

**Lancashire County Council**

**Development Control Committee**

**Wednesday, 18th January, 2017 at 10.00 am in Cabinet Room 'B' - The Diamond Jubilee Room, County Hall, Preston**

**Agenda**

**Part I (Open to Press and Public)**

**No. Item**

- 11. Fylde Borough: Application LCC/2016/0007 - The erection of photovoltaic panels and associated works including switchgear housing, security fencing and integral connection to the existing waste water treatment work substation. Clifton Marsh Waste Water Treatment Works, Preston New Road, Freckleton.** (Pages 1 - 22)

I Young  
Director of Governance,  
Finance and Public Services

County Hall  
Preston



## Development Control Committee

Meeting to be held on 18th January 2017

Electoral Division affected: Fylde South
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### **Fylde Borough: Application number LCC/2016/0007**

**Erection of a solar photo voltaic array (solar farm), 2 switchgear housings, a ring-main unit, 2.4m high security mesh fencing and integral connection to Preston Waste Water Treatment Works. Field adjacent to west side of Preston Waste Water Treatment Works, Clifton Marsh, off Lytham Road, Freckleton.**

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### **Executive Summary**

Application - Erection of a solar photo voltaic array (solar farm), 2 switchgear housings, a ring-main unit, 2.4m high security mesh fencing and integral connection to Preston Waste Water Treatment Works. Field adjacent to west side of Preston Waste Water Treatment Works, Clifton Marsh, off Lytham Road, Freckleton.

The application is accompanied by an Environmental Statement

### **Recommendation – Summary**

That after first taking into consideration the environmental information and further information, as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 submitted in connection with the application, planning permission be **refused** for the following reasons:

1. The proposed development would involve the loss of a substantial part of a Black-tailed Godwit natal feeding area that is functionally linked to the Newton Marsh SSSI, and in the absence of mitigation, the development would therefore have a significant and unacceptable impact on the nature conservation interests of the SSSI. The applicant's proposed mitigation measures for these impacts are not considered to be sufficiently robust and would carry a significant risk that they would not be successful. These impacts are sufficient to outweigh the benefits of the proposal in terms of the generation of electricity from renewable sources, and hence the proposal is contrary to Paragraphs 109 and 118 of the NPPF, and Policies EP16 and EP19 of the Fylde Borough Local Plan.

2. Insufficient information in the form of a Bird Management Plan and an updated Habitat Management Plan, has been submitted to enable Lancashire County Council, as the competent authority, to carry out the necessary assessment for the purposes of the Habitats Regulations and to conclude that the proposed development would not result in likely significant effects on qualifying interest bird species of the adjacent Ribble & Alt Estuaries SPA. In the absence of such

information, the County Council cannot properly assess the ecological impacts of the development sufficient to discharge its duties under the Habitats Regulations and cannot conclude that the development would not harm the ecological interests of the adjacent Ribble & Alt Estuaries SPA contrary to Paragraphs 109 and 119 of the NPPF, and Policy EP15 of the Fylde Borough Local Plan.

## **Applicant's Proposal**

Planning permission is sought for an array of ground mounted solar photovoltaic (PV) panels on a field measuring approximately 350m by 150m (5.7 hectares) to the west of the Preston Waste Water Treatment Works (WwTW) to generate up to 4.3MW of electricity per annum. The development would also include 2 x switchgear housings, a ring-main unit, security fencing and integral connection to the Preston WwTW. Underground cabling would connect the solar panels to the switchgear housing, and the switchgear housing to the ring-main unit and substations. The development would have a lifespan of 25 years.

The solar PV array would consist of series of 46 rows of solar panels that would be orientated east / west across the site. The rows would be 3.5m apart. The panels would be angled and mounted on metal frames fixed to the ground with the higher edge of the panels up to 2.6m above ground level and the lower edge 800mm above ground level. The solar panels have a dark blue glass finish.

The 2 x switchgear housings would each be contained within shipping containers measuring 12.1m x 2.4m x 3.5m high. The ring-main unit would be contained within a glass reinforced plastic (GRP) kiosk measuring 3m x 3m x 2.5m high, but with an overall height of 4.5m as it would be raised off the ground by 2m to provide protection against any flooding of the site. The colour of the switchgear housing and the GRP kiosk would be green.

The site would be surrounded by green 2.4 m high mesh security fencing to be fitted with natural screening such as woven hazel or willow.

A habitat management area of 19.44 hectares consisting of a mitigation and enhancement area of 15.74 hectares and a Black-tailed Godwit retained natal feeding area of 3.7 hectares is also proposed. It is proposed to remove of some hedge and trees along the northern boundary of the mitigation and enhancement area.

A screening opinion has been undertaken that concluded that the proposed development constitutes Environmental Impact Assessment development for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011.

## **Description and Location of Site**

The site is a rectangular area on the eastern side of a field of improved pasture reclaimed from former saltmarsh that is currently used for sheep grazing and located

along the northern bank of the River Ribble. The site is immediately west of a scrubby area of land that forms the western edge of Preston WwTW, The application site is approximately 8km west of Preston town centre and 1.5km south-east of Freckleton. Access is via a private road that runs south from the A584 Preston New Road to the Preston WwTW. The habitat management area is located to the immediate west of the application site; the Black-tailed Godwit retained natal feeding area adjoins the application site and then leads into the mitigation and enhancement area further to the west, with the land becoming increasingly marshy with shallow ponds.

The nearest residential properties to the proposal are located approximately 570m to the north-west at Grange Farm. The site is not itself within an area of higher tier ecological designation but the Ribble and Alt Estuaries SPA and Ramsar site, and the Ribble Estuary Site of Special Scientific Interest (SSSI), are located 180m to the south of the site, and the Newton Marsh SSSI is located approximately 640m to the north of the site. The River Ribble, Lower Tidal Section Biological Heritage Site (BHS) borders the entire southern boundary of the site.

