

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

7 December 2015

Report of the Strategic Director – Economy, Transport and Environment

Item for the Committee's Information

7 CURRENT APPEALS/CALLED IN APPLICATIONS

Planning Reference	Date	Appellant	Location	Description of Development	Decision
Planning Reference CM4/0114/156 PINS Reference APP/U1050/W/15/3002704 Written representations	Appeal submitted to PINS 14 January 2015. Start date confirmed by PINS as being 20 February 2015.	Seven Star Natural Gas	Land north-east of Dark Lane, Calow	Drilling of exploratory boreholes, erection of containerised units, associated plant and equipment, extraction of natural gas, electricity generation and ancillary operations.	Following refusal by Derbyshire County Council on 25 July 2015, the Planning Inspectorate (PINS) dismissed the appeal. PINS decision letter received 28 October 2015. The key areas of the decision letter is attached.
Planning Reference CL8/0114/153 PINS Reference	30 September 2014	Donald Ward Limited	Land at Griffon Road, Quarry Hill Industrial Estate, Ilkeston	Certificate of lawful use for storage of metals, scrap and waste metals and waste materials and waste	Appeal withdrawn by appellant on 25 November 2015. Following

APP/U1050/X/14/2225279 Public Inquiry 12 May 2015 was abandoned due to shortage of time. New inquiry date set for 1 December 2015.				recycling.	abandonment of the earlier Inquiry in May this year, the new inquiry date set for 1 December 2015 was unable to proceed because of the late withdrawal of the appeals (25 November 2015) by the appellant.
Planning Reference CL8/0114/154 PINS Reference APP/U1050/X/14/2225276 Public Inquiry 12 May 2015 was abandoned due to shortage of time. New inquiry date set for 1 December 2015.	30 September 2014	Donald Ward Limited	Land at Griffon Road, Quarry Hill Industrial Estate, Ilkeston	Certificate of lawful use for processing, recycling and storage of metals, scrap and waste metals and waste materials (including vehicle dismantling).	Appeal withdrawn by appellant on 25 November 2015. Following abandonment of the earlier Inquiry in May this year, the new inquiry date set for 1 December 2015 was unable to proceed because of the late withdrawal of the appeals (25 November 2015) by the appellant.

The above indicates the current position on appeals dealt with by the County Council. Appeal decisions are reported to this Committee and future reports will include details of any appeals lodged.

Mike Ashworth
Strategic Director – Economy, Transport and Environment

CALOW APPEAL DECISION

The application was refused in July 2015 and, following a site visit by the Planning Inspector in August 2015, the appeal was dismissed on 28 October 2015. A copy of the appeal decision is available to be viewed on the County Council's website under the application reference CM4/0114/156.

In issuing the Decision, the Inspector considered the main issues of case to be:

- (i) effect of proposal on character and appearance of area;
- (ii) effect of proposal on living conditions of surrounding residents arising from cumulative effects of noise, and visual effects;
- (iii) whether national benefits of gas extraction, amount to material consideration outweighing any adverse effects under (i) and (ii) to grant of planning permission.

The Inspector acknowledged the national need for natural gas extraction but did not consider that it was imperative, given the appellant's evidence put before him, that the location of the gas extraction and associated electricity generation infrastructure had to occur at the appeal site location. He concluded that the harm caused to the character and appearance of the area and neighbouring living conditions was not justified.

The Inspector recognised the large number of objections received from interested parties and detailed technical reports covering many areas, including light pollution, highway safety, vibration, land stability, effects on air quality, house prices, emissions to human health and wildlife, etc. However, he agreed with the Council's conclusions in the interpretation and reporting of the technical evidence within the Council's report.

In considering the first main issue, it was considered that the sensitivity of the landscape and level of harm would be substantial and greater than that estimated within the Landscape Visual Impact Assessment (LVIA) and that the significant harm to the character and appearance of the area was not able to be offset by the proposed mitigation.

