

## **PLANNING COMMITTEE - 15 JANUARY 2019**

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| <b>Application No:</b>   | <b>18/01966/FUL</b>  |   |
| <b>Proposal:</b>   | <b>Variation of condition 4 attached to planning permission 17/00732/FUL to extend the time period from 25 years to 30 years</b> |   |
| <b>Location:</b>   | <b>Former Rufford Colliery, Rufford Colliery Lane, Rainworth Nottinghamshire</b>   |   |
| <b>Applicant:</b>  | <b>Dr Marc Thomas</b>  |   |
| <b>Registered:</b>   | <b>22 October 2018</b>   | <b>Target Date: 17<sup>th</sup> December 2018</b> |
| <b>Extension of time agreed until 18<sup>th</sup> January 2019</b> |  |   |

### **The Site**

The site which forms the basis of this application relates to an approximate rectangle of hard standing land, used for coal stocking. The land was formally part of the deep mines colliery which ceased operation in 1993. Much of the wider site is sparsely vegetated or bare earth. To the immediate north of the site is a Bridleway (Rufford BW3) and to the south is further hard standing which is used for coal stocking. Further to the east is dense woodland which forms part of Clipstone Forest. The site as a whole forms part of the ongoing restoration programme pursuant to county planning application 3/CMW/99/0298.

The site is approximately 2km to the north of Rainworth; on the western boundary of the district. Given the previous use of the site as a location of coal extraction there is relatively little other development within the proximity. The nearest residential property is situated approximately 2km to the east with another collection of dwellings approximately 1.5km to the south west. To the west of the site is a brick electricity substation which is surrounded by palisade fencing.

The site is considered to be of avian interest given its location within the 5km buffer zone as identified in Natural England's indicative core area and RSPB's IBA boundary for those parts of Sherwood Forest which meet the primary criterion for designation as an SPA. The site is designated as being within Flood Zone 1 in accordance with Environment Agency mapping. The site is situated adjacent to two areas designated as Local Wildlife Sites notably; Rainworth Forest to the west designated for botanical & moth interest and Rufford Pit Top to the north designated for bird & butterfly interest. The site itself is however not the subject of any wildlife designation. Rainworth Heath SSSI is, at its nearest point, approximately 935m to the southwest. Birklands and Bilhaugh Special Area of Conservation (SAC) is located approximately 7.25km to the northeast of the site.

### **Site History**

**17/01299/DISCON** - Request for confirmation to discharge condition 8 attached to planning permission 17/00732/FUL Creation of fast response embedded power plant comprising containerised battery storage and AC/DC inverter, generator, transformer and control and switchgear container, banded fuel tank, welfare unit and DND control building and all associated

external works including acoustic and security fences and CCTV cameras. Amendment to application 16/01237/FUL

**17/00732/FUL** - Creation of fast response embedded power plant comprising containerised battery storage and AC/DC inverter, generator, transformer and control and switchgear container, bunded fuel tank, welfare unit and DND control building and all associated external works including acoustic and security fences and CCTV cameras. Amendment to application 16/01237/FUL. Approved 12 July 2017

**16/01237/FUL** - Proposed energy storage facility consisting of shipping containers containing batteries, and associated infrastructure including a substation and perimeter fence to be located on an existing coal stocking area at the former Rufford Colliery near Rainworth. Access via the A617. Approved October 2016

**15/01008/FULM** - Proposed solar photovoltaic development to be located at former Rufford Colliery near Rainworth. Access via the A617. Application refused December 2015

**15/01797/CMM** - To vary conditions 4, 5 and 12 of planning permission 3/13/00495/CMM to regularise the coal fines recovery operations to increase the maximum tonnage of materials to enter and leave the site in any seven day period to 10,000 tonnes and to extend the timescale for completion of mineral recovery operations to 30/09/2018 with a further year to complete the restoration. No objection raised. October 2015

**15/01798/CMM** - Increase in the coal fines stocking and blending area of consent No 3/13/00495/CMM together with the use of an internal haul road. No objection raised. October 2015

**15/01799/CMA** - To vary conditions 4 and 5 of planning permission 3/14/01046/CMA to regularise the coal fines recovery operations and to extend the timescale for completion of mineral recovery operations to 30/09/2018 with a further year to complete the restoration. No objection raised. October 2015

**14/SCR/00056** –The response concluded that the proposal would not be classed as EIA development.

### The Proposal

The proposal seeks a variation to the approved plans condition attached to the original consent for extensions to the dwelling and erection of a carport approved in June 2017 (17/00686/FUL) under section 73 of the Town and Country Planning Act 1990

Planning permission was originally sought and granted under 17/00732/FUL for an energy storage facility comprising utility scale batteries plus backup generation including 8 silenced containers housing generating diesel engines.

