

COMMITTEE REPORT

APPLICATION DETAILS

APPLICATION NO:	DM/19/00171/FPA
FULL APPLICATION DESCRIPTION:	The construction and operation of gas powered generators for the provision of flexible energy generation.
NAME OF APPLICANT:	Reliance Energy Ltd
ADDRESS:	Land at Mill Hill, North West Industrial Estate Peterlee
ELECTORAL DIVISION:	Easington
CASE OFFICER:	Chris Shields, Senior Planning Officer, 03000 261394 chris.shields@durham.gov.uk

DESCRIPTION OF THE SITE AND PROPOSALS

Site

1. The application site measures 1.09 Hectares (ha) in area and is located in the north east of North West Industrial Estate, Peterlee. The site is currently undeveloped with a generally flat topography that rises steeply to the road level on the eastern side of the site. The site is accessed from the unclassified Mill Hill Road, which connects to the A19 trunk road approximately 800m to the south (although the A19 passes by the site approximately 165m to the east). The site is bordered by industrial premises on all sides.
2. The nearest residential properties to the site are located on Westmorland Rise, approximately 350m to the south east of the site beyond the A19, Durham Lane approximately 950m to the north and Stockton Road approximately 650m to the north west. There are no heritage assets within the vicinity of the site and the site is not within any ecological or landscape designations. Castle Eden Dene National Nature Reserve, Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) lie approximately 2.1km to the south east of the application site. Tuthill Quarry SSSI lies approximately 2.1km to the north west of the site. Durham Coast National Nature Reserve, SAC and SSSI lie approximately 3.0km to the east. There are two connected public rights of way approximately 320m to the north of the site, these are Footpaths No's 10 and 11 (Easington Village). The site is within a Coalfield Low Risk Development Area.

Proposal

3. The proposed development is for the installation and operation of a Flexible Generation ('FlexGen') facility to provide support services to the National Grid during hours where the electricity network is under unusual stress. The development would consist of 16 containerised gas generator sets with turbo generators, 2 transformers, 66Kv substation compound, 4 switchgear containers, 4 Organic Rankine Cycle (ORC) containers, 2 banks of ORC coolers, control container, gas kiosk, oil tanks perimeter security and acoustic fencing and CCTV, access track and internal service road.

4. The gas generators would be housed within containers measuring 3.3m wide, 15m in length and with a height of 3.5m. Additional equipment would be mounted to the containers, including radiators and the exhaust flues which would have a total height from the ground of 10m. The switchgear cabin would measure 12m by 3.2m with a height of 4m.
5. The proposed development would provide 34MW of gas generated power, fuelled by gas that would be fed to site by pipeline from the nearby gas main located to the west of the site. The generator engines would consist of 2MW units located within individual modular acoustic enclosures, which are constructed of galvanised steel protected by polyester powder coated paint.
6. The proposed development would operate for upto 4000 hours per year, equating to approximately 46% of the time. The generators would operate whenever called upon by the National Grid but as electrical demand is greatest in the morning and early evening this is when the facility would be most likely to be delivering power to the grid.
7. This application is being reported to Planning Committee as it is classed as a major development with a site area greater than 1ha.

PLANNING HISTORY

8. No relevant planning history.

PLANNING POLICY

NATIONAL POLICY

9. A revised National Planning Policy Framework (NPPF) was published in February 2019. The overriding message continues to be that new development that is sustainable should go ahead without delay. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
10. In accordance with Paragraph 213 of the National Planning Policy Framework, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). The relevance of this issue is discussed, where appropriate, in the assessment section of the report. The following elements of the NPPF are considered relevant to this proposal.
11. *NPPF Part 2 - Achieving sustainable development.* The purpose of the planning system is to contribute to the achievement of sustainable development and therefore at the heart of the NPPF is a presumption in favour of sustainable development. It defines the role of planning in achieving sustainable development under three overarching objectives – economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways. The application of the presumption in favour of sustainable development for plan-making and decision-taking is outlined.

12. *NPPF Part 6 - Building a strong, competitive economy.* The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and a low carbon future.
13. *NPPF Part 8 - Promoting healthy and safe communities.* The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Developments should be safe and accessible; Local Planning Authorities should plan positively for the provision and use of shared space and community facilities. An integrated approach to considering the location of housing, economic uses and services should be adopted.
14. *NPPF Part 9 - Promoting sustainable transport.* Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Developments that generate significant movement should be located where the need to travel will be minimised and the use of sustainable transport modes maximised.
15. *NPPF Part 14 - Meeting the challenge of climate change, flooding and coastal change.* The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.
16. *NPPF Part 15 - Conserving and enhancing the natural environment.* The Planning System should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, geological conservation interests, recognising the wider benefits of ecosystems, minimising the impacts on biodiversity, preventing both new and existing development from contributing to or being put at unacceptable risk from pollution and land stability and remediating contaminated or other degraded land where appropriate.

