

Agenda Item A11	Committee Date 2 March 2015	Application Number 14/01117/FUL
Application Site Middleton Clean Energy Plant Middleton Road Middleton Lancashire		Proposal Erection of a 47.5mw gas fired power station and associated works
Name of Applicant Mr David Evans		Name of Agent -
Decision Target Date 20 January 2015		Reason For Delay To resolve issues relating to noise, air quality and contamination
Case Officer		Mr Andrew Dobson
Departure		Yes
Summary of Recommendation		Approval (subject to a referral back to Chief Officer to allow notice to be served on Natural England)

(i) Procedural Note

This application was presented to Planning Committee on 8 December 2014. Members resolved to delegate the application back to the Chief Officer to determine unless there were outstanding items or the Chief Officer was seeking to approve the application against a consultee's objection, in which case the application was to be reported back to January's Committee. As there were 3 outstanding items the application was reported back to Planning Committee on 5 January 2015. On that date only 1 of the 3 outstanding items (contamination) had been resolved, so the application was deferred until such time as all matters were adequately addressed. It is being reported back to Planning Committee as per January's resolution as the remaining 2 outstanding items (noise and air quality) have now been assessed to the relevant consultee's satisfaction.

1.0 The Site and its Surroundings

- 1.1 This full application relates to an area of land which is part of the former Middleton Oil Refinery and is known locally as Middleton Wood. The site area is 0.476 hectares and comprises of mainly rough ground covered by inert tipped material upon which some natural regenerated vegetation occurs in parts.
- 1.2 Part of the site comprises existing hard surfaces forming an original portion of the road network within the refinery site.
- 1.3 The site abuts existing industrial sites which front Middleton Road and there is potential linkage through that land by an existing access road on the other side of the boundary. Although the land forms part of the wider Middleton Wood site which is in the City Council's ownership, it has until relatively recently continued to be used for the reclamation of inert construction material and hence has not regenerated into natural habitat in the same way that the wider site area has.
- 1.4 The site and its surroundings are subject to a number of designations, including Hazardous Substance Installations designations (Tradebe Solvent Recovery); a Radon Protected Area; a

Minerals Safeguarding Area and is an area identified as being susceptible to groundwater flooding. Heysham industrial Estate, a waste site allocation, lies further to the south. The wider site includes a Biological Heritage Site designation.

2.0 The Proposal

- 2.1 The development consists of a 14m high, 1300sq.m industrial building which is to be used as a power hall housing five reciprocating gas engines. Fuel will be supplied from an existing underground natural gas pipeline. Emissions from the engines will be vented from a 35m high flue stack.
- 2.2 The proposal is in effect a small gas powered powers station designed to provide on demand additional capacity at times when wind power is delivering less and demand is high. It is generally constructed off site and assembled on the land once consent is granted.
- 2.3 Approximately 18 permanent staff in combinations of shift workers would be employed by the site. Vehicular access to the site both during and after construction would be over the existing estate roads.

3.0 Site History

- 3.1 The following application is relevant:

Application Number	Proposal	Decision
95/01352/DPA	Change of use from derelict Shell/ICI works to Middleton Community Wood	Granted 1/4/1996

4.0 Consultation Responses

- 4.1 The following responses have been received from statutory and non-statutory consultees:

Consultee	Response
Natural England	<p>The requirements of Regulations 61 and 62 of the Habitats Regulations do not appear to have been considered by Lancaster City Council (i.e. there is no Habitats Regulations Assessment). Further information should be provided on the likelihood of significant effects from the proposal upon the designated (European) sites to allow the Council to undertake their Habitats Regulations Assessment. This further information includes comprehensive details on air quality, drainage, water, protected species, Special Protected Area birdlife, the Lune Estuary and Heysham Marsh Site of Special Scientific Interest; and the Morecambe Bar Special Area of Conservation, Special Protected Area and Ramsar designated Morecambe Bay.</p> <p><i>Note: If the Council is minded to grant consent it must first provide notice to Natural England to include a statement of how the Council has taken account of Natural England's advice (and shall not grant a permission before a period of 21 days beginning with the date of that notice) – under Section 28(1)(6) of the Wildlife and Countryside Act 1991 (as amended).</i></p>
Lancashire Wildlife Trust	<p>Comments – Appropriate measures required (prior to approval) for minimise impacts on great crested newts which are likely to use the site for foraging, dispersal and hibernation. Little Ringed Plover (protected species) recorded at the site in 2014 and passerine species on adjacent land. Mitigation required to minimise impacts on breeding birds. Other measures required to ensure no wildlife habitat damaged during construction or operation; measures to mitigate against lighting, dust or noise (especially for bats). Protected plants and butterflies are supported by the habitats – ecological enhancement of the site post-construction should compensate for loss of this habitat type. Changes to existing drainage may cause hydrological impacts – measures potentially required to address this. LWT member access should be maintained; a method statement for the electricity cable easement is required; all loading/storage to be contained within red edge and measures for leaching from spoil,</p>

