

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

DATE: **WEDNESDAY, 23RD MARCH 2016**

REPORT BY: **CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

SUBJECT: **FULL APPLICATION - PROPOSED DEVELOPMENT OF SOLAR PHOTOVOLTAIC PANELS AND ASSOCIATED WORKS INCLUDING INVERTER HOUSINGS, ACCESS TRACKS, SECURITY FENCING AND CAMERAS AT DEESIDE LANE, SEALAND**

APPLICATION NUMBER: **053686**

APPLICANT: **SEP CHESTER LTD**

SITE: **LAND EAST OF DEESIDE LANE, SEALAND, FLINTSHIRE**

APPLICATION VALID DATE: **2ND JUNE 2015**

LOCAL MEMBERS: **COUNCILLOR MRS. C. M. JONES**

TOWN/COMMUNITY COUNCIL: **SEALAND COMMUNITY COUNCIL**

REASON FOR COMMITTEE: **THE SIZE OF THE APPLICATION SITE EXCEEDS THAT FOR WHICH DETERMINATION POWERS ARE DELEGATED TO THE CHIEF OFFICER (PLANNING AND ENVIRONMENT)**

SITE VISIT: **YES. MEMBERS WILL RECALL IN DEFERRING THIS APPLICATION AT THE COMMITTEE OF 24TH FEBRUARY 2016 IT WAS RESOLVED THE APPLICATION WOULD BE THE SUBJECT OF A SITE VISIT**

1.00 SUMMARY

- 1.01 The proposal is a full planning application for a photovoltaic solar farm and ancillary works on agricultural land at Deeside Lane, Sealand. The site extends to approximately 8.50 hectares. The issues for consideration are the principle of development; impacts on visual appearance and character of the green barrier; loss of best and most

versatile agricultural land (BMV), ecological impacts, impacts upon aerodrome safeguarding amenity and impacts on residential amenities.

2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASONS

- 2.01
1. The Local Planning Authority considers that the proposals would result in the unjustified loss of Grade 2 Best and Most Versatile agricultural land to beneficial agricultural production. Accordingly, it is considered that the proposals are contrary to the provisions of Policies STR1, STR7, STR10, GEN1 and RE1 of the Flintshire adopted Unitary Development Plan.

 2. The Local Planning Authority considers that insufficient evidence has been provided to justify the development of this site within an area of open countryside and Green Barrier and therefore considers that the proposals would unacceptably harm the character and appearance of the landscape and would have a detrimental impact upon the openness of the Green Barrier in this location. Accordingly the proposals are contrary to the provisions of Policies STR1, STR7, GEN1, GEN3, GEN4 and L1 of the Flintshire adopted Unitary Development Plan.

3.00 CONSULTATIONS

- 3.01 Local Member
Councillor Mrs. C. M. Jones
Requests Committee Determination.

Sealand Community Council

Objects to the proposals on the following grounds:

- Loss of Grade 2 agricultural land;
- Adverse impact upon habitat and populations of species;
- Proposals are of a scale which adversely impacts upon the character and appearance of the landscape; and
- Potential adverse impact upon aircraft approaching both Hawarden Airport and Liverpool John Lennon Airport.

Highways DC

No objection. Considers that the submitted Construction Traffic Management Plan demonstrates that the proposals would not give rise to any adverse impacts upon the local highway network.

Notes that Public Footpath 10 abuts the site but is unaffected by the proposal.

Pollution Control Officer

No adverse comments.

Dwr Cymru/Welsh Water

No objection.

Welsh Government – Land Use Planning Unit

Objects. Considers that the applicant has failed to demonstrate that the loss of BMV has been considered in accordance with best practice and guidance. Furthermore, considers that no evidence has been provided to prove that the land can be returned to BMV quality at the end of the proposed period of operation of the solar farm.

Airbus

No objection. Considers concerns in respect of aerodrome safeguarding as a consequence of bird hazard is addressed via the submitted Biodiversity Management Plan.

Liverpool John Lennon Airport

No objection. The proposals will have no impact upon operations at the airport.

