

## **DURHAM COUNTY COUNCIL**

At a Meeting of **County Planning Committee** held in Council Chamber, County Hall, Durham on **Wednesday 2 October 2024 at 10.00 am**

### **Present:**

**Councillor G Richardson (Chair)**

### **Members of the Committee:**

Councillors J Atkinson, A Bell (Vice-Chair), D Boyes, M Currah, J Elmer, J Higgins, K Shaw, A Simpson, G Smith, S Wilson, S Zair, C Hunt and G Hutchinson

### **Also Present:**

Councillor Jan Blakey, Councillor Ivan Cochrane and Councillor Mark Wilkes

### **1 Apologies**

Apologies for absence were received from Councillors Jopling, Martin and Savory.

### **2 Substitute Members**

Councillors Hutchinson and Hunt were in attendance as substitute Members for Councillors Savory and Jopling respectively.

### **3 Declarations of Interest**

Councillor M Wilkes declared an interest as Portfolio Holder of Neighbourhoods and Climate Change, however confirmed that he was in attendance to speak on item 5a) as a resident.

Councillor Hutchinson declared an interest on item no. 5 b) as Local Member, however he had not made any comments or representations on the application, prior to the meeting.

### **4 Minutes**

The minutes of the meeting held on 26 July 2024 were agreed as a correct record and signed by the Chair.

**5 DM/22/02238/FPA - Erection of 181 no.2,3 and 4 bedroom two-storey dwellings with associated works - Land South of Greylingstadt Terrace, The Middles, Stanley**

The Committee considered a report of the Senior Planning Officer for the erection of 181 no.2,3 and 4 bedroom two storey dwellings with associated works on Land South of Greylingstadt Terrace, The Middles, Stanley (for copy see file of minutes).

The Senior Planning Officer gave a detailed presentation which included a site location plan, site photographs, a site layout plan and a summary of the report. A site visit had taken place on the previous afternoon.

Councillor Wilkes addressed the Committee to confirm that although he was not specifically objecting to the proposal, there was a lack of clarity regarding Biodiversity Net Gain (BNG) within the site. The information published on the Council's website indicated that a site of only 9.5 hectares would have over 8 hectares of urban trees and whilst he had received information regarding the way the metrics had been calculated and acknowledged the information presented by Officers, it remained unclear how many of the 366 trees on site would contribute to the BNG requirement. Half of the trees were located within private gardens which could not be controlled and therefore not able to be counted toward BNG. He assumed there was no condition that could be applied to private trees and required confirmation that the remaining trees were sufficient to meet BNG requirements for the site. Councillor Wilkes suggested that more clarity be provided in planning applications in order for Members to ensure that the Council was meeting legal obligations.

Mr Dodds addressed the Committee to confirm that the Applicant specialised in entry level housing which was aimed at low to middle earners, which gave customers at the lower end of housing market the chance to own a home. The proposal was for the development 181 homes and care had been taken to ensure that homes were affordable. A two bedroom property was considered cheaper than private rent and properties also offered significant savings through energy bills due to their efficiency. The scheme would also provide significant contributions to open space, improvements to footpaths, increased GP capacity, onsite amenity space and 18 affordable units. In addition to Section 106 contributions Mr Dodds referred to a Community Matters Initiative which would be introduced for local initiatives, including sponsoring local junior sports teams, local employment commitments and sustainability pledges.

Mr Dodds confirmed that the trees within garden areas had not been counted within the calculation used for BNG. To sum up, the proposal was a predominantly first time buyer led, low cost home ownership scheme, in a

sustainable location, with a significant package of contributions and he hoped that it would be supported by Members. He thanked council Officers for their professionalism throughout the application process.

The Planning Officer advised that the application had been submitted in 2022 and therefore assessed on previous BNG requirements which required a net gain. It was important to note that the distinctiveness had improved and the required BNG would be delivered, with only the trees in open space and other site improvements included in the calculation. The Ecology Officer added that trees within gardens could not be included in the calculation, however there were 185 trees within public open space which would equate to a net gain when combined with the onsite habitat creation.