On the second main issue, it was concluded that noise levels would be within acceptable limits and would not cause undue harm to the living conditions of neighbouring residents. It was considered that the outlook from the nearest neighbouring property would be affected by the presence of the industrial appearance particularly the tall flues projecting into the skyline above the proposed landscape screening bund.

Appeal Decision

Site visit made on 4 August 2015

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 October 2015

Appeal Ref: APP/U1050/W/15/3002704

Land North-East of Dark Lane, Calow, Chesterfield, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Tony Bryan against the decision of Derbyshire County Council.
 - The application Ref CM4/0114/156, dated 29 January 2014, was refused by notice dated 25 July 2014.
 - The development proposed is Drilling of exploratory boreholes, erection of containerised units, associated plant and equipment, extraction of natural gas, electricity generation, and ancillary operations.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - i) The effect of the proposal on the character and appearance of the area;
 - ii) The effect of the proposal on the living conditions of surrounding residents resulting from the cumulative effects of noise, including traffic noise, and visual effects;
 - iii) Whether the benefits of the proposal with regard to the nationally recognised need for gas extraction, including any benefits to the economy, amount to a material consideration to outweigh any adverse effects that may be identified under i) and ii), above, to indicate that planning permission should be granted.

Reasons

Planning Policy Context

3. The development plan for the area comprises the Derby and Derbyshire Minerals Local Plan (2000) (the DDMLP) and the North East Derbyshire Local Plan (2005) (NEDLP). Both plans are time-expired but a number of policies have been saved following a direction from the Secretary of State. Within its reasons for refusal, the Council alleged that the proposed development would be contrary to the requirements of saved policies GS1 (Sustainable Development) and GS6 (New Development in the Countryside) of the NEDLP and policies MLP1 (the Environmental Impact of Mineral Development), MLP2

(the Need for Mineral Development) and MLP3 (Measures to Reduce Environmental Impact) of the DDMLP. Whilst not referred to within the reasons for refusal both parties agree that saved policy MP35 (Oil and Gas) is of relevance to the appeal.

4. Paragraph 215 of the Framework identifies that due weight should be afforded to relevant policies in existing plans, according to their degree of consistency with the Framework. The appellant contends that limited weight should be afforded to relevant saved policies due to the fact that they were adopted prior to the publication of the Framework¹. However, the age of relevant saved policies does not, of itself, render them inconsistent with the Framework.
5. Policy MLP1 is a permissively worded policy which states that minerals development will be permitted subject to a number of criteria (1 to 10) relating to the environmental effects of the proposed development. Policy MLP3 is intended to be read in conjunction with Policy MLP1, as identified in the explanatory text, and states that proposals for mineral development will be permitted where any adverse effects can be eliminated or reduced to an acceptable level, with regard to a number of specific factors. Policy MLP2 sets out how the benefits of mineral extraction will be taken into account in situations where an adverse environmental impact would be likely, including an assessment of the local, regional and national demand for the mineral; the scarcity of the resource; the necessity for it to be worked in that location; and the economic impacts of the proposal.
6. When read together, the three policies provide a balanced and permissive approach to mineral applications which enables recognition of the benefits of mineral production, including economic impacts, whilst taking account of the need to mitigate environmental harm. I find nothing in that approach that is inconsistent with the approach set out within section 13 of the Framework, including paragraph 144 which advises that great weight should be given to the benefits of mineral extraction but also advises local planning authorities to ensure that, when planning permission is granted, there would be no unacceptable adverse impacts to matters of identified importance, including the natural environment and human health. Therefore, notwithstanding their age, I am satisfied that policies MLP1-3 are consistent with the aims of the Framework and consider that substantial weight should be afforded to them, in accordance with paragraph 215 of the Framework.
7. Saved policy MP35 provides specific criteria for the extraction of oil and gas. Those criteria require a balanced assessment, taking account of the need for development, set against environmental objectives. Neither party has suggested that those criteria are inconsistent with the aims of the Framework and I afford weight to the policy accordingly.
8. Policies GS1 and GS6 of the NEDLP make no specific reference to mineral applications and, as the NEDLP is silent in relation to mineral development, the appellant contends that limited weight should be afforded to its saved policies. Both policies seek to restrict development to sites within settlement limits unless that development is considered to be acceptable within the countryside. From the information presented, including extracts of relevant policies, it is not clear how policies GS1 and GS6 are intended to be read in conjunction with the policies of the DDMLP.