<https://www.gov.uk/government/publications/national-planning-policy-framework--2>

17. The Government has consolidated a number of planning practice guidance notes, circulars and other guidance documents into a single Planning Practice Guidance Suite. This document provides planning guidance on a wide range of matters. Of particular relevance to this application is the practice guidance with regards to; air quality, flood risk and coastal change, climate change and noise.

<https://www.gov.uk/government/collections/planning-practice-guidance>

LOCAL PLAN POLICY:

District of Easington Local Plan (DELP) adopted 2001

18. *Policy 1 – General Principles of Development* – permits development that accords with the principles of sustainable development together with any benefits to the community and local economy.
19. *Policy 18 – Species and Habitat Protection – Species And habitat Protection* – precludes development that would have a significant adverse effect on protective species or their habitat without special justification and mitigation.

20. *Policy 35 – Design and Layout of Development* – requires the design and layout of development to embody the objective of energy conservation, reflect the scale and character of the area, be screened appropriately where required, and have no serious amenity impact.
21. *Policy 36 – Design for Access and the Means of Travel* – requires the design and layout of development to provide (inter alia) safe and adequate access capable of serving the amount and nature of traffic to be generated.
22. *Policy 53 – General Industrial Estates* – states the development within use classes B1, B2 and B8 will be acceptable on land allocated for general industrial use.

RELEVANT EMERGING POLICY:

The County Durham Plan

23. Paragraph 48 of the NPPF states that decision-takers may give weight to relevant policies in emerging plans according to: the stage of the emerging plan; the extent to which there are unresolved objections to relevant policies; and, the degree of consistency of the policies in the emerging plan to the policies in the NPPF. Following consultation at 'Issues & Options', 'Preferred Options' and 'Pre Submission Draft' stages, the CDP was approved for submission by the Council on 19 June 2019. The CDP was submitted to the Planning Inspectorate on 27 June 2019. Although the CDP is now at a relatively advanced stage of preparation, it is considered that it is not sufficiently advanced to be afforded any weight in the decision-making process at the present time.

The above represents a summary of those policies considered most relevant in the Development Plan the full text, criteria, and justifications of each may be accessed at <http://www.durham.gov.uk/article/3266/Whats-in-place-to-support-planning-and-development-decision-making-at-the-moment> (Easington District Local Plan)

CONSULTATION AND PUBLICITY RESPONSES

STATUTORY RESPONSES:

24. *Peterlee Town Council* – has objected to the proposal on the grounds of noise and disturbance, emissions, odours and hazardous materials.
25. *Haswell Parish Council* – has objected on the grounds of health and safety and potential harmful emissions.
26. *Easington Parish Council* – is concerned about the noise impact on the surrounding area and requests that provision is made to mediate the effect on the surrounding area.
27. *Highway Authority* – has raised no objections to the proposal noting that a new highway access would be created on to Hackworth Road. Officers request that an informative be included to ensure that the new access is constructed in accordance with the requirements of Section 184(3) of the Highways Act 1980.
28. *Environment Agency* – has raised no objections to the proposal and has provided advice to the applicant in respect of environmental permitting, testing backup generators, permit compliance and monitoring.

29. *Drainage and Coastal Protection* – have no objections to the proposed development. However, officers note that the proposal should comply with the NPPF which states that those proposing development are responsible for drainage designs which reduce flood risk to the development and elsewhere, potentially through the use of Sustainable Drainage Systems (SuDS). The design should take into account quantity and quality in relation to surface water management. A condition requiring the submission of details of the disposal of surface water is recommended.

INTERNAL CONSULTEE RESPONSES:

30. *Environment, Health & Consumer Protection (Nuisance Action)* – has raised no objections to the proposals stating that development would comply with the thresholds set out in the Technical Advice Notes (TANs) but has requested a condition to ensure that noise levels from the development do not exceed background levels at noise sensitive properties and that night time operation be restricted to times of National Grid emergency.
31. *Environment, Health & Consumer Protection (Air Quality)* – Raise no objections noting that the maximum modelled level of nitrogen dioxide and carbon monoxide fall within acceptable levels both for this plant individually and cumulatively with the similar plant allowed on appeal to the north. Officers have suggested that a condition restricting operation of the plant to 4000 hours or less per annum would secure it's intended use.
32. *Environment, Health & Consumer Protection (Contaminated Land)* – Raise no objections and note that there is no requirement for a contaminated land condition.
33. *Landscape* – No objections are raised but it is requested that a landscaping scheme be secured by condition.
34. *Ecology* – initially objected to the proposal due to the loss of habitat that would result from the development. However, it has been subsequently agreed that the impact to the site could be offset with offsite mitigation to be delivered through a calculated payment. Ecology officers have withdrawn their objection on the basis that this payment is made.

PUBLIC RESPONSES:

35. The application has been advertised by means of individual notification letters, site notice and press notice. One letter has been received offering general support for the development but requested that there is a clear point of contact in case there are any problems with the installation, binding noise limits, a process to investigate any complaints and an agreement to not operate at night.

