
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 15/09/14

**gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 8 Hydref 2014

Appeal Decision

Site visit made on 15/09/14

**by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM**

an Inspector appointed by the Welsh Ministers

Date: 8 October 2014

Appeal Ref: APP/H6955/A/14/2218276

Site address: Part of field to west of Commonwood Farm and south of Borrass Road, Commonwood, Holt, Wrexham (LL13 9TF)

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Euan Brown of GP Energy Ltd against the decision of Wrexham County Borough Council.
 - The application Ref HOL P/2013/0660, dated 18 July 2013, was refused by notice dated 31 March 2014.
 - The development proposed comprises site preparation, the drilling of an appraisal borehole (requiring 24 hour operation) to remove a core of coal for sampling, and restoration of the site following cessation of the drilling operations, which are anticipated to take approximately 60 days and a maximum of 75 days.
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Decision

1. The appeal is allowed and planning permission is granted for site preparation, the drilling of an appraisal borehole (requiring 24 hour operation) to remove a core of coal for sampling, and restoration of the site following cessation of the drilling operations, which are anticipated to take approximately 60 days and a maximum of 75 days, in part of a field to the west of Commonwood Farm and south of Borrass Road, Commonwood, Holt, Wrexham, in accordance with the terms of the application, Ref HOL P/2013/0660, dated 18 July 2013, and the plans submitted with it, subject to the conditions in the attached Annex.

Main Issues

2. The Council refused the application for 3 reasons but these encompass a wide range of matters. Accordingly, I consider the main issues to be considered in this appeal to be: effects on the landscape and the character and appearance of the countryside; effects of increased HGV traffic on the local road network; effects on noise and disturbance to nearby residential properties; the environmental sustainability of the proposal in a rural location; risks of pollution as a result of release of gas; and risks to geological stability and potential subsidence.

Reasons

Landscape and Character and Appearance of Countryside

3. The Council's first reason for refusal describes the proposal as an industrial use in a rural area having an adverse impact upon the landscape. Clearly there would be a temporary adverse impact on the part of the field in question but, apart from the drilling rig itself, the equipment and fencing introduced to the site would be of relatively low profile and little visual impact. The drilling rig would be seen from further afield but, even then, would not be a significant feature in the wider landscape.
4. The proposed site operations would take no longer than 3-4 months (2 weeks to set up, 2-2½ months [at most] to drill the borehole, and 2 weeks to clear and reinstate the site), and there would be no lasting long-term effects on the landscape. Thus any adverse effects would be very short-lived, and I consider them to be negligible in landscape terms and of little significance in visual impact. Consequently, I conclude the proposal would not conflict with the aims of Unitary Development Plan Policy GDP1 in this respect.
5. The Council's second reason for refusal also refers to the location of the site outside recognised settlement limits and describes the proposal as "an industrial form of development". It also states that UDP strategic policies PS1 and PS2 seek to direct new development to sites within settlements. Policy PS1 states "New development for housing, employment and community services will be directed to be within defined settlement limits/employment areas", and Policy PS2 states "Development must not materially detrimentally affect countryside, landscape/townscape character, open space or the quality of the natural environment".
6. The Appellant takes issue with the description "an industrial form of development", and clearly the proposal is not industrial development as normally defined. However, I acknowledge it might be viewed as of a similar form. Nevertheless, Policy PS1 does not seem to be directly applicable. Like minerals, gas can only be extracted where it occurs, and the Department of Energy and Climate Change has issued a licence for area PEDL 187 where exploratory drilling is to be carried out. Although that area is quite large, it seems to me to be entirely sensible to locate the borehole away from residential properties where it would cause the least inconvenience and harm to amenity. It has to be born in mind that the works would only take a few weeks and that the land would be fully restored when drilling was completed.
7. As for Policy PS2, I have already concluded above that the proposal would not materially detrimentally affect the countryside or the landscape and, in view of its temporary nature, it would not affect "open space". As for ecology, Great Crested Newts are known to be present in the area and the Appellant has put forward mitigation measures which could be ensured by condition. The proposal would not affect any ponds but could affect their wider habitat. However, Natural Resources Wales has advised that the proposal is "not likely to affect any protected species" and, in view of the short period of time involved, I reach the same conclusion. No other evidence of likely ecological harm has been put forward. Thus the proposal would be in accord with Policy PS2.