National Air Traffic Services

The proposals do not give rise to any objection upon air traffic safeguarding grounds.

Natural Resources Wales

No objection to the proposals.

RSPB Cymru

No objection. Welcomes the commitment of the developer to provide a bird habitat management and biodiversity enhancement scheme via the Biodiversity management Plan.

Campaign for the Protection of Rural Wales

Objects to the proposals on the following basis:

- the proposals would have an adverse impact upon landscape character;
- the essential need for an open countryside location has not been made; and
- proposals would result in the loss of high grade agricultural land from agricultural production.

Clwyd Bat Group

No response at time of writing.

Clwyd Badger Group
No response at time of writing.

North East Wales Wildlife
No response at time of writing.

North Wales Wildlife Trust
No response at time of writing.

The Ramblers Association
No response at time of writing.

National Grid
No response at time of writing.

SP Energy Networks
No objections.

Wales and West Utilities
No objections.

4.00 PUBLICITY

4.01 The application has been publicised by way of a press notice, site notice and neighbour notification letters.

At the time of writing 18No. letters have been received in objection to the proposals. The grounds for objection are:

- inappropriate development in the open countryside;
- loss of high quality agricultural land;
- absence of details in respect of grid connection;
- community consultation not undertaken as claimed by the applicant;
- Impacts upon character and appearance of the area;
- Impacts upon the enjoyment of footpaths by walkers;
- Flood risk;
- Impacts upon residential amenity occasioned by construction noise and disturbance and noise emitted by plant once operational;
- Area is not industrialised as claimed; and
- Absence of consideration of alternative sites;

At the time of writing 1No. letter has been received in support of the proposal.

5.00 SITE HISTORY

5.01 Various historical applications in relation to the agricultural use of the land but nothing relevant to this proposal.

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

- Policy STR1 – New Development
- Policy STR7 – Natural Environment
- Policy STR10 – Resources
- Policy GEN1 – General Requirements for Development Control
- Policy GEN3 – Development in the Open Countryside
- Policy GEN4 – Green Barriers
- Policy D1 – Design Quality, Location and Layout
- Policy D2 – Design
- Policy D3 – Landscaping
- Policy L1 – Landscape Character
- Policy WB1 – Species Protection
- Policy WB2 – Sites of International Importance
- Policy WB3 – Statutory Sites of National Importance
- Policy WB6 – Enchantment of Nature Conservation Interests
- Policy AC2 – Pedestrian Provision and Public Rights of Way
- Policy AC13 – Access and Traffic Impact
- Policy EWP1 – Sustainable Energy Generation
- Policy EWP5 – Other Forms of Renewable Energy Generation
- Policy RE1 – Protection of Agricultural land

Planning Policy Wales (2016);

Technical Advice Note 5: Nature Conservation & Planning (January 2009);

Technical Advice Note 6: Planning for Sustainable Rural Communities (July 2010);

Technical Advice Note 8: Renewable Energy (July 2005);

Technical Advice Note 23: Economic Development (February 2014)

7.00 PLANNING APPRAISAL

7.01 The Site and Surroundings

The site comprises an 8.5 hectare area of flat agricultural land. The site is bounded on all sides by existing hedgerows. Access is presently derived via an existing lane which serves Banks Farm which is provided via Deeside Lane. The site is set within a wider flat landscape of similar character which is employed predominantly in agricultural production.

7.02 The Proposals

The proposals seek permission for the development of the site to provide a 5MW solar park. The proposal seeks permission on a temporary basis of 25 years. The proposals provide for the siting of 19,320 solar panels arranged in arrays running across the site. The

panels are proposed to be mounted upon a metal frame at an angle of 28 degrees from the horizontal. The panels will be 2.2 metres above ground level at the highest point and 1 metre at their lowest.

7.03 In addition, cabling conduits, set 1 m into the ground are proposed which in turn link with inverters and control cabinets. The proposals provide for the site to be enclosed by a 2m high deer fence and a new electricity sub-station is proposed within the south eastern corner of the site to provide connections to the national grid. Access will remain as existing.