The development would be located wholly within Flood Zone 2, with a small area of the north-east corner of the site within Flood Zone 3.

## **Background**

There is no planning history for the application site.

## **Planning Policy**

National Planning Policy Framework (NPPF)

Paragraphs 11 – 14, 17 - 19, 28, 56 - 66, 93 – 98, 100 – 104, 109, 118 and 119 are relevant with regard to the requirement for sustainable development, core planning principles, building a strong competitive economy, supporting a prosperous rural economy, the requirement for good design, meeting the challenge of climate change, flood risk, and conserving and enhancing the natural environment.

National Planning Practice Guidance

Fylde Borough Local Plan

Policy SP2 Development in Countryside Areas  
Policy EP10 Building Design and Landscape Character  
Policy EP15 European Designated Nature Conservation Site  
Policy EP16 Sites of Special Scientific Interest  
Policy EP17 Biological Heritage Sites  
Policy EP19 Protected Species  
Policy EP20 Areas of Open Coastline  
Policy EP23 Pollution of Surface Water  
Policy EP30 Development within Floodplains

## Consultations

Fylde Borough Council – No objection and request the following:

- Consideration is given to whether the applicant has adequately demonstrated if other alternative sites of previously developed land or land of a lesser agricultural quality are available.
- Consultation be undertaken with South Ribble Borough Council as a neighbouring authority from where the site would be visible.
- Consultation be undertaken with The Ramblers due to the visibility of the site from public rights of way in the area and South Ribble.
- Consideration be given to the ecological issues in consultation with Natural England and specialist ecological advisers, including the completion of any Habitats Regulation Assessment that is necessary.

Freckleton Parish Council – No objection to the proposed solar park. However, there are concerns as to the possible impact of the associated “environmental enhancement” which is aimed at attracting birds to the Ribble estuary marshes and salt flats. The site chosen is extremely close to or under the approach path for aircraft that utilise Warton airfield. Such development could represent a significant increase in the risk of “bird strike” to such aircraft, and the PC is extremely sensitive to the possible consequences of such events. This can include loss of an aircraft and of life, to both the crews and personnel on the ground who live or work in the area. From the presentation given by the applicant's representatives, it is clear that this aspect has yet to be considered in any depth.

Newton-with-Clifton Parish Council – No objection.

LCC Highways Development Control – No objection.

Environment Agency – No objection.

LCC Specialist Advisor (Ecology) – Object for the following reasons:

- The development would result in a loss of natal feeding habitat for black-tailed godwit that breed on Newton Marsh Site of Special Scientific Interest (SSSI)
- The proposed mitigation and enhancement area is used by wintering birds, which are a qualifying species of the adjacent to the European Site (Ribble & Alt Estuaries Special Protection Area), as functionally-linked land to the Special Protection Area (SPA). The proposals would affect, at least indirectly, this habitat and BAE systems require a formal bird scaring/ bird management plan to address concerns about the risk of bird strikes to aircraft that utilise the approach path to BAE Systems Warton airfield. The bird management plan proposals could affect the usage of the area by birds associated with the SPA, but the proposals have not been sufficiently developed to be able to conclude with the required degree of certainty what the effects would actually be.

LCC Specialist Advisor (Archaeology) - No objection.

LCC Specialist Advisor (Landscape) – No objection subject to the following recommendations:

- The existing hedgerow on the northern boundary of the mitigation and enhancement area should be retained and managed so as to provide screening from the north and west. This could include the removal or lopping of existing trees in the hedgerow in order to limit the presence of avian predators, with gap filling if necessary.
- It is also proposed that screening be provided along the southern and western boundaries of the application site. This would form a connection with the existing hedge.
- If the scrub and trees are to be removed in the adjacent field to the east, it is suggested that scrub /trees are retained at the very south of the site to provide screening from the south of the river.

Natural England – The revised scheme is an improvement on the previous version but uncertainty and risk remains, particularly regarding the potential success of the mitigation area. NE advise that this risk could be reduced to an acceptable level through a more strategic approach to conservation in the surrounding area, for the benefit of breeding Black-tailed godwit i.e. provision of additional foraging habitat, improved habitat connectivity and habitat corridors.

The following comments have also been provided:

- No confirmation in the submitted Grassland Management. Note that the mitigation and enhancement area could be managed practically.
- Despite the content of the Site Selection Justification Statement that there are no alternative sites, it would seem that there is a further option worthy of consideration that would enable a larger area of the natal feeding habitat to be retained whilst also allowing the solar array to be built i.e. a combination of the area edged black on the plan and a smaller area to the north of the foraging habitat area.
- The applicant's conclusion in the Habitat Management Plan that Black-tailed godwits would continue to use natal feeding habitat within 110m of the solar panels is incorrect. NE consider that the displacement effect is more likely to be 200m from the solar panels and would therefore even further reduce the natal feeding habitat area for black-tailed godwit. This therefore increases the importance of the mitigation and enhancement area. However, even if the proposed grassland management is achievable in practice, managing land to create suitable conditions for BTG natal feeding habitat has proven to be very difficult. Therefore, whilst NE consider that the proposed mitigation might work, there is still a risk that it would not be used as natal feeding habitat.