Traffic on Local Road Network

8. The Council's first reason for refusal also refers to "a significant increase in HGV traffic movements", and many local residents have expressed concern about the effects of these on the relatively narrow local road network. A large number of HGV traffic movements would take place during the initial setting-up period and the final site clearance and reinstatement period, though there would be few during the drilling operation itself.
9. The Appellant submitted a Transport Technical Note and an Outline Traffic Management Plan as part of the planning application. The former demonstrates the feasibility of gaining access for the largest vehicle required, using conventional swept path analysis, and the latter describes how the traffic would be managed to minimise impacts on other road users and to ensure an acceptable level of highway safety. It also acknowledges that the Appellant would be responsible for any damage to the roads attributable to the traffic concerned. Approval of a final Traffic Management Plan could be ensured by a suitable planning condition.
10. Subject to suitable conditions, the Council's Highways Officer considered the proposal to be acceptable in terms of highway safety, and no evidence has been put forward to lead me to disagree with that conclusion. I conclude that the short-term increase in traffic on the local road network would not have an unacceptable effect on highway safety or the amenity of other road users and that the environmental effects could be acceptably managed for the short period of time involved. The requirements of UDP Policy GDP1 in these respects would be complied with.

Noise and Disturbance

11. The 3rd particular matter referred to in the Council's first reason for refusal is increased noise levels. The HGV traffic itself would, of course, generate noise but only over quite short periods of time, and a suitable planning condition could ensure that HGV movements only took place during the daytime. However, the drilling operations would take place continuously 24 hours per day and have the potential to cause a nuisance to the occupants of nearby residential properties.
12. It is claimed that the advantage of choosing a rural location for these works is that only a few properties (about 6 No.) would be close enough to be affected. The Appellant has submitted an Environmental Noise Assessment which takes into account several measures to control noise from the site (which could be ensured by use of a planning condition) and predicts worst case scenario noise levels for the nearest houses of 42 or 43 dB LAeq 1hour.
13. The Welsh Government's Technical Advice Note (Wales) 11, Noise, advises that noise levels below 45 dB LAeq 1hour need not be a determining factor in planning applications for new houses, though clearly lower levels might be desirable for existing houses in a quiet rural location. Government guidance for minerals development (e.g. quarries) is that the night-time noise limit should be 42 dB LAeq 1hour, and the latest World Health Organisation advice is that night-time noise levels in excess of 40 dB LAeq 1hour should be avoided if possible.

14. In this case, the predicted worst case scenario assessment indicates that slight exceedance of these noise levels may occur at a small number of nearby properties. However, as the drilling operations would only take a few weeks, the Council's Public Protection Department officers advised that such noise levels would be unlikely to be unacceptable. That is my conclusion too. Government guidance on minerals development also advises that higher levels of noise are considered acceptable for short periods of time when construction works are being carried out, which is comparable to the appeal proposal. I conclude that the proposal would be unlikely to cause unacceptable levels of noise and disturbance and would be in line with the aims of UDP Policy GDP1 in this respect.

Environmental Sustainability in Rural Area

15. The wider principle of the Council's first reason for refusal is the location of the proposed development in the open countryside, which it submits is an environmentally unsustainable location and contrary to Minerals Planning Policy Wales, which states that oil and gas should only be extracted in sustainable locations. The Council also refers to the 3 matters above to illustrate its unsustainable location. However, I have found in favour of the proposal on all of these 3 matters.
16. The Council refers to Minerals Planning Policy Wales which says that oil and gas should only be extracted in sustainable locations. However, it also says that "where oil and gas operations can be carried out in an environmentally acceptable way and consistent with the principles of sustainable development, there is no case in land use planning terms for placing more restrictions on the development than are necessary to ensure the protection of the environment". The Council also argues that a site within an existing settlement would be a more sustainable location and that the Appellant has not demonstrated why the work could not be done in such a location. However, there is no requirement for a sequential test for such development.
17. I have concluded above that there would be no unacceptable harm to the landscape or the character and appearance of the countryside (except temporary harm for a very short period of time), to the amenity of nearby residents by reason of noise and disturbance, to highway safety, or to ecology. Indeed, on the question of noise, it is likely that a rural location would cause less harm than a site within a settlement where a larger number of residential properties would be affected. Furthermore, the short-term, temporary nature of the proposal, including full reinstatement of the land after the temporary use, considerably abates any other sustainability arguments.
18. Overall I conclude that the proposal could be carried out in an environmentally acceptable way and would meet requirements for sustainability. I consider it would be in accord with national and development plan policies in this respect, including UDP Policy GDP1.