Councillor Elmer was concerned that the application had not been required to meet the new BNG requirements and reminded the Committee of the hierarchy in relation to BNG. It was most important to retain valuable habitats on site and to only replace where necessary, with like for like. If losing grassland, it should be replaced with grassland and in this situation there was a large amount of grassland to be lost but it appeared to be replaced with tree planting which didn't align with the principle of on site like for like.

The Ecology Officer advised that habitats were assessed for distinctness and only if grassland was determined as high level would it be required to be replaced like for like. The grassland on this site had been categorised with low level distinctiveness and according to guidance any medium distinctiveness habitat could be used to compensate. The BNG gain was therefore being partially delivered through a medium distinctiveness urban tree scheme.

Councillor Elmer had visited the site and queried whether the entrance corridor of grassland was being retained. The Ecology Officer advised that this area contained 0.6 hectares of grassland which had been assessed and classified as other neutral grassland and 0.4 hectares was being retained and enhanced in addition to another area of grassland to the south of the site. A proportion of this grassland would be built upon.

Councillor Wilson confirmed that the application accorded to policy and framework and could see no reason to reject the application. The land was not in use and there had been little objection to the scheme therefore he moved the recommendation to approve the application.

Councillor Atkinson noted that comments from Councillor Wilkes had not equated to an objection and only 20 in total had been received. He therefore seconded the motion to approve the application.

Councillor Shaw added that appropriate housing schemes were essential for the Council to meet future housing need.

Councillor Elmer confirmed that he was in support of the application and noted its value, but he wanted to ensure it had been assessed correctly.

Councillor Richardson referred to representations which had been made by the Local Member raising concerns about access to the site. The Highway Development Manager confirmed that the proposed access met all required standards in terms of visibility.

## **Resolved**

That the application be APPROVED subject to the conditions outlined in the report and the completion of a legal agreement under Section 106 of the Town and County Planning Act 1990 (as amended) to secure the following;

- £267,987 towards upgrading/delivering open space off site;
- £80,500 towards footpath improvement works in the vicinity;
- £87,234 to increase GP surgery capacity in the area.
- The delivery of 10% Affordable housing units on site, equating to 18 units for affordable home ownership, 5 of which will be first homes and 13 of which will be discounted sale and;
- An updated Habitat creation, management and monitoring plan and an agreement under Section 39 of the Wildlife and Countryside Act 1981 for long term management and monitoring

## **6 DM/23/01868/FPA - Installation and operation of a Solar Farm together with all associated works, equipment and necessary infrastructure (Resubmission) - Croxdale Farms, Hett Moor Farm, Hett, Durham, DH6 5LJ**

The Committee considered a report of the Senior Planning Officer regarding an application for Installation and operation of a Solar Farm together with all associated works, equipment and necessary infrastructure (Resubmission) at Croxdale Farms, Hett Moor Farm, Hett, Durham, DH6 5LJ (for copy see file of minutes).

The Senior Planning Officer confirmed that the application was a resubmission of an application previously refused in June 2022 and subsequently approved by Members subject to a 39 Legal Agreement on 8 May 2024. Since the previous meeting, a letter had been received from a law firm acting on behalf of one of the objectors. The Senior Planning Officer confirmed that he would present the report as it had been presented on 8 May 2024 following which he would address other matters received since.

The Senior Planning Officer gave a detailed presentation which included a site location plan, aerial photograph, site photographs from various locations, and proposed site layout and landscape strategy plan. He then outlined further representations received since the application had been approved on 8 May 2024 which included three from local residents and one from a law firm representing a resident from Burnhope. This letter had alleged that the solar farm application had been incorrectly presented to Members at the previous meeting and criticised the report for not specifically stating that the provision of a community benefit fund was not a material planning consideration.

The Senior Planning Officer provided details of the issues raised by the Objector and calculations in relation to the output capacity of the project. He also provided details of the calculations provided by the Applicant and confirmed that there was a condition which required the final design of the scheme to be approved before construction, including panel specifications.

The Planning Officer confirmed that the Community Benefit Fund formed no part of the Officers assessment and was afforded no weight in the planning balance as it was acknowledged that it was not a material planning consideration. It had been mentioned in the report under public representations and in the Applicant's Statement, however during the meeting on 8 May 2024 the Planning and Highways Lawyer had reminded Members that it could not be afforded any weight as it was an agreement outside of the planning system.