	other pollutants, compaction of ground, damage to vegetation put in place; measures to avoid spread of Japanese Knotweed which is present in the vicinity of the development site.
County Highways	No objection subject to a condition securing a Construction Traffic Management Statement.
Environment Agency	No objection subject to conditions relating to land contamination (if below ground works are proposed) and surface water drainage
United Utilities	No objection subject to no building within 3m of the public sewer. Site should be drained on a separate system (foul draining to public sewer; surface water draining sustainably).
Property Services	No objection. Supports the principle of development but considered the original layout to be “rushed and ill-considered”. The development has subsequently been relocated nearer the boundary of the Biological Heritage Site to the east to keep the roadway clear in a north-south direction in line with Property Services’ suggestion.
Environmental Health	No objection subject to conditions regarding air quality mitigation measure, noise levels and contamination
Office of Nuclear Regulation (ONR)	No objection
EDF	No objection. There is no significant detrimental effect on the safe and reliable operations at the 2 nuclear power stations
Middleton Parish Council	No comments received

5.0 Neighbour Representations

5.1 3 representations have been received. Two of these representations express support for the proposal which will make a tangible contribution of clean gas-powered electricity, with a small developable footprint on a brownfield site, with a good design and no significant visual impacts.

The third representation concerns access issues. The site to the north (Tradebe Solvent Recycling) is a designated Control of Major Accident Hazards (COMAH) site. The primary access for emergency service vehicles is via Middleton Lane, yet the prevailing wind direction means that this route is unsafe. Secondary and tertiary routes off Main Avenue are unavailable due to flytipping and the presence of protected species. Recently the City Council, County Council, Police, Fire & Rescue Service, NW Ambulance Service and Tradebe amongst others have been trying to resolve these issues and reinstate the secondary access route across land being proposed for the current application.

6.0 Principal National and Development Plan Policies

6.1 National Policy Statements
Energy Infrastructure (EN-1)
Fossil Fuel Electricity Generating Infrastructure (EN-2)

National Planning Policy Framework (NPPF)

The National Planning Policy Framework indicates that the purpose of the planning system is to contribute to the achievement of sustainable development. At the heart of the NPPF is a presumption in favour of sustainable development (**paragraph 14**). The following paragraphs of the NPPF are relevant to the determination of this proposal:

Paragraph **17** - 12 core land-use planning principles
Paragraphs **93 96** and **98** – meeting the challenge of climate change
Paragraphs **109** and **118** – biodiversity
Paragraph **120** and **121** – contamination
Paragraph **122 / 124** – emissions / air quality
Paragraph **123** – noise

Lancaster District Core Strategy (2008)
SC1 Sustainable development
ER2 Regeneration priority areas

ER3 Employment land
ER7 Renewable energy

Lancaster District Local Plan Saved Policies
E26 Middleton Wood community woodland

6.2 Development Management DPD and Morecambe Area Action Plan DPD

The City Council resolved to adopt both the Development Management and Morecambe Area Action Plan Development Plan Documents (DPDs) on 17 December 2014. This means that both documents now form part of the Local Plan for Lancaster District 2011-2031 and the policies contained therein are afforded full weight.

DM15 Proposals involving employment land and premises
DM17 Renewable energy generation
DM18 Wind turbine development
DM25 Green Infrastructure
DM27 The protection and enhancement of biodiversity
DM35 Key design principles
DM37 Air quality management and pollution
DM40 Protection of water resources and infrastructure

7.0 Comment and Analysis

7.1 The material considerations in this case are:

- a) Whether a departure from the Development Plan is justified;
- b) Whether the proposal would have an adverse impact on the Biological Heritage Site or other ecological interests including the wider Morecambe Bay SSSI;
- c) Whether there would be wider impacts on the locality in terms of noise, air quality, and traffic movements;
- d) Whether the development would undermine safety considerations in relation to any of the nearby Hazardous Installations;
- e) Whether the development would lead to the disturbance of hazardous substances remaining on the site from the earlier period of remediation; and
- f) Whether the development would have an adverse landscape and visual impact