Pollution from Release of Gas

19. The Council's third reason for refusal says insufficient information has been provided in respect of the impact of drilling on the vertical and lateral movement of gas and that geological instability could result in possible subsidence and pollution. These are also concerns raised by many local people, particularly in view of the gas explosion some years ago that caused many deaths at Gresford Colliery.

20. Dealing first with the risks of pollution, the proposed borehole would be drilled through a major aquifer stratum, and concerns have been raised about possible pollution of the aquifer with methane released by the drilling process, which might migrate vertically and horizontally. However, I consider these concerns to be misplaced. The proposed investigation would aim to remove a core of coal to assess its potential for coal bed methane and would not involve dewatering. The gas within the coal measures is contained by water pressure, and there is no reason to expect any disturbance or migration of the gas.
21. The drilling process proposed is a well established, conventional methodology and much of the depth would be lined to avoid disturbance of other strata, including that of the Kinnerton Formation aquifer. Natural Resources Wales has raised no objections on grounds of risk to the aquifer, and I am satisfied that any risks would be negligible. The proposal would not conflict with the aims of UDP Policy GDP1 to safeguard the environment against any adverse effects of water pollution.
22. Mention has also been made of radon, as levels are relatively high in this area. My conclusions are similar to those above. Furthermore, radon is a concern when it accumulates in confined spaces such as buildings. If any radon were to be released at this site it would vent safely into the open air.

Geological Stability and Subsidence

23. Concerns have also been expressed that release of gas could lead to geological disturbance and subsidence. Again, I consider these concerns to be misplaced. As explained above, the proposed investigations would be unlikely to cause the release or migration of gas, even if geological faults were encountered, and I consider the risk of geological instability or subsidence to be negligible.
24. When work is completed the borehole would be fully sealed with cement mortar, cut off 4 metres below ground level and buried. Thus again, the presence of the borehole would be of negligible consequence in the future. Some third parties have asserted there would be long-term deterioration and gas movement along the line of the borehole, and mention has been made of incidents at boreholes in Australia. However, the reinstatement would be in accordance with established Government health and safety requirements, and I have no reason to doubt the effectiveness of these.
25. Many local residents have referred to the existence of the former colliery workings and the possibility of the borehole encountering old, unrecorded workings. The Council took further advice from the Coal Authority on this matter. The Coal Authority advised that the borehole would be over 1 km from the nearest point of the abandoned mine workings and that its records are complete and reliable. It says the surveys of the mine workings were carried out by experienced, qualified mine surveyors, appointed under the Mines and Quarries Act 1954, and in accordance with the Coal and Other Mines (Surveyors and Plans) Regulations 1956, which sets out required minimum standards of accuracy. No evidence has been put forward that leads me to doubt this advice, and I conclude that there would be negligible risk of the borehole encountering former mine workings.
26. The proposal would not conflict with the aims of UDP Policy GDP1 to safeguard public safety.