RSPB – Object on the basis of the application site's importance as a natal feeding area for Black-tailed Godwit and the likely significant adverse impact of the proposed development upon the only breeding population of this species in the northwest of England. The birds usually nest on the Newton Marsh SSSI but lead their young onto

the application site to rear them until they have fledged. The RSPB also consider that the proposals for mitigation and enhancement are inadequate. There is a lack of consideration of alternative sites: the Developer has not adequately explained why land within its ownership to the east of the WwTW is unsuitable for use as a solar park. The Proposed Habitat Management Plan proposes to move the natal feeding area further to the west onto the Mitigation and Enhancement Area - there are serious concerns as to the effectiveness of the Godwit chicks using the new area for feeding based upon experiences of other sites within the UK. The RSPB would only be supportive of the current application if it was determined after the Mitigation and Enhancement Area was shown to be fully functioning, i.e. supporting feeding Godwit chicks. However, the agent has stated that this is not considered to be a feasible option. The Grassland Management Note submitted on the 08/12/16 alludes to the feasibility of proposed management but it is not adequately covered. There is no submission of method/s to secure management of the mitigation land in the long-term (Habitat Mitigation Plan), no submission of a proposed strategic conservation strategy for Black-tailed Godwits, and a lack of monitoring regime of success of Mitigation and Enhancement Area for foraging godwit chicks.

The RSPB also comment that the applicant has made it clear in meetings that the Solar Park has to be generating electricity by the end of March 2017 so as to ensure that they can get the higher feed-in tariff (FIT) before it lowers at the start of April 2017 so as to avoid a reduction in income/ ensure higher income is achieved. Therefore the only reason for UU to push for the solar park to be generating electricity by the end of March 2017 is for financial reasons which seemingly has little to do with the commitment to self-generate electricity (the applicant's reason in the application information is that the need for the development is UU's own commitment to self-generate 35% of their annual electricity demand by 2020 in order to pass the energy savings onto customers).

It is requested that United Utilities finds an alternative less damaging site for the proposed solar farm.

Shell UK Ltd. – No observations received.

Health and Safety Executive - No observations received.

Canal and River Trust – No objection but make the following comments:

- The development could have an indirect impact upon the Lancaster Canal, and Leeds and Liverpool Canal, as these waterways connect to the River Section of the Ribble Link (River Ribble). It is therefore recommended that silt fences are installed during the construction phase of the project to intercept silt laden runoff, if construction traffic or adverse weather is likely to cause damage to the topsoil.
- The visual impact when viewed from craft on the River Ribble should be minimal and hence acceptable.

BAE Systems – Object due to the risk of bird strikes to aircraft that utilise the BAE Systems Warton airfield, as a consequence of increased numbers of birds using the proposed mitigation and enhancement area.



Ministry of Defence Lands – Safeguardings – No observations received.

National Air Traffic Services - No objection.

Representations – The application has been advertised by press, site notice and neighbouring residents have been notified by letter. Two objections have been received; one each from the Lancashire and Cheshire Fauna Society, and the Lancashire Wildlife Trust on the basis of loss of habitat functionally linked to Newton Marsh SSSI vital to the continued breeding success of Black-tailed Godwit.

An additional representation has commented that the planting of trees along the north and west sides of the solar park would help to screen the development from further afield.

### **Advice**

Planning permission is sought for a solar panel array covering an area of nearly 5.7 hectares in a field adjacent to the west side of Preston WWTW.

Preston WWTW treats waste water arising from the urban areas of Preston. The equipment used to power pumps and other treatment infrastructure is electrical and hence the site is a major consumer of electricity. The solar panels would allow this plant to be powered by electricity that is generated on site rather than having to draw electricity from the national grid. The panels would allow the generation of up to 4.3MW of electricity per annum, based on an estimate that the panels would generate electricity 11.8% of the total number of hours in a year. The development would have a lifespan of 25 years after which time it could be removed or, the lifetime extended subject to a further permission.

The main issues associated with the application are climate change issues, landscape/ visual impact, glare, traffic, flood risk, residential amenity, nature conservation interests, aviation and pollution of surface water.

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. In considering the issues that arise from the proposed development, it is necessary to take into consideration the relevant policies of the Development Plan and the planning history of the site and all other material planning considerations. Government policy is a material consideration that should be given appropriate weight in the decision making process. The policies of the Development Plan relevant to this application are contained in the Fylde Borough Local Plan.

The site is designated as countryside area within Policy SP2 of the Fylde Borough Local Plan. The policy permits various development in countryside areas where proposals properly fall within one of a number of categories. One of the categories includes other uses appropriate to a rural area. A solar farm would be a use that would be appropriate to a rural area given that it demands large areas of undeveloped land. The proposed development is therefore considered in principal to

be an acceptable development within the Countryside area and therefore complies with Policy SP2.

### *Climate change issues*

The NPPF states that the planning system plays a key role in securing radical reductions in greenhouse gas emissions, minimising vulnerability and providing reliance to the impacts of climate change, and supporting the delivery of renewable energy infrastructure which is central to the economic, social and environmental dimensions of sustainable development. To help increase the use and supply of renewable energy, the NPPF advises that planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable sources. The NPPF states that applicants for energy development should not be required to demonstrate the overall need for renewable energy and that planning authorities should recognise that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions. The NPPF advises that applications for renewable energy development should be approved if impacts are (or can be made) acceptable.

The electricity produced is proposed to be used at Preston WWTW that had an electricity consumption of approximately 10.5MW for the past four years. The solar farm would generate up to 4.3MW of electricity per annum which equates to approximately 40% of the annual electricity use of the WWTW. Any surplus electricity produced would be fed into the national grid. The solar farm would reduce reliance on electricity generated by conventional means and so reduce the greenhouse gas emissions associated with such generation. The proposal is therefore considered to accord with National Planning Policy regarding the need for renewable energy generation and meeting climate change objectives.

