

PLANNING COMMITTEE

REPORT OF THE HEAD OF PLANNING AND REGENERATION

19/01156/FULL – Land at NGR 302839 111143 Lloyd Maunder Road Willand

Description of Development:

Installation of a 24MW Reserve Power Plant with associated infrastructure.

REASON FOR REPORT:

To consider the reasons for refusal proposed by the Planning Committee at the meeting of 12th February 2020.

RECOMMENDATION

Grant permission subject to conditions.

Relationship to Corporate Plan:

Environment

- *Seek new ways to improve our operational efficiency, reducing energy use and lowering our carbon footprint*

Financial Implications:

Any appeal may require the appointment of planning consultants to assist in the defence of the reasons for refusal. The applicant may make an application for costs on any appeal against the Council and such costs claims are made by demonstrating that there has been unreasonable behaviour. That being the case, Members must be able to clearly justify each and every reason for refusal.

Legal Implications:

The report identifies the risks in proceeding with an appeal based on the reasons given by the Committee on 12th February, 2020 – both in terms of outcome of an appeal and the risk of a costs decision. The Council will still need to prepare draft planning conditions for the appeal. External legal representation may be required if the appeal proceeds to a public inquiry.

Risk Assessment:

If the Planning Committee decides to refuse the application for reasons that cannot be sustained at appeal there is a risk of a successful costs claim against the Council for reasons of unreasonable behaviour.

At the Planning Committee held on 12th February, 2020 Members of the Planning Committee resolved that they were minded to refuse the above application, contrary to officer recommendation, and requested a further report to consider –

1. The Committee's draft reasons for refusal and
2. The implications of refusing the application

REFUSAL The Committee was minded to refuse the application on the following grounds:

- In the open countryside
- Not producing renewable energy
- Not an energy efficient measure
- Not in accordance with Policies COR5, DM5 or COR 18(f) of the Local Plan
- Cumulative impact with other Devon renewable energy plants in the area.

1. The Committee's reasons for refusal

Set out below are two reasons for refusal which could appear on the planning decision notice, and these combine the above factors, apart from "energy efficiency", which is not a material planning consideration and therefore does not belong on a decision notice:

- A) The proposed development would result in the creation of a power plant in the open countryside, which would not generate renewable energy. As such, the proposal does not meet the criteria for acceptable development outside settlement limits and is contrary to Policy COR18 of the Mid Devon Local Plan.
- B) Taken together with other energy facilities in the locality, the proposal would have an adverse impact on the visual and general amenities of the area, contrary to Policy DM2 of the Mid Devon Local Plan.

2. The implications of refusing the application

- 2.1 In respect of the determination of planning applications, the planning Acts (section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004) state that they should be determined in accordance with the Development Plan unless material indications indicate otherwise. The Development Plan is therefore the primary consideration and the NPPF acts as non-statutory guidance, which should be taken as a material.

3. Consideration of the proposed reasons for refusal

- 3.1 The following section will assess the evidence to support the aforementioned suggested reason for refusal.

3.2 Reason for Refusal A)

The proposed development would result in the creation of a power plant in the open countryside, which would not generate renewable energy. As such, the proposal does not meet the criteria for acceptable development outside settlement limits and is contrary to Policies COR5 and COR18 of the Mid Devon Local Plan.

- 3.3 The proposed development is not an obvious renewable energy facility in the way that a wind or solar farm is. The proposal would involve the installation of gas-fuelled plant, which generates electricity for the national grid. Whether or not the proposal

can be defined as a renewable energy facility will depend on the nature of the gas being used to fuel it. If the fuel is natural gas, then the facility would be fuelled using a fossil fuel and could not reasonably be considered a renewable energy facility. If, however, the gas is from a renewable source, such as biomass, then the facility could reasonably be considered a renewable energy power plant. Whether or not the proposal generates renewable energy is of significance because the site is located in the countryside, and Policy COR18 of the Local Plan, whilst generally resisting development outside settlement limits, does allow for exceptions, and these include renewable energy development.