APPLICANTS STATEMENT:

36. Reliance Energy (Reliance) is a highly experienced developer of energy projects.
37. Its core business is focussed on the development of flexible energy generation (FlexGen) facilities. These facilities provide dependable and cost-effective service to the National Grid and, in turn, local consumers.
38. The overarching benefit of FlexGen facilities is they help 'keep the lights on'. They do this at a National level, by generating when consumer demand is higher than the generation (usually due to the amount of intermittent, renewable energy generation). They also do this a Regional level by making the local energy distribution network, less inclined to fail by generating the power closer to where local consumers are actually based. This improvement in local energy network reliability of supply is particularly important in the North East where outages are a known issue.

39. In addition to these services provided for the common good, Reliance and its partners are open to the possibility of forming specific commercial relationships with large, local consumers to provide power in the form of private wires or corporate power purchase agreements. In many cases, these arrangements make the locality an attractive place to situate high consumption industries.
40. The principle of the development, in this location, is supported by National and local planning policies and adheres to the principle of sustainable development. The proposed facility on the Mill Hill industrial estate is ideally located thanks to its proximity to both grid and gas connections, all the while not adversely impacting on the current occupiers of the area. The provision of biodiversity and landscape enhancement assists in ensuring that the built form can be accommodated into the existing industrial estate context.
41. The site was selected as it met all of the site selection criteria:
- A sufficiently large grid connection has been secured from the District Network Operator and the site is in close proximity to the grid connection.
 - The site sits in close proximity to a viable gas supply to fuel the engines.
 - The land is free from restrictive covenants and the landowner is supportive of the development.
 - A 25-year lease has been secured.
 - The Area Planning Committee, in debating a planning application for another similar facility to the north of Hackworth Road on agricultural land, considered that brownfield land should be considered first and that the nearby industrial estate (i.e. Mill Hill) would be more suitable.
42. The development will deliver benefits, direct and indirect, to the local economy during construction and operation of the facility.
43. In conclusion, as evidenced above and in the planning application documentation, it has been demonstrated that the FlexGen facility is compliant with relevant National and local policies and there will be no detrimental impact on the environment. In light of this, Reliance Energy respectfully requests that the Committee resolves to grant planning permission.

The above represents a summary of the comments received on this application. The full written text is available for inspection on the application file which can be viewed at <https://publicaccess.durham.gov.uk/online-applications/search.do?action=simple&searchType=Application>

PLANNING CONSIDERATIONS AND ASSESSMENT

44. Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that if regard is to be had to the development plan, decisions should be made in accordance with the development plan unless material considerations indicate otherwise. In accordance with advice within the National Planning Policy Framework (NPPF), the policies contained therein are material considerations that should be taken into account in decision-making. Other material considerations include representations received. In this context, it is considered that the main planning issues in this instance relate to the principle of development, landscape, access and traffic, residential amenity, flooding and drainage, ecology, other issues and planning obligations.

Principle of Development

45. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration. The Easington District Local Plan (EDLP) remains a statutory component of the development plan and the starting point for determining applications as set out at Paragraph 2 of the NPPF. However, the NPPF advises at Paragraph 213 that the weight to be afforded to existing Local Plans depends on the degree of consistency with the NPPF.
46. The EDLP was adopted in 2001 and was intended to cover the period to 2006. However, NPPF Paragraph 213 advises that Local Plan policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the NPPF. Due weight should be given to them, according to their degree of consistency with the NPPF (the closer the policies in the plan to the policies in the NPPF, the greater the weight that may be given to them). Notwithstanding this, it is considered that a policy can be out-of-date if it is based upon evidence which is not up-to-date/is time expired depending on the circumstances.
47. Paragraph 11 of the NPPF establishes a presumption in favour of sustainable development. For decision taking this means:
 - c) approving development proposals that accord with an up-to-date development plan without delay; or
 - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:
 - i) the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Policies in this Framework taken as a whole.
48. The key policies for the determination of this application are EDLP Policies 1 (General Principles of Development) and 53 (Existing General Industrial Estates). The site is located within an undeveloped area on Peterlee North West Industrial Estate, outside of the allocated Enterprise Zone. Policy 53 states that land identified for general industrial use is suitable for employment uses within use classes B1, B2 and B8. This Policy is slightly restrictive in that uses compatible with industrial areas may not always fall within the prescribed use classes. Due to this approach the Policy is considered to be only partially consistent with the NPPF, which does not place such strict barriers on development. Instead, emphasis is placed upon balancing harm of development against the prospective benefits. Policy 1 is considered to be consistent with the NPPF in most respects but is also overly prescriptive in terms of locational criteria. Policies 1 and 53 are therefore considered out-of-date for the purposes of Paragraph 11 of the NPPF, and the weight to be afforded to the Policies reduced as a result. The prescription of how much weight should be given to these Policies in the decision is a matter for the decision-maker, having regard to advice at Paragraph 213 of the NPPF.