The NPPF seeks to promote a strong local economy by supporting sustainable economic growth and the expansion of all types of business and enterprise in rural areas in order to create jobs and prosperity. The proposal would accord with paragraphs 18, 19 and 28 of the NPPF.

### *Landscape/ visual impact*

A landscape and visual assessment has been submitted. The site is in a flat countryside area that is not covered by any special landscape designations and is a considerable distance from sensitive receptors. The development would cover a significant area of land but its visual impact would be relatively low as the top edge of the panels would only be 2.6m above ground level. In terms of the array design, this is influenced by the engineering requirements of the array, with associated structures located to minimise the amount of cabling required to operate an efficient solar array. The panels are aligned to face south, which allows for the maximum amount of solar energy to be collected.

The LCC Specialist Advisor (Landscape) has not objected subject to the retention of trees, hedges and scrub along the northern boundary of the mitigation and enhancement area, and the field adjacent to the east side of the solar park, plus the provision of screening along the southern and western boundaries of the application

site. However, it is not considered this landscaping would be appropriate as the increase in vegetation may result in greater impacts on the existing bird interests of the site as a consequence of more avian predators being able to perch on the vegetation and survey the area for prey. Given the relatively low visual impact of the development, it is not considered that the additional landscaping is essential in order to make the visual impacts of the development acceptable.

The site is screened from the north and east by a raised area of land and the Clifton Marsh landfill site. There is the potential for the site to be seen from public rights of way on the south side of the River Ribble and across Hutton and Longton Marsh. However, the footpaths would be a minimum of 1.5km away; a distance that would be expected to reduce the visual impact. The landscape and visual impacts of the development are limited to the immediate site surroundings, with medium and long distance views considered not to be significant.

The solar panels have a dark blue glass finish with light coloured metal framework. The switchgear housing and the GRP kiosk would be coloured green. Subject to a condition to require that the plant and equipment be finished in accordance with the submitted colour details, it is considered that the development would have an acceptable visual impact within the local landscape and therefore accords with Policy EP10 of the Fylde Borough Local Plan.

### *Glare*

The solar panels are designed to absorb light but there is the potential that sunlight reflecting off the panels could have an impact upon residential amenity and also aviation, given the site's proximity to Warton Aerodrome. Atmospheric conditions will influence when glare could potentially occur.

An assessment of the potential for glare has been undertaken that concludes that there is some potential for glare, particularly at receptors to the south, southeast and west of the site, although this is limited to March-May and August-October each year between either 05:00-07:00 or 18:00-19:00. Incidences of glare would not occur for the entire duration of these time periods, with glare likely to be seen for short periods of a few minutes at most. The assessment does not consider the screening effect of intervening vegetation and buildings, and does not take into account the orientation of buildings or views as it assumes that all would face directly towards the site, which of course would not be the case.

In every case, including a projected flight path from Warton Aerodrome, the predicted incidences of glare are considered to have a low potential for an 'after image' to be present in a person's vision i.e. the yellow spots that can persist in an individual's vision after viewing a bright object. Additionally, during the periods of potential glare, the sun will generally be low in the sky and viewed behind the solar array, relative to the receptor location. As such it is likely that in many cases the sun itself would be a more prominent source of glare than the solar PV array.

It is therefore considered that the limited instances of predicted glare arising from the proposed development would not result in any demonstrable adverse effects.

## *Traffic*

Access to the solar park site is required primarily for the purposes of construction when the majority of vehicle movements would occur. Occasional access would be required during the operational phase of the development, limited to relatively few movements for maintenance and cleaning purposes.

Access to the site will be taken via the existing wastewater treatment works junction with the A584 and access road which runs south from the junction to the works. The A584 and junction is already used by large numbers of HGV's and is capable of accommodating the HGV traffic that would be generated by the development.

The construction of the solar park would take approximately 12 weeks to complete. The solar panels, supporting frames and all other necessary construction components and materials would be delivered to site by standard HGV articulated lorries, with no abnormal loads anticipated for the proposed construction phase. It is estimated that the maximum daily deliveries by HGV would be nine associated with the delivery of the array components. Following this, the daily delivery would drop significantly to an average of two HGV movements per day.

Construction transport hours will be limited to between 07:00 and 19:00 hours Monday to Friday, 09:00 and 12:00 hours Saturdays and no deliveries on Sundays or bank holidays. These hours will provide flexibility in delivery times to allow peak times to be avoided thereby minimising effects on local road users.

LCC Highways Development Control has raised no objection and considers the proposal to be acceptable on highway safety grounds subject to a condition being imposed to require the provision of wheel cleaning facilities. However, given the length of surfaced access road between the site and the A584, such a condition is not considered to be necessary.

## *Water Environment*

The development would be located wholly within Flood Zone 2, with a small area of the north-east corner of the site within Flood Zone 3. However, given the design of the solar array and associated infrastructure, the development would not increase the risk of flooding elsewhere or be sensitive itself to flooding impacts

The Environment Agency (EA) have not objected. The proposal therefore accords with Policy EP30 of the Fylde Borough Local Plan.

The Canal and River Trust have commented that the use of heavy plant on wet arable/grazing land may cause the topsoil to be disrupted which in-turn could pose a pollution risk to local watercourses. An intense rainfall event may result in silt laden runoff being discharged from the site potentially polluting local watercourses. To prevent this, a condition could require that silt fences are installed during the construction phase of the project to intercept silt laden runoff. With such a condition the proposal would accord with Policy EP23 of the Fylde Borough Local Plan.

