

EPP9(S)

**APPEAL BY ISLAND GAS LTD, PORTSIDE
ELLESMERE PORT**

APPEAL REFERENCE APP/A0665/W/18/3207952

PLANNING

Summary Proof of Evidence

BY

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1. EXPERIENCE

- 1.1 In my main proof I set out my relevant qualifications, professional experience and describe my areas of expertise, including brownfield regeneration for the purpose of the inquiry. I understand I have a professional duty to assist the inquiry, in accordance with the guidelines and standards of the RTPI. I confirm that the evidence I produce here is true to the best of my knowledge and belief, representing my honestly held professional view.

2. THE APPLICATION

- 2.1 The main proof sets out the details of the application and reason for refusal. The site location and history is also set out. I note the concern that the Appellant has confused the intention of the application. The application documents do not describe the extraction technique. They state that the technique will not be hydraulic fracturing but do not state what the technique will be. Only in correspondence with the Rule 6 party did the Appellant clarify that the method of extraction involves “*acid washing or, if required, an acid squeeze*” (applying the definitions of those terms by the Environment Agency).
- 2.2 In light of the Environment Agency definitions and given the description of the proposed development and the lack of specificity of the application documents, if approved, the developer in effect could progress a matrix acidisation. Therefore the potential land use consequence of this must be fully considered when deciding whether or not to approve, with a precautionary principle applied to deal with potential adverse consequences, such as blow outs and associated threat to life of site operatives and neighbouring properties.
- 2.3 In the main proof I then go on to consider the site location, including its proximity to sensitive receptors. Having considered the application details and supporting documentation I find that the reason for refusal by the Council is valid.

3. DEVELOPMENT PLAN

Development Plan: Cheshire West and Chester Local Plan (Part One)

- 3.1 My view is that the development does not comply with the Development Plan policies: STRAT 1, or with the policies STRAT 4, SOC5 ENV1, ENV4, ENV7 and ENV9, to all of which I attribute significant weight.
- 3.2 The Council refused the application on the grounds the proposal was contrary to Policy STRAT 1 as it failed to mitigate and adapt to the effects of climate change, ensuring development makes the best use of opportunities for renewable energy use and generation. In addition, the Council could also have refused the development for departing from other aspects of Policy STRAT1.
- 3.3 After Chester, Ellesmere Port is the second place in the Local Plan (Part One) to have a dedicated strategic policy: STRAT 4. The thrust of this policy is to develop the town and its urban area with a range of houses, and to develop areas such as New Bridge Road, Stanlow and Ince Park as employment centres. A shale gas development at the site could hamper future regeneration plans, as issues such as noise levels, heavy traffic, and associated air pollution could detract from the residential sites being brought forward due to reduced residential amenity. The future land use with a capped well would impede future land use potential for employment and residential uses. Long term monitoring of the well for methane and radon emissions would need to be considered and again this could thwart regeneration ambitions. This factor should be attributed due weight.
- 3.4 In order to meet the health and well-being needs of its residents the Council sets out in *Policy SOC 5 - Health and Well-being* what it will do regarding proposals. In the main proof I refer to noise and air quality issues. In particular, the public health impact of the development must be understood, in light of Prof Watterson's evidence on air quality and Dr Szolucha's evidence on social harm.
- 3.5 The *Policy ENV 1 - Flood risk and water management* seeks to reduce flood risk, promote water efficiency measures, and protect and enhance water quality. Concerns relating to the application and ENV1 are the focus of Mr Grayson's and Prof Smythe's evidence. It must be demonstrated that the groundwater source will not be

subjected to contamination from the development, as this is clearly a most important public health issue. This planning issue must be afforded significant weight.

- 3.6 Local Plan *Policy ENV 4- Biodiversity and geodiversity* aims to safeguard and enhance biodiversity and geodiversity. The site is 270m from the Priority Habitats at Mersey Estuary SPA, RAMSAR and SSSI, which is regarded as one of the most important overwintering wildfowl sites in the UK, and of international importance. The officer report states Natural England considers “no significant effect”, yet an Environmental Impact Assessment / Habitat Regulations Assessment has not been undertaken to fully assess the negative impacts that could arise. It is difficult to know how the Council could approve the development in the absence of such important information. I refer to the *People Over Wind* case, which will be the subject of legal submissions. I strongly recommend that an appropriate assessment be carried out.
- 3.7 The Local Plan *Policy ENV 7 - Alternative energy supplies* seeks to support renewable and low carbon energy proposals where there are no unacceptable impacts. Given that this application will flare 1,166 tonnes of untreated hydrocarbons, initially with very low efficiency allowing 35% of the gas to escape unburnt (mainly methane) it is not a “low carbon” development. The Local Plan Policy ENV7 should be given due weight.
- 3.8 Policy ENV9 -Minerals supply and safeguarding should be considered in so far as the compliance of the proposal with “*ensuring the sustainable and prudent use of all natural mineral resources, including salt and brine, whilst having regard to the need to contribute to the provision of nationally significant gas storage capacity.*” As stated elsewhere in this document the development cannot be considered sustainable and therefore should not be allowed. Full weight should be attributed to Policy ENV9.