Other Matters

27. Several other matters have been raised by third parties. Firstly, it has been asserted that the proposal should be subject to formal environmental impact assessment (EIA). However, this matter has been considered by both the Council and the Welsh Government, who have both concluded that it is unnecessary. The Welsh Government Screening Direction was issued on 24 June 2014 and concluded that the proposed development is not "EIA development" within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. Furthermore, I am satisfied that the environmental information provided is sufficient for me to adequately consider these various matters.
28. Several third parties have expressed concern about the extraction of coal bed methane and the possibility that it might involve "fracking" operations. However, the matter before me is solely the drilling of an appraisal borehole and, if any proposals were brought forward in the future for extraction operations, they would be the subject of another application for planning permission, and that would be the time for any matters associated with such operations to be taken into account. Consideration of this appeal can only take into account the particular proposal that is the subject of the appeal.
29. It has been asserted that the extraction of coal bed methane would not be feasible in the geological circumstances of the area. I do not know whether that would be the case or not. However, as the proposal before me is aimed at assessing this, it would be perverse not to allow it. The precautionary principle has also been raised. However, I am satisfied that sufficient information has been provided to enable me to reach the conclusions above. No evidence has been provided that the modest proposal before me would raise any meaningful risks that would warrant the precautionary principle overriding the other considerations.
30. Finally, mention has been made of an application for another scheme in Scotland and it has been suggested the current appeal decision should be delayed until that has been resolved. However, I do not consider that to be necessary or appropriate, bearing in mind the modest nature of the particular proposal before me.

Overall Conclusion

31. These and several other matters have been raised, and I have taken into account all that are relevant to this particular proposal. However, nothing outweighs the considerations that have led me to my main conclusions above. These are that the proposal would not cause unacceptable harm to the character and appearance of the countryside or to the ecology, to highway safety or the amenity of other road users, or to the amenity of nearby residents by reason of noise and disturbance. I consider the proposal would not be unsustainably located and that risks of it causing pollution, geological instability or subsidence would be negligible. The proposal would be in accordance with development plan and national policy.
32. For the reasons given above I conclude that the appeal should be allowed.
33. In reaching this conclusion I have also taken into account the possible use of conditions to control the development and mitigate its effects, and I consider that a number of conditions are necessary. In view of the nature of the development a condition is needed to specify its exact scope and methodology, including reference to plans, reports and relevant correspondence. However, a condition referring to plans demonstrating transport feasibility is unnecessary.

34. Management Plans or Method Statements are needed for construction traffic, ecological protection and construction environmental management in order to avoid harm to highway safety and various elements of the natural environment. Protection of the environment also leads to the need for conditions covering foul and surface water drainage and the avoidance of spillage of oils, fuels and chemicals. The Council has suggested a lengthy set of detailed conditions to safeguard nearby trees. Protection measures are needed but, in view of the nature of the development, a simple condition would be sufficient.
35. Conditions are necessary to limit noise generated by the development, in order to safeguard the amenity of nearby residents, including implementation of the mitigation measures described in the application. In view of the potential for archaeological remains in the area, a condition is needed for a watching brief during any excavations. Finally, to minimise the impact of the short-term development, conditions are needed to limit its duration and to ensure restoration of the land.

Clive Nield

Inspector

Annex of Conditions

- 1) The development hereby permitted shall begin not later than five years from the date of this decision.
- 2) The operator of the site shall notify the mineral planning authority in writing within 7 days of the dates of: the implementation of the planning permission; and completion of final restoration of the site.
- 3) Except as otherwise required by other conditions attached to this permission, the development hereby permitted shall be carried out in accordance with the following documents and plans received by the mineral planning authority on 20 September 2013 (unless otherwise stated):
 - Application Form;
 - Case in support of the Drilling of an Exploration Borehole for the purpose of Mineral Exploration at land south of Borrás Road, Borrás Head, Wrexham;
 - Figure 1: Licence Area PEDL 187;
 - Figure 2: Site Location PEDL 187 – Site 2;
 - Figure 3: Site Plan PEDL 187 – Site 2;
 - Figure 4: Indicative Site Layout (Schramm) PEDL 187 – Site 2 (or similar for Drillmec HH102 Rig);
 - Figure 5a: Schramm Rig Specifications; or Figure 5b: HH102 Rig Specifications;
 - Letter to Emma Broad dated 3 September 2013, reference 1427/L001;
 - Environmental Noise Assessment for Proposed Coalbed Methane Appraisal Borehole at Borrás Road, by Wrexham;
 - Technical Note addressing comments made by local highway authority by AECOM dated 6 December 2013, received by mineral planning authority on 10 January 2014;
 - Site at Commonwood, Holt Outline Traffic Management Plan dated December 2013, received by mineral planning authority on 10 January 2014;
 - Document titled: Changes to site construction including the use of “Dura-Base”, relating to drilling of exploration borehole for mineral exploration south of Borrás Road, received by mineral planning authority on 14 January 2014;
 - Temporary mineral appraisal well - method statement;
 - Chemical safety data sheets;
 - Guidelines for the suspension and abandonment of wells: Issue 4, July 2012, received by mineral planning authority on 20 January 2014;
 - Letter to Natural Resources Wales, dated 14 January 2014 regarding the integrity of cement and measures to notify nearby abstractors, received by the mineral planning authority on 6 February 2014;
 - Geophysical Survey Report received by mineral planning authority on 14 November 2013;