49. The purpose of the proposed development is to rapidly meet short term demands from the electrical grid. The location was chosen as it provides close connection points to a suitable gas supply and electrical connection with few constraints. This development is one of many proposed nationally to address capacity shortfalls in the grid due to peak demands, the unpredictability of renewable energy and the inability for large centralised power stations to react quickly.
50. The 2018 Employment Land Review (ELR) scored Peterlee North West Industrial Estate as good and assessed that within the A19 corridor there is 35.57ha of similar quality land available whilst 69.89ha of average quality land is also available in this area. Whilst it may have been preferable to locate this type of development on lower quality land it would only occupy 1ha of land that has remained undeveloped since allocation. The operation of the development does also require strong gas and electric grid connections, which may not be available elsewhere. Operating in tandem with the nearby 5MW solar farm and wind turbines at Hare Hill and Haswell Moor the proposal would create a very resilient local energy supply.
51. An appeal decision was issued in March 2019 (APP/X1355/W/18/3205662) allowed a similar development for a gas fuelled generation plant on land at Westmoor Farm, approximately 500m to the north of this application site. The application was originally refused due to the countryside location of the development would creating adverse impacts in terms of unacceptable visual amenity and loss of best and most versatile agricultural land. The Planning Inspector, in arriving at his decision, considered that the development would not have unacceptable visual impact and that the loss of best and most versatile agricultural land would be modest, concluding that the impacts of the development were not sufficient to outweigh the benefits of energy security and support for renewable energy.
52. The proposal would conflict with EDLP Policy 53 as it is not a use falling within class B1, B2 or B8 as it is a 'sui generis' use, however, the benefits of the development in terms of energy security through decentralisation of power stations and the support it provides for renewable energy development are sufficient to outweigh the loss of employment land. The creation of a decentralised energy supply would accord with Part 14 of the NPPF. However, this is weighed up further in the planning balance. The proposal would generally accord with EDLP Policy 1.
53. An assessment of the relevant environmental impacts of the proposal is set out below.

Landscape

54. Paragraph 170 sets out key areas for conserving and enhancing the natural environment. This is reflected in EDLP Policy 1, which seeks to protect landscape character.
55. The application site is on an undeveloped area of an industrial estate, surrounded by industrial uses. The site has a flat base with steep rises on the north, south and east boundaries up to the road and surrounding units. The site has a partial hedgerow on the north and east sides although this has not been maintained and there are some gaps. The key viewpoints of the site would be from Mill Hill Road but the development would be viewed against similar structures on the adjacent Hexion plant including tanks, piping, framework and other buildings.

56. The design and appearance of the development would be entirely utilitarian with most elements housed within containers, kiosks or cabins. The most prominent element would be the 10m exhaust flues associated with the generator units. Although they would be large it would not be inappropriate in the location and would be of similar scale to surrounding development. Full details of colours and finishes would be agreed through condition, along with details of the perimeter security fence. A landscaping scheme has been requested to mitigate the loss of the 5 trees that would be lost during construction.
57. Landscape officers have considered the proposal and have requested that a condition be included to require the submission of a landscaping scheme. Taking into account the surrounding land uses, allocated use of the site and comments from Landscape officers it is considered that subject to the above condition the proposal would have minimal harm to the landscape and would potentially deliver some improvements to the site in hedgerow and tree planting. The proposal would therefore accord with EDLP Policy 1 and Part 15 of the NPPF.

Access and Traffic

58. Paragraph 108 of the NPPF states plans and decisions should take account of whether: opportunities for sustainable transport modes have been taken up; safe and suitable access can be achieved; improvements can be undertaken to limit significant impacts of development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. EDLP Policy 1 requires developments to incorporate satisfactory and safe provision for pedestrians, cyclists, public transport, cars and other vehicles. The objectives of Policy 1 are expanded upon in Policy 36 which requires development to include a safe and adequate access capable of serving the amount and nature of traffic to be generated. Policy 36 is considered to be consistent with the NPPF and can be afforded weight in the decision making process.
59. The site would be accessed from the A19 via the unclassified Mill Hill road that currently serves the industrial estate. The proposed development would create a new access onto Mill Hill road. Highways officers have considered the proposal and raised no objections to the proposal but have requested an informative to ensure that the access is constructed to appropriate standards.
60. Whilst the development would generate a degree of construction traffic for the 12-18 month construction period it would be not be unacceptable in this location. Following construction, the site would be automated and would only be attended periodically for maintenance purposes. A condition is recommended to ensure that vehicles accessing the site are adequately cleaned before leaving to ensure that debris is not carried onto the public highway. Subject to this condition the proposal is considered to accord with EDLP Policies 1 and 36 and Part 9 of the NPPF.

Residential Amenity

61. The nearest residential properties to the site are located on Westmorland Rise, approximately 350m to the south east of the site beyond the A19, Durham Lane approximately 950m to the north and Stockton Road approximately 650m to the north west. No objections have been received from the nearest residential properties, although objections have been raised from Peterlee Town Council and Haswell Parish Council in respect of noise and disturbance, emissions, odours, hazardous materials and health and safety. Easington Parish Council has raised concerns about the noise impact on the surrounding area. A neighbouring business has sought assurance that noise levels would be set and that the plant would not operate at night, as well as providing a complaint procedure.