### *Residential amenity*

The nearest residential dwellings to the site are 570m to the north-west at Grange Farm. Traffic using the existing access would generate noise and increase emissions in the immediate and surrounding locality. Construction operations may produce dust and noise. However, the distance of the development from properties would ensure that the impacts of the proposed development would not affect the amenities of residents in the vicinity and the development is therefore considered acceptable in terms of local amenity.

### *Nature conservation interests*

The proposed site is a rectangular area on the eastern side of a field of improved pasture reclaimed from former saltmarsh that is currently used for sheep grazing. As part of the proposal, it is also proposed to create a habitat management area to the west of the application

The proposed development would not directly affect any site with statutory or non-statutory ecological designations. However, the land subject to the application is a natal feeding area for a wading bird named Black-tailed Godwit.

In relation to the Black-tailed Godwit, the RSPB have advised that it is one of the UK's rarest breeding birds. It breeds on just five sites in the UK, one of which is at Newton Marsh SSSI, located approximately 700 metres north of the application site. The UK population of Black -tailed Godwits is currently estimated at 100 pairs (based on February 2015 numbers) so that the pair that nests on Newton Marsh represent around 1% of the UK population. European breeding Black-tailed Godwit numbers have declined significantly over the past 25 years. In consequence the species is Red-listed by the International Union for the Conservation of Nature (IUCN) which classifies its status as Near Threatened. The species is also Red-listed in the UK (Birds of Conservation Concern) and given special protection during the breeding season under Schedule 1 of the Wildlife & Countryside Act (as amended).

Black-tailed Godwits have nested (with variable success) in the vicinity of Newton and Clifton Marshes since at least 1984. Although they have nested in the past on the application site itself, its main usage in recent years has been as a feeding site for newly-hatched chicks. The birds that nest on the Newton Marsh SSSI lead their young onto the application site to rear them until they have fledged. The application site is therefore functionally linked to the Newton Marsh SSSI with regard to habitat for Black-tailed Godwits and the continued availability of the site is considered to be essential for the species to complete its breeding cycle. Any impact upon their usage of the application site must therefore be treated as an adverse impact upon the SSSI.

The original application proposed solar panels over an area of 9.5 ha with the adjoining field to the west being used as a habitat enhancement area with an area of 15.7 hectares. That proposal was to generate up to 4.5MW of electricity per annum. However, the site area has now been reduced to 5.7 hectares following concerns by the RSPB and Natural England as to the impacts of the development on Black-tailed

Godwits. The revised proposal would retain 3.7 hectares of the Black-tailed Godwit natal feeding area and continues to propose the original habitat mitigation and enhancement area.

Despite the reduction in size of the proposed solar park, the primary ecology concern and the reason for objections from the RSPB, Natural England, the Lancashire and Cheshire Fauna Society, the Lancashire Wildlife Trust, and LCC Specialist Advisor (Ecology) still relates to the importance of the application site for breeding Black-tailed Godwits and the likely significant adverse impact upon this species.

Under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, all public authorities have a duty to have regard to the conservation of biodiversity in the exercise of functions. The section 41 list (species and habitats which are of principal importance for the conservation of biodiversity in England) has been published by the Secretary of State to identify those particular species (and habitats) which are priorities for conservation and thus for which public authorities need to have special regard. The Black-tailed Godwit is one of those species.

Regulation 9A of the Conservation of Habitats and Species Regulation 2010 (as amended) places a duty on public authorities to take appropriate steps in the exercise of their functions to preserve, maintain and re-establish a sufficient diversity and area of habitat for wild birds, including by means of the upkeep, management and creation of such habitat; and also, in exercising any function, to use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds.

Paragraph 109 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by: minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Paragraph 118 of the NPPF states that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
- Proposed development on land within or outside a SSSI likely to have an adverse effect on a SSSI (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSI;
- Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, unless the need for, and benefits of, the development in that location clearly outweigh the loss.

Paragraph 119 of the NPPF states that the presumption in favour of sustainable development in paragraph 14 does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

Policy EP16 of the Fylde Borough Local Plan refers to SSSI's and states that development proposals within or likely to prejudicially affect SSSI's will be subject to special scrutiny, and will not be permitted unless the use of conditions or planning obligations would prevent damaging impacts on the nature conservation interest of the site, or the reasons for the development clearly outweigh the nature conservation value of the site itself.

Policy EP19 of the Fylde Borough Local Plan refers to protected species and states that development that would have an adverse impact upon species specifically protected under Schedules 1, 5 or 8 of the Wildlife & Countryside Act (as amended), or their habitat, will not be permitted. Where development is permitted which would affect these species or their places of shelter and breeding, the use of planning conditions and/or planning obligations will be used to facilitate the survival of individual members of the species, reduce disturbance to a minimum, and provide adequate alternative habitats to sustain the current levels of population.

Notwithstanding the reduction in area of the application site, it is considered that the solar farm proposals would still result in direct and indirect impacts on the natal feeding habitat of black-tailed godwit that breed in Newton Marsh SSSI. The proposals would result in the loss and deterioration of natal feeding habitat which may lead to the failure of future breeding attempts by black-tailed godwit at Newton Marsh SSSI and hence the loss of the only black-tailed godwit breeding site in north-west England; and an adverse effect on around 1% of the UK breeding population of a section 41 NERC Act 2006 species. Such impacts would clearly represent a significant adverse effect on biodiversity.

Therefore, and before considering the adequacy of any proposed mitigation or compensation, the planning authority should first be satisfied that there are no alternatives that would result in less or no harm.

The applicant argues that the size of array applied for is the minimum size that would be viable in this location, and that none of their other land holdings in and around the waste water treatment works are suitable and/ or available for a development of this size. It is, however, unclear as to why a smaller array would not be viable on other nearby land in the applicant's ownership and which would not have the same ecological impacts.

