



Appeal Decision

Site visit made on 7 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal Ref: APP/Y1138/W/20/3259142

Lloyd Maunder Road, Willand, Cullompton EX15 2PJ

- 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 Amzco Development Ltd against the decision of Mid Devon District Council.
 - The application Ref 19/01156/FULL, dated 26 June 2019, was refused by notice dated 18 August 2020.
 - The development proposed is to install a 24MW Reserve Power Plant with associated infrastructure.
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Decision

1. The appeal is allowed and planning permission granted to install a 24MW Reserve Power Plant with associated infrastructure at Lloyd Maunder Road, Willand, Cullompton EX15 2PJ in accordance with the terms of the application, Ref 19/01156/FULL, dated 26 June 2019, subject to the following conditions in the attached schedule.

Application for costs

2. An application for costs was made by Amzco Development Ltd against Mid Devon District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposal is supported by the development plan in this location and, if not, whether there are any material planning considerations that indicate that a decision should be made otherwise than in accordance with the development plan.

Reasons

4. The proposal, as explained in the appellant's Supporting Statement (June 2019), is for a Reserve Power Plant (RPP) with 24 containerised Combined Heat and Power (CHP) units and associated infrastructure. The Statement says that the engines would run on gas which would be produced from the adjoining Anaerobic Digestion (AD) plant and on mains natural gas¹. Other information specifies that the gas from the mains would be certified to come from renewable sources.
5. Subsequently in the application process the submissions refer to the site also providing storage for electricity and reference is made to providing a backup

¹ Paragraph 16 of the Supporting Statement (June 2019)

- for electricity produced from solar farms in the area. The appeal statement has clarified this matter and explains that the units would be hybrid units using batteries and gas engines on green gas or charge with green electric. It is explained that the units would be able to respond in less than 30 seconds from an instruction from the national grid to help stabilise the grid in the event of unexpected surges in demand or loss of generation.
6. There is much debate as to whether the proposal would fall to be considered as a renewable energy scheme and therefore be appropriate as a matter of principle in this location on land defined as countryside. I have carefully considered the detailed submissions of all the parties, including from the appellant, the Council, Willand Parish Council and the CPRE, together with the planning reports, and have had regard to the definition of renewable and low carbon energy in the glossary to the National Planning Policy Framework (the Framework).
 7. The RPP would use gas, either from the adjoining AD plant or from the mains supply (and even if I was to be satisfied that this would be from a renewable source), it would not in itself use a natural and repeating source such as the sun, wind, water or biomass to produce the electricity. The RPP would effectively be a secondary process to produce energy rather than one direct from a renewable source. Equally the storage of electricity produced elsewhere would also not involve the production of renewable energy in itself. Consequently, on the evidence presented to me from the parties, I am not persuaded that this proposed stand-alone RPP should be considered as a scheme that as a primary purpose is one that directly produces renewable energy.
 8. It follows that the scheme would conflict with the requirements of Policy S14 of the Mid Devon Local Plan 2013-2033 (the Local Plan) which sets the types of development which can be acceptable in principle in the countryside. In terms of energy production this policy allowance is limited to renewable energy schemes.
 9. The proposal would be contrary to the development plan in this respect. However, planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
 10. In terms of other considerations, the scheme would provide a RPP that would assist this part of the network with addressing any fluctuations in power demand and indirectly help with the transition to a more environmentally sustainable energy supply system, which can be dependent on prevailing weather conditions. The RPP would make a contribution to providing a reliable and decentralised electricity supply that could be added to the distribution network in a very short space of time. This would generally accord with the approach of Western Power Distribution and their flexible power procurement requirements, their identified constraints within their network and their need to manage demand response.
 11. The intention is that biogas would be used from the adjoining AD plant. This would provide a reliable and immediate supply that could be piped directly and conveniently to the site. The evidence indicates that there would be sufficient biogas to meet the needs of the RPP. Objectors argue that this would reduce biogas being used elsewhere and therefore lead to a greater use of natural gas

within the overall network. However, I am not persuaded that this would necessarily be the case as in due course more biogas can be added to the system, potentially through other AD plants.

