



Appeal Decision

Site visit made on 19 August 2022

by Mr Cullum Parker BA(Hons) PGCert MA MRTPI MCMI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22 August 2022

Appeal Ref: APP/D3505/W/21/3284011

Land at Churchfield Road, Chilton, Sudbury CO10 0GQ

- 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 Jack Hulme of Balance Power Projects Ltd against the decision of Babergh District Council.
 - The application Ref DC/21/00357, dated 19 January 2021, was refused by notice dated 25 August 2021.
 - The development proposed is described as '*Development and operation of a Standby Energy Generation Facility*'.
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Decision

1. The appeal is allowed and planning permission is granted for Development and operation of a Standby Energy Generation Facility at Land at Churchfield Road, Chilton, Sudbury CO10 0GQ in accordance with the terms of the application, Ref DC/21/00357, dated 19 January 2021, subject to the conditions set out in Appendix A.

Application for costs

2. An application for costs was made by Mr Jack Hulme of Balance Power Projects Ltd against Babergh District Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed development would be consistent with local development plan policies and national planning policy which seek sustainable development.

Reasons

4. The proposed development is a gas-powered standby electricity generation facility (also known as a 'peaking plant') comprising three electricity generators connected to the mains gas grid as associated infrastructure. These would be used for a period of 20 to 25 years. The generators would be controlled remotely by the National Grid. At peak demand periods, the facility could be called upon to burn natural gas from the mains grid to generate electricity, which would be exported to a nearby electricity substation. The facility would, therefore, burn fossil fuel to produce power, resulting in carbon emissions. This would amount to roughly 2.2million kilograms of carbon per annum were the facility operated at a maximum of 2'500 hours per annum. This could power just under 23'000 homes when required.

5. Policy CS13 of the *Babergh Local Plan 2011-2031, Core Strategy & Policies (Part 1 of New Babergh Local Plan) February 2014* (LP), indicates that 'all new development will be required to minimise dependence on fossil fuels and make the fullest contribution to mitigation of climate change through adopting a sustainable approach to energy use'. Policy CS15 of the LP requires in implementing sustainable development in Babergh proposals should address climate change through design, adaption, mitigation and by incorporating or producing sources of renewable or low carbon energy'. I also note that the Council has declared a 'Climate Emergency' along with the Suffolk Climate Change Partnership (SCCP) with an aspiration to have a carbon neutral portfolio by 2030¹.
6. Viewed out of context, it is clear that the proposal could conflict with the Climate Emergency declaration and with the policies of the LP indicated. However, planning seeks to act in the wider public interest and the development should be considered in the context of the government's objective of mitigating and adapting to climate change. This includes moving to a low carbon economy, as expressed in paragraph 8c) of the *National Planning Policy Framework 2021* (the Framework). Paragraph 152 of the Framework indicates that the planning system should support the transition to a low carbon future in a changing climate and support renewable and low carbon energy and associated infrastructure.
7. The *Overarching National Policy Statement for Energy (EN-1)* July 2011 sets out the Government's policy for delivery of major energy infrastructure, and how it will meet key goals on carbon emission reductions. To summarise, it says, at paragraph 3.3.11, that an increase in renewable electricity is essential, but that some renewable sources are intermittent. It recognises that, even when the UK's electricity supply is almost entirely decarbonised, fossil fuel power stations may still be necessary for short periods when renewable output is too low to meet demand. As a consequence, paragraph 3.3.12 says that an increased reliance on renewables will result in a need for more total electricity capacity, with a larger proportion being built only, or mainly, to perform back-up functions.
8. I also acknowledge that the Energy White Paper published in December 2020 continues to recognise that an electricity supply based predominantly on intermittent wind and solar generation, must be supported by alternative sources of power to ensure its reliability. Short-term dispatchable generation providing peaking capacity, which can be flexed as required, is specified as one such alternative.
9. The overall trend within the Policy Statement, Energy White Paper and Framework is clear. There is a need for standby energy generators as supporting infrastructure; even when moving to a fully renewable or low carbon electricity future.
10. In this respect, the proposed development would contribute to the reliability of the electricity supply at times of peak demand, potentially providing energy for over 22'000 households. As such it would support the overall national trend to move away from fossil fuel generation to a supply based increasingly on renewable energy. Admittedly, the facility would use natural gas and potentially result in the emission of over two million kilograms of carbon over a

¹ See Planning Committee Report, paragraph 4.18

year, if running at full capacity for up to 2'500 hours. Whilst it might appear counter-intuitive to use a fossil fuel which creates carbon for a peak demand facility it is, in a sense, a necessary evil. This is in order to ensure that homes and business can stay powered over the next 20 to 25 years during periods of peak demand and as renewable energies continue to replace traditional fossil fuel burning power stations.