The proposed mitigation/ compensation is to retain part of the existing natal feeding area, and to secure the management of a further area of land adjacent to the proposed solar array as replacement natal feeding habitat for black-tailed godwit. Whilst this would provide an equivalent area of similar habitat, there is no evidence to support the effectiveness of the proposed approach as conservation effort for rare species should focus on expanding and enhancing habitat to augment populations, rather than removing existing habitat and attempting to displace species to

alternative areas which carries significant risk that the mitigation may not be successful.

The reduction of the area of the proposal would allow the retention of part of the existing natal habitat but there is a significant risk that this area would not continue to be used by the birds. The proposed solar array would introduce a continuous and unnatural barrier to sightlines (such as does not currently exist), which may result in godwits being displaced by the solar array. Successful mitigation therefore depends upon the replacement natal feeding area (further west) functioning to support black-tailed godwit. Unfortunately whether or not the mitigation will work cannot be known in advance of the habitat being created and used by the birds, and therefore there is a risk to the population of the birds should the mitigation not be successful.

In an attempt to overcome these concerns and find a solution that would make the development acceptable, the applicant has been encouraged to consider a landscape-scale black-tailed godwit conservation strategy in the wider area. It is not clear whether the applicant has attempted to engage with neighbouring landowners to assess the feasibility of a more strategic approach. However, the applicant now argues that this is outside of their powers due to land ownership issues.

The applicant has advised that they are prepared to make a separate and non-related financial contribution to black tailed godwit conservation. However if, as the applicant appears to suggest, land ownership issues are an insurmountable barrier to the development of a more strategic conservation approach, then it would appear likely that these same issues would continue to be an insurmountable barrier to whichever organisation/s received a donation.

The Habitat Mitigation Plan would also need further revision before it could be approved and implemented, such as for example, by addressing habitat connectivity/wildlife corridors (that the applicant now suggests cannot be achieved given land ownership constraints), and by containing objectives and details of management to enhance habitat for godwits while deterring other breeding waders and wintering birds.

Given the risks of the potential permanent loss of black-tailed godwit from Newton Marsh SSSI and the uncertainties that godwits would adopt replacement habitat next to a solar farm, it is not at all clear that significant adverse effects on biodiversity would be avoided, mitigated or as a last resort compensated for. This being the case, the proposal would have unacceptable impacts on ecology and is contrary to Paragraphs 109 and 118 of the NPPF, and Policies EP16 and EP19 of the Fylde Borough Local Plan. In addition, Lancashire County Council in its duty as the determining planning authority would not be acting in accordance with section 40 of the NERC Act 2006, and Regulation 9A of the Conservation of Habitats and Species Regulation 2010 (as amended) if the proposal was approved.

The development would not directly affect any site with statutory ecological designations although the Ribble and Alt Estuaries SPA and Ramsar site, and the Ribble Estuary SSSI, are located approximately 180m to the south of the site. The SPA is of European importance for a range of breeding, migratory and wintering bird species.



LCC's Specialist Advisor (Ecology) considers that the proposal has the potential to affect the European site as the proposed mitigation and enhancement area is used by wintering birds, which are a qualifying species of the adjacent European Site (Ribble & Alt Estuaries Special Protection Area), and hence the proposed mitigation and enhancement area is classed as functionally-linked land to the SPA. The proposals would affect, at least indirectly, this habitat due to a bird management plan proposed by BAE Systems that is intended to deter bird usage of the mitigation and enhancement area so as to address their concern about the risk of bird strikes to aircraft that utilise the approach path to BAE Systems Warton airfield. The application may therefore have implications for qualifying bird species as a result of disturbance and displacement effects necessary as part of airfield safeguarding.

Regulation 61 of the Conservation of Habitats and Species Regulation 2010 (as amended) requires a competent authority, before permitting a project which is likely to have a significant effect (alone or in combination) on a European site, and is not directly connected with or necessary to the management of that site, to make an appropriate assessment of the implications for that site in view of that site's conservation objectives.

Paragraph 119 of the NPPF states that the presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.

Policy EP15 of the Fylde Borough Local Plan refers to a European Designated Nature Conservation Site and states that development proposals which may affect a European site will be subject to the most vigorous examination. Development proposals not directly connected with or necessary to the management of the site and which would affect the integrity of the site as a whole, will not be permitted unless the developer can demonstrate that there is no alternative solution and there are imperative reasons of over-riding public interest for the development.

When assessing projects for the purposes of the Habitats Regulations, the precautionary principle must apply and case law has established that projects should not be authorised where there would be a significant adverse effect on the European site or where there is uncertainty as to effects. Regulation 61(2) clearly states that a person applying for permission must provide such information as is reasonably required for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.

Whilst it is the responsibility of the competent authority to carry out the assessment, the applicant has very recently submitted an updated shadow Habitats Regulations screening assessment that concludes no likely significant effect on the SPA (and therefore no requirement for appropriate assessment). This conclusion was reached in the absence of a proposed formal bird scaring/ bird management plan, and an updated Habitat Management Plan that are intended to deter bird usage of the mitigation and enhancement area. These could have an adverse effect on SPA species, but in the absence of them, neither the applicant nor Lancashire County

Council has sufficient information to be able to assess the likely impacts on the birds associated with the SPA.

The applicant has stated that a bird scaring/ bird management plan will be produced, but not in advance of determination of the application, and so suggests that the submission of a Bird Management Plan be the subject of a planning condition.