The Senior Planning Officer provided details in relation to a recent Judicial Review of a solar farm in Burnhope. The decision had been quashed as the Council had failed to take into account whether it was approving more panels to produce the electricity generating capacity, over a larger area than required. The Judge had dismissed the assertion that the development exceeded a capacity level that could be determined by the Planning Authority. The Committee were advised that it was important to consider whether the scheme could be delivered with less panels, however the information provided by the Applicant confirmed that to deliver a stable and consistent output of 49.9MW, it required a peak generating capacity of 77MW to account for weather and light conditions.

Councillor Blakey addressed the Committee as Local Member and in objection to the proposal. She supported residents' concerns and objected due to the scale of the scheme as it would have a significant impact on the surrounding area. Councillor Blakey criticised the consultation process, suggesting that an exercise be undertaken to enable members and residents to contribute to planning applications in a quicker and more simplified way.

Ms Marinan addressed the Committee as local resident, in objection to the proposals which would result in the loss of agricultural land used for food production and impact food security. She shared personal experience of domestic solar panels that were inefficient due to weather conditions and suggested that the scheme would not be efficient enough to warrant the destruction of arable land. The application was contrary to policies within the County Durham Plan (CDP) and she noted that construction materials would be imported. Furthermore, residents from Hett had not been consulted about whether the project should go ahead and they would receive very little from the community benefit fund as it would cover a wide area.

Mr Galloway addressed the Committee in objection to the proposal. Solar farms changed rural land to industrial land and impacted on the ability to use land for recreational purposes. The reason for a 50MW limit was to protect communities from the devastating impact of overdevelopment. The drawings submitted by the Applicant had incorrectly calculated the maximum output capacity. It had been agreed by both the Government and solar industry that the average panel was 225W per square metre and therefore using the agreed standard the scheme would equate to 95MW, which was nearly double the threshold. The Applicant would argue that the scheme would produce less and when it was dark it would produce nothing, however it was important to consider the output produced at the scheme's theoretical maximum. The Applicant had not explained how 95MW became 49.9MW at maximum capacity and Mr Galloway considered that the scheme was likely to be unlawful. He urged the Committee to refuse the application or at least defer it to investigate further.

On behalf of the Applicant, Mr Duncan confirmed that the project would provide significant benefits. It would reduce energy bills, meet the energy needs of 14k homes and provide environmental benefits. The site was graded as low quality agricultural land. The Applicant had responded to submissions and provided clarity on the design of the scheme and the way that capacity was measured. The report concluded that no new matters had been raised.

The Chair added that grade 3 agricultural land was able to grow a good crop.

The Senior Planning Officer took the opportunity to respond to some of the issues raised. He confirmed that during the consultation process neighbour letters had been issued twice, to 1128 properties and the application had been advertised in the local press and with numerous site notices. Responses had been received and therefore he assumed that people had read them.

Referring to the output capacity, he confirmed that the 50 MW limit only restricted the output of the site, however there was no limit on its generating

capacity. Whilst the Planning Authority had to be mindful of the scale of the site, whatever the maximum generating capacity, the output was under 50MW. He advised Members that the calculation by Mr Galloway used a limited range of panels and there were more than 1200 on the market. There was nothing contained in the application which stated which panel would be used. Furthermore, the Judge had determined that the Burnhope application had not approved a specific panel type and there had been no concerns regarding capacity.

The Senior Planning Officer confirmed that the impact on landscape ecology had previously been deemed acceptable and nothing had changed since the previous application.

Councillor Wilson reiterated comments he had made at the previous meeting in May regarding similar developments refused by the Council and overturned on appeal, highlighting the potential costs associated. The Senior Planning Officer reminded Members that there had been two applications overturned on Appeal, however the Council had been fortunate not to have incurred costs.

In response to a question from Councillor Currah, the Senior Planning Officer confirmed that the decision on Burnhope had been quashed in February 2024 and the application would be redetermined by the Planning Committee.

In response to further questions from Councillor Currah, the Senior Planning Officer advised that there had been no changes to the application since the decision in May and reiterated the reasons for the JR decision. It had not been due to the scale or output of the scheme, but the Committee had not addressed whether they were approving more panels than required, which was a material consideration.