62. Paragraph 170 of the NPPF states that planning decisions should ensure that new development is appropriate for its location, taking into account the effects of pollution on health, general amenity and the potential sensitivity of the area to adverse effects from pollution. EDLP Policy 1 requires that development should safeguard the visual and general amenity of people living and working within the vicinity of the site. This is supported by EDLP Policy 35 which requires the design and layout of development to have no serious adverse effect on the amenity of people and existing adjacent land uses in terms of privacy, visual intrusion, noise, other pollutants and traffic generation. Policy 35 is considered to be consistent with the NPPF and can be afforded weight in the decision making process.
63. The proposed gas generators for the site have the potential to cause pollution through noise and exhaust emissions. The application is therefore supported by air quality and noise assessments. The air quality assessment considers the baseline conditions for the site and provides maximum (worst case) predictions for emission outputs for the site both individually and cumulatively with the recently approved (allowed on appeal) 40MW gas generator development to the north. This is then assessed against local air quality objectives and long and short-term impacts on human health. The air quality assessment concludes that impacts due to the operation of the proposed development would be negligible with predicted impacts to all sensitive receptors being acceptable. Environment, Health & Consumer Protection officers have considered the proposal and air quality assessment and consider that the development would have an acceptable impact. In addition, the generators proposed in this application would result in a lower air quality impact than those in the previous application as the generators are more efficient.
64. The submitted noise assessment considers the baseline conditions for the area and provides predictions for the operation of the proposed plant, including generator and battery storage units, transformers and gas kiosk, for the site. The assessment also considers the impact of the development on the nearest noise sensitive properties. The assessment provides background noise levels from points close to the nearest noise sensitive properties and demonstrates that the predicted noise level from the generators at the nearest noise sensitive properties would range between 30dB and 42dB as a worst-case scenario which assumes all of the plant to be operating simultaneously. During daytime operation the noise levels would be between 0dB and 32dB below existing background noise levels. Whilst the plant is unlikely to operate during night time hours (2300 to 0700) it may occasionally do so in the event of National Grid emergencies. Environment, Health & Consumer Protection officers have considered the proposal and the noise assessment and consider that the development would be acceptable but have requested daytime operations (0700 – 2300) be restricted no noise levels no greater than background. The applicant has also agreed that the plant would not operate during night time hours (2300 – 0700) unless there is a National Grid emergency. In addition, it is recommended that a condition be imposed requiring a construction management plan to ensure protection of residential amenity during the construction phase of the development and also that the operation of the plant is limited to 4000 hours per annum.
65. Peterlee Town Council raised concerns relating to odours and hazardous materials and Haswell Parish Council raised health and safety as an issue. The facility would burn natural gas in internal combustion engines, which would produce odourless exhaust emissions. There are no other processes at the site that could cause odour. Whilst the site would be using natural gas as a fuel it would be permitted and audited for safety by the Environment Agency.

66. Subject to the imposition of the conditions recommended above it is considered that development would provide an acceptable standard of residential amenity in accordance with EDLP Policies 1 and 35 and Part 15 of the NPPF.

Flooding and Drainage

67. Part 14 of the NPPF directs Local Planning Authorities to guard against flooding and the damage it causes. Part 15 of the NPPF takes account of the impact of any development upon the natural environment.
68. The application is accompanied by a flood risk assessment (FRA) which identifies that the application site is located entirely within Flood Zone 1 and would not increase the risk of flooding.
69. Drainage and Coastal Protection officers have considered the proposals and although no objections have been raised it is noted that the application does not provide details of surface water management measures and it is requested that these details be secured by condition. The Environment Agency has also raised no objections to the proposal.
70. Subject to the proposed conditions being adhered to, the proposed development would not lead to increased flooding and the site would be out of the floodplain area. The proposal is therefore considered to be in accordance with EDLP Policy 1 and Part 14 of the NPPF with regards to flood risk.

Ecology

71. The presence of protected species is a material consideration, in accordance with Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) and Paragraph 119 of the NPPF. In addition, under the requirements of the Conservation of Habitats and Species Regulations 2017 (referred to as the Habitats and Species Regulations hereafter) it is a criminal offence to (amongst other things) deliberately capture, kill, injure or disturb a protected species, unless such works are carried out with the benefit of a licence from Natural England. Regulation 9(1) of the Conservation of Habitats and Species Regulations requires local planning authorities to have regard to the requirements of the Habitats Directive in exercising their functions. Case law has established that local planning authorities must consider whether the applicant might obtain a protected species licence from Natural England where there is likely to be a disturbance to a European Protected Species.
72. Paragraph 170 of the NPPF sets out the Government's commitment to halt the overall decline in biodiversity by minimising impacts and providing net gains where possible with Paragraph 175 stating that development should be refused if significant harm to biodiversity cannot be avoided, mitigated or, as a last resort, compensated for. EDLP Policy 18 states that development which would significantly adversely effect, either directly or indirectly, any protected species or its habitat will only be approved where the reasons for the development clearly outweigh the value of the species or its habitat. Policy 18 is considered to be consistent with the NPPF and can be afforded weight in the decision making process.
73. A Preliminary Ecological Appraisal (PEA) and subsequent Biodiversity Mitigation report have been submitted in support of the application. The PEA sets out the baseline data for the site and relevant ecological designations in the vicinity. Identified habitats on the site include broadleaved woodland plantation and semi-improved grassland. The PEA concludes that the development would lead to a minor loss of self-seeded scrub plantation and semi-improved grassland of local value.