7.04 The Main Issues

I consider the main issues for consideration in connection with this application are:

1. The principle of development having regard to both national and local planning policy;
2. Loss of Best and Most Versatile agricultural land (BMV);
3. Impacts upon the visual character and appearance of the landscape and Green Barrier;

7.05 The Principle of Development

National Policy and Guidance

The Welsh Government (WG) has clear priorities to reduce carbon emissions, with one of the important ways of delivering this being through the continued development of renewable energy generating projects. TAN8 included a target of 4 TWh (Terrawatt hours) per annum of renewable energy production by 2010 and 7 TWh by 2020.

7.06 PPW advises that the WG's aim is to secure an appropriate mix of energy provision for Wales, whilst avoiding, and where possible minimizing, environmental, social and economic impacts. This will be achieved through action on energy efficiency and strengthening renewable energy production.

7.07 When considering planning applications for renewable energy schemes, WG advises that planning authorities should take into account:-

- The contribution a proposal will play in meeting identified national, UK and European targets and potential for renewable energy.
- The wider environmental, social and economic benefits and opportunities from renewable energy and low carbon development.
- The impact on the national heritage, the coast and the historic environment.
- The need to minimize impacts on local communities, to safeguard quality of life for existing and future generations.
- To avoid, mitigate or compensate identified adverse impacts”.

- 7.08 In addition to this there is a raft of further key documentation relevant to the proposal, for example, EU Energy Strategy 2020, Climate Change Strategy for Wales (2010), Energy Wales a Low Carbon Transition (2014), Planning implications of Renewable and Low Carbon Energy – Practice Guidance (Welsh Government, 2011) and Planning for Renewable and Low Carbon Energy – A Toolkit for Planners (Welsh Government, 2015).
- 7.09 The above paragraphs therefore set out the national planning policy framework associated with renewable energy proposals.
- 7.10 The Planning and Compulsory Purchase Act 2004 stipulates at S.38 that ‘if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise’. Accordingly, the UDP is the starting point for the consideration of this application, unless National Planning Policy supersedes the provisions of those applicable policies.
- 7.11 **Local Planning Policy**
There are a number of strategic policies to be found in the UDP which are of relevance to this proposal and I refer to each in turn.
- 7.12 STR1 New Development – should generally be located within existing settlement boundaries, allocations, development zones and principal employment areas and will only be permitted outside these areas where it is essential to have an open countryside location.
- 7.13 STR7 Natural Environment – the stated aim of this policy is to safeguard Flintshire’s natural environment by, amongst other things, protecting the open character and appearance of strategic green barriers around and between settlements. The green barrier at this location is not around or between Flintshire settlements. Nevertheless it is a strategic planning designation where it abuts and compliments the West Cheshire Green Belt. In addition criterion (g) seeks to protect the quality of land, soil and air.
- 7.14 STR10 Resources – criterion (a) requires that new development must make the best use of resources through utilizing suitable brownfield land wherever practicable in preference to greenfield land or land with ecological, environment or recreational value.
- 7.15 Policy GEN1 sets out the general requirements to be met by all new development. It states that development that requires planning permission and is in accordance with the Plan’s other policies should satisfy a list of criteria. Criterion (k) states that the development should not result in the permanent loss of the best and most versatile agricultural land where either suitable previously developed land or

land in lower agricultural grade is available. The applicant contends that the site is grade 3b agricultural land. Advice from Welsh Government Land Use Planning Department in respect of the Agricultural Land Classification of this site casts doubt upon this view and indicates the site actually comprises Grade 2 land. Other criterion require the development to not have a significant impact on (amongst other things) wildlife species and other landscape features. Whilst the site is not a designated landscape it is a landscape feature in its own right by virtue of its openness and the visual impact upon this will need to be fully considered.

7.16 Policy GEN3 sets out those instances where development will be permitted in the open countryside and criterion (j) refers to other development which is appropriate to the open countryside and where it is essential to have an open countryside location rather than being sited elsewhere. In terms of the principle of this type of development it is my view that an open countryside location for solar panels is not necessarily essential. For example solar energy can be harvested on brownfield sites, land allocated for employment uses or in the Plan's Principal Employment Areas.

