

Agenda Item 4

Development Control Committee
Meeting to be held on 20th May 2015

Electoral Division affected: Fylde West
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Fylde Borough: application number. LCC/2014/0084
Retention of the site compound and access track for a further three years to allow pressure testing and seismic monitoring of the Bowland Shale reservoir, followed by plugging and abandonment of the existing exploratory well and site restoration. Grange Road Shale Gas Exploration Site, Land on south side of Grange Road, Singleton.

Appendix 1 – Application Report to Development Control Committee 25/2/15.

Appendix 2 – Minute of Item 5 to the Development Control Committee meeting of 25/2/15

Appendix 3 – Development Plan Policies

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Executive Summary

Application - Retention of the site compound and access track for a further three years to allow pressure testing and seismic monitoring of the Bowland Shale reservoir, followed by plugging and abandonment of the existing exploratory well and site restoration. Grange Road Shale Gas Exploration Site, Land on south side of Grange Road, Singleton.

The application was considered by the Development Control Committee at the meeting of 25th February 2015. The Committee resolved that it was minded to refuse the application for the following reason:

That the application be **refused** as it is contrary to policies SP2 of the Fylde Borough Local Plan, CS5 of the Lancashire Minerals and Waste Development Framework and DM2 of the Lancashire Minerals and Waste Local Plan.

It was also resolved that a further report setting out draft reasons for refusal be reported back to the Committee for confirmation of the reasons why the proposal is contrary to policies SP2, CS5 and DM2.

This report includes a summary of the presentations received as reported on the update sheet to the Committee and considers the policies referred to by the Committee.

Recommendation – Summary

Based upon the Committee's conclusion that the impacts of the proposal are considered so great as to render the proposal unacceptable, then the application be

refused for the following reason:

The proposal is contrary to Policy CS5 of the Lancashire Minerals and Waste Development Framework Core Strategy DPD (Managing our Waste and Natural Resources) and Policy DM2 of the Lancashire Minerals and Waste Local Plan (Site Allocation and Development Management Policies – Part One) in that the retention of the site in its current form and scale would adversely affect the landscape character of the area.

Background

This application was considered by the Development Control Committee at the meeting on the 25th February 2015. The Committee resolved to refuse the application having concluded that it is contrary to Policy SP2 of the Fylde Borough Local Plan, Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan (Site Allocation and Development Management Policies – Part 1) and Policy CS5 of the Joint Lancashire Minerals and Waste Development Framework Core Strategy Framework DPD (Managing our Waste and Natural Resources).

It was also resolved that the details of the reason(s) for refusal would be reported back to the Development Control Committee for approval.

Applicant's Proposal

The details of the proposal are set out in the report to the Development Control Committee meeting of 25th February 2015 (**Appendix 1**).

Planning Policy

The following policies were considered to be the most relevant to the proposal (**Appendix 1**):

National Planning Policy Framework (NPPF)

Paragraphs 11 – 14, 17, 56 – 66, 87 – 90, 109, 120 – 125, 142, 144 and 147 are relevant with regard to the requirement for sustainable development, core planning principles, the requirement for good design, conserving and enhancing the natural environment and facilitating the sustainable use of minerals.

Joint Lancashire Minerals and Waste Local Plan – Site Allocation and Development Management Policies – Part One

Policy NPPF 1 Presumption in favour of sustainable development
Policy DM2 Development Management

Fylde Borough Local Plan

Policy SP2 Development in Countryside Areas
Policy EP11 Building Design and Landscape Character
Policy EP15 European Wildlife Sites
Policy EP16 Development affecting SSSI's

Policy EP23 Pollution of Surface Water
Policy EP24 Pollution of Ground Water
Policy EP26 Air Pollution
Policy EP27 Noise Pollution
Policy EP28 Light Pollution

Consultations

A summary of the consultations and representations received is included in the officer report to the Development Control Committee on 25th February 2015 (**Appendix 1**).

The following summarised additional consultee response was reported on the Committee update sheet as follows:

LCC Ecology: If the applicant can demonstrate that the proposed schedule is compatible with avoiding disturbance during the wintering bird season then, and as indicated in Natural England's response (dated 11/02/15), Lancashire County Council would be able to screen the project for the likelihood of significant effects (Habitats Regulations Assessment) and should be able to conclude no likely significant effect on the European site either alone or in combination.