- 3.4 The applicants have stated that the plant would be fed by gas directly from the neighbouring anaerobic digester (AD) facility and from gas derived from the national grid. The gas received from the AD facility is renewable because it is derived from biomass. Gas from the national grid is from a range of sources and includes gas derived from biomass (renewable) and natural gas (non-renewable). All of this gas, derived from many sources, is mixed together once it is within the national gas infrastructure. In order to provide a guarantee that renewable gas would be used to fuel the facility, the applicants have pledged to sign up to the Green Gas Certification Scheme (GGCS) using Renewable Gas Guarantees of Origin (RGGO), and your officers have recommended a planning condition to secure this arrangement.
- 3.5 The GGCS provides a means of tracking the commercial transactions of bio-methane through the supply chain. It tracks the green gas from its injection into the gas distribution network and its sale to a supplier or trader, through to when it is sold on to an end-use consumer. It is important to note that the GGCS tracks the contractual flows of green gas rather than the physical flows of green gas. Since each unit of green gas injected into the network displaces the need for a unit of conventional, or natural gas, the contracts are the only practical means of tracking the green gas from production to end use.
- 3.6 The GGCS system labels each registered kWh of green gas electronically with a unique identifier known as a Renewable Gas Guarantee of Origin (RGGO), rounded to the nearest kWh. This identifier contains, for each kWh of green gas, information in code form about:
 - the technology and feedstock from which it was produced (e.g. biogas from AD, landfill gas or syngas from gasification)
 - the month and year in which it was produced (MM/YY)
 - the part of the UK in which it was produced (England, Wales, Scotland, N. Ireland)
 - the registered producer
 - the kWh number, part of a sequence or range relating to that producer's green gas injected into the grid that month.
- 3.7 Once a licensed supplier registers a sale of gas to an end-use consumer, the GGCS system issues an electronic Green Gas Certificate in the consumer's name. The Certificate is the guarantee of the authenticity and origin of the equivalent amount of green gas injected into the network as it cites the relevant range of RGGOs attached to it. The consumer, in making any claims concerning the green gas, whether for regulatory, commercial or other purposes, can back up the claim with the relevant RGGOs listed on the certificate.
- 3.8 In light of the above, Planning Officers are satisfied that a suitable monitoring and audit scheme can be secured through the use of a planning condition to ensure that the gas being used to fuel the proposed facility is from renewable sources. This being the case, if the audit evidence provided on request does not convincingly

demonstrate that renewable fuel is being used, then enforcement action could be taken. This might involve requiring the operator to compensate for the unacceptable use of any non-renewable gas through the retrospective purchase of renewable gas units, with a failure to do so resulting in a requirement that the use of the facility ceases until such time as the required actions have been taken and confirmed in writing to the satisfaction of the Local Planning Authority. The operator can be required to provide an annual report to the Council detailing the use and source of the facility's fuel, with a failure to do so by the required date, or a failure to demonstrate that the fuel is of acceptable provenance, resulting in sanctions, such as the closure of the facility until such time as acceptable information has been received. The exact form that the monitoring plan would take would be the subject of discussions and agreement between the Council and the applicants, but the main point to take away is that a robust scheme is achievable.

3.9 In relation to costs applications, the Planning Practice Guidance states that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. The following are examples given in the Guidance:

- *Preventing or delaying development which should clearly be permitted, having regard to its accordance with the Development Plan, national policy and any other material considerations;*
- *Failure to produce evidence to substantiate each reason for refusal on appeal;*
- *Refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead.*

3.10 Given that officers are satisfied that a robust scheme of monitoring and compliance can secure the use of sustainable gas, and therefore a renewable energy facility, to refuse the proposal on the grounds that it would not produce renewable energy could be deemed unreasonable. There is an absence of evidence to substantiate the claim that the proposal would not be a renewable energy facility, and it appears that planning permission would be refused despite there being conditions available that, as discussed above, could address the matter at hand. As such, an award of costs is considered to be a distinct possibility should an appeal and corresponding costs application be made.

3.11 Reason for refusal B)

Taken together with other renewable energy facilities in the locality, the proposal would have an adverse impact on the visual and general amenities of the area, contrary to Policy DM2 of the Mid Devon Local Plan.

3.12 Officers have formulated this draft reason based on the draft minutes from the committee meeting, where it was stated that the proposal would have an unacceptable cumulative effect when considered in conjunction with other renewable facilities in Devon. It is not sufficient to say that a proposal would have an unacceptable effect: it must be stated what the alleged harmful effects would be in relation to, and officers have therefore suggested visual and amenity impacts as examples.

3.13 Members' attention is drawn to the following example of unreasonable behaviour in the Planning Practice Guidance, and liable to result in an award of costs:

- *Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.*

3.14 It is unclear which other Devon renewable energy facilities the proposal is being considered in relation to as far as the claimed cumulative impact is concerned, and it is unclear precisely how their combined effects are harmful. In terms of visual impact for instance, which other facilities can the proposal be seen in combination with in the wider landscape? The site is located alongside existing large-scale industrial facilities, including the AD facility and a manufacturing site, and the proposal would be dwarfed in scale by the structures associated with these. It is also possible to secure a scheme of landscaping to help to screen the proposal. There are no sensitive land uses located nearby that could be affected by the proposed development in terms of noise or other forms of nuisance, and the harm to amenity is therefore unclear.

3.15 Given the shortcomings of the above reason for refusal, an award of costs is considered to be likely should an appeal and corresponding costs application be made. A more robust reason for refusal might relate to the proposal's visual impact in terms of the site itself, where the proposed plant, equipment, and associated features would result in a significant change compared to the existing situation, where the site is currently an open field.

Conclusion:

Your Officers are of the opinion that the refusal of this current planning application in relation to both reasons is not defensible and should not be pursued. There is a real risk of an award of costs in relation to both reasons, as they currently stand, based on the information available.

Contact for any more information

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Background Papers

Committee report

File Reference

19/01156/FULL

Circulation of the Report

Cllr Barnell
Members of Planning Committee