In response, it is considered that this is not appropriate; the Bird Management Plan and an updated Habitat Management Plan is required in advance of determination to be able to assess the impacts of the development on ecology and inform the Habitats Regulations Assessment. The assessment cannot be carried out, and 'no likely significant effect' concluded, based on an assumption that an acceptable Bird Management Plan (that maintains SPA bird numbers) can be developed and agreed at a later date. A permission based on an inadequate assessment for the purposes of the Regulations would be unsound in terms of legal principles. The County Council is therefore unable to carry out the necessary appropriate assessment and hence it cannot be concluded with reasonable certainty that the proposed mitigation and enhancement area and bird control measures would not generate any significant environmental effects on the qualifying interest bird features that use the adjacent Ribble & Alt Estuaries SPA. The significant environmental effects being disturbance and displacement. In the absence of such information, the County Council is unable to comply with its obligations under the Habitats Regulations. Given that insufficient information has been provided to allow such ecological impacts to be properly assessed, the proposal is contrary to Paragraphs 109 and 119 of the NPPF, and Policy EP15 of the Fylde Borough Local Plan.

#### *Aviation*

The proposed mitigation and enhancement area would be approximately 350m south of the approach for aircraft that utilise the BAE Systems Warton airfield.

BAE Systems have objected as they consider that the proposed mitigation and enhancement area would continue to support and make this area attractive to birds and would inevitably lead to increased risks of bird strikes to aircraft. BAE Systems currently have permission to monitor and control birds in this area, although no details have been provided as to what this entails.

The Habitat Management Plan makes no mention if BAE's bird monitoring and control measures would continue. Following discussions with BAE Warton, the applicant has now acknowledged that a formal bird scaring/ bird management plan would be required if the development is to proceed. However, no such details have been submitted. BAE understandably consider that any development that would support an increased number of high risk species being in this area without an appropriate level of control approved by BAE Systems would increase the bird strike risk to military and civilian aircraft to an unacceptable level and therefore should be refused. The applicant has suggested that a formal bird scaring/ bird management plan could be the subject of a planning condition so as not to increase the numbers of birds that may pose a bird strike risk. Whilst it is agreed that this could be the subject of a planning condition, it would not permit a proper assessment of the likely impacts on the existing populations of birds that are associated with the SPA and

therefore it is not possible to conclude with the required degree of confidence that the bird management controls that may be required to address the airfield safeguarding risks would be acceptable.

## Conclusion

The proposed solar park would produce electricity to allow Preston WWTW to reduce its reliance on electricity produced from fossil fuels. The development would therefore contribute towards meeting the UK's renewable energy targets and would comply with the policy in the NPPF relating to the contribution of renewable energy projects.

The impacts of the development in terms of the need for the development, landscape/ visual impact, glare, traffic, flood risk, residential amenity and pollution of surface water are acceptable or can be made so by planning conditions.

However, in relation to nature conservation interests, the loss of a substantial part of the Black-tailed Godwit natal feeding area that is functionally linked to the Newton Marsh SSSI would be a significant impact and hence the proposal is contrary to Paragraphs 109 and 118 of the NPPF, and Policies EP16 and EP19 of the Fylde Borough Local Plan. In addition, Lancashire County Council in its duty as the determining planning authority would not be acting in accordance with section 40 of the NERC Act 2006, and Regulation 9A of the Conservation of Habitats and Species Regulation 2010 (as amended) if the application were to be approved. The applicant's proposed mitigation measures for these impacts are not considered to be sufficiently robust and would carry a significant risk that they would not be successful.

In relation to the effect on the Ribble & Alt Estuaries SPA, in certain circumstances, where there is no viable alternative solution, overriding public interests (which may include the requirement to generate energy from renewable sources), can outweigh any impacts to sites of European wildlife importance. However, such wider considerations can only apply once the degree of harm to the ecological interests of the European site has been established. In this case, insufficient ecological information in the form of a Bird Management Plan and an updated Habitat Management Plan, has been submitted to enable LCC, as the competent authority, to carry out the necessary appropriate assessment to conclude that the proposed mitigation and enhancement area would not generate any significant environmental effects on the qualifying interest bird features that use the adjacent Ribble & Alt Estuaries SPA. Therefore, the absence of this information means that the County Council cannot properly assess the ecological impacts of the development sufficient to discharge its duties under the Habitats Regulations and hence cannot conclude that the development would not harm the ecological interests of the adjacent Ribble & Alt Estuaries SPA contrary to Paragraphs 109 and 119 of the NPPF, and Policy EP15 of the Fylde Borough Local Plan.

The potential impacts on ecology are sufficient to outweigh the benefits of the proposal in terms of the generation of electricity from renewable sources.

## Human Rights Issues

Article 1 of the 1st Protocol concerns the enjoyment of property and provides that everybody is entitled to the peaceful enjoyment of his possessions and that no one should be deprived of the enjoyment of property except in the public interest. The refusal of planning permission has the potential to affect the applicant's rights under this Article. However, the County Council has a duty to ensure that the impacts of renewable energy development are properly assessed in order to protect wildlife and their habitats as set out in the policies of the Development Plan. The proposal would conflict with these policies and the interference in the rights of the applicant is therefore considered to be justified in order to protect the public interest. It is considered that the public interest can only be safeguarded by refusal of permission and that refusal of the application would not be a disproportionate interference with the rights of the applicant.