No European Protected Species (EPS) were identified on site and the report concludes that the development would result in negligible harm to EPS suitable habitat. In order to limit the impacts of the development, opportunities for onsite mitigation were provided in the Biodiversity Mitigation report, however, this only provided 0.2ha of enhancement against a total loss of 1.54ha, leaving a residual 1.32ha habitat loss.

74. In order to compensate the loss of the habitat from the site, the applicant has agreed to pay a sum of £40,294, calculated using the Warwickshire biodiversity calculator, to the Council for offsite biodiversity projects. This would absolve the applicant from needing to carry out any further biodiversity mitigation works to the application site. In accordance with Paragraph 175 of the NPPF, compensation is the least sequentially preferable option, however, given the available space and existing habitat quality it is highly unlikely that onsite mitigation could adequately offset the loss of biodiversity. In addition, the site is remotely located from any surrounding land that could provide connecting habitat.
75. Ecology officers have considered the proposal to compensate for the loss of habitat, rather than attempting to mitigate the harm on site and in this case it is considered to be an acceptable option. It is therefore considered that the proposal would accord with EDLP Policy 18 and Part 15 of the NPPF

Other Issues

76. The site is located within Coal Mining Low Risk Development Area and as such standing advice would be provided to the applicant should planning permission be granted.
77. The proposal is of a type that would be subject to a permit required through the Environmental Permitting (England and Wales) Regulations 2010 which would regulate issues at the site relating to pollution control. There are powers to enforce should this not be complied with. The operator would require a Medium Combustion Plant Directive (MCPD) permit from the Environment Agency, complete with MCPD emission limit values, before operations can commence. The requirement to operate with a permit would also address the concerns of the neighbouring business as the operator would be required to provide contact details at the site entrance.
78. To ensure that the site is restored if the development becomes redundant a condition is recommended to require restoration of the site it's pre-development state if the plant is inoperative for a period of 6 months.

Planning Obligations

79. Paragraph 56 of the NPPF and Regulation 122 of The Community Infrastructure Levy Regulations 2010 set out three planning tests which must be met in order for weight to be given to a planning obligation. These being that matters specified are necessary to make the development acceptable in planning terms, are directly related to the development, and are fairly and reasonably related in scale and kind to the development.
80. In this case the planning obligation is required to offset the biodiversity requirements necessary to overcome the harm to habitat that would be caused to the site by the proposed development. The amount of money required to offset this harm has been calculated using an industry accepted method and has been agreed by both parties. On this basis it is considered that the proposed planning obligation meets with the tests set out in Paragraph 56 of the NPPF and Regulation 122 of The Community Infrastructure Levy Regulations 2010.

Planning Balance

81. This proposal is considered to be in conflict with EDLP Policy 3 due to being a 'sui generis' use on a site allocated specifically for B1, B2 and B8 uses. However, as a result of relevant policies being out of date, the acceptability of the application should be considered under the planning balance test contained within Paragraph 11 of the NPPF. There are no specific policies within the NPPF that protect areas or assets of particular importance which provide a clear reason for refusing the development and therefore planning permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits.

Benefits

82. The development would provide local energy security through decentralisation of power stations and would provide support for renewable energy development by picking up gaps in supply due to the unpredictability of wind and solar generation.
83. Development of the site would result in a net biodiversity gain as a result of a mixture of on-site habitat creation through tree and hedgerow planting and providing a financial contribution for offsite mitigation.

Adverse Impacts

84. The development would result in the loss of employment land, however given the relatively small size of the site (just over 1Ha) this should be afforded limited weight.

CONCLUSION

85. The proposed development would provide a peaking power generation facility that would support centralised power stations by responding quickly to peak electricity demand. Going forward this would assist in providing a stable and reliable National Grid for both local and national requirements.
86. The proposal would conflict with land use criteria set out in EDLP Policy 53. However, in this case the NPPF, a significant material consideration, sets out that on the basis of the out-of-date nature of this Policy, that the presumption in favour of sustainable development is engaged and development is required to be considered in the context of Paragraph 11 of the NPPF, which states that the development should be approved without delay, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
87. Whilst utilitarian in appearance the proposal would be well screened both visually and acoustically from noise sensitive receptors. The loss of employment land in this instance would not be significant and, to mitigate the loss of existing grassland, biodiversity enhancement has been offered through hedgerow creation, setting aside a small portion of undeveloped land and installing bat and bird boxes. In this case it is considered that there are no adverse impacts associated with the proposal and any residual harm would not significantly and demonstrably outweigh the benefits of the development in terms of energy supply and security, support for renewable energy and biodiversity enhancement and accordingly, planning permission should be granted.

