

Development Control Committee

Meeting to be held on 13th December 2017

Electoral Division affected: Fylde West
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Fylde Borough Council: application number. LCC/2014/0096NM1
Non material amendment of permission LCC/2014/0096 to allow up to a maximum of nine single convoy deliveries or removals to be carried out outside the hours specified in condition 19 provided they are carried out only in relation to works phases c), d), e) or f) as set out in planning condition 3. Preston New Road Exploration site near Kirkham.

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Executive Summary

Application - Non material amendment of permission LCC/2014/0096 to allow up to a maximum of nine single convoy deliveries or removals to be carried out outside the hours specified in condition 19 provided they are carried out only in relation to works phases c), d), e) or f) as set out in planning condition 3.
Preston New Road Exploration site near Kirkham.

Recommendation – Summary

That the non material amendment to condition 19 of planning permission LCC/2014/0096 be approved.

Applicant's Proposal

The application is for a non material amendment of planning permission LCC/2014/0096 relating to the existing shale gas exploration site at Preston New Road which was granted by the Secretary of State on appeal in October 2016.

The application is to allow a maximum of nine single convoy deliveries or removals to be carried out outside of the hours specified in condition 19 of the planning permission where those traffic movements are related to phases c, d, e or f of the development. These phases relate to the drilling of each of the four exploration wells, hydraulic fracturing of each of the wells, flaring of gas during the initial flow test of each well and installation of the gas pipeline and connection to the National Grid.

The effect of the proposed amendment would therefore be to allow vehicle movements to and from the site between the hours of 18.30 to 07.30 hrs on Mondays to Friday, after 12.00 hrs on Saturdays and at any time on Sundays or public holidays. The applicant is proposing to restrict such movements to a maximum of nine events over the duration of the four phases listed above but that each event may consist of convoys of multiple HGV's.

Description and Location of Site

The application relates to the Preston New Road Shale Gas Exploration site which is located immediately north of the A583 Kirkham to Blackpool Road, approximately 4km west of Kirkham.

The site consists of a stone compound area surrounded by security and noise attenuation fencing. The compound currently houses the drilling rig, various ancillary equipment and stores and workers accommodation and is linked to the A583 by a stone surfaced access road. At the time of writing the rig is drilling the first two boreholes into the Bowland Shale.

Land surrounding the site is in agricultural use. The nearest residential properties to the site are located at Plumptre Hall Farm (450 metres east of the site) and at Staining Wood Cottages which are 150 metres west of the junction of the access with the A583. There is also a group of further properties located at Foxwood Chase which are located on the southern side of the A583, 270 metres west of the site access.

Under the approved traffic management plan for the site, HGV traffic should normally approach the site via junction 4 of the M55 and then leave the site using the A583 and A585 to access junction 3 of the M55. The traffic management plan includes provision for some variation to this routing where agreed with the police.

Background

Planning permission for the development of a hydrocarbon exploration site was granted by the Secretary of State in October 2016 (planning permission ref LCC/2014/0096).

The development of the site commenced in January 2017.

Planning Policy

National Planning Policy Framework : Paragraphs 11 – 16, 17, 32, 123 and 144 of the NPPF are relevant in relation to the presumption in favour of sustainable development, core planning principles, sustainable transport, impacts of noise and the determination of proposals for minerals development.

Joint Lancashire Minerals and Waste Local Plan (JLMWLP)

Policy DM2 – Development management

Fylde Borough Local Plan

Policy EP27 – Development and Noise

Consultations

Fylde Borough Council : No objection.

LCC Highways Development Control : No objection.

Lancashire Constabulary: No objection.

Westby with Plumpton Parish Council : Object to the application due to the likely noise from excessively sized convoys of HGVs at any time of the night. The Parish Council also consider that the approved traffic management plan is being altered to accommodate the developer's needs as and when required.