11. I therefore find that the proposal constitutes associated infrastructure that supports a nationwide shift towards renewable and low carbon energy. Consequently, the proposal would accord with the Framework's aims of supporting the transition to a low carbon future in a changing climate.
12. I acknowledge when considered in isolation, the development would result in an increase in carbon emissions. However, it would be a constituent element which would support a national transition to renewable and low carbon energy generation; thereby making an important contribution to an overall reduction in greenhouse gas emissions. By supporting renewable energy generation, and reducing carbon emissions on a national scale, it would help to address the challenges of climate change and energy security. The proposal would, therefore, accord with the aims of CS13 and CS15 of the LP.

Other Matters

13. A number of other matters have been raised by interested parties, including local residents and businesses. I consider a number of these, before coming to an overall conclusion.
14. Near to the appeal site is the Grade I listed church of St Mary's Church, Chilton, with associated graveyard. The church is located within a verdant context with a number of tall trees surrounding it with open fields beyond. The significance of the church derives, in part, from its archaeological, architectural and historical interest; including the link with the nearby Grade II listed Chilton Hall, Grade II Registered Park and Garden, and former village.
15. The Appellant's *Historic Environment Assessment* concludes that the magnitude of change would be 'negligible'² and the effect would be no greater than 'less than substantial' as set out in Paragraph 202 of the Framework. When considering any harm to setting, the Council's Heritage Officer is reported in the Committee Report³ as finding that the development would 'not damage the setting of the church'. Given that the proposal would be located within the context of an existing industrial estate and experienced within that, I see no reason to disagree with the views of the Council's heritage expert.
16. Whilst there would be a change to the context of the area, the church itself and other nearby heritage assets are relatively self-contained by mature and established planting. Mindful of my duties under s66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended (PLBCAA), I find that the proposal would not have a negative impact on the setting of nearby heritage assets, including the Grade I listed church of St Mary's. Accordingly the proposal would preserve the setting of nearby listed buildings as required under s66 of the PLBCAA.

² Historic Environment Assessment, by Heritage Archaeology, May 2020, Page 17, Paragraph 5.2,

³ Committee Report, Item No. 6B, Reference DC/21/00357, Paragraph 6.1

17. With regard to concerns over the potential impact of users of the Public Right of Way (PROW) on the eastern edge of the site, from my site inspection I saw that the boundary of this consists of tall trees and hedges. These would provide screening for the appeal site – as they currently do for the wider industrial estate – for most of the year. Whilst users of the public footpath might experience noise and/or light from the proposed standby energy generator, this would be for a small part of the PROW kinetic experience, for limited times and periods during the year, and in the context of a PROW which abuts an open field on one side and an industrial estate on the other. I do not, therefore, find that the proposal would erode the enjoyment of users of this PROW significantly greater than already by its specific location.
18. In terms of the proposal not providing local employment benefits, the proposal would create employment opportunities during the construction phase and also in terms of fortnightly site inspections. It would also provide benefits through the National Grid when it is utilised at peak times. These are economic benefits that should be afforded modest weight. Moreover, although the site is allocated under Policy EMO2: Employment Allocation of the LP, it is located within an existing industrial estate with various light industrial uses such as manufacturing, office space, and Royal Mail sorting offices. Accordingly, I do not find that the proposal would conflict with this policy.
19. With regard to air quality impacts, as detailed within the Appellant's final comments, a Bespoke Environment Permit would be required prior to the operation of the facility under the Environmental Permitting Regulations 2016, as amended. This would be issued by the Environment Agency. Whilst recognising that the methodology between the planning and environment permit regimes differ, (and it is only the former which is within my remit to determine), it is clear that in planning terms as confirmed in the air quality assessment, the proposal would be within local air quality objectives.
20. Moreover, it is clear that both the Appellant and the Council are cognizant with further actions outside of the planning system they would need comply with to minimise any potential impact on air quality. Similarly, I recognise the concerns of the Parish Council and local residents regarding the potential impacts of emissions from the generators on public health. However, the Council's Environmental Management Team raised no objections provided operation is limited to no more than 2'500 hours per annum of use, and advise that detailed control of emissions would be subject to an Environmental Permit issued by the Environment Agency as the enforcing agency (who also raise no objections). The evidence does not, therefore, indicate that emissions from the development would result in any harm to human health.
21. Given the location of the appeal site within an existing industrial estate, it would not be unusual to have a mix of noisy and less noisy uses operating. The proposal seeks the erection of an acoustic fence on the side of the site with the nearest building, which would assist in mitigating any noise impacts. This, and other mitigation measures, could be reasonably controlled through appropriately worded conditions. Concerns have also been expressed regarding the potential for light pollution. It is unclear to what extent lighting would be required, but to avoid any harm to landscape quality or residential amenity as a result of the proposal, I have imposed a condition requiring prior approval of any external lighting to be installed.

