

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H18-1034-23 **Applicant:** Enso Green Holdings R Ltd

Proposal: Installation of a solar farm and battery storage facility with associated infrastructure - H18-0741-21 - approved on Appeal. Modification of Condition 3 to allow the solar farm and battery storage facility to operate for a further 5 years to 40 years

Location: Gunthorpe Road Solar Farm Land South Of Gunthorpe Road Walpole Marsh

Terminal Date: 1st March 2024

Planning Policies**South East Lincolnshire Local Plan - Adopted: March 2019**

31 Climate Change and Renewable and Low Carbon Energy

National Guidance**National Planning Policy Framework 2023**

Section 4 - Decision-making

Section 14 - Meeting the challenge of climate change, flooding and coastal change

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	1	0	0
WARD MEMBER	0	0	0	0
HIGHWAYS & SUDS SUPPORT	0	0	0	1
SHDC INTERNAL	0	0	2	0
OTHER STATUTORY BODIES	0	0	0	2
RESIDENTS	1	0	0	1

CASE OFFICER ASSESSMENT

Reason for Chairman's Panel

The application comprises a development that merits consideration of Chairman's Panel.

Proposal

This application is a Section 73 application, seeking to vary condition 3 of planning application H18-0741-21. The condition reads:

Within 1 month of the date of first export of electricity, confirmation shall be given in writing to the local planning authority of the date of first export to the Grid. The development hereby permitted shall cease on or before the expiry of a 35-year period from the date of the first export of electricity and the local planning authority shall be notified of the cessation of electricity generation and storage in writing no later than 5 working days after the event. The land shall thereafter be restored to its former condition in accordance with a scheme of decommissioning work (the Decommissioning Scheme)

This application seeks to extend the operational life of the Solar Farm by a further 5 years to enable renewable energy to be generated from the Solar Farm for a period of 40 years from the date of the first export of electricity.

The applicant wishes the condition to be revised as follows:

Within 1 month of the date of first export of electricity, confirmation shall be given in writing to the local planning authority of the date of first export to the Grid. The development hereby permitted shall cease on or before the expiry of a 40-year period from the date of the first export of electricity and the local planning authority shall be notified of the cessation of electricity generation and storage in writing no later than 5 working days after the event. The land shall thereafter be restored to its former condition in accordance with a scheme of decommissioning work (the Decommissioning Scheme)

A similar S73 application has been submitted to Kings Lynn & West Norfolk (KL&WN). During the original application process SHDC issued a notice of non-determination on 25 February 2022. This stated no further action would be taken on that application. SHDC therefore failed to determine the application. In the Statement of Case, SHDC suggest it does not wish to defend the appeal and has no objection to the proposal.

Site Description

The application site straddles the administrative boundary between local authorities in two different counties, South Holland District Council (SHDC); and the Borough Council of Kings Lynn and West Norfolk (KLWN), in Norfolk.

The site benefits from an extant permission to formulate a solar farm for a 35 year period. Approved by the planning inspectorate in September 2023.

History

H18-0741-21 - Installation of a solar farm and battery storage facility with associated infrastructure. Allowed at appeal 29th September 2023

An application was submitted to each Council (SHDC & KL & WN), on 21 January 2022 SHDC considered a report that raised no objections to the proposal. The resolution was that decision-making authority should be delegated to KLWN, as the greater proportion of the site lies in its administrative area, and we issued a notice of non-determination on 25 February 2022. This stated no further action would be taken on that application. SHDC therefore failed to determine the application. In the Statement of Case, SHDC suggest it does not wish to defend the appeal and has no objection to the proposal.

A pending condition compliance application is under consideration:

H18-0040-24 - Condition 9 Written Scheme of Investigation. Awaiting Decision.

Consultation Responses

Parish

At a meeting on 12th December 2023 Sutton Bridge Parish Council resolved to support the application

Highways & Suds

No objection: This application seeks to extend the period for which the consented Solar Farm is permitted to operate, from the 35 years specified in Condition 3 of the Consent, to 40 years. Given that the day to day operation of a Solar Farm generates very minimal trips, in the form of occasional visits by a maintenance engineer, typically travelling in a light van, the proposed additional five years of operation of the Solar Farm would have a negligible impact upon the safe operation and capacity of the local highway network and therefore no objection is raised by the highway authority to the grant of Consent for this application.

Fenland District

In response to the consultation received 30 November 2023 the Local Planning Authority have no observations to make.