Medlar-With-Wesham Town Council : Strongly object to the application. The original condition to restrict hours of working was imposed for good reason to protect the amenities of local communities from HGV movements. The original conditions should not be amended. The Town Council do not consider that the amended hours would prevent protestors from attempting to hinder vehicle movements as lock-ons have already taken place outside of the approved hours. If the amendment is granted, the Town Council have no confidence that the terms of the new condition would be adhered to.

Greenhalgh-with-Thistleton: No observations received.

County Council Oades has also raised strong objection to the amendment on the basis that the agreed HGV routing is being contravened too many times and that residents should not have to put up with a 24 hour operation.

County Councillor Dowding also objects to the application on the basis that the existing conditions were imposed to protect a range of factors including noise to neighbours and emissions.

Representations – The application has been advertised by press and site notice, and neighbouring residents informed by individual letter.

75 letters of objection to the application have been received raising the following issues:-

- The original application was only granted on the basis that the original conditions would be complied with. The terms of the original permission are not being complied with and therefore any manipulation of the regulatory framework should not be allowed. The terms of the existing permission should be adhered to.
- The applicant did not consult with Lancashire Police before bringing the rig to the site on 27th July outside of the approved hours – Cuadrilla told the police what they intended to do and the Police then had to put an action plan into place to allow the delivery to proceed.
- The proposal would result in an increase in night time noise levels including at houses adjacent to the A583 / A585 access road to the M55
- The applicant should never have been given permission in the first place
- Undertaking operations at night would increase noise and light pollution and the risk of accidents and result in disturbance to sleep. There are approximately 300 houses on the route to the site between junctions 3 and 4 on the M55.
- The evidence that has been submitted in support of the application is unreliable. The ambulance service do not have any record of the delays that

have been claimed and the figures for road closures and arrests in July should have been shown along with the months before and after July.

- The application is an example of incremental changes to the permission which should not be allowed. The gradual erosion of planning regulations over time could result in traffic movements being under no restriction.
- The protesters are on the site 24 hours per day and they will not cease demonstrating because vehicle movements take place at night time
- The proposal will increase demand on police resources as they will be required to attend the site at night
- The applicant has not followed the routing contained in the existing approved traffic management plan
- The proposal is contrary to Policy EP11 of the Fylde Borough Local Plan.
- The proposal would have a detrimental impact on nocturnal wildlife.
- The applicant has not been penalised for the breaches of the traffic management plan that have taken place to date.
- The use of police escorts during the daytime is more appropriate than changing to a plan that requires a more costly 24hr police escort presence.
- Protest activities including 'lorry surfing' could be more easily organised during the day
- The proposal is not non material as it has significant implications for local residents and the highway network.
- Protestor activity has declined significantly since July and the existing Traffic Management Plan should be sufficient to manage HGV access to the site.
- Many of the protestors who have been arrested have subsequently not been charged or been acquitted at court
- The proposed changes to the wording of condition 19 are too flexible and the application is not clear about how many vehicles would be in each convoy and whether the maximum level requested is per night, week, month or in total.
- Granting the application would set a precedent for other sites including for Roseacre Wood where it would very disturbing.
- The proposal would harm road safety in particular to cyclists.
- The amendment will increase emissions.

Friends of the Earth also object to the application. They consider that the change to conditions represents a material amendment as it would have material impacts in terms of noise and therefore should have been submitted under the provisions of section 73. FoE consider that more information should be sought in relation to whether the permitted Lmax noise levels were breached when the previous out of hours delivery took place on 27th July. FoE also consider that the application demonstrates that the applicant is not able to comply with the planning conditions that have been imposed in order to make the development acceptable. FoE consider that these conditions were imposed to protect local amenity and to comply with local planning policy. Local residents should not have their amenity affected which would be the consequence of the proposed amendment.

31 letters of support have also been received raising the following issues:

- The A583 is a key route for staff travelling to and from work and for businesses during the day and the proposal would result in a considerable reduction in hold – ups and road hazards and would increase road safety.