12. On those occasions when the mains gas would be used for the turbines the appellant has indicated that the RPP would be indicatively fuelled solely by gas certified by the Green Gas Certification Scheme using Renewable Gas Guarantees of Origin. I have carefully considered all the representations on this matter and judge that I am sufficiently reassured that the approach is sound and that with a suitably worded condition, as suggested by the Council, this requirement could be secured. I consider that such a condition would be necessary to provide confidence that the RPP would complement and support the renewable energy production network.
13. The RPP would also have the ability to store electricity which it is explained would, in all likelihood, be produced from PV arrays in the surrounding area. This would be another benefit of the scheme and accord with the intention to smooth fluctuations in electricity supply and support the renewable energy sector.
14. The proposal would be sited in proximity to the AD plant to benefit from biogas supply and would also be close to the Willand electricity sub-station which has direct connections to the distribution line. In these respects the site is very well located.
15. Drawing these particular matters together, the proposal would provide a valuable component of local infrastructure which would assist with the delivery of a reliable and decentralised energy supply. Furthermore, it would be supported by renewable energy production from the AD plant and local PV schemes. The gas supplied from the wider network could be certified from a green source. Consequently, the scheme would complement the approach in the Local Plan and the Framework to meet the challenge of climate change and the transition to a low carbon energy supply. These are matters which collectively afford substantial weight in favour of the scheme.
16. The site is classified as countryside and forms a section of a wider field. There are views from the land out to more open countryside, however, the site is greatly influenced by the adjoining built development. The site runs parallel with the food processing factory and, while the boundary screening is reasonably effective, the large buildings, industrial appearance, lorry movements and general activity of the factory are still apparent. To the north is the AD plant with the large domes of the digesters and the related buildings and infrastructure. In the wider area, adjoining this built development, is the fairly sizeable water treatment works, the electricity substation with associated overhead cabling and pylons which pass reasonably close to the site, areas of housing and other commercial development, the main railway line and the M5 motorway. The site associates more closely with this extensive built form rather than the adjoining countryside.
17. As a consequence of the surroundings, the introduction of the RPP, despite its appearance, to a section of this grade 4 agricultural land would be a fairly minor and inconsequential addition to the landscape. From the open countryside areas looking towards the site, the backdrop of the much more substantial structures would mean that the development would, with adequate boundary planting, merge with the surroundings without undue landscape

impact. The application was not refused by the Council because of the effect on the character and appearance of the area and I find that the site would be acceptable in this respect. The proposal would, therefore, preserve the character and appearance of the countryside and consequently there would be no conflict with the general approach of Policy S9 of the Local Plan which seeks to sustain the distinctive quality, character and diversity of environmental assets. Criterion (d) of this policy is not directly relevant as it refers only to renewable energy development, although the proposal would have an acceptable local impact.

Planning Balance

18. In conclusion, I am not persuaded, based on the evidence presented, that this stand-alone proposal would be a renewable energy scheme in itself. It would therefore conflict with Policy S14 of the Local Plan which sets the strategic approach to development in the countryside. While the proposal would only be in conflict with this policy it could be considered, given the strategic nature of the policy, that the scheme would therefore conflict with the development plan when considered as a whole.
19. In terms of other considerations, I have set out above a series of benefits of the scheme. These include that the development would help to support a reliable and decentralised energy network thereby helping the transition to a low carbon energy supply and to assist with meeting the challenge of climate change. These are matters which have Local Plan and Framework support and collectively weigh substantially in favour of the scheme.
20. The development would not harm the character and appearance of the countryside and would be a minor and inconsequential addition compared with the adjoining built development.
21. As a consequence, the conflict with Policy S14 of the Local Plan, and with the development plan as a whole, should be considered in the light of the site circumstances including the benefits from locating next to the AD plant and with direct access to the wider electricity network, the substantial benefits which would accrue from the scheme and the lack of visual harm.
22. Taking all these matters into account, I conclude that material planning considerations indicate that a decision should be made otherwise than in accordance with the development plan in this case. Consequently, I conclude that the balance falls in favour of the scheme.