National Gas

No Objection

Environmental Protection

No Concerns

Representations

Two objections have been received expressing concerns in relation to the following material issues:

- Design and Impact on the Character of the Area and Landscape Character
- Residential and Land Users Amenity
- Highway Safety
- Efficiency of Solar

Planning Considerations

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above. The policies and provisions set out in the National Planning Policy Framework (December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Furthermore, where a Neighbourhood Plan has been adopted, this alongside the adopted Local Plan, forms part of the Development Plan for the District, and must be considered when assessing development proposals. In this instance, no relevant neighbourhood plans have been adopted.

Scope of Section 73 Application

Permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted.

A decision notice describing the new permission should clearly express that it is made under section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

As a section 73 application cannot be used to vary the time limit for implementation, this condition must remain unchanged from the original permission. If the original permission was subject to a planning obligation then this may need to be the subject of a deed of variation.

Assessment

The basis of this Section 73 application is to extend the operational lifespan and as such, the assessment focusses solely on the extension of the lifespan of the approval, which is requested for a further 5 years, from 35 to 40.

The justification for the proposal provided by the applicant states:

An extended operational life maximises the period within which the Solar Farm, once installed, can generate renewable electricity and contribute to carbon reduction and Net Zero targets beyond 2050.

The greater operational period of the development represents no materially greater harm and will provide a greater contribution to the UK's low carbon energy needs for a longer period. Landscaping will already be well established, screening the site from public views and will benefit from continuous management for the full operational period to effectively screen the development from views and provide an improved habitat for local ecology and biodiversity for the duration of the operational life (40 years from 35 years). Operational traffic is able to be controlled and would remain limited.

The visual impact following the variation of the operational life condition will therefore remain the same and will continue to be acceptable beyond 35 years. No materially greater impacts are raised in terms of archaeology, agricultural land quality, flooding or traffic/highway matters.

Whilst the operational lifetime restriction is proposed to be extended, the development is still temporary and reversible. At the end of the operational life, the development will be removed in accordance with the requirements of Condition 3 and the Decommissioning Scheme (Condition 4) or Early Decommissioning Scheme (Condition 5). There will be no greater impact or harm caused as a result of extending the lifespan of the development given that there would not be any intensification of the use, and the equipment would already be in place.

Paragraph 163c of the National Planning Policy Framework (December 2023) is relevant to this assessment, it states:

When determining planning applications for renewable and low carbon development, local planning authorities should:

In the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site, and approve the proposal if its impacts are or can be made acceptable.

SELLP Policy 31 does not refer to the extension to the lifetime of renewable energy projects other than "Provision should be made for post-construction monitoring and the removal of the facility and reinstatement of the site if the development ceases to be operational."

The applicant's justification is based on the fact that the longer the lifetime of the development, the greater amount of renewable electricity is generated and so the contribution to carbon reduction and Net Zero targets is greater. There appears to be no policy base to refute this and so is considered sufficient reasoning. Furthermore, the development proposal has been instructed by the Planning Inspectorate and the 'externalities' relating to highways, landscape, character and amenity by the point the development reaches 35 years will be acceptable, and so limited effect will occur by extending the operational life span to 40 years. This again is sufficient reasoning as regard to the social and environmental impacts brought about by extending the operational phase.

Given that this development has been approved by the Planning Inspectorate as recently as

September 2023, it is not considered reasonable to adopt the previous approach of non-determination and therefore making the applicant appeal. It is of material note that KL & WN have approved a S73 application to extend the development under 23/02080/F, approved January 2024.

Conditions

An application submitted to discharged condition 9 'Written Scheme of Investigation' has been submitted and its details agreed by Lincolnshire County Council. Condition 9 then will be amended to a compliance form. The condition is agreed under application reference number H18-0040-24.

All other conditions will be reattached

Planning Balance

Given the limited input South Holland District Council had on the original application, the direction to approve the scheme made by the planning inspector and that KL&WN have approved a S73 to extend the lifetime of the development, it is considered that this permission is acceptable.

Conclusion

Paragraph 163c of the National Planning Policy Framework (December 2023) sends clear instruction that in the case of applications for the repowering and life-extension of existing renewable sites, give significant weight to the benefits of utilising an established site, and approve the proposal if its impacts are or can be made acceptable. It is considered in this instance that the impacts are made acceptable as the facility will be well established once 35 years of operational activity is reached.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).

C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to

respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Recommendation

It is recommended that the proposal should be approved under delegated authority.