Councillor Currah was concerned that there seemed to be a free market for this type of development and asked whether there would be a limit on the number of developments within the county. The Senior Planning Officer confirmed that there were no plans to have a set limit or target, however the supplementary planning document could be revised.

Councillor Currah queried the capacity output suggested by the objector and the Senior Planning Officer explained that this had been calculated using the highest powered panels and had not taken into account inefficiencies of the system.

Mr Kriss was in attendance on behalf of the Applicant and in response to further questions from Councillor Currah, he confirmed that 135,000 panels had been proposed with an indicative panel of 570W as these had been recently been installed elsewhere and the overall scheme equated to 77MW.

He was unable to confirm the exact type of panel to be used as the procurement exercise would only begin following planning consent and depended on availability. There was a range of panels on the market, with panels available up to 700W however these were larger. The exact type of installation could not be confirmed until planning consent was granted, which was normal practice. He added that most panels were visually identical and therefore there would be no impact on the overall development.

Councillor Currah stressed that less panels would be required if higher powered panels were used which would have less impact on the environment. Mr Duncan advised that the project had been developed around various environmental constraints and other technical factors. The layout presented made the most efficient use of the grid export capacity. He reiterated that the assumption of 570W had been based due to a recent installation and confirmed that market conditions would be considered at the construction and procurement stage. In addition, the final layout required approval which was conditioned. Whilst there may have been some potential to use less panels, based on various simulations on other projects, the difference would be negligible. Visually the 570W panels were almost identical to 680W and therefore make little difference. He confirmed that the Officer had found the policy context and environmental impacts of the scheme to be acceptable.

Councillor Hutchinson was familiar with the area as it was within his ward. This was a large scheme and he queried the location of the villages consulted as it would impact on a large area with a significant number of properties. The Senior Planning Officer confirmed that letters had been issued to at least two rows of properties that would potentially be able to view the site. He confirmed that this was over and above the consultation that would normally be carried out.

In response to a further question from Councillor Hutchinson the Senior Planning Officer confirmed that as with any electric device, there would be electromagnetic radiation but it was harmless.

Councillor Boyes suggested that the Committee could not object to the proposal without a material difference from the application approved in May. If it were rejected, the Council would lose at Appeal and incur costs to the tax payer. He moved a motion to approve the application as per the recommendations in the report.

Councillor Shaw agreed that there were no material reasons to refuse the application having heard the advice given by Officers and he seconded the motion to approve the application.

Councillor Wilson noted that there was no difference to the application than that previously approved and the Council had a duty to consider previous decisions of the Planning Inspector which had been overturned when applying weight to similar developments.

Councillor Elmer supported the application. The issue of landscape harm was subjective, it would change the landscape, but only temporary. The appearance and ability to farm would fundamentally change as a consequence of climate challenges and large scale solar farms were by far the most effective way of meeting carbon targets. The application had considerable BNG and would not result in the entire loss of farming as it would still be possible for animals to graze under the panels. He therefore supported the recommendation.

The Planning and Highways Lawyer reminded Members that they were being asked to reconsider the application in its entirety. The Senior Planning Officer had explained that the recommendation remained the same as before. The Objector had suggested that any level of overplanting would make the scheme unlawful, however this had not been the view of the Planning Officers or the Judge in the Burnhope case who had agreed that it was permissible to make an allowance for overplanting. The Council had assessed the level of overplanting and associated impacts and considered it to be acceptable and not unlawful as had been alleged.

### **Resolved**

That the application be APPROVED subject to the completion of an agreement under Section 39 of The Wildlife and Countryside Act 1981 to secure biodiversity management for the life of the development and the conditions outlined in the report.

Councillors Boyes and Wilson left the meeting at this point and did not return.

## **7 DM/23/02008/FPA - Engineering and associated works to form enclosed area in association with storage use, Land North Of Emerald Biogas, Preston Road, Aycliffe Business Park, Newton Aycliffe, DL5 6AB**

The Committee considered a report of the Senior Planning Officer regarding an application for Engineering and associated works to form enclosed area in association with storage use Land North Of Emerald Biogas, Preston Road, Aycliffe Business Park, Newton Aycliffe DL5 6AB (for copy see file of minutes).

The Senior Planning Officer gave a detailed presentation which included a site location plan, aerial photograph, previously approved and proposed site

layout plans, proposed site elevations and site photographs from various locations.