7.17 Whilst the site is open countryside it is also designated as green barrier. Policy GEN4 deals with development in these locations and the proposal does not constitute any of the uses referred to in criteria (a) – (d) or (f). However criteria (e) refers to farm diversification schemes and it is the applicants assertion that the proposal will result in farm diversification for which there is policy support at both the national and local level. Criterion (g) refers to other appropriate rural uses for which a rural location is essential.

7.18 Notwithstanding these circumstances the policy also goes on to state that proposals are only likely to be considered to be acceptable where, amongst other matters, it would not unacceptably harm the open character and appearance of the green barrier. Openness is a key attribute of this green barrier and whilst the applicant contends that a rural location is essential for the proposed use, it is my view that it is no more essential than other locations which are outside of the green barrier. I therefore fail to see the essential requirement for the proposal to be developed at this location.

7.19 Loss of Best and Most Versatile agricultural land (BMV)
Both national and local planning policy seek to ensure that development does not result in the loss of best and most versatile agricultural land where either suitable previously developed land or land of lower agricultural quality is available. The application particulars assert that quality of the agricultural land is Grade 3b and therefore not BMV. Furthermore, notwithstanding that the applicant does not consider the site to constitute BMV land, they assert that the loss of the land to agriculture is mitigated by the fact that grazing can still occur beneath the solar arrays.

- 7.20 The proposals have been the subject of consultation with Welsh Government Land Use Planning Unit (WG) who have raised objection to the proposals on the basis that it is not in the long term national interest to lose 8.5 hectares of BMV. Furthermore, WG has raised objection on the basis that the land amounts to Grade 2 agricultural land and therefore would constitute BMV. Various representations from third parties also raise this matter in objection.
- 7.21 The applicant has sought to contend that the land is not of such high agricultural quality as a consequence of flooding and soil wetness and ought therefore to be properly considered as Grade 3b. WG have considered the Agricultural Land Classification reports submitted in support of the application, together with other additional information provided in relation to the effect of the claimed flood and soil wetness issues at the site.
- 7.22 WG have consulted with NRW upon these points and NRW have advised that the site is not subject to flooding as a consequence of inundation from adjacent watercourses and groundwater is not such as would result in soil wetness to reduce the quality of the soil. Accordingly, WG maintain their objection and advise that the site comprises Grade 2 land.
- 7.23 Accordingly, the site does amount to land which is Best and Most Versatile agricultural land and therefore its loss to agricultural production, whether permanent or temporary (as cited by the applicant), must be weighed against other factors which make the siting of the proposed development upon such land an imperative notwithstanding the above issue.
- 7.24 In addressing this issue, the applicant has submitted a report examining alternative locations to this site. This report acknowledges that BMV land should only be used where there is demonstrably no previously developed land (PDL) available for use and there is no other lower grade agricultural land available to substantiate that the use of this BMV land is acceptable. The report identifies a variety of sites amounting to PDL, including former landfill sites, and examines opportunities via the use of commercial roof space in the area. For a variety of reasons, the report discounts these sites as being unsuitable.
- 7.25 It would have been expected that the applicant would then have proceeded to consider the availability of lower grade agricultural land in sequential preference to BMV land. However, upon this point, the applicants rely upon their view that the site is sub grade 3b land and therefore, not BMV. In taking this view they have concluded that an assessment of other agricultural land is not required.