¹ Paragraphs 9.3 and 9.5.8 of the Statement of Case

9. Notwithstanding that point, policies GS1 and GS6 remain part of the development plan and there is nothing before me to indicate that saved policies of the NEDLP should not be applied to applications relating to mineral extraction. Although policy GS1 pre-dates the publication of the Framework by some distance the criteria for assessing sustainable development remain broadly consistent with the approach to sustainable development within the Framework. In particular, paragraph 7 of the Framework identifies three dimensions of sustainable development; economic, social and environmental. Paragraph 8 notes that these three strands are mutually dependent and should not be seen in isolation. Policy GS1 clearly sets out the need for a balance between economic growth, environmental protection and the quality of life of the community i.e. the social dimension. Whilst the terminology of the policy does not replicate that of the Framework, I see nothing inherently inconsistent between the requirements of the policy and the broad approach to sustainable development within the Framework and I therefore apply weight to the policy accordingly.
10. As set out above, the explanatory text to policy GS6 does not identify mineral extraction as a type of development that may be considered as 'appropriate' in the countryside. Given the nature of mineral extraction it is a type of development that, for the most part, is likely to take place within the countryside, outside established settlement boundaries. In that context, and based upon the information before me, it is unclear whether the lack of reference to mineral extraction in the preamble to policy GS6 is an indication that the NEDLP was not intended to be applied to mineral extraction, given the two-tier nature of the authority and the existence of a specific minerals local plan.
11. In any event, the requirements of the saved policy do not fully comply with the aims of the Framework, particularly the recognition at paragraph 144 that great weight should be given to the benefits of mineral extraction, including to the economy. The restrictive criteria within policy GS6 do not replicate the approach of paragraph 144 of the Framework with regard to the balance between the benefits of mineral extraction, against the potential adverse impacts to factors including human health, and the natural and historic environment. Consequently, in the context of the proposal before me, in accordance with paragraph 215 of the Framework, the weight that should be applied to policy GS6 must be reduced accordingly.
12. Therefore, with the exception of policy GS6 I am satisfied that the policies referred to above are broadly consistent with the aims of the Framework. In the context of paragraph 14 of the Framework, those policies remain up to date and the development plan is not silent or absent with regard to mineral extraction. Section 38(6) of the Planning and Compulsory Purchase Act 2004 identifies that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. That is the context within which I have made my decision.

First Main Issue: The effect of the proposal on the character and appearance of the area

13. The appeal site is situated on agricultural land, currently in arable use, to the south of Calow, a small town/ large village to the east of Chesterfield. The settlement stretches out alongside Top Road, the A632, as it passes through on

an east-west axis. The bulk of the village is situated to the north of Top Road, with twentieth century housing estates branching off from Church Lane and Blacksmith Lane. Comparatively little development has extended to the south of Top Road and, as such, the southern approaches to the settlement retain a strong rural character with field boundaries extending up to the edge of the settlement.