The Senior Planning Officer confirmed the following revisions to the report. The report referred to the site as a Designated Local Wildlife Site within the CDP (paragraph 4 and 131). This had been the case in 2020, however the land had been de-designated prior to submission of the application in 2023 and was therefore no longer a Designated Local Wildlife Site. With regards to the reasons for refusal no. 1) referred to a conflict with Policy 43 of the CDP, however this was in error as whilst Dingy Skipper was a Priority Species and not a Protected Species. The application was still in conflict with Policy 41 and paragraphs 180 and 186 of the National Planning Policy Framework.

Mr Greally addressed the Committee on behalf of the Applicant to confirm that the application had been submitted in July 2023 and enhanced following engagement with Officers. He advised that there would be significant benefits, including the use of a longstanding vacant site within an industrial location. The proposed storage use was in accordance with the employment use allocation carried forward from the Sedgefield Local Plan and there was a presumption which favoured uses such as storage. He described the type of equipment and machinery that would benefit from open storage and advised that approval of the application would provide support for existing and new businesses in the area and reduce the potential for relocation.

Mr Greally advised that the previously granted planning permission had been subject to a legal agreement which had resulted in a compensatory payment of £90,000 for offsite habitat. At the time of approval, the Applicant had been absolved from having to carry out any further biodiversity mitigation works to the application site and there were no conditions attached requiring any of the biodiversity features to be installed or managed over time. The Applicant was of the view that this payment had offset any biodiversity impacts on the site, however in order to address comments on the scheme, an 0.75 hectare area would be retained and enhanced to provide habitat for Dingy Skipper butterflies. This was a larger area than the existing areas on site that were considered highly suitable for the species.

Mr Greally suggested that conditions could be attached to actively manage the site, and to deliver and maintain areas suitable for Dingy Skipper. This was a regime that did not exist on site, nor through the previously granted planning permission. The Applicant's Ecologists had advised that the type of habitat designed, would have the correct ground conditions and landforms to help maximise sunlight and thermal capture, which was essential for the species. This was considered a significant benefit over the previously approved scheme and the ability to secure the retention and long-term management of these features had not been afforded sufficient weight.

He continued that whilst a number of trees would be removed to facilitate the scheme, a condition could be attached to secure a long-term management strategy for remaining and replacement trees. Great Aycliffe Neighbourhood Plan had been referred to within the refusal however Mr Greally noted that in responding to the application, the Town Council had raised no objection to the proposals. A detailed design of the drainage scheme would need updating to accommodate the increased area for Dingy Skipper however the principles of the drainage strategy which had been accepted by the Council, could also be incorporated into a planning condition.

In conclusion, Mr Greally clarified the employment status of the site and that it was no longer a Designated Local Wildlife Site. The storage facility would support business in the area by providing the opportunity to meet storage needs and he urged the Committee to grant planning permission to enable the site to be brought into productive economic use.

The Senior Planning Officer accepted that measures on the previously approved site had not been secured in perpetuity, however because they were shown on the approved plans they were required for the consent to be lawfully implemented. He confirmed that the financial contribution secured under the previous planning consent had been discussed at length by Officers, however they did not consider that it mitigated the identified impact of the current application.

Councillor Atkinson confirmed that the site was within his ward and queried the ownership status. Mr Greally advised that the owner of the site also owned the biomass site to the south. The Senior Planning Officer confirmed that the landowner had been served notice of the application on receipt of the application, however site ownership was not a material planning consideration.

Councillor Elmer requested a more detailed explanation of the net impact. The Principal Ecologist advised that it was in relation to the Priority Species, Dingy Skipper. Although the scheme included a proposed mitigation plan, there were various unresolved issues, including the scale and location of the donor site, the methodology used to move adult population and timescales.

In response to questions from Councillor Currah regarding the payment made in relation to the previous consent, the Principal Ecologist confirmed that the money had been calculated using a metric which accounted for habitats only and had been invested into Durham Wildlife Project to purchase land for uplift in biodiversity habitats. The payment had mitigated the impact on habitats, however the fundamental issue related to the impact on a Priority Species. The national population of Dingy Skipper was in decline and most recent data showed a decline of 30% within County Durham. This

site had been listed on the Biodiversity Action Plan and reported as a county level population with 30 individuals, which was significant. The Council were required to give key consideration to Priority Species in any planning decision. Councillor Currah asked for further info on the work required to appease the Council and was advised that there were fundamental issues with the proposed methodology, the donor site had not been identified and issues with the viability of the plan and scale of the proposed habitat. Without further relevant information, the Principal Ecologist advised that he could not be confident that the population on site would be maintained.

