

Development Control Committee
Meeting to be held on 1st March 2017

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| Electoral Division affected: West Lancashire North |
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West Lancashire Borough: application number. LCC/2017/0016
Variation of condition 14 of planning permission LCC/2014/0047 so that permitted noise limits during plugging and abandonment of the well and restoration are limited to 50dB(A) between 07.00 and 19.00 hrs when measured at the boundary of the nearest residential receptor.

Becconsall Exploration Site, off Bonny Barn Road, Hundred End, Banks

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Executive Summary

Application - Variation of condition 14 of planning permission LCC/2014/0047 so that permitted noise limits during plugging and abandonment of the well and restoration are limited to 50dB(A) between 07.00 and 19.00 hrs when measured at the boundary of the nearest residential receptor.

Recommendation – Summary

That planning permission be **granted** subject to conditions controlling time limits, working programme, highway matters, ecology, control of pollution, restoration and aftercare.

Applicant's Proposal

Planning permission is sought to vary condition 14 of planning permission LCC/2014/0047 which relates to an existing hydrocarbon exploration well site located at Becconsall, West Lancashire.

Condition 14 of the existing permission restricts the noise levels that can be generated during the approved pressure monitoring, plugging and abandoning and restoration works. The condition is currently worded as follows:-

Noise emitted from the site shall not exceed 42dB(A) Laeq (1 hour) (free field) as defined in this permission when measured at any point on the site boundary.

The applicant proposes that this condition be varied as follows:-

Noise emitted from the site shall not exceed 50dB(A) Laeq (1 hour) (free field) as defined in this permission between the hours of 07.00 to 19.00 hours when measured at the boundary of the nearest residential receptor.

Description and Location of Site

The application relates to an existing hydrocarbon exploration well site located within an area of flat agricultural land approximately 1.5 km northwest of the Banks and 3km west of Beconsall. The site is located approximately 700 metres north of Marsh Road from which access to the site is gained via an agricultural track known as Bonny Barn Road.

The site covers an area of 1ha and consists of a hardcore drilling platform surrounded by fencing with soil storage mounds on two sides and the well head in the centre of the platform.

The nearest residential properties are located at Marsh Nurseries 200 metres to the west and at Marshfield Farm 400 metres to the north. Other properties are located off Marsh Road. A public right of way is located approximately 290 metres to the east of the drilling platform.

The site is located within the Marsh Farm Fields /North Meols Biological Heritage Site. The Ribble Estuary SSSI and Morecambe Bay SPA are located approximately 650 metres to the north beyond the embankment / flood defence that forms the edge of the agricultural land.

The site is also located within the Green Belt.

Background

History: Planning permission was originally granted on this site for an exploration well for hydrocarbons in 2010 (permission 8/10/973). In 2015 a further permission ref LCC/2014/0047 was granted for the retention of the well site for a further period of three years to allow for the pressure monitoring of the Bowland shale reservoir followed by plugging and abandonment and restoration of the site.

There is also a current application elsewhere on this agenda for a non material amendment to permission LCC/2014/0047 to increase the proposed rig height. Ref LCC/2014/0047/NM

Planning Policy

National Planning Policy Framework

Paragraphs 6 -14, 17,144 - 147 and 206 of the NPPF are relevant with regards to the definition of sustainable development, core planning principles, the control of mineral workings and the use of planning conditions.

National Planning Practice Guidance: The guidance relating to noise from mineral working activities is relevant to this proposal.

Joint Lancashire Minerals and Waste Local Plan (JLMWLP)

Policy DM2 Development Management

West Lancashire Borough Local Plan

Policy SP1 A sustainable development framework for West Lancashire.

Policy GN3 Criteria for Sustainable Development

Policy EN2 Preserving and Enhancing West Lancashire's Natural environment.

Consultations

West Lancashire Borough Council: No observations received.

North Meols Parish Council: No observations received.

Hesketh-with-Becconsall Parish Council

Sefton Metropolitan Borough Council; No observations received

Environment Agency: No observations received.

Health & Safety Executive : No observations received.

LCC Highways Development Control; No observations received.

Representations – The application has been advertised by press and site notice, and neighbouring residents informed by individual letter. The representations received can be summarised as follows:-

Friends of the Earth have objected to the application as they consider that insufficient information has been submitted to justify the change in noise levels, there has been inadequate consultation with Natural England and that it would result in additional noise impacts during the bird over wintering season if the restoration were not to be completed in summer 2017. FoE also question the statutory timescales for consultation compared to the decision date and point to a discrepancy between the application title and site notice detail.