7.2 Departure from the Development Plan

7.2.1 Although there is a technical departure from the Development Plan, this relates to the land allocations in the former Lancaster District Local Plan which expected the whole of the Middleton Wood area to become a community woodland over time. In reality this was unlikely to occur as the extent of restoration enabling public access was much less than originally envisaged. In the consultation draft of the emerging Local Plan this part of Middleton Wood is proposed to be allocated for employment development. The area of the proposed employment allocation which would be taken up by the power station would be relatively small leaving the opportunity for more commercial development on the site in the future.

7.2.2 In overall strategy terms the District plays an important role as part of Britain's Energy Coast facilitating a number of growth projects aimed at improving the nation's self-sufficiency in energy production. This part of the District is identified in the emerging Local Plan as Heysham Gateway; an area where opportunities will be developed to enhance economic activity associated with the energy industry and the strategic importance of the Port of Heysham. The proposal is entirely in accordance with those objectives. A full set of analysis of the impact of the development on the locality has been undertaken. They appear to demonstrate that there are no overriding impacts which are unacceptable.

7.3 Impact on the Biological Heritage Site

7.3.1 Although the wider portion of Middleton Wood has not been created into a community woodland with extensive public access, the bulk of it (outside the proposed employment portion) is a Biological Heritage Site and is naturally regenerating. There is a cost attached to maintaining this habitat which falls on the Council, and it currently contracts the Lancashire Wildlife Trust to assist with the

management of the land.

7.3.2 One of the key objectives of introducing an employment allocation on that part of the site not within the Biological Heritage Site was to help generate income to continue the maintenance of the site to the standard which has been achievable in the past. To this end a Section 106 agreement will be required to secure a contribution to mitigate the impact of the development by helping the further management and restoration of the remainder of the site.

7.3.3 The original siting of the proposal was such that it sat astride the route of one of the former refinery estate roads which runs across the site, and through the small industrial complex to the north linking ultimately to Middleton Road. This could have adversely impacted on emergency means of escape from the development to the north and could have influenced how the rest of the Council's land is released for development. The revised plans address this concern, though as a result the development now sits closer to the designated Biological Heritage Site. However, the Wildlife Trust confirm that they have no objection to this amendment.

7.4 Wider impacts on the locality

7.4.1 The aforementioned 3 outstanding items (as of mid-December 2014) were air quality, noise and contamination. Environmental Health initially objected to the application based on a lack of information (or insofar as the noise assessment was concerned it was not undertaken in accordance with the latest British Standards that were introduced around the date that the application was submitted). Since receipt of this objection the applicant has agreed the scoping for the required noise and air quality assessments with Environmental Health and commissioned the necessary work. The completed assessments have been formally submitted and Environmental Health Officers are satisfied with their findings, subject to the imposition of 1 condition relating to noise levels not being exceeded at identified receptors to protect the local amenity, and the increase of the proposed 25m stack to 35m to more effectively disperse pollution due to the increased height of the point of emission. The Contaminated Land Officer has now accepted the information provided by the applicant but seeks a condition that requires them to investigate the immediate ground (up to 4m in depth) to ensure that no subterranean structures that may still remain from the time of the refinery are disturbed that could release contaminants into the environment that are currently securely contained.

7.4.2 Now that the outstanding items have been resolved, the Council can undertake a Habitats Regulation Assessment to satisfy Natural England that they have fully considered the impacts of the development on protected species and European designated sites (Special Area of Conservation, Special Protection Area and RAMSAR site). The supporting documentation submitted with the application suggests that there will be no impact on these designated sites as the prevailing winds will blow emissions from the proposal away from the bay and estuary. Whilst this statement is true, wind directions are variable, and therefore the Local Planning Authority must be satisfied that the development can adequately control emissions to ensure that there is no detrimental impact on the bay and Lune estuary regardless of wind directions.

7.4.3 County Highways confirms that they have no objection to the scheme, subject to a Construction Traffic Management Statement being agreed (post determination) and fully implemented.