Planning permission is now sought to vary condition 4 of planning permission 17/00732/FUL to extend the time period of the energy storage facility from 25 years from commissioning to 30 years. Following completion of the plant, and an assessment of the equipment installed, the applicant is confident that with suitable maintenance the plant has a useful service life of 30 years. They contend that if the plant is taken out of use sooner, its capacity will need to be replaced

within the UK grid earlier. Deferral of asset replacement reduces cost to the consumer, and reduces net environmental impact due to significant embodied carbon of such capital projects, and this provides a wider benefit to society to balance the limited harm of deferring the remediation of this section of the Colliery by 5 years.

The Plans under consideration are;

Site Location Plan RF1001AS, received 12<sup>th</sup> October 2018

Final Layout Plan RF1000KS, received 12<sup>th</sup> October 2018

### **Publicity**

Occupiers of six properties have been individually notified by letter. A site notice has been posted and a notice published in the press.

Earliest Decision Date 28/11/2018

### **Planning Policy Framework**

#### **The Development Plan**

*Newark and Sherwood Core Strategy Adopted March 2011*

Spatial Policy 1 – Settlement Hierarchy

Spatial Policy 3 – Rural Areas

Spatial Policy 7 – Sustainable Transport

Core Policy 9 – Sustainable Design

Core Policy 10 – Climate Change

Core Policy 12 – Biodiversity and Green Infrastructure

Core Policy 13 – Landscape Character

*Allocations and Development Management DPD Adopted July 2013*

Policy DM4 – Renewable and Low Carbon Energy Generation

Policy DM5 – Design

Policy DM7 – Biodiversity and Green Infrastructure

Policy DM8 – Development in the Open Countryside

Policy DM9 – Protecting and Enhancing the Historic Environment

Policy DM12 – Presumption in Favour of Sustainable Development

#### **Other Material Planning Considerations**

National Planning Policy Framework 2018

### **Consultations**

**Rainworth Parish Council** – Objection. The Parish Council objected to the application in the first place. We find the reason to extend it is unbelievable.

**NCC Highways Authority** – No objection

**The Coal Authority** – The application site does not fall with the defined Development High Risk Area and is located instead within the defined Development Low Risk Area. This means that there is no requirement under the risk-based approach that has been agreed with the LPA for a Coal Mining Risk Assessment to be submitted or for The Coal Authority to be consulted.

**Nottinghamshire County Council Ecologist** – No objections are raised. Do not envisage that the proposal will give rise to any significant ecological impact.

**Environment Agency** – although the Environment Agency did not propose condition 4 there would be no objection to the proposed extended time period.

**No letters of representation received** from neighbours or interested parties.

## **Appraisal**

### **Principle**

This application is made under Section 73 of the Town and Country Planning Act 1990 to vary or remove conditions associated with a planning permission. Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact.

If the application is acceptable a decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity, decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As a Section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission (unless as is the case here development has already commenced and therefore the need for a time condition falls).

The principle of the development has already been established through the granting of planning permission in July 2017.

Since determination of the previous application the NPPF has been revised. The revised NPPF ‘Supports the transition to a low carbon future in a changing climate ...and encourage the use of renewable resources.’ The NPPF policy on renewable and low carbon energy is set out in section 14 of the document. NPPF paragraph 148 indicates that planning should, ‘help to shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and improving resilience; encourage the reuse of existing resources ..... and support renewable and low carbon energy and associated infrastructure.” The revision to the NPPF represent a slight alteration in the wording on climate change but the principle remains the same.

I am therefore satisfied that the principle of the proposed amendments to the previously approved plans is acceptable subject to an assessment of site specific issues.

### **Impact upon Protected Species**

The site as a whole is in the process of undergoing restoration after the closure of the colliery and there are a number of designated Local Wildlife Sites (LWS) within proximity of the proposed development site, notably Rainworth Forest to the west and Rufford Pit Top to the north. It was previously determined that the site would not result in harm to ecological interest of the site

subject to a condition (6) in relation to scrub clearance of an area of land approx. 250m to the east of the development to offset the proposed site not being restored for a further 25 years. The ecologists have confirmed that they do not envisage that the proposed extension of time to 30 years will give rise to any significant ecological impact.