88. The proposal has generated some public interest, with letters of objection and comments having been received. Concerns expressed regarding the proposal have been taken into account, and carefully balanced against the scheme's wider social, economic and community benefits.

RECOMMENDATION

That the application is **APPROVED** subject to the completion of a Section 106 Legal Agreement to secure the provision of:

- £40,294 for offsite biodiversity mitigation works.

and subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: Required to be imposed pursuant to Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in strict accordance with the following approved plans and documents:

- Drawing No. SK5 Rev.E 'Proposed Layout'
- Drawing No. SK6 Rev.A 'Proposed Site Wide Elevations'
- Drawing No. GPP/RE/MHP/19/04 Rev.1 'Build Development – Tree Removal'
- Document 2665 PAEL Mill Hill Biodiversity Mitigation Dated 13 May 2019
- Document C101-P01-R01 Air Quality Assessment for a Flexgen Facility Dated January 2019
- Document P1808-REP02-REV C-BDH Environmental Noise Impact Assessment Dated 16 January 2019

Reason: To define the consent and ensure that a satisfactory form of development is obtained.

3. The development hereby approved shall not be brought into use until a surface water drainage system has been installed in accordance with details to have been submitted to and approved in writing by the Local Planning Authority.

Reason: To prevent the increased risk of flooding from any sources in accordance with the Part 14 of the National Planning Policy Framework.

4. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following:

- A Dust Action Plan including measures to control the emission of dust and dirt during construction taking into account relevant guidance such as the Institute of Air Quality Management "Guidance on the assessment of dust from demolition and construction" February 2014;
- Details of methods and means of noise reduction;
- Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration;

- Details of whether there will be any crushing/screening of materials on site using a mobile crusher/screen and the measures that will be taken to minimise any environmental impact.
- Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
- Designation, layout and design of construction access and egress points;
- Details for the provision of directional signage (on and off site);
- Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;
- Details of provision for all site operations for the loading and unloading of plant, machinery and materials;
- Details of provision for all site operations, including visitors and construction vehicles for parking and turning within the site during the construction period;
- Routing agreements for construction traffic;
- Details of the erection and maintenance of security hoarding;
- Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works; and
- Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The Construction Management Plan shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

Reason: In the interests of protecting the amenity of neighbouring site occupiers and users from the impacts of the construction phases of the development having regards to Easington District Local Plan Policy 1 and Part 15 of the NPPF. Required to be a pre-commencement condition and the details of the construction management statement must be agreed before works on site commence.

5. The rating level of noise emitted from fixed plant/machinery on the site shall not exceed the background noise level, as calculated using BS4142:2014, at any noise sensitive receptor between the hours of 0700 and 2300. Night time operation, 23:00-07:00, of the facility will be limited to emergency situations only as defined by the National Grid.

On written request by the planning authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level.

Reason: To ensure residential amenity is protected from noise pollution in accordance with Easington District Local Plan Policy 1 and Part 15 of the National Planning Policy Framework.

6. All vehicles leaving the site shall be sufficiently cleaned in order to ensure that mud and dirt is not transferred onto the public highway.

Reason: In the interests of residential amenity and highway safety in accordance with the Easington District Local Plan Policy 36 and Part 15 of the National Planning Policy Framework.

7. Prior to the commencement of development precise details fencing, gates, lighting of the colours and finishes for all buildings, fixed plant and machinery shall be agreed in writing with the Local Planning Authority and the development carried out in accordance with agreed details.

Reason: To ensure the development is carried out in accordance with the approved documents and in the interests of visual amenity in accordance with Easington District Local Plan Policy and Part 15 of the National Planning Policy Framework. Required to be pre-commencement in order to assess the appearance of the development.

8. Prior to commencement of development details of a landscaping scheme shall be submitted to the Local Planning Authority for approval in writing. The landscaping scheme shall be designed in accordance with Section 5.0 of the approved Biodiversity Mitigation plan (Penn Associates, 13 May 2019). The approved landscaping scheme shall be implemented on site in the first planting season following the development being brought into use. The tree planting shall be maintained and replaced as required for the life of the development.

Reason: In order to provide landscape enhancement and screening for the development in accordance with Easington District Local Plan Policy 1 and Part 15 of the NPPF.

9. The development shall not operate for more than 4000 hours in any 12 month period. On written request by the planning authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above hours of operation.

Reason: In the interests of air quality protection in accordance with Easington District Local Plan Policy 1 and Part 15 of the NPPF.

10. In the event that the gas generators and battery storage are inoperative for a period of 6 months or longer the development hereby approved shall be removed and the site restored to its pre-development state within 18 months from the time at which it became inoperative.