- 7.26 It is in this respect that the assessment of alternative sites is fundamentally flawed. The site is BMV land and therefore, to not assess whether other lower grade agricultural land is available does not accord with the applicable policy context.
- 7.27 The applicants have referred to a relatively recent planning permission granted for a solar farm on land to the north of Shotwick Road, suggesting that even if this land is considered to be BMV, the precedent has been set. Members will however recall that that planning permission was granted on the basis of a proven locational need to serve the adjacent papermill, which was cemented through a complex legal agreement binding the applicant to this supply. Despite the letters of support recently submitted (See Paragraphs 7.38 – 7.45 below) there is no such proven need in this case and consequently, no overriding requirement to locate this development upon this particular tract of land.
- 7.28 Impacts upon the visual character and appearance of the landscape and the Green barrier
GEN3 sets out those instances where development will be permitted in the open countryside and criterion (j) refers to other development which is appropriate to the open countryside and where it is essential to have an open countryside location rather than being sited elsewhere. I have stated earlier, this type of development it could also be accommodated on brownfield sites, land allocated for employment uses or in the Plan's Principal Employment Areas. Whilst the site is open countryside it is also designated green barrier.
- 7.29 GEN4 deals with development in these locations and the proposal does not constitute any of the uses referred to in criteria (a) to (f). Criterion (g) refers to other appropriate rural uses for which a rural location is essential. Notwithstanding these circumstances the policy also goes on to state that development should only be permitted provided that it would not contribute to the coalescence of settlements and unacceptably harm the open character and appearance of the green barrier. Objections have been received citing the detrimental impact of the proposed development on the designated Green Barrier.
- 7.30 The UDP strategy in the designation of green barriers is to ensure the protection of important areas of open land. This is certainly the case in this instance as the site sits within a larger swathe of green barrier number 16 Sealand – Cheshire Border (N River Dee). The character of the site is in complete contrast to the industrial areas located across the river to the south. The River Dee, in this area of the county could be seen to form a firm and defensive boundary to the limits of built development on the industrial sites to the south. In essence the green barrier designations are intended to perform the same basic functions as green belts albeit without the same level of permanence. In this case the land has been designated as it comprises an extensive area of flat and open agricultural land.

- 7.31 In broad terms Policies GEN3 & 4 refer to use of land in open countryside/green barrier only where it is appropriate and essential with other brownfield sites being preferential. As set out previously in this report, there is no overriding need to locate the development upon this site such that would outweigh the policy presumption against development of this kind in this area. Accordingly, I cannot conclude that this proposal is located thus due to an absence of other alternative sites within the area.
- 7.32 I turn then to consider whether the proposed siting of the arrays in this area would have an adverse impact upon the landscape itself. I note that the application has been the subject of landscape and visual impact assessment and the proposals are accompanied by a Landscape and Visual Impact Assessment and a Historic Environment Assessment. These assessments have assessed both the visual impacts of the proposed development from various vantage points around the site and also the impact of the proposals upon any historic assets in the locality.
- 7.33 The vantage points from which the visual impact assessment (VIA) has been undertaken at points ranging between 0m to 1.27km from the site. The VIA concludes that the impact from these viewpoints is moderate. The impacts are considered to be more significant at distances more local to the application site and principally impact upon the occupiers of nearby dwellings and users of nearby footpaths. In terms of impacts upon Historic Assets, the reports illustrate that there is actually only one asset in the search area (the listed former Women's Land Army building on Sealand Road) but no further assets of this type within the 500m assessment area and those which exist within the wider 5km assessment area have no direct visual relationship with the site and therefore there is no impact upon the setting of such assets.
- 7.34 Despite benefiting from the filtering effect of existing vegetation to long range views, at close range there would be clear views of the site which are unlikely to benefit much from any proposed mitigation by way of landscaping. The application details include visual mitigation by way of landscaping screening in the form of native species hedgerows and tree planting to the field boundaries to augment and reinforce those already existing.
- 7.35 The applicants argue that the site does not have any particular landscape value however it should be noted that green barrier designations need not have any intrinsic inherent quality (landscape or nature conservation). The key purpose is to retain openness.
- 7.36 Given the flat and open nature of the landscape I conclude that development upon this site would be particularly visible within the wider open, flat expanse of land. The site is particularly visible from

the adjacent public footpath situated to the eastern boundaries of the application site where there are uninterrupted views across the whole of the site. There is no doubt the site's development would inevitably change the character of the field and erode its rural quality and diminish the open nature of the green barrier designation. The proposed mitigation would serve to screen the site from medium to long distance views

7.37 Taking the requirements of Policies GEN3 & GEN4 into account I conclude that the proposals would not comply with these policies. The site has not been proven to be sequentially preferable and I consider that it is prejudicial to the green barrier designation, albeit for the temporary period of 25 years, especially at a localised level. I have also factored the requirements of Policies L1 and RE1 into my consideration of the broader issue and note that the proposals would also fail to satisfy the requirement to maintain or enhance the character of the landscape (policy L1) and does not provide an overriding case for the loss of BMV as required by policy RE1.