Conditions

23. The Council has suggested a number of conditions which I have considered taking account of advice in the Planning Practice Guidance. In addition to the statutory time limit, a condition requiring the development to be carried out in accordance with the approved plans is necessary in the interests of certainty.
24. A condition is necessary for a scheme to be approved to ensure that the gas supply is attributed to renewable sources in the interests of sustainable sources of supply and the overall intentions of the proposal to support a transition to a decentralised and green energy network. Condition 4 is necessary to complement condition 3 and ensure that the justification for this location adjoining the AD plant takes effect.

25. Conditions regarding the submission and approval of a hard and soft landscaping scheme, agreement to the colour scheme for the plant, equipment and buildings, and details of the fencing, CCTV apparatus and external lighting, are necessary in the interests of protecting the visual appearance of the area.
26. Agreement to surface water details are necessary in the interests of flood prevention and the provision of sustainable drainage. The provision of on-site parking and manoeuvring is necessary in the interests of local amenity and highway safety. Agreement to a scheme of ecological mitigation, protection and enhancement is necessary in accordance with the recommendations in the submitted Ecological Appraisal.
27. While not included in the list of conditions recommended by the Council, the County Senior Historic Environment Officer has explained that the RPP would lie adjacent to the flood plain and groundworks associated with its construction may expose waterlogged palaeo-environmental deposits that could provide information on past land use and man's impact upon it. Reference is made to other sites in the vicinity that have revealed significant amounts of prehistoric archaeological deposits and features in this landscape. In these circumstances, the recommended archaeological condition is judged necessary and reasonable.
28. It is necessary for the sources of gas to the RPP, the ecological mitigation and enhancement matters, and the scheme of archaeological investigation to be the subject of pre-commencement conditions. This is because they are fundamental matters that need to be agreed and in place from the outset of development.

Conclusion

29. In the light of the above, and having regard to the recommended conditions, I conclude that the appeal should be allowed.

David Wyborn

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 approved plans: AMZ04_SP_004 Site Plan, AMZ04_EL_003 Transformer elevations, Proposed Sheet 1 of 2 Standard container, Proposed Sheet 2 of 2 Standard container, Block Plan AMZ04_SP_005 and Site Location Plan AMZ04_SL_003.
- 3) No development shall take place until a scheme to ensure the use of renewable gas has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail the measures proposed to ensure that the approved power plant is only fuelled using bio-methane. Such measures shall include enrolment in the "Renewable Energy Guarantees of Origin" scheme and the "Green Gas Certification Scheme", and a system of rigorous documentary recording, to demonstrate to the Local Planning Authority on request, that all of the gas being used is in accordance with the above schemes. The development shall be operated at all times in accordance with the approved scheme, for the life of the development.
- 4) Prior to the first use of the development hereby approved, the bio-methane outflow infrastructure connecting the proposal to the neighbouring Anaerobic Digester facility, and depicted on the approved plans, shall be fully installed and thereafter retained for the life of the development.
- 5) Prior to the first operation of the development hereby approved, a scheme of hard and soft landscaping, including specimens to be retained, shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding and turfing comprised within the approved scheme shall be carried out in the first planting season following the commencement of development and any trees or plants, including existing specimens to be retained, which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.
- 6) The installation or construction of all plant, equipment, and buildings shall be undertaken using a colour scheme which has previously been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be retained in accordance with the approved colour scheme.
- 7) The development hereby approved shall not be brought into use until the surface water drainage arrangements, including the sub-surface storm water attenuation depicted on the approved plans, have been provided in full. The approved measures shall thereafter be retained for the life of the development.

- 8) Prior to the first operation of the development hereby approved, on-site space shall be provided to allow for the parking of vehicles at the site and to allow for manoeuvring so that vehicles can exit the site in a forward gear, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, these approved elements shall be retained for the life of the development.
- 9) No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted Ecological Appraisal (dated September 2018), has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include proposals for protective measures during the construction process; external lighting; and planting, including a timetable for implementation. The development shall thereafter be undertaken in accordance with the approved details.
- 10) Boundary fencing, CCTV apparatus, and external lighting at the site shall be installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority and shall thereafter be retained as such.
- 11) No development shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved by the Planning Authority. The development shall be carried out at all times in accordance with the approved scheme.

End of Schedule