### **Recommendation**

That after first taking into consideration the environmental information and further information, as defined in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 submitted in connection with the application, planning permission be **refused** for the following reasons:

1. The proposed development would involve the loss of a substantial part of a Black-tailed Godwit natal feeding area that is functionally linked to the Newton Marsh SSSI, and in the absence of mitigation the development would therefore have a significant and unacceptable impact on the nature conservation interests of the SSSI. The applicant's proposed mitigation measures for these impacts are not considered to be sufficiently robust and would carry a significant risk that they would not be successful. These impacts are sufficient to outweigh the benefits of the proposal in terms of the generation of electricity from renewable sources, and hence the proposal is contrary to Paragraphs 109 and 118 of the NPPF, and Policies EP16 and EP19 of the Fylde Borough Local Plan.
2. Insufficient information in the form of a Bird Management Plan and an updated Habitat Management Plan, has been submitted to enable Lancashire County Council, as the competent authority, to carry out the necessary assessment for the purposes of the Habitats Regulations and to conclude that the proposed development would not result in likely significant effects on qualifying interest bird species of the adjacent Ribble & Alt Estuaries SPA. In the absence of such information, the County Council cannot properly assess the ecological impacts of the development sufficient to discharge its duties under the Habitats Regulations and cannot conclude that the development would not harm the ecological interests of the adjacent Ribble & Alt Estuaries SPA contrary to Paragraphs 109 and 119 of the NPPF, and Policy EP15 of the Fylde Borough Local Plan.

### **Local Government (Access to Information) Act 1985 List of Background Papers**

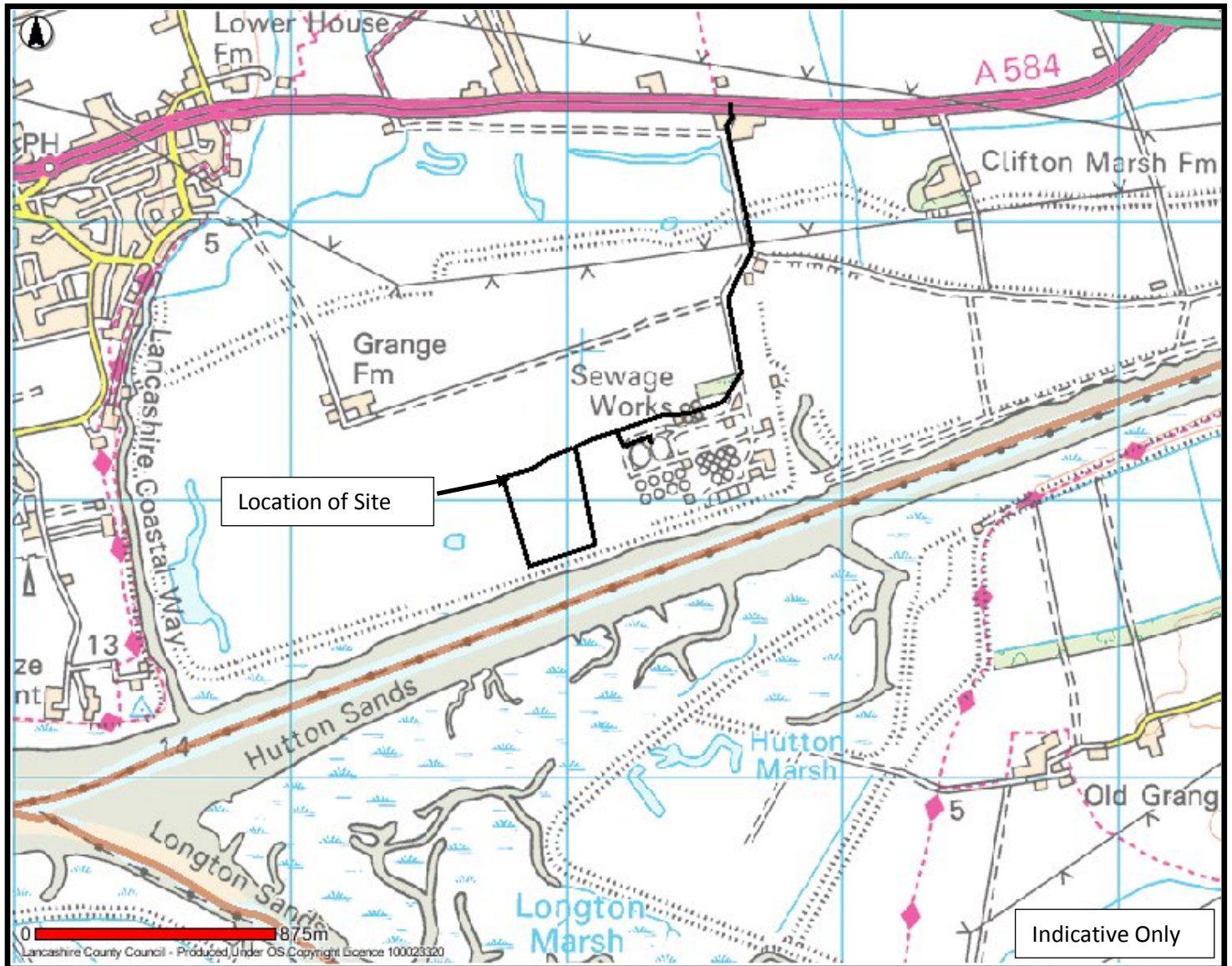
<b>Paper</b>	<b>Date</b>	<b>Contact/Ext</b>
LCC/2016/0007		

Rob Jones  
Planning and Environment  
534128

Reason for Inclusion in Part II, if appropriate  
N/A



**APPLICATION LCC/2016/0007 THE ERECTION OF PHOTOVOLTAIC PANELS AND ASSOCIATED WORKS INCLUDING SWITCHGEAR HOUSING, SECURITY FENCING AND INTEGRAL CONNECTION TO THE EXISTING WASTE WATER TREATMENT WORK SUBSTATION. CLIFTON MARSH WASTE WATER TREATMENT WORKS, PRESTON NEW ROAD, FRECKLETON**



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