A further fourteen objections including from Residents Action on Fylde Fracking, Preston New Road Action Group and Frack Free Burscough have been received raising the following issues:-

- The proposed increase in noise from 42 – 55 db(A) represents a doubling of noise levels which is unacceptable
- The existing condition should remain as there have been no change in circumstances

- The additional noise levels produced would impact on local residents and be a deterrent to bird life.
- The applicant should have addressed the noise issues at the time when application LCC/2014/0047 was determined if it was apparent that the condition could not be complied with
- There will be an impact on house prices
- The proposed variation would set a precedent which could be followed in any future proposal for fracking
- The application to vary the noise condition would also require longer hours of working

Advice

Planning permission was originally granted on this site in 2010 for the drilling of an exploration well to assess hydrocarbon potential in the Bowland Shale and other Carboniferous formations. The borehole was drilled in 2011.

A further planning permission ref LCC/2014/0047 was granted in 2015 to allow the well site to be retained for a further period of three years to allow pressure monitoring of the well followed by plugging and abandonment of the borehole and restoration to return the land to agricultural use.

The applicant does not now propose to undertake the pressure monitoring. However, it is still necessary to plug and abandon the well and to restore the site to its former agricultural use as is required by the conditions of the existing permission. The applicant's intention is to undertake these works and to restore the site in summer 2017. There is no intention to undertake any further testing, drilling or hydraulic fracturing at the site.

Condition 14 of the existing permission sought to control noise arising from the pressure monitoring, plugging and abandonment works and restoration operations authorised by planning permission LCC/2014/0047. The condition is worded as follows:-

Noise emitted from the site shall not exceed 42dB(A) Laeq (1 hour) (free field) as defined in this permission when measured at any point on the site boundary.

Reason : To safeguard the amenity of local residents and adjacent properties / landowners and land users and to conform with Policy CS5 of the Joint Lancashire Minerals and Waste Development Framework Core Strategy DPD, Policy DM2 of the Lancashire Minerals and Waste Local Plan and Policies GN3 and EN2 of the West Lancashire Local Plan.

The applicant is of the view that the wording of condition 14 places an unreasonable restriction on the development that is not consistent with minerals planning policy. Because the condition requires the noise level to be measured at the site boundary, it will be impossible to undertake any works to seal the borehole or restore the site without breaching the condition. The applicant has therefore proposed an alternative condition to limit noise which will allow them to undertake the required operations in compliance with a permission.

The National Planning Practice Guidance contains government policy on noise from mineral workings. The guidance states that MPA's should aim to establish a noise limit through planning condition, at the noise sensitive property, that does not exceed the background level (LA90 1 hour) by more than 10dB(A) during normal working hours (07.00 – 19.00 hours). Where it will be difficult to not to exceed the background level by more than 10dB(A) without placing unreasonable burdens on the operator, the level should be set as near that level as practicable. In any event the total noise from operations should not exceed 55 dB(A). The guidance also states that it may be permissible to allow higher noise limits (up to 70 dB(A)) for activities such as restoration or removal of soil screening mounds where such activities are limited to not more than 8 weeks in any one year.

Paragraph 206 of the NPPF sets out various tests for planning conditions and states that they should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

It is considered that condition 14 as currently drafted effectively prevents the applicant from restoring the site as any noise generating works such as respreading of soils or cementing of the borehole carried out as part of the restoration would be likely to breach the condition. The condition also does not meet current guidance as it sets a noise limit at the site boundary rather than at a noise sensitive property. The condition therefore fails the reasonableness test in paragraph 206 of the NPPF and does not comply with current guidance regarding the setting of noise conditions. For this reason, it is considered that there is merit in varying the condition so that appropriate noise limits are set at the nearest sensitive property thereby allowing the operator to restore the site.

The applicant originally proposed that the condition should be worded such that noise would not exceed 55 dB(A) LAeq 1 hour (free field) between the hours of 08.00 and 21.00 hours and 42 dB(A) LAeq 1 hour (free field) between the hours of 21.00 and 08.00 when measured at the nearest residential property.

The previous application on this site included a noise survey which included background noise levels. The background noise levels in the area are very low (LA90's down to 25 dB(A) during the night time period and 36 – 40 dB(A) during the daytime). The applicant's proposed condition would therefore not comply with Government guidance as the noise level in their proposed condition would be more than 10 dB(A) above the background level. This would apply particularly during the night when the applicant would be using the rig to plug and abandon the well.

