writing by the local planning authority.