7.5 Protected Species

7.5.1 The application has been submitted with a Phase 1 habitat and protected species walkover survey, which has utilised survey work previously undertaken in October to December 2012 and March 2013. The key findings are the presence of Great Crested Newts in nearby ponds that may utilise the site outside of hibernating season, the use of the site's shrub for ground nesting birds and foraging bats, and limited use of the site by birds that winter at the nearby estuary and bay. Two forms of invasive species were also identified that will need to be responsibly managed. The site's shrub has little biodiversity interest as a plant species, but does provide some habitat for ground nesting birds. Works, such as site clearance, will need to comply with a Construction Environmental Management Plan that will need to be submitted and agreed prior to works commencing. Compensatory planting will also be needed to ensure that there is no net loss of biodiversity interest in respect of birds. This also applies to the wintering birds that to a lesser degree utilise the site. The impact on them is more likely to occur if the designated bay and estuary are adversely affected by the proposal, which is described in 7.4. Likewise before any works commence, fencing will need

to be erected to ensure the development site (including the pipe and cable trenches) does not adversely impact on Great Crested Newts. Mitigation measures are set out in greater detail in the aforementioned survey, which also suggests the implementation of a compensatory pond. The impact on bats can be significantly reduced by controlling light emissions. Conditions are therefore required for external lighting, a Construction Environmental Management Plan, Great Crested Newt mitigation and compensation, compensatory planting and invasive species management.

7.6 Landscape and visual impact

7.6.1 As advised above, the manner in which the applicant has been able to address air quality concerns is by increasing the height of the proposed 25m high stack by an additional 10m. The scheme has been amended accordingly to incorporate this 35m stack, making it more prominent within the landscape. However, the key viewpoints of this feature would be from the A683 on its south westerly approach into Heysham and from Middleton village, in which case it would be visible alongside existing tall infrastructure, such as electricity pylons and the 2 nuclear power stations. Therefore whilst it would clearly be visible, it would not be overly intrusive within the wider landscape which is already characterised by tall manmade structures. Subject to the colour and finish of the stacks being controlled by condition the installation of such a tall structure in this location is deemed to be acceptable.

8.0 Planning Obligations

8.1 A Section 106 Agreement will be required to secure a financial contribution for the continuing maintenance and improvement of the Middleton Wood BHS. This sum is currently being negotiated.

9.0 Conclusions

9.1 At December's Committee it was reported that there was a need to try to determine this application before the close of 2014 to enable the applicants to have certainty to bid for a license from the Government to undertake the development. This deadline has expired, but the applicant wishes to be in a position whereby they have the benefit of a consented scheme when they enter the 2015 bid process in April. Further to the submission of additional information, the 3 outstanding items (noise, air quality and contamination) have now been addressed to the consultees' satisfaction, and therefore it is recommended that the application is approved, though the Council would need to refer the decision to Natural England to ensure that they accept the Council's Habitat Regulations Assessment.

Recommendation

That planning permission **BE GRANTED** (with subsequent referral of the decision to Natural England) subject to a legal agreement to secure:

- Financial contribution towards the continuing maintenance and improvement of the Middleton Wood BHS

and the following conditions:

1. Standard 3 year timescale
2. Development in accordance with approved plans – list
3. Notwithstanding plans, all materials (including finishes and colours) to be agreed
4. Notwithstanding plans, all boundary and surface treatments (including finishes and colours) to be agreed
5. Access, parking and turning facilities – loading/unloading within the on-site facilities provided only
6. Construction Traffic Management Statement
7. Separate drainage system
8. Surface water drainage system and maintenance
9. Hours of construction (Mon to Sat 0800-1800)
10. Method statement for the electricity cable easement
11. Construction Method Statement including dust control and barrier fencing to protect surrounding habitat
12. Japanese Knotweed and Montbretia management scheme
13. Ecological mitigation and compensatory measures

14. Construction Environmental Management Plan
15. External lighting details
16. Landscaping scheme
17. Noise rating levels not to be exceeded at nearby identified receptors
18. Contamination
19. No external storage
20. No building or planting of deep rooted shrubs/trees within 3m of the public sewer

Article 31, Town and Country Planning (Development Management Procedure) (England) Order 2010

In accordance with the above legislation, the City Council can confirm the following:

For the reasons stated in the report, this proposal departs from policies within the Development Plan. However, taking into account the other material considerations which are presented in full in the report, it is considered that on this occasion these outweigh the provisions of the Development Plan, and in this instance the proposal can be considered favourably.

In reaching this recommendation the local planning authority and the applicant have positively and proactively addressed the issues to enable permission to be granted.

Human Rights Act

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

Background Papers

None