To address this issue, the applicant now proposes to only undertake works during the daytime period and to limit noise during this time to 50 dB(A) when measured at the nearest property. Noise at this levels may still be more than 10dB(A) above the background level but Government guidance indicates that this may be acceptable where a restriction to background level +10 would place an unreasonable burden on the operator. Whilst the limitation to daytime operations only would extend the timescale for the plugging and abandoning works from two weeks to around five weeks, these operations would still be of a short term nature. The remainder of the

works involving the removal of pollution prevention membranes and the stone surfacing materials and respreading of the soils would be classified as restoration works which would take approximately 12 – 14 weeks allowing for poor weather. The applicant's proposal for a 50 dB(A) limit is therefore considered to be appropriate particularly given that Government guidance indicates that a higher noise level of 70 dB(A) may be appropriate for such short term restoration operations. The two nearest properties to the site are in the landowners control and the next nearest properties are local on Marsh Road at considerable distance (600 metres) from the site. It is therefore very unlikely that any properties outside of the landowners control would experience day time noise impacts from the proposed operations. The applicant's proposal is therefore considered acceptable and would provide sufficient protection of local amenity and would comply with government guidance in relation to noise from mineral workings.

Friends of the Earth, comment that applications to vary conditions should be subject to the same 8 or 13 week determination timescales for new development and that this application is being allowed insufficient time for consideration. They are also concerned that the statutory 21 consultation period is not being complied with.

The 8 / 13 week timescales are the benchmarks against which planning authorities are assessed by central government for performance in speed of determination for planning applications. They are not statutory timescales after which a decision may be taken. Under the Development Management Procedure Order 2010, planning authorities are prohibited from determining an application before the end of 21 days beginning with the date a site notice was first displayed or 14 days from the date the notice was published in the newspaper. The site notice for this application was posted on the 6th February and the application was advertised in the newspaper on 8th February. Therefore, sufficient time has elapsed since the site notice and advertisement to allow the application to be determined at the 1st March Committee. In relation to their comments about the description of the development

Friends of the Earth have also commented about lack of consultation with Natural England. This site is located close to the Ribble Estuary SPA and is located within a Biological Heritage Site that is designated for its value as supporting habitat to the SPA for overwintering birds. These issues were considered as part of the previous application on this site and the permission included a section 106 agreement providing for ecological mitigation measures to offset any impacts on over wintering birds. However, the applicant proposes to restore the site in summer 2017 and therefore there should be no impacts on over wintering bird interests arising from the proposed development. Consultation with Natural England is therefore considered unnecessary given the nature of these proposals.

Friends of the Earth have also commented that the site notice did not include the correct information as to the noise limits that were being applied for. They comment that the noise level quoted in the statutory notice was 55 dB(a) and not 55 dB LAeq (1 hour) (free field) as applied for. Whilst FoE are correct in their observation, it is not considered that the application was misadvertised. The advert was clear that a variation to condition 14 was being proposed and directed local residents to the County Council's website where full details of the proposal could be viewed.

One representation has commented that the application to vary condition 14 on noise would also require variation of the hours of working condition which is not included in the title of the application or been advertised as such. In planning permission LCC/2014/0047, the hours of working condition contains provisions for the testing and plugging and abandonment works to take place on a 24 hr per day basis. It is now proposed to undertake the plugging and abandonment works between 07.00 to 19.00 hrs and therefore the hours of working for these works would be considerably shorter than previously permitted. The hours of working condition covering restoration is proposed to be limited so that the permitted hours for these works are the same as those currently contained in permission LCC/2014/0047.

An application to vary conditions to an existing permission will, if approved, result in a new permission being granted. All the conditions that were attached to permission LCC/2014/0047 are therefore recommended to be attached to any new permission save any rewording that is necessary to account for any changes in circumstances since the original permission was issued.

In view of the scale, location and nature of the development, it is considered that no Convention Rights set out in the Human Rights Act 1998 would be affected.

Recommendation

That planning permission be **granted** subject to the following planning conditions:-

Time Limits

1. The works to plug and abandon the borehole and to restore the site in accordance with the requirements of condition 17 below shall be completed by 31st August 2017.