The Oil and Gas Exploration, Production and Distribution SPD

- 3.9 In my main proof I address this SPD and show how the cumulative impacts of the proposed development would not be acceptable to the Council’s aspirations. The applicant must consider the interaction with other existing developments in the area.

Development Plan: Cheshire West and Chester Local Plan (Part Two)

- 3.10 The Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies Submission Version (March 2018) which was examined in September 2018 also contains relevant policies, which should be afforded some weight. The development would be a departure from Policy EP1 - Ellesmere Port settlement area 1 and from Policy M4 - Proposals for exploration, appraisal or production of hydrocarbons relating to gas emissions, noise and vibration. Accordingly, the development should not be permitted as the gas emissions and noise have potential to harm.
- 3.11 The development would also be a departure from Policy DM33- New or extension to hazardous installations. This is because there is an increased risk to the general public or environmental sensitive areas. This proposal fails this local plan policy test.
- 3.12 Policy DM 43 - Water quality, supply and treatment states proposals should ensure that sufficient water resources are available and the development does not affect the water quality of surface or groundwater.

4. OTHER MATERIAL CONSIDERATIONS**The National Planning Policy Framework**

- 4.1 The revised National Planning Policy Framework, 2018 sets out the Government's planning policies for England and how these should be applied. NPPF 2018 Section 8 Promoting healthy and safe communities sets out in paragraph 91 that planning policies and decisions should aim to achieve healthy, inclusive and safe places which promote social interaction. This is in line with and gives extra weight to development plan Policy STRAT 4- Ellesmere Port which aims to build 4,800 homes and new local jobs. In light of paragraphs 91 and 93 of the NPPF 2018, this policy should be given great weight.
- 4.2 NPPF 2018 Section 14 Meeting the challenge of climate change, flooding and coastal change sets out the Government's planning policy for the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It requires planning policy to contribute to radical reductions in greenhouse gas emissions. This is reflected in the Council's Policy STRAT 1- Sustainable development.

- 4.3 NPPF 2018 Section 15. Conserving and enhancing the natural environment sets out Government intention for planning policies and decisions to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity, recognise the wider benefits from natural capital and ecosystems, minimising impacts and providing for net gains on biodiversity (paragraph 120 bullets a, b, d and e). Significant weight should be attributed to this, particularly due to the proximity of one of the country's most important wildfowl overwintering sites (Mersey Estuary Priority Habitats, SSSI, RAMSAR, SPA).
- 4.4 In paragraph 205 the Framework sets out that local planning authorities should give great weight to the benefits of mineral extraction. But as the development is for exploration it will be for a short duration, the economic benefits will be modest. Paragraphs 205 and 209 do not require MPA's to implement a blanket grant of planning permission to all minerals development regardless of where it is to be located or what the impacts to the locality will be. So, while great weight must be afforded to the application, as the policy states, it should not be used as a trump card permitting harmful development in a sensitive place. It is true to assert that even greater weight may be accorded to other policy, or policies, with which the development does not comply - for example climate change.

Other Policies and Legislation

- 4.5 In my main proof I deal with the Shale Gas and Oil Policy Statement by DECC and DCLG (13 August 2015), the Written Ministerial Statements: Energy Policy and Shale Gas and Oil Policy and A Green Future: Our 25 Year Plan to Improve the Environment (2018), the Paris Climate Agreement (2016) and the Localism Act 2011.
- 4.6 I also address the Climate Change Act 2008. Limiting GHG and evidencing reductions of at least 80% by 2050 from 1990 is a material consideration. The progress in terms of Carbon Budgets by the Council should be understood. Significant weight should be attributed with planning in accordance with the Act. The Committee on Climate Change: Onshore Petroleum - The Compatibility of UK Onshore Petroleum with Meeting the UK's Carbon Budgets (March 2016, published 7 July 2016) Report is also a material consideration to be afforded significant weight.

- 4.7 Having considered the other material considerations I find no good reason why the development should be permitted, in conflict with the Development Plan.

5. **PLANNING BALANCE**

- 5.1 All the relevant planning policies and material considerations need to be appropriately weighed to find the correct planning balance of the proposal.
- 5.2 My view is that the development does not comply with the Development Plan policies: STRAT 1, or with the policies STRAT 4, SOC5 ENV1, ENV4, ENV7 and ENV9, to all of which I attribute significant weight. Nor does it accord with relevant policies of the Local Plan (Part Two) or the Oil and Gas Exploration, Production and Distribution SPD. I recommend attributing full weight to this non-compliance. Therefore, planning permission should be refused unless material considerations indicate otherwise.
- 5.3 The NPPF 2018 is a material consideration. The expert witnesses appearing on behalf of the Rule 6 Party have evidenced that the proposed development is not sustainable socially, environmentally or economically and is contrary to NPPF Sections 8, 14 and 15. The proposal is supported by Section 17 but the economic benefits are limited. Taken together the material considerations in my view suggest permission should not be granted. Based on the evidence I recommend that the application be refused.

**Jackie Copley MA BA (Hons) PgCert MRTPI,
December 2018**