22. My attention has been drawn to a potential development adjacent to the appeal site and between the appeal site and the Royal Mail warehouse. This was submitted after planning permission was refused for the appeal site. I understand that that proposal seeks the creation of an outdoor 'wellness' garden area, retail kiosk, covered seating area and pergola together with electric car charging points for up to eight vehicles. The planning merits of such a proposal are for others to consider.
23. Nonetheless, the appeal site is located within an industrial estate that is designated for employment land uses. There are alternate areas for employees to seek refuge from the hustle and bustle of the industrial estate; such as that found at the nearby church and graveyard. I do not, therefore, find that the recent submission of that scheme, which followed the refusal of the appeal scheme, provides justification that alters my findings in respect of the acceptability of the proposal.
24. Concerns have been raised over the validity of the Appellant's Ecological Impact Assessment. This contains a number of mitigation measures including translocation of the Common Lizard and improved habitat for the reptile population. The proposal would also provide enhancements including landscape planting with native species, bird nest boxes and wildlife refuges such as deadwood hibernacula. Cumulatively these would provide a net gain for biodiversity for the site.
25. I am reinforced in this assessment by the fact that no objections have been raised by the Council's ecological advisers, so long as mitigation and enhancement measures are implemented. This could be achieved by means of a planning condition(s). In terms of the 'Duty to conserve biodiversity' under s40 of the *Natural Environment and Rural Communities Act 2006*, as amended, placed upon public bodies in exercising its functions, the proposal would restore and/or enhance a population and/or habitat. This decision has therefore complied with this duty.
26. Concerns have been raised as to the potential impact on the efficiency of solar panels located on the sloping roofs on the adjacent building to the north. The fence nearest to that building would be a mesh/lightweight 'Paladin fence' of around 2.4 metres in height. The proposed acoustic fence would be around 5.5 metres high, with an opaque appearance in order to contain/minimise sound emitting from the appeal site. This would be around the same height as the eaves of the adjacent building to the north, but with a sizeable gap between the acoustic fence and it. Given the gap between the acoustic fence and adjacent building I find it unlikely that the proposal would result in any significant loss of energy creation from the solar panels. This does not justify the dismissal of the appeal scheme.
27. In terms of the potential impact on the solar panels and light getting to them, I have been directed to caselaw of *William Ellis McLennan vs Medway Council and Ken Kennedy [2019] EWHC 1738 (Admin)*. In this instance, I have taken into account the potential impact of the proposal on the solar panels on the adjacent building. However, I do not find that they weigh against the grant of planning permission here given my analysis above.
28. Similarly, I note that a daylight assessment has not been submitted. However, given the distances between fences and openings in the flank wall of the adjacent building to the north (which predominantly serve office space) I do

not consider that the proposal would lead to a materially harmful loss of light into those openings.

29. Taking into account all other matters raised by interested parties, I do not find, whether individually or cumulatively, that they provide justification for the dismissal of the appeal scheme.