14. The site would be accessed from Dark Lane, a narrow and winding rural lane which enters onto Top Road a short distance to the north. A short run of dwellings is situated on the north-eastern side of the carriageway between the village and the proposed entrance to the site, terminating at Ashfield House; a detached dwelling with a south facing garden which overlooks the field within which the proposal would be situated. Beyond this short run of dwellings the settlement pattern is one of dispersed farmsteads sitting within a gently undulating and attractive agricultural landscape. The appeal site is within a field, enclosed by hedgerows, which falls away from a high point adjacent to Ashfield House into the valley beyond.
15. The landscape falls within the Nottinghamshire, Derbyshire and Yorkshire Coalfield, an area identified as Character Area 38 on Natural England's National Character Area map. That broad character area has been broken down into smaller Landscape Character Types (LCTs) within *The Landscape Character of Derbyshire*, published by the Council². The appeal site falls within the Coalfield Village Farmlands LCT. The area is described as a broad, gently undulating, landscape characterised by pastoral farming with localised arable cropping. Other notable features are the presence of hedgerows, the network of small irregular lanes between larger urban roads, dispersed farmsteads, and the presence of towns and villages on ridge lines, often with evidence of expansion through ribbon development of red brick terraced housing.
16. The area to the south of Calow, including the appeal site, retains many of the defining features of this LCT. When viewed from the well-used public footpaths to the south and south-east of the site the appeal proposal would be viewed in the context of an attractive rural setting with the patchwork of enclosed arable and pastoral fields in the foreground with the village on the ridgeline in the background, including the focal point of the church spire.
17. Whilst the description of the LCT notes the negative effects of industrialisation and housing development, those effects are not present in the context of the appeal site and surrounding area. Although electricity pylons run close to the site the presence of these ubiquitous features does not, in my view, alter the prevailing rural character of the immediate landscape. It is an attractive landscape and one that is clearly valued by those who reside within it, as demonstrated by the representations submitted in response to the proposal and the well trodden routes of the local footpath network.
18. In assessing the effect of the proposal on the character and appearance of the area I am cognisant of the three phases of the proposed development, as shown on the submitted plans, including the drilling phase, gas testing and evaluation phase, and the electricity generation phase. Whilst works involved in the drilling, testing and evaluation phases have the potential to introduce features that would cause harm to the character and appearance of the local landscape, such as the drilling rig and flare stack, those phases would be

² Relevant extracts reproduced within the appendix to the appellant's statement of case

relatively short lived, lasting a matter of weeks, and would not have any long standing effects on the landscape. Although described as temporary, the operational phase would continue for 15 years and would have a much greater degree of permanence. Therefore, the greatest impact in landscape terms would arise from the operational phase and my comments below relate to that element of the proposal.

19. When set against the established character of the landscape the proposal would be seen as an alien feature, as recognised within the Landscape and Visual Impact Assessment (LVIA) that was submitted by the appellant with the application. However, the appellant contends that there would be no adverse impacts upon most of the elements of the landscape that give it its character and local distinctiveness.
20. I do not concur with that assessment on a number of grounds. The tall flue stacks, lighting columns, and the buildings associated with the proposal, including the substantial acoustic wall and security fencing would appear as incongruous industrial elements in an otherwise rural landscape. The enclosed fields form an intrinsic part of the setting of the village and the close relationship between the towns and villages and their agricultural past is defined as a feature of the LCT.
21. The undulating land form falls away from the village which runs across the ridgeline on an east-west axis – both features being typical of the LCT. The proposal would be located prominently on the south facing slope of the field and the proposal to re-grade the slope, required to create a level platform, would contrast awkwardly with the established landform. The proposed mitigation, in the form of raised earth bunds, would accentuate the change in profile and add a further discordant feature that would jar against the prevailing topography. In that sense, the proposed mitigation would not only fail to off-set the harm to the local landscape, it would cause further harm of itself.
22. Moreover, the configuration of the appeal site bears little relationship with existing field boundaries within the vicinity. The field within which the site is located is one of a number of rectilinear fields sloping away to the south of Calow. The field pattern and the gently sloping topography are particularly prominent from public footpaths within the vicinity of the site, including Calow Footpath 11 which passes in close proximity and medium distance views from footpaths to the north and west of Calow Oaks Farm. The compound would sit broadly in the middle of the field and the proposed means of enclosure (including fencing, acoustic fencing, hedgerow planting and bunding) and tree planting would not relate to the established field boundaries and pattern of enclosure, another characteristic feature of the LCT.
23. Thus, by virtue of its industrial appearance and prominent location the proposal would cause significant harm to the character and appearance of the area and relate poorly to a number of features that form an intrinsic part of the local landscape character. It would harm the relatively unspoilt setting of the village and, when viewed from footpaths to the south, the proposed screening would not mitigate against the prominence of the substantial acoustic fencing and 11 metre tall flues which would be prominent and intrusive features in the landscape.