- The decision to bring in the rig during the night time was justified in minimising disruption to the travelling public.
- Closure of the A583 has resulted in a significant loss of business to premises that are located off the A583
- Closure of roads and delays is bad for tourism and if allowing overnight deliveries helps to solve the issue, the amendment should be permitted.
- The existing problems of lock ons and road closures cannot be allowed to continue
- The amendment would relieve some pressure on the police and other authorities.

Lancashire Chamber of Commerce support the proposal. They state that significant numbers of businesses have complained about the impact of road closures on the A583 resulting from the actions of protestors which has resulted in loss of revenue and business. The Chamber of Commerce consider that Cuadrilla's decision to deliver the drilling rig outside the approved hours was correct as it avoided further road closures and that additional flexibility over HGV movements would minimise future disruption to other road users.

A petition from an organisation called 'Backing Fracking' containing 219 signatures in favour of the proposal has also been received. A letter received with the petition states that the measures employed to deliver the rig to the site demonstrate that over night deliveries are significantly less disruptive than those conducted during the day and that the application should be approved to help keep the A583 open for residents and other travellers.

Advice

Background

Planning permission for the development of an exploration site to allow drilling for and testing for hydrocarbons within the Bowland Shale was granted by the Secretary of State on appeal in October 2016. The development commenced in January 2017.

To date the works that have been undertaken on the site include the construction of the site access and the exploration compound. Drilling of the first two boreholes commenced in August 2017 and are expected to be completed to the target formation by early 2018 after which the bores will be subject to hydraulic fracturing and testing to establish the existence and flow rates of any gas that might be present.

The planning permission is subject to a number of conditions including no.19 which controls hours of operation. Condition 19 restricts the delivery and removal of materials including plant and equipment associated with all drilling and extended flow testing during the exploration and appraisal phases of the site to between the hours of 07.30 to 18.30 hours Mondays to Fridays, 08.30 to 12.00 hours on Saturdays with no such works on Sundays or public holidays.

The applicant is now applying for a non material amendment of condition 19 to allow HGV movements to and from the site to take place outside the hours listed in condition 19. It is proposed that out of hours movements would be restricted to a total of nine occurrences over the remaining duration of the development. The

applicant intends that one occurrence of out of hours HGV movements might be comprised of a single vehicle or a convoy of multiple vehicles.

Planning and Highway Issues

Since operations commenced at this site in January 2017, there has been significant protestor activity which has resulted in closures or other disruption to the A583 with resultant delay to the applicant's business and to the general travelling public. Anti shale gas protestors have been an almost constant presence at the site which has required the deployment of significant police resources resulting in a large number of arrests of protestors. The protestors have employed a range of techniques to disrupt the construction and development of the exploration site. These include protestors 'locking on' within the site bell mouth or in the A583 carriageway itself to delay vehicles from accessing the site. 'Locking on' involves protestors linking and locking arms using handcuffs or other locking devices located within steel tubes. Specialist police resources are then required to safely remove the protestors. Where the lock on has occurred close to or within the carriageway of the A583, the police have had to close the road or implement a contraflow to give them sufficient working space so that they can deal with the lock – on in a safe manner. Protestors have also mounted HGVs traveling towards the site so that they can occupy the vehicle and force it to stop in the carriageway. In such cases, the police have to deploy specialist equipment to allow them to detain the protestors in a safe manner but again this invariably requires the road to be closed or contraflows installed.

During July 2017, an anti-fracking activist group called 'Reclaim the Power' coordinated a month of activity at the site. As a result the A583 was completely closed or subject to a contraflow on 20 occasions during July to allow the police to deal with protestors. Many of the road closures or contraflows took place over several hours covering peak times leading to significant delays to other road users. Whilst other months have not seen the same levels of disruption as seen in July, there have still been many similar events since January 2017 resulting from the police having to deal with lock ons and other protestor activity.