Reason: To ensure the plugging and abandonment of the borehole and restoration of the site within a reasonable timescale in the interests of the visual amenities of the area and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN3 and EN2 of the West Lancashire Local Plan 2012-2027

Working Programme

2. The development shall be carried out, except where modified by the conditions to this permission, in accordance with the following documents:
 - a) The planning application ref LCC/2014/0047 received by the County Planning Authority on 27 March 2014 as amended by the planning application forms received on the 17 April 2014, planning application ref LCC/2017/0016 received on 26th January 2017 and non material amendment application ref LCC/2014/0047/NM received on 30th January 2017.
 - b) Submitted Plans received by the County Planning Authority on 27 March 2014:

Drawing No. Figure 1 - Planning Application Boundary
Drawing No. Figure 2 - Planning Application Boundary
Workover rig drawing received with non material amendment
application ref LCC/2014/0047/NM

- c) All schemes and programmes approved in accordance with this permission.

Reason: For the avoidance of doubt and to enable the County Planning Authority to control the development and to minimise its impact on the amenities of the local area and to conform with Policies NPPF 1 and DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies SP1, GN1, GN3, EC2 and EN2 of the West Lancashire Local Plan.

Ecology

3. No site restoration works shall commence or be carried out during the bird-breeding season between 1 March and 31 July inclusive unless the site has been previously checked and found clear of nesting birds in accordance with Natural England's guidance and if appropriate, an exclusion zone set up around the site to be protected. No work shall be undertaken within the exclusion zone until birds and any dependant young have vacated the area.

Reason: To provide mitigation to nesting birds and to conform with Policy EN2 of the West Lancashire Local Plan.

Soils and Overburden

4. No topsoils or subsoils shall be exported from the site. All such soils shall be retained for use in the restoration of the site.

Reason: To ensure the proper removal and storage of soils to ensure satisfactory restoration and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local and Policies GN1, GN3, EC2 and EN2 of the West Lancashire Local Plan.

5. All topsoil and subsoil mounds shall be retained in a grassed, weed free condition prior to their use in the restoration of the site.

Reason: To ensure the effective restoration of the site in the interests of the visual amenity of the area and to comply with Policy DM2 of the Joint Lancashire Minerals and Waste Local and Policies GN1, GN3, EC2 and EN2 of the West Lancashire Local Plan.

Hours of Working

6. No works associated with the plugging and abandonment of the borehole shall take place except between the hours of:

07.00 to 19.00 hours Mondays to Fridays (except public holidays)
07.00 to 13.00 hours on Saturdays (except Public Holidays)

Restoration works shall not take place except between the hours of:

07.30 to 18.30 Mondays to Fridays (except public holidays)
07.30 to 13.00 Saturdays

No delivery or removal of materials, plant or equipment, site development or site restoration works shall take place at any time on Sundays or public holidays.

This condition shall not apply to the carrying out of essential repairs to plant and equipment used on the site.

Reason: In the interests of the amenities of the area and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan.

Highway Matters

7. Heavy traffic to and from the site shall follow the route provided in accordance with the Transport Assessment submitted with application LCC/2014/0047 throughout the lifespan of the development.

Works and routing signage shall be provided in accordance with the submitted Transport Assessment throughout the lifespan of the development.

Reason: In the interests of highway safety and local amenity and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan.

8. Measures shall be taken at all times during the site construction, operational and restoration phases of the development to ensure that no mud, dust or other deleterious material is tracked onto the public highway by vehicles leaving the site.

Reason: In the interests of highway safety and local amenity and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan.

9. All vehicles shall enter or leave the site in a forward direction.

Reason: In the interests of highway safety and local amenity and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan.

10. All vehicles associated with the development, operational or restoration phase of the development shall park in the site. No vehicles associated with the development shall park on Bonny Barn Lane or Marsh Road.

Reason: In the interests of highway safety and local amenity and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan.

Control of Noise

11. All plant, equipment and machinery used in connection with the operation and maintenance of the site shall be equipped with effective silencing equipment or sound proofing equipment to the standard of design set out in the manufacturer's specification and shall be maintained in accordance with that specification at all times throughout the development.

Reason: To safeguard the amenity of local residents and adjacent properties/landowners and land users and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local and Policies GN3 and EN2 of the West Lancashire Local Plan.

12. Noise emitted from the site shall not exceed 50 dB LAeq (1 hour) (free field), as defined in this permission, when measured at any noise sensitive property.

Reason: To safeguard the amenity of local residents and to prevent disturbance to birds and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN3 and EN2 of the West Lancashire Local Plan.

Safeguarding of Watercourses and Drainage

13. Provision shall be made for the collection, treatment and disposal of all water entering or arising on the site to ensure that there shall be no discharge of contaminated or polluted drainage to ground or surface waters throughout the lifespan of the development.