24. The site does not benefit from any statutory landscape designation but is clearly a valued landscape at a local level, as recognised within the LVIA. Photographs of the site are included within the LVIA from various receptors and further views are produced on drawing number 11-2388-05 Rev C. I was able to observe those locations on my site visit but the lens type and focal length of the images is not stated and the photographic representation does not accurately reflect the likely scale and proximity of the proposal as viewed with the naked eye. When viewed on site, the site appears to be much closer than is apparent on the images produced by the appellant, including views from side facing windows of Ashfield House which is in close proximity to the appeal site.
25. In reality, the site is in close proximity to a number of sensitive receptors, including residential properties, the footpath network and from Dark Lane itself. Whilst the proposal would not be directly visible from dwellings other than Ashfield House, it would, nonetheless, be a prominent and unsightly feature within the landscape that would be noticeable as local residents travel through the landscape as part of their daily routines. To my mind, the fact that the attractive landscape is in close proximity to the resident population heightens its sensitivity to change.
26. In my view, the sensitivity of the landscape and the level of harm would be substantial and significantly greater than estimated within the LVIA. The proposed operational phase is expected to last no longer than 15 years, after which the site would be restored to an agricultural use. However, whilst the proposal is temporary, in human terms it would represent a significant period of time within which those residing close to the site and using the adjacent rights of way would have to contend with the visual effect of the proposal. Therefore, the time period for which permission is sought is not a factor that significantly reduces my concerns on the harm to the character and appearance of the area.
27. In view of the above, I consider that the proposal would cause significant harm to the character and appearance of the area; harm that would not be off-set by the proposed mitigation. Policy MP1 of the DDMLP is a permissively worded policy which states that mineral development will be permitted providing that the impact upon the environment would be acceptable with regard to a number of factors, including the visual effect of the proposals and the effect on the character and quality of the landscape. For the reasons given, the proposal would not have an acceptable effect on those matters. Similarly, policy MP3 states that proposals will be permitted provided that any adverse effects on the environment can be eliminated or reduced to an acceptable level. As set out, the mitigation measures would not substantially ameliorate the harmful landscape effects of the proposal and the residual effects, taking account of proposed mitigation would remain unacceptable, contrary to the aims of policy MP3.
28. Moreover, the proposal would fail to preserve or enhance the natural environment, contrary to the aims of policy GS1 of the NEDLP and would cause harm to the intrinsic beauty of the countryside, contrary to one of the core principles of the Framework at paragraph 17 and the requirements of paragraph 109 which states that the planning system should protect and enhance valued landscapes. The resulting environmental harm would be contrary to the environmental role of sustainable development at paragraph 7 of the Framework.

Second Main Issue: The effect of the proposal on the living conditions of surrounding residents resulting from the cumulative effects of noise, including traffic noise, and visual effects