This has been discussed with Natural England, who confirm that where their response (dated 11/02/15) refers to development being carried out in strict accordance with the submitted details; this is a reference to the commitment to avoid undertaking disturbing works during winter, and not to allow spring commencement unless it is clear that spring commencement would be compatible with avoiding disturbance during the wintering bird season.

Representations

Representations received from Friends of the Earth on behalf of Singleton Against a Fracked Environment (SAFE) were summarised on the Committee update sheet as follows:

Friends of the Earth maintain the grant of planning permission would be unlawful in respect of ecological matters, that the officer report is flawed in respect of matters relating to noise, that there are unanswered questions regarding well integrity and ground water and that alternatives have not been properly considered. The matters raised were also included in the presentation made to Members of the Development Control Committee by SAFE and were summarised on the update sheet.

Presentations

SAFE made a presentation to Members of the Development Control Committee on Monday 23rd February a summary of which was reported on the update sheet as follows.

The first part of the presentation maintained that no EIA has been carried out and therefore assessments regarding Special Protection Area species (particularly pink footed geese and whooper swans) are inadequate and faulty; that the application to collect seismic data is linked to applications at Roseacre Wood and Preston New

Road which have not been determined and therefore this application is premature; and that the application is for a change of use in the initial application, that pressure monitoring is an appraisal activity which has the potential to lead to production and as such the site needs to be assessed with this in mind and if so would require EIA.

The second part of the presentation maintained the regulatory regime for developments of this nature is inadequate; that wells leak, fugitive emissions of gasses from the well can migrate through various routes to atmosphere and ground water; no cement bond logs were made for the well; nobody has a full understanding of the integrity of the well; the well should not be allowed to be abandoned until more details of it are understood; the application should be rejected as other regulators have confirmed they will not be monitoring abandoned wells.

Public Speaking

The committee received presentations from 14 speakers opposing the application, 1 speaker in support of the application and from the applicant. The issues raised are summarised as follows:

The speakers opposing the proposal reiterated many of the issues raised in the representations received and as part of the presentation made by SAFE. It was maintained that there were conflicts of officers views with the applications at Preston New Road and Roseacre Wood; that the proposal is contrary to policies SP2, SP5, CS5 and DM2; no alternatives had been considered; the application is premature and should be refused; no assessment against other projects in the area had been made to assess cumulative impacts; there would be impacts on protected species and the SPA for which there is too little information despite it being available; the long term impacts should be assessed at the appraisal stage; horizontal drilling from less sensitive locations should be considered; what long term monitoring of the well would be carried out; this would be a storage well to dispose of waste water; the well is split and there are too few details to ensure safety; Only one of the Royal Society's recommendations have been implemented; the applicant has not demonstrated high standards with reference to leakages and abandonment at Preese Hall; migration of gas and water contamination; there is no risk of supply of gas; this will perpetuate the reliance on hydrocarbons in the future will all the negative impacts

The speaker in support of the proposal was of the view that the application is for the use of an existing borehole for monitoring purposes and to provide seismological information that would not generate any issues and would not be noisy or dangerous.

The applicant maintained that the proposal would provide geological and seismological information to meet one of the Royal Society's recommendations; it would not involve fracking; no fluids would be used and no gas would be extracted; principle works would be carried out over a 2 week period; cement bond logs have been carried out; there would be limited views of the principle activities; there is good access with limited HGV usage; noise levels would be short term and low; ground water is protected by the well casings and a protective ground membrane; there would be no ecological impacts on the SPA as a result of project timing and the proposal accords with the policies of the development plan and should be supported.

Further details of the presentations are recorded in the minutes of the meeting an extract of which is appended to this report (**Appendix 2**).

Advice

After hearing the officer presentation and the public speakers opposing and supporting the proposal the Committee resolved:

- i) That the application be **refused** as it is contrary to policies SP2 of the Fylde Borough Local Plan, CS5 of the Lancashire Minerals and Waste Development Framework and DM2 of the Lancashire Minerals and Waste Local Plan.
- ii) That a further report setting out draft reasons for refusal be reported back to the committee for confirmation of the reasons why the proposal is contrary to policies SP2, CS5 and DM2.

The policies referred to in the resolution are set out in full in **Appendix 3**.