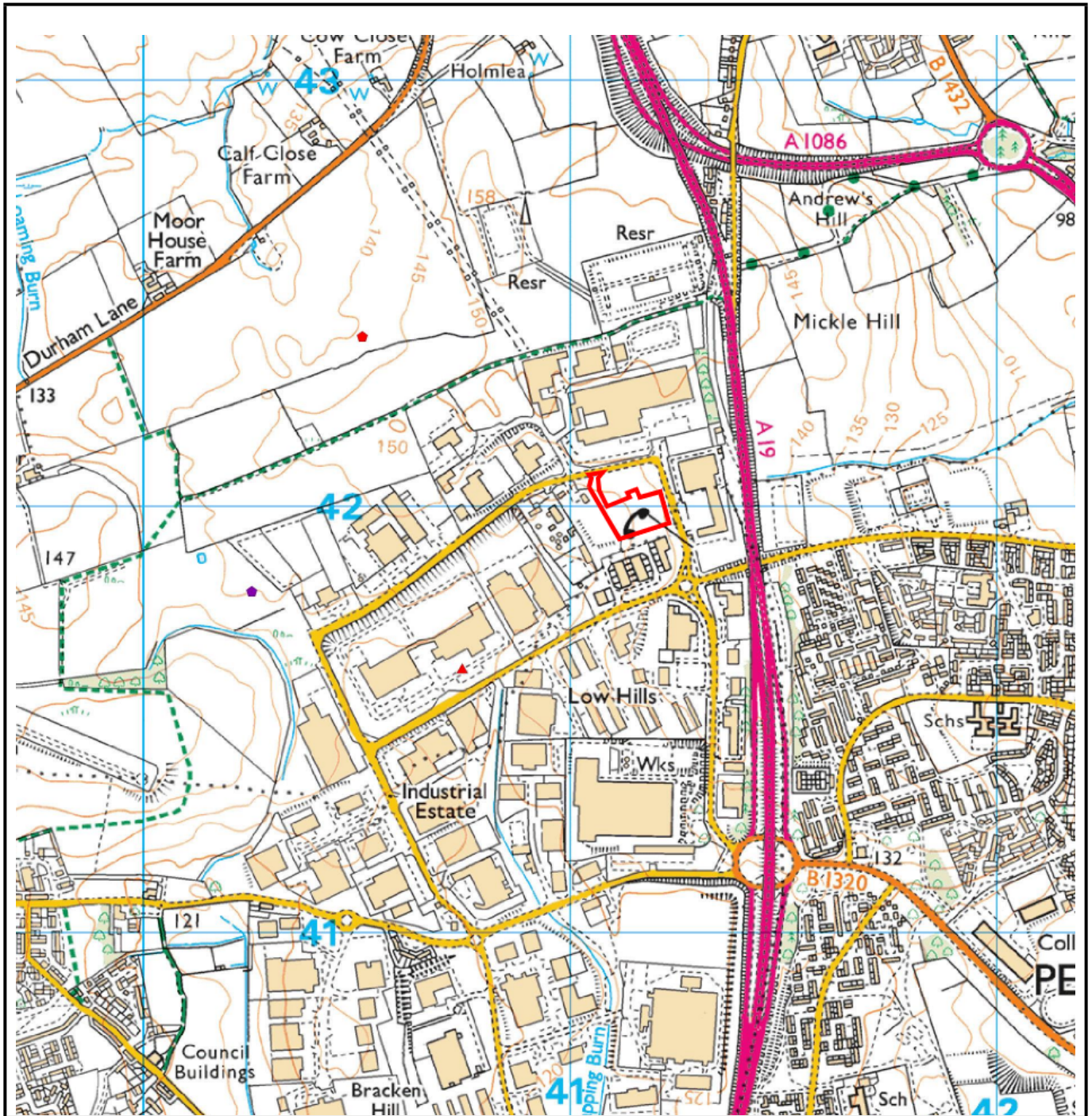
Reason: In the interests of visual amenity and pollution prevention in accordance with Easington District Local Plan Policy 1 and Part 15 of the NPPF.

STATEMENT OF PROACTIVE ENGAGEMENT

The Local Planning Authority in arriving at its recommendation to approve this application has, without prejudice to a fair and objective assessment of the proposals, issues raised, and representations received, sought to work with the applicant in a positive and proactive manner with the objective of delivering high quality sustainable development to improve the economic, social and environmental conditions of the area in accordance with the NPPF. *(Statement in accordance with Article 35(2) (CC) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.)*

BACKGROUND PAPERS

- Submitted application form, plans supporting documents and subsequent information provided by the applicant.
- The National Planning Policy Framework (2018)
- National Planning Practice Guidance notes.
- Easington District Local Plan 1997.
- Employment Land Review 2018
- Statutory, internal and public consultation responses.



Planning Services

DM/19/00171/FPA The construction and operation of gas powered generators for the provision of flexible energy generation at Land at Mill Hill, North West Industrial Estate Peterlee

This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of Her Majesty's Stationary Office © Crown copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceeding. Durham County Council Licence No. 100022202 2005

Comments

Date July 2019 **Scale** NTS