29. Paragraph 143 of the Framework states, amongst other things, that local planning authorities should set out environmental criteria against which planning applications should be assessed so as to ensure that permitted operations do not have unacceptable adverse impacts on the natural and historic environment or human health. It also makes clear that they should take into account the cumulative effects of multiple impacts from individual sites and/or a number of sites in the locality. That advice is supplemented by the Planning Practice Guidance (PPG) which states that planning should ensure that new development is appropriate for its location – taking account of the effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area to adverse effects from pollution³.
30. The appellant contends that the aim of paragraph 143 is to allow an individual impact to be assessed cumulatively with other impacts of the same type. However, I can find nothing in the Framework or PPG to support that assumption. It appears to me that the intention of the Framework is to ensure an assessment of the combined effects of multiple impacts, which many not be of sufficient magnitude individually to warrant the refusal of permission, but may render a proposal unacceptable in cumulative terms. Those combined effects could be for the same type of impact i.e. noise generated from different parts of a site but could equally apply to a number of non-related impacts, the combined effect of which may give rise to greater harm. The Framework does not distinguish. To my mind the latter may be particularly pertinent to matters of human health or the effect on living conditions where numerous smaller impacts from different sources could give rise to harm that may have unacceptable combined effect.
31. The second reason for refusal refers to the combined effects of noise and visual impact. My conclusions in relation to the first main issue identify that the proposal would cause significant harm to the character and appearance of the area. In line with paragraph 17 of the Framework the intrinsic character and beauty of the countryside is worthy of protection for its own sake. However, the visual impact of the proposal would also cause harm to the living conditions of adjacent residents by reason of the effect on the outlook from dwellings in close proximity.
32. That impact would be most acutely felt by the residents of Ashfield House which is in close proximity to the proposal. When viewed from side facing habitable room windows the existing pleasant and open outlook would be altered by the presence of the industrial appearance of the proposal, particularly the tall flues that would project into the skyline above the proposed bunding. As set out above, the photographs presented with the application do not portray the proximity of the site to Ashfield House and, as such, do not accurately reflect the way in which the proposal would be viewed or its likely impact. I have no doubt that the presence of an industrial feature in such close proximity to the neighbouring dwelling would cause harm to the outlook from that dwelling, including the garden in the winter months when leaves are not in

³ Paragraph: 012 Reference ID: 27-012-20140306

foliage. The resultant visual impact would be harmful to the living conditions enjoyed by those residing at Ashfield House.

33. Views from other nearby dwellings would be less direct and set at a further distance from the site. Consequently, with the exception of Ashfield House, the effect on outlook from within dwellings would not be significant. Nonetheless, the location of the site, on the fringe of the settlement, is such that the proposal would be prominent feature in the local landscape.
34. With regard to noise, the Council does not dispute the reliability of the assumptions within the acoustic report submitted by the appellant with the application. That report was prepared following consultation with the Environmental Health Officer and, on the information before me, I have no reason to take a different view. The assessment identifies that night-time noise levels from operations at the site are those most likely to have an impact upon adjacent residential properties; Ashfield House being the closest. During the electricity generating phase, the night-time noise levels at that property would be below the current ambient recorded noise levels. That would be below the Lowest Observable Adverse Effect Level (LOAEL), that being the level above which adverse effects on health and quality of life can be detected, as defined within the Noise Policy Statement for England (NPSE)⁴. Consequently, noise from the generation of electricity on site would not cause harm to neighbouring amenity.
35. During the operational phase of the development levels of traffic would be modest. The site would be unattended and would be visited by one or two people in light vehicles at intervals during a normal week. One or two HGV movements may be required per week to take away water, if consent to discharge into a watercourse was not granted. That level of activity would not be significantly greater than may be expected for an agricultural operation and would not give rise to any significant harmful effect, notwithstanding the proximity of the proposed access to the closest properties on Dark Lane.
36. A greater level of noise and disturbance is predicted during the drilling and testing phases, with the drilling phase expected to continue for 4-6 weeks and the testing phase for 1-2 weeks. That noise would arise from the drilling operations themselves and from the increased level of traffic associated with that phase. However, subject to mitigation, which could be secured by condition, noise levels at the closest residential receptor would not exceed 42 LAeq, 1hr at any time of night. That would ensure that the Significant Observed Adverse Effect Level (SOAEL) was not exceeded; that being the level above which significant effects on health and quality of life would occur. Conditions could also be imposed to ensure that gas flaring, a temporary activity that would take place for 1-2 weeks, would be undertaken during daytime hours.
37. Construction traffic would be greater during those periods but the drilling and testing phases would be relatively short and the level of disturbance from those aspects would not lead to any significant harm, over and above that which would occur for any construction activity. The PPG recognises that short term activities associated with construction may lead to a greater level of noise and disturbance and recommends a temporary limit of 70dB LAeq, 1hr (free field) for

⁴ Noise Policy Statement for England (March 2010), published by Department for Environment, Food and Rural Affairs

the duration of those activities. The information before me suggests that those limits would not be exceeded in relation to the proposed development.