In response to the level of protestor activity, on the 27th July the applicant took the decision to deliver the drilling rig using a convoy of 27 HGVs which arrived at the site at approximately 4.45 am. Whilst these HGV movements were in breach of the approved hours listed in condition 19 of the planning permission, the applicant considers that the breach was justified as it allowed the rig to be delivered to the site without any disruption or delay to the public highway. The applicant therefore wishes to modify condition 19 to retain the ability for such night time movements without being in breach of the planning permission.

The applicant is requesting permission for these out of hours deliveries to take place on up to nine separate occasions associated with the remaining four phases of the development (drilling of each of the four wells, hydraulic fracturing of each well, flaring of gas from each well and installation of the gas pipeline and connection to the grid.) Each occasion would consist of a lorry, or convoy of lorries, accessing the site to deliver / pick - up equipment and then leaving the site. The applicant considers that it would normally take around 45 minutes to load / unload vehicles before HGVs exit the site to access the motorway network.

The applicant maintains that it would be their preference not to move HGVs outside of normal permitted hours. The ability to use the additional hours would probably be reserved for where major pieces of equipment need to be moved onto or away from site such as when the drilling rig is taken away following the completion of the first two boreholes or when the fracking equipment needs to be brought to the site. It is likely that the four work phases for which the relaxation is sought would be completed within 24 months and therefore there would be an average of 0.375 incidences of out of hours HGV movements per month (approximately 1 night every 3 months).

The roads that are used to access the Preston New Road site are all major A class Roads. The A583 carries approximately 13,000 vehicles per day including around 250 HGVs. It is therefore considered that there are no highway capacity or safety issues arising from the amendment that is sought. The key planning issue is in terms of the impact of such night time traffic movements on the amenity of any residents living close to the site and adjacent to the A583 / A585. Some of the representations make reference to there being 300 properties that are located adjacent to these roads. Whilst there are many properties located off these roads including the Carr Bridge Caravan Park and the new estates on the western edge of Kirkham, most of these have a considerable standoff from the highway which reduces the impacts of passing HGV traffic. There are relatively few properties that are located immediately adjacent to either the A583 or A585. When the night time convoy was employed on 27th July, the County Council only received one complaint about noise disturbance. Both roads are also A class roads where there will already be some HGV traffic throughout the night. The amendment sought would result in an increase in HGV traffic above the existing levels at night but it must be acknowledged that it is only proposed to make use of the extended hours on approximately 1 night every three months and therefore the impact on residential amenity must be considered in that context.

The applicant proposes that it would be the intention to organise any night time HGV movements into a convoy, similar to that employed on 27th July. However, given that use of the additional hours would only be an average of one night every three months, use of convoys is not considered to be essential and distribution of HGV movements throughout the night is not considered to have a materially greater and unacceptable impact given that the vehicle movements would be on A class roads where there are already some HGV movements throughout the night. The applicant has requested permission for up to 30 vehicle loads in any one night time period. It is considered that any amendment of condition 19 must contain a limitation on the number of vehicles used in each 'out of hours' event as well as a requirement for the operator to give prior notification to the County Council of the intention to use the extended hours so that if necessary monitoring can be undertaken and to allow a record to be maintained of each occasion when the extended hours are utilised.

Condition 19 currently restricts night time operations on the site to work associated with the drilling of boreholes. A separate condition (no 29) sets average and maximum noise levels from the site when measured at the nearest residential properties. These levels were set in relation to the operation of the drilling rig during the night time period which is the aspect of the development most likely to give rise to noise issues. Whilst the unloading and loading of vehicles during the night would have the potential to increase the total noise levels from the site, the night time delivery on 27th July did not result in a breach in either the 1 hour average or

maximum noise levels stated in condition 29 of the planning permission. The limits for night time noise are very stringent and the fact that these were not breached indicates that impacts would be very low. The noise restrictions in condition 29 would remain in force throughout the remainder of the development and a sophisticated system is in place to provide real time monitoring of noise levels. The compound area is surrounded by 4 metre high acoustic fencing and provided that all loading / unloading of HGVs takes place within the compound area, it is considered unlikely that the noise levels contained in condition 29 would be breached by any loading unloading activities during the night time period. A requirement can be imposed regarding the location of night time loading / unloading activities.