7.38 Economic Case

The applicant has suggested that power arising from this development could be supplied to local firms or residential customers via a Power Purchase Agreement from a major energy supplier (EDF). In addition, a letter of interest and PPA has also been provided by a land holding company associated with the Airfields site within the Deeside Enterprise Zone. This letter expresses interest in securing the generated power as an added incentive to parties interested in developing the Airfields site.

7.39 As mentioned previously in this report, Members are aware in the case of recently approved Shotwick Road solar farm in which the proximity of the that site to the identified end users of the produced power was considered to be the material consideration which outweighed the other policy concerns in that case. I have examined the details submitted by the applicant in support of their economic argument and am also mindful of the support for the proposal expressed by the Council's Business Development Manager. The submissions in both cases indicate that there is an interest in purchasing the power.

7.40 In the case of the EDF interest, this does not provide any indication of where the end users of the power are actually located in relation to the site itself. Whilst not a determinant factor in itself, it is material in considering the proximity user argument being relied upon by the applicant in support of the use of this site. The question is not whether the point has a policy basis, rather is the issue of sufficient materiality to outweigh the policy presumptions against the proposals. I shall return to this question in drawing conclusions upon this point.

- 7.41 The second expression of interest arises from the developer of the Airfields Site at Northern Gateway. In addition to the letter and PPA, the submission highlights a commitment to deliver energy at a 5% discount and indicates that the economic benefits over the 25 year production life of the this and the related solar farm proposal at Deeside Lane equates to some £13.4M.
- 7.42 The applicant contends that this site has been chosen not only because of its' proximity to site such as the Airfields, but also because of the proximity of available grid connection points within the area. I am advised that this site is one of those closest to the available 11kv grid connection in the area.
- 7.43 I have considered these submissions but note that, notwithstanding the intentions of the developer at the Airfields, there is actually no development undertaken or being undertaken upon this site. Therefore, there is no end user to satisfy the proximity argument being relied upon by the applicant. It is a fact that this proposal offers no guarantees as to when the development of the Airfields development will commence. Therefore, until development has been undertaken, there is no end user at that site and therefore all power generated in the interim would be fed directly into the grid.
- 7.44 This fact brings be back to question of the materiality of the proximity arguments being advanced by the applicant is support of the development of this site. The materiality of such an argument was apparent in the decision at Shotwick Road, where it was evidenced and secured via an appropriate S.106 agreement, that the location of the solar farm was essential given its proximity to the end user of the power.
- 7.45 The fact in this case is that there is no locational factor which would override the policy presumption against the development of a site in the open countryside, within a Green barrier and comprising BMV land. The facts are that, if approved, either of the above arrangements would see the power produced being fed into the grid, with no control as to where that power is then distributed.

8.00 CONCLUSION

- 8.01 In coming to my recommendation, I have weighed into the balance the strong support at national and local levels for the development of renewable energy generation against the presumption against non-essential development in the open countryside/Green Barrier, the impact arising therefrom and the loss of BMV land for the duration of the life of the site.
- 8.02 Whilst the case for the development of such proposals has significant weight, it does not in itself outweigh the fact that the location of the development on this site is not proven to be essential. It therefore

necessarily follows that non-essential development is not, in itself, sufficient reasons to allow development which would result in the loss of BMV land and result in a negative landscape impact.

- 8.03 Accordingly I consider that the proposals are not acceptable having regard to the policies within the UDP and having regard to the national policy guidance framework.
- 8.04 In considering this planning application the Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention, and has had due regard to its public sector equality duty under the Equality Act 2010.

LIST OF BACKGROUND DOCUMENTS

Planning Application & Supporting Documents
National & Local Planning Policy
Responses to Consultation
Responses to Publicity

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