38. Consequently, I am satisfied that noise levels would be within acceptable limits and would not cause undue harm to the living conditions of neighbouring residents. Given that the level of noise would be within acceptable limits this matter would not result in any cumulative harm that would add to my concerns regarding landscape and visual effects, and the resulting harm to adjacent living conditions and neighbouring amenity.

Other Matters

39. A large number of objections have been received from local residents and interested parties with regard to a wide range of matters including light pollution; highway safety; potential disruption to the power supply; the possibility of vibration, land stability and subsidence; effects on air quality; potential for gas leakage and explosion; effect of emissions on human health; effects on house prices; risk of theft and vandalism; effects on wildlife; potential for contamination of local watercourses; and the effect of the proposal on the safety of horses stabled nearby.
40. Those objections were summarised within the committee report prepared by Council officers and were considered by the Council prior to determination of the application. A number of detailed reports were prepared in support of the application including an ecological assessment, air quality assessment, and a subsidence and earthquake risk report. On the basis of those reports, the Council concluded that the proposal would not cause any significant harm to human health as a result of air quality or dust. Whilst I am mindful of the significant concerns expressed by local residents, on the basis of the technical evidence presented, I can find no reason to depart from the Council's conclusions in that regard.
41. Similarly, the reports regarding the potential for vibration, land stability and subsidence highlight that such concerns are unlikely to arise as a result of the proposal and that the technology for the extraction of gas from a stranded gas field is well tested. The Coal Authority has raised no objection to the proposal in relation to potential effects with regard to former mining activity. Moreover, the Environment Agency has raised no objection subject to the imposition of conditions to protect local watercourses. The ecological assessment highlights that the site is not covered by any statutory designation but that it may provide foraging opportunities for bats. Mitigation is proposed in terms of conditions to secure an appropriate lighting scheme. Again, based upon the response of statutory undertakers and the technical evidence submitted, I concur with the conclusions of the Council in those respects.
42. As set out above, the level of traffic during the operational phase would not be substantial and would not give rise to concerns regarding highway safety. The level of traffic would be proportionally greater during the construction, drilling and testing phases but the local highway authority have raised no objections to the proposal, subject to conditions regarding the proposed access arrangements. The appellant has also submitted a s106 agreement to control the routing arrangements for all construction traffic and to require the submission of a traffic management scheme. That agreement has not been signed by the County Council and is therefore in draft form. However, were I minded to grant planning permission I am satisfied that a management plan for

construction traffic could be secured by condition, including measures such as routing, timing of vehicle movements and temporary parking and turning arrangements. Whilst construction and testing activity may lead to a temporary increase in the level of traffic using Dark Lane, I am satisfied that this would not be to the detriment of highway safety.

43. There may be some temporary disturbance in terms of light pollution as a result of lighting columns during the drilling and testing phase but conditions could control the location of any columns to ensure that disturbance was kept to a minimum. During the operational phase it is anticipated that lights would be switched off during night time hours, with the exception of a single, movement controlled, light at the site entrance. Similarly, a condition could be imposed to control the design of that light to prevent glare or disturbance to neighbouring properties.
44. There is no reason to suppose that the proposal would give rise to vandalism or that it would harm animal welfare. Matters relating to house prices are not material to my decision.

Third Main Issue: Whether the benefits of the proposal with regard to the need for the proposal, including any benefits to the economy, amount to a material consideration to outweigh any adverse effects that may be identified under i) and ii), above, to indicate that planning permission should be granted