The traffic management plan for this site originally required that all HGV movements approach the site from junction 4 of the M55 and then leave the site towards junction 3 of the M55 using the A585. Such routing requires HGVs to turn left into the site and left out of the site which is the favoured manoeuvre in terms of highway safety. These vehicle routing arrangements have since been modified to allow vehicles to also arrive at the site from junction 3 or to leave towards junction 4 where agreed with the police. These modified routing arrangements have been widely used in response to protestor activity or road closures. The applicant wishes these traffic management measures to remain in force during the extended hours. This is considered acceptable and would require HGVs to turn left into and left out of the site unless otherwise agreed with the police in response to protestor activity.

A large number of representations have been received in response to the consultation exercise. There is considerable support for the extended hours from the local business community and from a number of local residents as there were considerable delays to traffic around the site arising from protestor activities which resulted in some local economic impact and disruption to the daily lives of local residents.

However, many objectors have said that the amendment should not be approved as the extended hours will not necessarily mean an end to protestor activity and associated road closures. In relation to these issues, the extended hours will not necessarily reduce the incidence of 'lock - ons' and road closures as most vehicle movements would still take place within the existing permitted hours of operation. However, it would allow the applicant to programme important deliveries to the site when the risk of protestor activity is lower. The key planning test is considered to be whether there would be unacceptable impacts arising from the amendment that is sought and not in terms of its likely benefits. In relation to the concern of additional emissions or traffic levels, the amendment sought would not increase the levels of traffic to the site and would only change the times at which such movements take place.

Some objectors have said that the original conditions were attached in order to make the development acceptable and should therefore not be changed. However, it is a legal right for anyone who holds a planning permission to seek to amend planning conditions that are attached to the permission. The Town and Country Planning Act recognises that new issues can arise following the granting of permission and therefore provides a statutory right to amend conditions via section 73 or 96A.

In support of their proposal, the applicant has also referred to a number of occasions during July when ambulances were unable to reach their destinations using the

fastest route due to incidents outside the Preston New Road site. A number of objectors have disputed that this is the case drawing attention to Freedom of Information requests that they have made to the ambulance service which have stated that no records exist of such delays. However, the absence of records does not mean that the delays did not occur. It could simply be that the ambulance service does not record that information, given the number of ambulance call outs that take place each day. Information provided by the police at a recent Community Liaison Meeting for the Preston New Road site stated that three ambulances had to be diverted due to the road being closed. It is therefore considered that there is some evidence that the road closures have resulted in some occasional difficulties for the emergency services.

Use of Non material amendment procedure

The applicant has applied to change condition 19 through the non material amendment procedure within section 96A of the Town and Country Planning Act 1990. This section allows a local planning authority to '*make a change to any planning permission.... if they are satisfied that the change is not material. In deciding whether a change is material, a local planning authority must have regards to the effects of the change together with any previous changes made under this section*'.

The ability to apply for non material amendments to existing planning permission was introduced in 2009 and guidance on the use of the procedure is contained in Planning Practice Guidance. The Guidance states that '*There is no statutory definition of non material. This is because it will be dependent on the context of the overall scheme – an amendment that is non material in one context may be material in another*'.

Friends of the Earth have challenged the use of the s96A procedure. However, it must be acknowledged that the applicant is requesting the ability for HGVs to access and leave the site during the night time for a very limited number of times taking into account the overall life of the site. If it is concluded that the impacts of the amendment would be minimal, the change requested may be considered to be non – material in nature. Applications under s96A do not carry any requirement in terms of consultation or publicity. However, in view of the level of public interest in this site, the application has been advertised and consulted upon in the same way as any other planning application and the results of the consultation are included within this report.