Nottinghamshire Wildlife Trust (NWT) have confirmed that the scrub clearance was undertaken in winter 2017/18, but on inspection earlier this year it was clear that the stumps had not been treated as had been agreed. The developers have subsequently used ecoplugs, however, the stumps should have been treated immediately after cutting, so it is not guaranteed that the ecoplugs will be successful at this late stage. NWT suggest that the stumps should be assessed to see whether the ecoplugs have worked and recommend a site inspection next summer. If they have not worked then the stumps will need recutting and treated immediately with herbicide. A condition can be imposed to reflect this.

It is therefore not considered, subject to a suitably worded condition, that the proposed extension of the previously approved operational period would detrimentally impact upon the ecological interest of the site nor the wider colliery site and as such the proposal is considered to accord with policy DM7 of the NSDC DPD and the NPPF.

#### Impact on Visual Amenity and Landscape Character

Core Policy 9 states that new development should achieve a high standard of sustainable design and layout that is of an appropriate form and scale to its context complementing the existing built and landscape environments. Core Policy 13 requires the landscape character of the surrounding area to be conserved and created.

In accordance with the NSDC Landscape Character Assessment 2013, the site is defined as being within landscape character area S PZ 8, Vicar Water and Rainworth Heath Wooded Estate lands. This area is identified as being in very poor condition with the targeted action amongst other things to create new heathland habitats with Oak/Birch woodlands and open acid grassland/heathland. The site is largely inaccessible and forms part of a degraded landscape that typifies the wider Rufford Colliery site. It is framed by deciduous woodland to the east and west, with the disused railway line within the woodland to the west. The northern, eastern and southern boundaries are currently open. The existing areas of woodland provide a physical framework to the site, ensuring that any changes are localised with visibility of the proposed development limited to the site and its immediate context. There is however a bridleway which runs along the northern boundary of the site (Rufford Bridleway 3).

The energy plant has been completed and it is not considered that extending the time period for de-commissioning by a further 5 years would significantly detract from the character of the surrounding area. Accordingly the proposal would accord with Core policies 9 & 15 and policy DM5 of the Core Strategy and DPD respectively.

#### Impact upon Amenity

The nearest dwelling is approximately 1.3km to the south of the site. Given the degree of separation from the proposed installation to other residential properties it is not considered that the proposal would result in a loss of neighbouring amenity through overlooking, overbearing or loss of light; the proposal therefore accords with Policy DM5.

### Impact upon Highway Safety

The site has been constructed and is now maintained by occasional visits by a maintenance engineer in a van. No objection to the proposed development has been raised by NCC Highways Authority. As such it is not considered that the proposed development would impact on highway safety and would accord with Spatial Policy 7 of the Core Strategy.

### **Conclusion**

The variation of condition 4 of planning permission 17/00732/FUL to extend the service life of the plant from 25 years to 30 years is considered to be acceptable and will provide a wider benefit to balance the limited harm of deferring the remediation of the site by a further 5 years. It is therefore in accordance with the Development Plan and there are no material considerations which would warrant refusal of the application.

### **Recommendation**

Approve, subject to the following conditions;

#### **Conditions**

01

The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

Site Location Plan RF1001AS, received 12<sup>th</sup> October 2018

Final Layout Plan RF1000KS, received 12<sup>th</sup> October 2018

unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the permission.

Reason: So as to define this permission.

02

The planning permission hereby granted shall be for a temporary period only, to expire on the 12<sup>th</sup> of September 2047.

Reason: The proposal is not suitable for a permanent permission and in accordance with the applicants expressed intent.

03

Not later than six months after the date on which the planning permission hereby granted expires, the energy storage facility and ancillary equipment shall be dismantled and removed from the site and the land restored in accordance with a scheme to be submitted to the Local Planning Authority.

Reason: In the interests of visual amenity.

04

Within 6 months of the date of this permission, the area of land approximately 250m to the east of the proposed development, as highlighted in the plan received from the applicant on 12<sup>th</sup> June 2017, shall be inspected and confirmation of the successful scrub clearance submitted to and

agreed in writing by the Local Planning Authority. If the scrub clearance previously undertaken is found to not have been successful then each stump shall be recut and treated immediately with herbicide, as was originally agreed and confirmation of which will need to be submitted to and agreed in writing by the Local Planning Authority.

Reason: In order to compensate for the 30 year delay in the restoration of important habitat and in order to accord with policies CP12, DM7 and the NPPF.

05

Notwithstanding the consent hereby granted, flood lighting on the site shall only be utilised in the event of an emergency.

Reason: in the interests of visual amenity

### **Informative**

01

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated in this location.

02

The application as submitted is acceptable. In granting permission the District Planning Authority is implicitly working positively and proactively with the applicant.

### **BACKGROUND PAPERS**

#### **Application case file.**

For further information, please contact Jennifer Wallis on ext **5419**.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Business Manager Growth and Regeneration**