45. Paragraph 144 of the Framework identifies that great weight should be given to the benefits of mineral extraction. It is also clear that natural gas forms an essential component of the UK energy supply and has an important role to play in reducing national carbon emissions. The national energy policy context is summarised accurately within the appellant's statement of case⁵ and the Council does not dispute the benefits of the proposal in terms of the contribution of electricity to the national grid. I concur with the assessment of both parties and consider that the benefits of energy production stemming from the proposal represent a significant material consideration in its favour.
46. However, the proposal would also result in significant harm to the local landscape, to the detriment of the amenities of those who travel through it, and would be detrimental to the living conditions of the residents of Ashfield House, as a result of the effect on the outlook from that dwelling. The significance of the harm in those respects is also a matter to which I attract great weight.
47. For the reasons given above, with the exception of policy GS6 of the NEDLP, the relevant policies of the development plan remain consistent with the policies of the Framework and are not out of date in that respect. Therefore, in accordance with section 38(6) of the Planning and Compulsory Purchase Act I am required to determine the proposal in line with the development plan unless material considerations indicate otherwise.
48. Saved policy MP35 of the DDMLP states that proposals for the development of gas, including facilities associated with the production, processing or transportation, only be permitted where they can be carried out in an environmentally acceptable way and subject to a number of criteria, including

⁵ Paragraphs 5.1 to 5.7 and 6.1 to 6.15

an assessment of whether the irreparable damage to interests of acknowledged environmental importance is outweighed by proven need for the development in its proposed location; and an assessment of whether the proposed location of the development is the best having regard to geological, technical *and* (my emphasis) environmental considerations. To my mind, the need to include environmental factors within such an assessment is consistent with the need to balance the benefits of mineral extraction against environmental harm, as set out within paragraph 144 of the Framework.

49. Similar provisions are set out within saved policy MP2 which states that mineral development will be permitted provided that, where there is an adverse environmental impact, there is sufficient need for the development, taking account of a number of factors, including the availability of alternative sources of supply and the nature and extent of the deposit and the necessity of the mineral to be worked in that location.
50. At a national level, there is a demonstrable need for the extraction of natural gas. The PPG identifies that gas can only be worked where it is found. However, my conclusions relating to visual impact, and the resultant harm to the character and appearance of the area and living conditions, relate predominantly to the electricity generating phase of the development and the associated building operations. I can find no presumption in national policy that would require the electricity generating equipment to be located at the same point at which the gas is extracted. Whilst I appreciate that there may be cost efficiencies in locating the generating phase at the point of extraction, the information presented does not demonstrate a compelling need for the electricity generating infrastructure to be located in such a prominent location, in close proximity to residential properties.
51. Moreover, the statement submitted by the appellant in support of the proposal provides brief details regarding the site selection process. That identifies that the optimum surface locations for the extraction of gas were based upon seismic and geological data⁶. It also confirms that the proposed site was settled on as being a near perfect fit to those optimum criteria. It appears to me that the criteria for selection did not follow the requirements of policy MP35 by failing to include environmental factors when determining the best site for extraction, including analysis of the proximity to residential properties and landscape impact of the proposal. The evidence before me does not indicate that such an assessment was undertaken and it is not clear how environmental considerations were taken into account, or what weight was given to them. Therefore, I cannot rule out the possibility that sites with a much reduced environmental impact would be available, if a site selection assessment taking into account environmental factors was undertaken.
52. Consequently, whilst there is a national need for energy produced from natural gas the information submitted with the appeal does not identify an imperative need to locate the proposal at the appeal site, or to construct the electricity generating phase of the development at the exact point of extraction. Therefore, I consider that the harm that would be caused to the character and appearance of the area and neighbouring living conditions is not justified, having regard to the criteria within policies MP2 and MP35 of the DDMLP. The proposal would therefore be contrary to the requirements of those policies. As

⁶ Paragraph 3.1.2

set out in my conclusions on the first main issue, the proposal would also be contrary to policies MP1 and MP3 of the DDMLP, policy GS1 of the NEDLP and the aims of paragraphs 17 and 109 of the Framework.

53. In view of the lack of a demonstrable need to locate the proposal at the appeal site, the weight that should be attributed to mineral extraction does not outweigh the significant harm that would arise from the proposal and the benefits of the proposal in that regard do not amount to a material consideration of sufficient magnitude to outweigh the presumption in favour of the development plan, as set out at section 38(6) of the Planning and Compulsory Purchase Act.

Conclusion

54. Having regard to the assessment above, and all other material considerations, I conclude that the appeal should be dismissed.

Chris Preston

INSPECTOR