

SUPPLEMENTARY REPORT

Responsible Officer: Tim Rogers

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Summary of Application

<u>Application Number:</u> 14/02730/MAW	<u>Parish:</u>	Ellesmere Rural
<u>Proposal:</u> Temporary operation for exploratory borehole and associated infrastructure		
<u>Site Address:</u> Land North West Brooklands Farm Dudleston Ellesmere Shropshire SY12 9JG		
<u>Applicant:</u> Dart Energy (Europe) Ltd		
<u>Case Officer:</u> Kelvin Hall	<u>email:</u> planningdmc@shropshire.gov.uk	

Recommendation:

That the Committee confirms what its decision on planning application ref. 14/02730/MAW would have been had the application still been before the Council for determination.

That if Committee would have refused the application, then the reasons ,as detailed in section 2.4 of this report, are agreed

That Committee agree that the Council's statement of case for the appeal against non-determination is predicated on the issues as set out in section 2.4 of this report.

1.0 BACKGROUND

1.1 In June 2014 a planning application was submitted by Dart Energy (Europe) Ltd. for the drilling of a temporary exploratory borehole to extract a core of coal for analysis (ref. no. 14/02730/MAW). The proposed drilling operation would be undertaken for a maximum period of 60 days following which the borehole would be capped and the land restored. The purpose of the proposed development is to determine the characteristics of the underlying coal bed, and assess the potential for methane gas extraction, i.e. coalbed methane (CBM).

1.2 Members of the North Planning Committee considered the application at a Special Planning Committee meeting held on 24th October 2014 (the Committee report is attached as Appendix 1).

- 1.3 At this meeting Members resolved that consideration of this item be deferred, with Members minded to refuse the application for the following reasons:
- **“The proposal would be contrary to Core Strategy policies CS6, CS8, CS17, CS20 in that the significant harm caused by the development would have a detrimental environmental impact, including disturbance by noise, light, low frequency noise and vibration, loss of public amenity in terms of landscape, potential for pollution by virtue of the close proximity of the access to the lagoon, ecological issues, poor economic return and risk of groundwater pollution.”**
- 1.4 The matter was due to be returned to committee with a further report that gave advice in respect of the proposed reasons for refusal.
- 1.5 In view of the concerns raised by Members and the need to advise members on their proposed reasons for refusal, Officers subsequently requested additional information from the applicant on specific matters in order to provide more detailed clarification on the impacts of the proposed development. In particular Officers requested that the following additional information should be provided:
- 1.6 Potential noise impact:
- a detailed site layout and equipment specification, including noise emissions, along with a scheme for the minimisation of noise
 - a detailed noise management plan
 - details of noise impacts of the proposed development based upon a target level of 40dB as referred to in the 2009 World Health Organisation document entitled “Night Noise Guidelines for Europe”
 - clarification on statements in the submitted application that noise effects during the initial site preparation works would not be significant due to their transient nature and daytime only timing
 - details of the ‘best practicable means’ that would be employed to minimise noise emissions from plant, machinery and operational activities
 - details of measures that can be implemented to provide additional on-site attenuation of noise, such as providing barriers around the site, and assessing what effect these would have on the likely noise levels experienced at sensitive receptors
 - further evidence to demonstrate that a 15dB reduction in noise levels can be realistically achieved through an open window
- 1.7 Potential impact on private water supplies:
- details of the location of water supplies that are present within a 250 metres radius of the site, to include features such as wells, springs, boreholes, and culverts
 - an assessment of the risk of contamination of these supplies that may be posed by the proposed development, including any damage caused by site preparation, drilling and restoration operations, and the passing of vehicles across the site and access track
 - a monitoring plan and a mitigation scheme
- 1.8 Potential impact on structural stability of slurry lagoon
- information on the structural integrity of the slurry lagoon, and its ability to

withstand vibration caused by the passage of the likely type, number and frequency of vehicles travelling past it without causing damage, instability or failure

1.9 Dart Energy responded to the above request in a letter dated 8th January 2015, and advised as follows:

1.10 Noise, low frequency noise and vibration

- "...the Development would be acceptable in respect of noise and vibration and any concerns can be dealt with through the imposition of specific conditions. I therefore do not believe it is appropriate or proportionate to provide further information with regards to noise, low frequency noise and vibration at this stage in the process."