Policy CS5 of the Lancashire Minerals and Waste Development Framework was not listed in the policy section to the report although was referred to in the advice section to the report (**Appendix 1**).

Policy CS5 was referred to in presentations made objecting to the proposal; it was maintained that the application was in breach of this policy as it does not accord with the specified criteria.

The first part of the policy relates to transport and alternatives to roads. The second part of the policy refers to the development of criteria for the site identification process and for considering proposals brought forward outside the plan-making process to ensure they meet specified environmental criteria. These criteria have been developed as part of the Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies – Part One.

Policy CS5 is set out in full in **Appendix 3**. With regard to those criteria:

- (i) There is no evidence that the proposal would have an unacceptable impact on natural resources including water, air, soil or biodiversity. The borehole has been drilled to meet the requirements of the Health and Safety Executive. The proposal is for pressure testing of the well. No fracking is proposed and there would be no release of shale gas other than in the immediate area of the perforated casing. The site has been developed, soils are being stored for restoration purposes and the site is lined with a controlled drainage system to protect ground and surface water from contamination. Mitigation measures are proposed to ensure major works are carried out outside the wintering wildfowl season. There would not be any further impacts on biodiversity and Natural England and the county Ecologist has raised no objection subject to the employment of mitigation measures.
- (ii) The site does not fall within close proximity to or within any feature or landscape of historic and cultural importance.

- (iii) The proposal would not adversely contribute to fluvial flood risks or surface water flooding.
- (iv) It is proposed to retain the site as a hard secure surface for a further two year period after which it would be restored in a similar way to the sites at Preese Hall and Annas Road. Whilst there would be some extended visual impact it would still be temporary and in the long term would not adversely affect the character of Lancashire's landscapes. However, whilst temporary, the development would (in total) have existed for some 7 years and the Committee gave significant weight to criteria (iv) of the Policy; that "*proposals for mineral workings incorporate measures to conserve, enhance and protect the character of Lancashire's landscapes*"
- (v) The borehole has already been drilled. The development works proposed would be over two, two week periods with the plugging and abandoning of the well over a 4 week period. These works and the monitoring operations would not adversely affect the amenity, health, economic wellbeing and safety of the population. High operating standards on the site have been employed to date along with sensitive working practices, environmental management systems that have and would continue to minimise harm and nuisance to the environment and local communities throughout the life of the development and which could be controlled by condition.
- (vi) No essential infrastructure and services to the public would be affected.
- (vii) Restoration of the site could be controlled by condition in a similar way to those sites at Preese Hall and Annas Road that have been abandoned and successfully restored.

Given the weight that the Committee gave to the site being retained in its current state for a further temporary period with the resulting visual impact, the Committee could come to a view that the proposal is contrary to criteria (iv) of the policy.

Policy SP2 of the Fylde Borough Local Plan was referred to in the policy section of the report and the application was assessed against this policy (**Appendix 1**). The conclusion was that the proposal is not contrary to this policy.

Fylde Borough Council raised no objection to the proposal but requested that a scheme of appropriate restoration be carried out within the three year development period and that the County Council reconsider the need for the submission of an updated EIA. Conditions were proposed requiring restoration of the site and a 5 year period of aftercare on completion of the development. A screening opinion of the current application was carried out; it was concluded that the development does not constitute EIA development. Fylde Borough Council does not consider the proposal to be contrary to Policy SP2 of their local plan.

The Committee heard in representations that the application was in breach of this Policy as mineral extraction does not fall within any of the accepted categories in a countryside area.

The policy is aimed at controlling development in the countryside and sets out those development types that may be found acceptable, essentially those associated with agriculture, horticulture, forestry, tourism, re use of old buildings, redevelopment of existing sites and minor extensions to dwellings and other buildings. The policy does

not (and should not) refer to mineral developments. Mineral developments can only be carried out where the mineral occurs and are assessed against the policies of the Lancashire Minerals and Waste Development Framework and the Lancashire Minerals and Waste Local Plan Site Allocation and Development Management Policies – Part One.