- Geophysical Survey – Wrexham, Figure 01, received by mineral planning authority on 14 November 2013.
- 4) The development hereby permitted shall cease not later than 1 year from the date of commencement of development, and the site shall be cleared of all buildings, plant and machinery associated with the development and the land shall be restored to its previous condition within this time period.
- 5) No part of the development shall commence until a Construction Traffic Management Plan, including provisions for contractor parking, has been submitted to and approved in writing by the mineral planning authority. The Plan shall be implemented in full accordance with the approval.
- 6) Details of a scheme for the disposal of foul and surface water drainage shall be submitted to and approved by the mineral planning authority, and the scheme shall be implemented as approved prior to any drilling operations taking place. No surface water run-off shall be permitted to flow from the site on to the adjoining public highway.
- 7) No part of the development shall commence until an Ecological Method Statement, including timescales, has been submitted to and approved in writing by the mineral planning authority. It shall include details of reasonable avoidance measures and biosecurity risk assessments. The Method Statement shall be implemented in full accordance with the approval.
- 8) No part of the development shall commence until an Arboricultural Method Statement, including measures to safeguard existing trees and hedgerows, has been submitted to and approved in writing by the mineral planning authority. The Method Statement shall be implemented in full accordance with the approval.
- 9) No development shall take place until a Construction Environmental Management Plan has been submitted to and approved in writing by the mineral planning authority. The development shall be carried out in full accordance with the approval.
- 10) Facilities for the storage of oils, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, or the combined capacity of any connected tanks, plus 10%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank overflow pipe outlets shall be detailed to discharge downwards into the bund.

- 11) During the site set-up and restoration phases noise levels arising from the development shall not exceed 55 dB LAeq 1hour between the hours of 0700 and 1900 hours each day measured at any noise sensitive property nearby. During the drilling phase noise levels arising from the development shall not exceed 45 dB LAeq 1hour between the hours of 0700 and 1900 hours each day measured at any noise sensitive property nearby. For all phases of the development noise levels arising from the development shall not exceed 42 dB LAeq 1hour between the hours of 1900 and 0700 hours each night measured at any noise sensitive property nearby.
- 12) Noise mitigation measures, as identified in the Environmental Noise Assessment for Proposed Coalbed Methane Appraisal Borehole at Borrás Road by Wrexham, shall be implemented for the duration of the development.
- 13) No HGVs shall access the site between the hours of 1900 and 0700 hours each night, except in an emergency.
- 14) The developer shall ensure that a suitably qualified archaeological contractor is present during the undertaking of any ground works so that an archaeological watching brief can be conducted. The archaeological watching brief shall be undertaken to the standards laid down by the Institute for Archaeologists. The mineral planning authority shall be informed in writing, at least 2 weeks before commencement of development, of the name of the said archaeological contractor. A copy of the watching brief report shall be submitted to the mineral planning authority and the Clwyd-Powys Archaeological Trust within 2 months of the fieldwork being completed.
- 15) Within 3 months of commencement of development a scheme for the restoration of the site, together with timescales for the work, shall be submitted to and approved in writing by the mineral planning authority. The scheme shall include measures to remediate any damaged soils. The scheme shall be implemented in full accordance with the approval, including the timescales.