1.11 Potential for pollution by virtue of the close proximity of the access to the lagoon

- "...[the measures proposed] suitably address any concerns raised in relation to the lagoon and any outstanding concerns can be addressed by the imposition of a condition which ensures the access track is constructed using the material specified. I therefore do not believe it is appropriate or proportionate to provide further information with regards to the lagoon at this stage in the process".

1.12 Private water supplies

- "There are no private water supplies in the near vicinity of the Development, which was confirmed by the Council's Public Protection Officer and the Environment Agency during the course of the planning application. The nearest private water supply lies some 500 m to the north of the site ... I therefore do not believe it is appropriate or proportionate to provide further information with regards to private water supplies at this stage in the process".

2.0 **CURRENT SITUATION**

2.1 On 9th January 2015 Dart Energy advised that they had submitted an appeal to the Planning Inspectorate on the grounds of non-determination, i.e. the failure of the Council to make a decision on the application within the relevant timescale. A decision on the proposed development will therefore now be made by an independent Inspector appointed by the Inspectorate.

2.2 Dart Energy has requested that this appeal is dealt with by the Written Representations procedure, and the Planning Inspectorate and has confirmed that this is suitable. The appeal procedure sets out a strict timetable. This includes the need for the local planning authority to submit its statement of case by 12th March 2015.

2.3 The Officer recommendation to the North Planning Committee on 24th October was that planning permission for the proposed development should be granted subject to conditions. As Members were minded to refuse the application, contrary to officers recommendation as set out in paragraph 1.3 of this report, it is considered that Committee should now confirm what decision it would have made on the application had the appeal against non-determination not been lodged, having

regard also to the Applicants' response of 8th January.

- 2.4 Officers have given further consideration to the proposed reasons for refusal raised by Committee at its meeting of 24th October and consider that issues pertaining to adverse impacts arising from lighting, landscape, ecology and a poor economic return would be difficult to defend successfully at appeal. Therefore, if Members continue to be minded to oppose the proposed development, Officers consider that the following reasons are more likely to be defensible in an appeal situation:

Reason

The application would be contrary to Core Strategy Policies CS6 and CS18 as it:-

- Has not been adequately demonstrated that the proposed development can be undertaken without adverse impact upon residential and local amenity due to the disturbance from noise emissions.
- Has not been adequately demonstrated that the proposed development would not have an unacceptable impact upon private water supplies in the area through contamination or damage resulting from site preparation, drilling and restoration operations, and the passing of vehicles across the site and access track
- Has not been adequately demonstrated that the proposed development, including the preparation of the site and subsequent reinstatement, can be undertaken without causing pollution of groundwater and surface water from the failure of the slurry lagoon caused by damage resulting from the number, frequency and type of vehicles travelling past it
- Is considered that the benefits of the proposed scheme, in establishing the characteristics of the underlying coal measures, would not outweigh the potential harm to the area as set out above.

On this basis, were the Council required to make a decision on the application, its decision would be to refuse the application for the reason set out above.

3. Risk Assessment and Opportunities Appraisal

3.1 Risk Management

There are two principal risks associated with this recommendation as follows:

In relation to planning appeals, costs can be awarded irrespective of the mechanism for hearing the appeal - written representations, a hearing or inquiry. The decision is challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its

planning merits. A challenge by way of Judicial Review must be a) promptly and b) in any event not later than six weeks after the grounds to make the claim first arose first arose.

3.2 Human Rights

Article 8 give the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

3.3 Equalities

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in planning committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

4. Financial Implications

The likely financial implications relate to the costs of defending any decision. These will be met by the authority and will vary dependant on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning appeal – in so far as they are material to the application. The weight given to this issue is a matter for the decision maker.

5. Additional Information

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
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The application ref. 14/02730/MAW and appeal ref. APP/L3245/W/15/3002435.

Cabinet Member (Portfolio Holder)

Cllr M. Price

Local Member

Cllr Steve Davenport

Appendices

APPENDIX 1 – North Planning Committee report of 24 th October 2014