Conditions

30. A number of conditions have been suggested by the local planning authority and interested parties. I now consider these in light of Paragraph 56 of the Framework, and the guidance contained within the national Planning Practice Guidance and the use of planning conditions.
31. Conditions relating to the implementation of the permission within three years and in accordance with the submitted drawings are reasonable and necessary for the avoidance of doubt and to provide certainty.
32. The proposed conditions restricting operation of the facility to no more than 2'500 hours per any 12-month period, limiting the use to a period of 25 years, that the site is restored to its undeveloped state, and a five year review period for operational need are reasonable and necessary. These conditions would ensure that the proposals air quality emission effects are limited in duration and that when the identified Standby Energy Generation Facility use is no longer required the site is cleared and available for alternative employment uses.
33. With regard to highway safety; conditions for visibility splays, vehicular access specifications, measures to reduce surface water run-off onto the highway, and the submission of a Construction Management Plan, are reasonable to minimise the impact of the proposal on the local highways network and its operation. The submission of details relating to hard and soft landscaping, and planting are necessary in order to contribute positively to the character and appearance of the area.
34. The carrying out of work in accordance with the Ecological Impact Assessment, and the submission and approval of a Reptile Method Statement and Landscape and Ecological Plan (LEMP) are necessary and relevant to planning in order to protect, conserve and enhance biodiversity. Conditions requiring the erection of an acoustic barrier, and the submission and approval of a verification noise assessment are necessary and reasonable in order to protect the amenity of occupiers of nearby buildings.
35. Lastly a condition for the submission and approval of external lighting is necessary in order to minimise night-time illumination on the character of the area and any subsequent effect on it night-time biodiversity.

Conclusion

36. For the reasons given above, I conclude that the appeal should be allowed.

C Parker

INSPECTOR

Appendix A – List of conditions imposed on 3284011

- 1) The development hereby permitted shall be begun not later than the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 024-PI-Sudbury Primary – Existing Plan – Rev J
 - 024-PI-Sudbury Primary – Proposed Plan – Rev J
 - 024-PI-Sudbury Primary – Aerial Plan – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation AA – Rev J
 - 024-PI-Sudbury Primary – Existing Plan Topo – Rev J
 - 024-PI-Sudbury Primary – Location Plan – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation BB – Plant – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation CC – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation CC – Plant – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation DD – Plant – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation BB – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation DD – Rev J
 - 024-PI-Sudbury Primary – Proposed Elevation AA – Plant – Rev J
 - Crm.366.009.No.R.003_Sudbury Noise Assessment Final
 - Crm.366.009-Enz-01-00-Xx-00.101 – Landscape Strategy Plan P04
 - Crm.366.009.Ec.R.001 – Ecia Rev D Final
 - J4124 Babergh_Sudbury Primary Thep Facility_F3
- 3) Once operational the development shall not operate for more than 2'500 hours in any 12-month period. A record of the hours of operation over a period of at least 12 months, with a month-by-month break down of operational hours and non-operational hours, shall be made available for inspection by the local planning authority.
- 4) This permission shall enure for a period of 25 years from the date of this decision only, after which time the hereby permitted use shall permanently cease.
- 5) Within six months of the end of the operational life of the development 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 Number 024-PI-Sudbury Primary – Location Plan – Rev J. The land shall be subsequently restored to its undeveloped state in accordance with a scheme submitted to and approved in writing by the local planning authority.
- 6) The operational need for the hereby permitted development shall be reviewed five years from the date of being first brought in to use and every five years thereafter. A copy of this five-yearly operational need review should be provided to the local planning authority. When there is no longer an operational need for the development the hereby permitted use shall be discontinued, and represent the end of the operational life of the development.
- 7) Before the access is first used visibility splays shall be provided with an X dimension of 2.4m and a Y dimension of 43m and thereafter retained in the specified form. Notwithstanding the provisions of Part 2 Class A of the *Town & Country Planning (General Permitted Development) Order 1995* (or any Order revoking and re-enacting that Order with or without modification)

no obstruction over 0.6 metres high shall be erected, constructed, planted or permitted to grow within the areas of the visibility splays.