Councillor Atkinson confirmed that there were various economic reasons to accept the application.

Councillor Elmer advise that in his former role as an Environment Ranger he had conducted a botanical survey of the whole town council area and this site had been identified as having significant ecological interest. It was common to find such sites in industrial areas as land was not intensively managed and left untouched for a significant period of time. The poor soil made the perfect conditions for regeneration and what had become a species rich low nutrient grassland. In addition to Dingy Skipper this site had a range of plants that would only colonise in particular and sensitive locations. From experience as an Ecologist, consultants would often propose mitigation such as translocation, to compensate impacts and would make it sound easy and straightforward however it was extremely complex, unreliable, and highly likely to fail. He would be upset to lose the site, although he appreciated that it might happen one day if someone presented a scheme that could address these complex issues. He supported the recommendation and moved refusal of the application.

Councillor Currah considered the location of the site and its designated industrial use and considered the Applicant to have made good efforts to mitigate. He was concerned that if the Committee started rejecting applications for ecology in every instance, they would move problems from one application to next. If there was a market need for open storage, he questioned where else it could it be sited without impacting elsewhere. There were some unanswered questions regarding the species which he suggested could naturally relocate. He confirmed that he was against the recommendation and minded to approve the application for the economic benefits.

Councillor Atkinson agreed that this was the ideal site for storage perfect location and whilst there would not be many employees, the storage would benefit a lot of businesses.

Councillor Currah proposed a motion to approve the application which was seconded by Councillor Atkinson.

Councillor Bell agreed that the location and designation of the land were positive attributes and he queried whether deferring the application would allow some of the concerns regarding ecology to be addressed. The Planning and Highways Lawyer advised that the Committee would be required to give clear reasons for deferral of the application which would also be informed by whether the Applicant was willing to carry out further work to address the refusal reasons.

Mr Greally confirmed that the Applicant would ultimately like to reach a consensus however he highlighted the significant length of time since the application had been submitted. The Applicant had made every effort to address concerns and only two weeks prior had agreed to reduce the net development area, however they had subsequently received more enquiries. They had brought the application to Committee as they had no confidence that they could get approval. He also added that only five Dingy Skippers had been found during the most recent survey. In conclusion, the Applicant was willing to enter further negotiations to reach an agreement, however they did not want to incur more costs and delays. Mr Greally added that the matters raised regarding translocation had been suggested by regionally recognised ecology advisors and he was sure they could find a solution that could be achieved through a planning condition, however a deferral would be accepted, if the Committee preferred that was to be agreed in advance.

The Planning and Development Manager confirmed that he was not aware of any other applications on allocated employment sites that had been recommended for refusal. The scheme complied with the local plan which identified the land for employment opportunities, however there would be a relatively low level of weight applied as there would be no direct employment. Ecology Officers were skilled at working with developers to bring forward major development opportunities within the county and it was disappointing to be in this position. The application had been in planning for a considerable length of time and the delay was not due to Officers who had sought to work positively and proactively throughout the negotiations. If the Applicant accepted that deferment may lead to more proactive negotiations to resolve outstanding issues, it would be wise in the circumstances.

Councillor Bell moved a motion to defer the application which was seconded by Councillor Hunt.

In response to a point of order from Councillor Atkinson, the Planning and Highways Lawyer confirmed that the motion from Councillor Elmer to refuse the application had not been seconded, therefore there was a motion to approve the application and another to defer it. It would make logical sense to take the motion to defer the application first and if lost, they would move to the motion to approve.

Councillor Elmer addressed Councillor Currah's previous statement confirming that it was not the case that ecology stopped applications going forward and in the vast majority of cases it was possible to find a way forward. This was evidenced as being the first time that Officer's had been unable to find a solution.

### **Resolved**

That the application be **Deferred** to allow further work to be undertaken and negotiations between the Applicant and Officers on the issue of priority species mitigation.