The proposal relates to the exploration of mineral reserves; minerals can only be worked where they occur and inevitably given the nature of such are usually undertaken in open countryside areas. However, it is not unusual for mineral operations to still have some adverse impacts and the acceptability of such must be weighed against the benefits of exploring, appraising and winning minerals in such areas. The principle of development in this location, albeit for a temporary period, has already been established. It is therefore a question of balance as to whether the impacts associated with the continued presence of the site for a further temporary period would be acceptable. Whilst some reference has been made to directional drilling from what may be considered more appropriate locations within or on the periphery of urban areas, this does not take into account the geological conditions and the likely passage of any drilled borehole through fault lines potentially giving rise to seismic movement and contamination pathways, issues that have been raised by other objectors and who are keen to prevent such risks. The borehole has been drilled on this site and there would be no further impacts associated with such.

It is therefore concluded that the retention of the site for a further temporary period would not be contrary to Policy SP2 of the Fylde Borough Local Plan and to refer to such in any reason for refusal would not be sustainable.

Policy DM2 of the Lancashire Minerals and Waste Local Plan is a central policy against which all minerals developments are considered. The policy supports minerals developments providing the minerals planning authority is satisfied that all material, social, economic or environmental impacts that would cause demonstrable harm can be eliminated or reduced to acceptable levels.

When assessing proposals the policy requires account to be taken of the proposal's setting, baseline environmental conditions and neighbouring land uses, together with the extent to which its impacts can be controlled in accordance with current best practice and recognised standards.

In accordance with Policy CS5 and CS9 of the Core Strategy, developments will be supported for minerals or waste developments where it can be demonstrated to the satisfaction of the mineral and waste planning authority, by the provision of appropriate information, that the proposals will, where appropriate, make a positive contribution to the:

- Local and wider economy
- Historic environment
- Biodiversity, geodiversity and landscape character
- Residential amenity of those living nearby
- Reduction of carbon emissions
- Reduction in the length and number of journeys made

This will be achieved through for example:

- The quality of design, layout, form, scale and appearance of buildings
- The control of emissions from the proposal including dust, noise, light and water.
- Restoration within agreed time limits, to a beneficial after use and the management of landscaping and tree planting.
- The control of the numbers, frequency, timing and routing of transport related to the Development.

The Committee heard in presentations that the application was in breach of this Policy as the application had not demonstrated that all material, social economic and environmental impacts have been sufficiently addressed in order to reduce those impacts to an acceptable level.

The site has been present since 2010, planning permission having been initially granted for the drilling of a borehole and subsequent fracking. The borehole has been subsequently drilled but the site was not fracked and has been held in abeyance since. Given the nature of the proposed works it is considered that the retention of the site would not generate social, economic or environmental impacts that could not be eliminated or reduced to acceptable levels.

However, in light of representations received and the weight that the Committee attached to the site being retained in its current state for a further temporary period maintaining its current visual appearance and the visual impact associated with such, the Committee could come to a view that the proposal is contrary to the policy in that it would adversely affect the landscape character of the area.

Human Rights

The proposal raises issues relating to the protection of amenity and property under Article 1 of the 1st Protocol of the Human Rights Act 1998.

In view of the scale, location and nature of the proposed development it is considered that no Convention rights as set out in the Human Rights Act 1998 would be affected. However, if the application is to be refused, the rights of the applicant must also be considered.

Article 6 is the determination of an individual's civil rights and obligations. Article 6 provides that in the determination of these rights, an individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. Article 6 has been subject to a great deal of case law. It has been decided that for planning matters the decision making process as a whole, which includes the right of review by the High Court, complied with Article 6.

Conclusion

It is considered that notwithstanding the resolution of the committee it would be unsustainable to refuse the application on the basis it is contrary to Policy SP2 of the Fylde Borough Local Plan. Given the weight the Committee attached to the criteria of policies CS5 and DM2, it could conclude that the retention of the site in its current form and scale for a further temporary period would be visually unacceptable and would adversely affect the landscape character of the area contrary to these policies:

Recommendation

If the Committee concludes that the impacts of the proposal are considered so great as to render the proposal unacceptable, then the application be refused for the following reason:

The proposal is contrary to Policy CS5 of the Lancashire Minerals and Waste Development Framework and Policy DM2 of the Lancashire Minerals and Waste Local Plan in that the retention of the site in its current form and scale would adversely affect the landscape character of the area.

Local Government (Access to Information) Act 1985

List of Background Papers

Paper	Date	Contact/Directorate/Ext
LCC/2014/0084		Jonathan Haine/Environment/54130
05/12/0003		
05/10/0091		

Reason for Inclusion in Part II, if appropriate

N/A