Reason: To safeguard local watercourses and drainages and avoid the pollution of any watercourse or groundwater resource or adjacent land and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN3, EC2 and EN2 of the West Lancashire Local Plan.

14. All foul drainage shall be discharged to a public sewer or else to a sealed watertight tank fitted with a level warning device to indicate when the tank needs emptying. Upon emptying the contents of the tank shall be removed from the site completely.

Reason: To safeguard local watercourses and drainages and avoid the pollution of any watercourse or groundwater resource or adjacent land and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN3, EC2 and EN2 of the West Lancashire Local Plan.

15. Any chemical, oil or fuel storage containers on the site shall be sited on an impervious surface with bund walls; the bunded areas shall be capable of containing 110% of the container or containers' total volume and shall enclose within their curtilage all fill and draw pipes, vents, gauges and sight glasses. There must be no drain through the bund floor or walls. Double skinned tanks may be used as an alternative only when the design and construction has first been approved, in writing, by the County Planning Authority.

Reason: To safeguard local watercourses and drainages and avoid the pollution of any watercourse or groundwater resource or adjacent land and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN3, EC2 and EN2 of the West Lancashire Local Plan.

16. Buffer zones with a width of not less than 5 metres shall be maintained between the perimeter mounds or edge of the drilling compound and the ditches on the boundaries of the site within which there shall be no vehicle movements, storage of materials, excavation, or other construction activity.

Reason: To safeguard local watercourses and drainages and avoid the pollution of any watercourse or groundwater resource or adjacent land and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN3, EC2 and EN2 of the West Lancashire Local Plan.

Restoration

17. Site restoration shall take place in accordance with the following:-

- a) All plant, buildings, hardstandings, aggregates/ hardcore and lining systems shall be removed from the land.
- b) All perimeter fencing and gates shall be removed.
- c) The upper layers of the subsoil material shall be subsoiled (rooted) to a depth of 600mm with a heavy-duty subsoiler (winged) prior to the replacement of topsoils to ensure the removal of material injurious to plant life and any rock, stone, boulder or other material capable of preventing or impeding normal agricultural land drainage operations, including mole ploughing and subsoiling.
- d) Following the treatment of the subsoil, topsoil shall be placed over the site to a minimum depth of 150mm and shall be ripped, cultivated and left in a state that will enable the land to be brought to a standard reasonably fit for agricultural use.
- e) Measures to relieve compaction or improve drainage.

Reason: To secure the proper restoration of the site and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan - Site Allocation and Development Management Policies - Part One and Policies GN1, GN3, EC2 and EN2 of the West Lancashire Local Plan.

Aftercare

18. Within 3 months of the certification in writing by the County Planning Authority of the completion of restoration, as defined in this permission, a scheme and programme for the aftercare of the site for a period of five years to promote

the agricultural afteruse of the site shall be submitted to the County Planning Authority for approval in writing.

The scheme and programme shall contain details of the following:

- a) Maintenance and management of the restored site to promote its agricultural use.
- b) Weed control where necessary.
- c) Measures to relieve compaction or improve drainage.
- d) An annual inspection to be undertaken in conjunction with representatives of the County Planning Authority to assess the aftercare works that are required in the following year.

Reason: To secure the proper restoration and aftercare of the site and to conform with Policy DM2 of the Joint Lancashire Minerals and Waste Local Plan and Policies GN1, GN3, EC2 and EN2 of the West Lancashire Local Plan.

Definitions

Completion of Restoration: The date the County Planning Authority certifies in writing that the works of restoration in accordance with condition 17 have been completed satisfactorily.

Notes

If the abandonment process could lead to a discharge occurring then a groundwater activity permit may be required in line with Schedule 22 to the Environmental Permitting Regulations 2010.

The Environmental Permitting (England & Wales) Regulations 2010 (Regulation 38(1)) makes it an offence to cause or knowingly permit a groundwater activity (discharge of a pollutant that might lead to its direct or indirect input into groundwater) except under and to the extent authorised by an environmental permit or an exemption as provided for in the Regulations.

Recommendation

That planning permission be **Granted** subject to the following conditions

Local Government (Access to Information) Act 1985

List of Background Papers

| Paper | Date | Contact/Directorate/Ext |
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| LCC/2017/0016 | | |
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| 26th January 2017 | | |
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| Jonathan Haine | | |
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Planning and Environment
534130

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