- 8) Any new vehicular access shall be laid out and completed in all respects in accordance with drawing 024-PI-Sudbury Primary – Proposed Plan – Rev J with a minimum entrance width of 4.3 metres and made available for use prior to use. Thereafter the access shall be retained in the specified form.
- 9) Before the development is commenced details shall be submitted to and approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained thereafter in its approved form.
- 10) No development shall take place until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The CMP shall include:
 - a) Details of measures to prevent mud from vehicles leaving the site, including wheel-washing facilities, and details of measures to control the emission of dust and dirt during construction;
 - b) A noise and vibration control plan, including how noise and vibration will be monitored and controlled at the adjacent buildings, with details of noise limits identified;
 - c) A waste disposal policy (including stating no burning on site);
 - d) Details of any site construction office, compound, and ancillary facility buildings;
 - e) Construction and delivery hours, and a specific point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be recorded and addressed, including an appropriate phone number;
 - f) A photographic survey to be carried out to determine the condition of the carriageway and footways prior to commencement of the works;
 - g) Means of access for construction traffic and haul routes for construction traffic on the highway network and monitoring and review mechanisms;
 - h) Provision of boundary hoarding and lighting;
 - i) Details of provision to ensure pedestrian and cycle safety;
 - j) Programme of works (including measures for traffic management and operating hours);
 - k) Parking and turning for vehicles of site personnel, operatives and visitors;
 - l) Areas for loading and unloading of plant and materials and areas for storage of plant and materials.

The approved Plan shall be adhered to throughout the construction period for the development.

- 11) No development above slab level shall take place until there has been submitted to and approved in writing by the local planning authority, a scheme of hard, soft and boundary treatment landscaping works for the site, which shall include any proposed changes in ground levels and also accurately identify spread, girth and species of all existing trees, shrubs and hedgerows on the site and indicate any to be retained.
- 12) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out in full during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be approved in writing by the local planning authority up to the first use of the development.

Any trees, hedges, shrubs or turf identified within the approved landscaping details (both proposed planting and existing) which die, are removed, seriously damaged or seriously diseased, within a period of 10 years of being planted or in the case of existing planting within a period of 5 years from the commencement of development, shall be replaced in the next planting season with others of similar size and species.

- 13) All mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecological Impact Assessment (Enzygo Ltd, January 2021). This may include the appointment of an appropriately competent and qualified person for example an ecological clerk of works (ECoW,) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
- 14) A Reptile Method Statement shall be submitted to and approved in writing by the local planning authority. This will contain mitigation measures and/or works to reduce potential impacts to reptiles during the construction phase. The measures and/or works shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.
- 15) A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by the local planning authority prior to slab level of the development. The content of the LEMP shall include the following:
 - a) Description and evaluation of features to be managed;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan;
 - h) Ongoing monitoring and remedial measures.

The LEMP shall also include details of any legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved plan will be implemented in accordance with the approved details.

- 16) Noise levels from the development hereby permitted shall be mitigated such that sound rating levels do not exceed 50dB LAeq,1hr at the façade of the adjacent Sudbury Court offices when adjusted for acoustic content, as per BS4142 Noise Assessments and Methods (or equivalent or replacement standards), and reflection from the building façade.
- 17) Prior to bringing the development into operation, a verification noise assessment shall be undertaken and submitted to the local planning authority for its written approval to ensure that the above noise levels are met during conditions where the development is in operation.

If further mitigation measures need to be employed, and their effect verified, where necessary to meet the specified noise levels, such details shall be submitted to and approved in writing by the local planning authority and implemented and retained thereafter in accordance with any such approval.

- 18) Prior to first operation (including testing) an acoustic barrier shall be installed as per the specifications in sections 5.1.3 and figure 5-2 of the document Noise Assessment: Sudbury Standby Energy Generation Facility' (document reference Crm.366.009.No.R.003_Sudbury Noise Assessment Final, dated January 2021). The barrier shall be designed and installed and thereafter maintained so as to meet the predicted internal noise levels as given in table 5-1 and details of the acoustic performance and construction of the barrier shall be submitted to the local planning authority prior to installation.
- 19) Prior to the erection/installation of any floodlighting or other means of external lighting at the site, details to include luminaire type, operating hours, position, height, aiming points, lighting levels and a polar luminance diagram (based on the vertical plane and marked with 10, 5, 2, 1 and 0 lux contour lines), shall be submitted to and approved in writing by the local planning authority. The lighting shall be carried out and retained as may be approved. There shall be no other means of external lighting installed and/or operated on/at the site.

*****END OF CONDITIONS*****