Conclusions

The development of this site has been subject to considerable protestor activity which has led to many closures of the A583 and other traffic management measures which have resulted in delay and disruption to other road users. The applicant wishes to have greater flexibility to be able to programme a limited number of HGV movements outside of the currently permitted hours to reduce disruption to their business and to the highway generally. Whilst it is considered that the proposals would not necessarily remove the incidence of road closures, it would help reduce their frequency which would be of benefit to the applicant and also to the general public including those whose businesses are affected by road closures. The number of occurrences of night time HGV movements would be very low and given the

location of the site and nature of the roads affected, it is considered that any adverse impact on local amenity would be infrequent and not unacceptable.

In view of the scale, location and scope of the proposal, it is considered that no Convention Rights set out in the Human Rights Act 1998 would be affected. The Human Rights Act 1998 requires the County Council to take into account the rights of the public under the European Convention on Human Rights and not to act in a manner incompatible with those rights. Article 1 of the 1st Protocol states that an individual's peaceful enjoyment of their property shall not be interfered with except as is necessary, in accordance with law and as is proportionate.

This application, were it to be approved, would be unlikely to generate such an impact on neighbouring properties which would breach those rights given the scale of the proposal and the fact that previous movement of vehicles at night only resulted in one complaint regarding noise.

Recommendation

That the non material amendment to condition 19 of planning permission LCC/2014/0096 be approved and that condition 19 is reworded as follows:-

19a. The following hours of working shall apply to the development:-

Activity	Permitted hours of work
Site construction and restoration including: <ul style="list-style-type: none">• Delivery or removal of materials• Construction of the site access and compound• Installation of the interconnections to the national gas and water grids• Works associated with the delivery and removal of plant and equipment associated with all drilling and extended flow testing of gas monitoring works during the exploration and appraisal phases of the site	07.30 to 18.30 hours Mondays to Fridays (except public holidays) 08.30 to 12.00 hours on Saturdays (except public holidays) Not permitted Sundays or Public Holidays
<ul style="list-style-type: none">• Drilling boreholes and operational management of drilling and extended flow testing• Well operations• Flowback and testing operations (including those involving pumping equipment but excluding hydraulic fracturing pumping operations)• Carrying out essential repairs to	24 hours / 7 days per week

plant and machinery used on the site	
<ul style="list-style-type: none"> Pumping associated with hydraulic fracturing operations 	08.00 to 18.00 hours Mondays to Fridays 09.00 to 13.00 hours on Saturdays Not permitted Sundays or Public Holidays

19b. Notwithstanding the above general hours of working, HGVs may also enter and leave the site outside the above hours on Mondays to Fridays (except for public holidays) provided that the instances of working outside the hours specified in condition 19a do not exceed 9 occurrences (as defined below) over the duration of the development,

The following conditions shall apply during any occurrence of HGV movements under the provisions of condition 19b:-

- All HGVs shall be loaded or unloaded within the site compound area shown on drawing PNR-ARP-CH-018. No such loading or unloading shall take place on the site access road.
- Not less than 24hrs notice in writing shall be given to the County Planning Authority of the intention to utilise the extended hours authorised under the provisions of condition 19b.
- Not more than 30 HGVs shall leave the site in any one period between 18.30 to 07.30 hours.
- All HGV movements undertaken under the provisions of condition 19b shall be managed in accordance with the Traffic Management Plan (issue 11) approved under the provisions of condition 11 of planning permission LCC/2014/0096.

For the purposes of this condition, one 'occurrence' shall be any one night time period between the hours of 18.30 and 07.30 when HGVs access the site for the purposes of delivering or picking up plant, equipment or materials.

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

Paper	Date	Contact/Directorate/Ext
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LCC/2014/0096NM1		
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534130		

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