

Development Control Committee
Meeting to be held on 2 March 2016

Electoral Division affected: Lancaster Central

Lancaster City: Application number. CRT/2015/0096

Application for a lawful development certificate for proposed erection of a solar photo voltaic array, switchgear housing, ring main unit, underground cabling and 2.4m high security fence.

Lancaster Waste Water Treatment Works, Stodday Lane, Lancaster

Contact for further information:
Jonathan Haine, 01772 501772 534130
DevCon@lancashire.gov.uk

Executive Summary

Application - Application for a lawful development certificate for proposed erection of a solar photo voltaic array, switchgear housing, ring main unit, underground cabling and 2.4m high security fence.

Lancaster Waste Water Treatment Works, Stodday Lane, Lancaster.

Recommendation – Summary

That the application be **refused** for the following reason:

It is considered that the application site is not operational land within the meaning in section 263 of the Town and Country Planning Act 1990 and therefore the proposed development cannot benefit from the permitted development rights contained in Schedule 2 Part 13, Class B(f) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Applicant's Proposal

The application is for a Certificate of Lawful Development for the erection of a solar photo voltaic array, switchgear housing, ring main unit, underground cabling and 2.4 metre high security fencing.

The proposed solar array would have an installed capacity of 1.5 MW and would consist of 18 rows of solar panels, each row being between 70 and 125 metres in length. There would be two housings containing switchgear – these would be in the form of steel shipping containers measuring 4.5 metres by 2.4 metres by 2.5 metres

in height. The ring main units would be a grp kiosk type building sited on a concrete base measuring 3 metres by 3 metres by 2.5 metres in height.

The proposed solar array site would be surrounded by 2.4 metre high mesh fencing. The total length of fencing would be 460 metres.

Description and Location of Site

The application relates to an area of agricultural pasture measuring 100 metres by 100 metres located immediately north of Lancaster Waste Water Treatment Works. The works is 3km south west of Lancaster city centre and 700 metres northwest of Stodday. The treatment works is accessed via a number of minor roads that link with the A588.

To the west of the application site is the Condor Green to Lancaster Cycle path beyond which is the Lune Estuary which is designated as a SSSI and a Special Protection Area.

There is a small grouping of residential properties at Low Wood which immediately adjoin the application site to the north east.

The majority of the proposed development has already been undertaken.

Background

History – None relevant on this site.

Planning Policy

The application is for a Certificate of Lawful Development and the provisions of the Development Plan are not a relevant consideration in such an application.

Consultations

The application is for a Certificate of Lawful Development and there is no requirement to undertake consultation or to advertise the application.

Advice

The application is for a Certificate of Lawful Development for the proposed construction of a solar array consisting of the erection of photo voltaic cells covering an area of around 1 ha together with a range of other ancillary development including switch gear housing and perimeter fencing. The primary purpose of the proposed solar array is to provide electricity to the adjacent waste water treatment works.

The applicant is of the view that the development would be authorised by virtue of the permitted development rights in Schedule 2 Part 13 Class B(f) of the General Permitted Development Order 2015. The Order grants permission for certain types of development associated with waste water treatment operations and the applicant

has therefore applied for a determination to obtain confirmation from the Local Planning Authority that the proposed development would be permitted development. If the LPA considers that the proposal would not be permitted development it must refuse the application for the Certificate of Lawful Development and the developer would then have to make a planning application in the normal manner.

It is important to recognise that the determination of the Certificate of Lawful Development applications must be made on the basis of whether the development would be lawful taking into account the relevant facts and the provisions of planning law. The planning merits or environmental impacts of the development are not relevant to the determination of such an application. As such, these types of applications are normally determined by the Director of Governance, Finance and Public Services under delegated powers. However, County Councillor Gina Dowding has requested that this application be determined by the Development Control Committee. The Committee should note that their consideration of the application is still restricted to legal considerations and should not stray into the planning merits of the proposed development.

Operators of waste water treatment works are known as statutory undertakers for the purposes of planning legislation. Statutory undertakers benefit from various permitted development rights under the General Permitted Development Order 2015. In particular sewerage undertakers benefit from various rights under part 13 Class B or the Order which grants permission for a range of development associated with the management of waste water including ' *any other development in, on, over or under their operational land other than the provision of a building but including the extension or alteration of a building*' (paragraph f of Class B)

The applicant maintains that the proposed solar array is permitted development under paragraph f) and requests confirmation of this through the determination of the Lawful Development Certificate.

It is considered that proposals such as solar arrays could be covered by these permitted development rights but only if they are located in, on, over or under operational land.

The meaning of 'operational land' is defined in section 263(1) of the Town and Country Planning Act 1990.

s263(1) reads :- *Operational land means:*

- a) *Land which is held for the purposes of carrying on their undertaking and*
- b) *Land in which an interest is held for that purpose.*

(2) Paragraphs a) and b) of subsection (1) do not include land which in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held for the purposes of the carrying on of statutory undertakings.

In order to demonstrate that the site is operational land, the applicants have provided a copy of a legal agreement dated 17th November 1934 relating to the transfer of the

land to the Lancaster Corporation for the purposes of constructing a sewage disposal works. Whilst it is concluded that the applicant has an interest in the land for the purposes of carrying out their undertaking, it is also necessary to consider the requirements of subsection (2) of s263.

There is little relevant case law which assists in the interpretation of subsection (2). However, the application site had (prior to development) the characteristics of an open field used for horse grazing and other agricultural activities. There is no evidence that the site has ever been used for activities associated with waste water treatment and the site has an appearance akin to the other areas of agricultural land in the area rather than the waste water treatment works to the south. It is therefore considered that the application site cannot be operational land due to the provisions of subsection (2) of s263.

The permitted development rights contained in Part 13 Class B(f) of the General Permitted Development Order 2015 therefore do not apply to this development. Consequently a Certificate of Lawful Development cannot be issued for this development and a full planning application will be required.

Permitted development rights do not apply in instances where the development would otherwise have to be subject to Environmental Impact Assessment. As this development is located close to the Morecambe Bay SPA there is potential for the development to give rise to significant environmental effects which may be sufficient to give rise to a need for EIA to ensure that the likely environmental effects of the development are properly investigated. The applicant has submitted some information to allow the likely impacts on birds to be assessed. Whilst no screening opinion has yet been undertaken to establish the need of otherwise for EIA, this does not affect the judgement expressed above that the permitted development rights do not apply to this development.

Human Rights Considerations

The refusal of applications made under the Town and Country Planning Act 1990 will usually affect the Human Rights of the applicant and landowner. The rights which may be affected are contained in Article 1 of the 1st Protocol which 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. However in this case, the provisions of the Town and Country Planning (General Permitted Development) Order 2015 already constrain the rights of landowners by restricting permitted development rights in certain situations and the determination of this application is only being undertaken in accordance with statutory provisions. It is therefore considered that the refusal of this application does not affect the human rights of the applicant any further than is the case through existing legislation.

Recommendation

That the application be refused for the following reason:-

1. It is considered that the application site is not operational land within the meaning in section 263 of the Town and Country Planning Act 1990 and therefore the proposed development cannot benefit from the permitted development rights contained in Schedule 2 Part 13, Class B(f) of the Town and Country Planning (General Permitted Development) (England) Order 2015.

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

Paper	Date	Contact/Ext
--------------	-------------	--------------------

CRT/2015/0096		
---------------	--	--

28th September 2015 Jonathan Haine Planning and Environment 534130		
---	--	--

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