

Agenda Item No.4.3

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

7 December 2015

Report of the Strategic Director – Economy, Transport and Environment

3 APPLICATION FOR A CERTIFICATE OF LAWFUL DEVELOPMENT FOR A PROPOSED USE (FOR THE INSTALLATION OF SOLAR PANELS), AT ASHBOURNE SEWAGE TREATMENT WORKS, OFF WATERY LANE, ASHBOURNE
APPLICANT: SEVERN TRENT WATER LIMITED
CODE NO: CL3/0915/80

3.1612.3

Introductory Summary Section 192 of the Town and Country Planning Act 1990 (as amended), allows an applicant to clarify whether a proposed use or development requires planning permission, or whether a proposed development already has planning permission (i.e. is considered to be Permitted Development by virtue of a Town and Country Planning (General Permitted Development) (England) Order 2015, or is lawful by some other reason. Approval will confirm that the use, operations or other matter applied for, would be lawful if carried out in the manner stated in the Certificate. Where the evidence submitted does not support the lawful existing or proposed use, it would fall to the county planning authority to refuse the application. A refusal will point to the need for an express planning permission before the use, operations or other matter, are undertaken. Unlike a conventional planning application, each application for a Certificate of Lawful Proposed Use or Development (CLOPUD), is assessed entirely on its available factual evidence about planning history, the interpretation of any relevant planning law or judicial authority and judged on ‘the balance of probabilities’.

The grant of a certificate applies only to the lawfulness of development proposed, in accordance with the Town and Country Planning legislation. It does not remove the need to comply properly with any other legal requirements, such as consents required under the Building Regulations, the Wildlife and Countryside Act 1981, or the Listed Building and Conservation Areas Act 1990. In this case, this is an application for a proposed future lawful use on the land identified. In view of the evidence submitted, the definition of operational land, as defined by the Town and Country Planning Act 1990, the County Council does not hold any records which would otherwise contradict the information submitted and, on the balance of probabilities, I consider that

the above requirements have been fulfilled. I am therefore recommending that it would be appropriate to issue a Certificate.

(1) **Purpose of Report** To enable the Committee to consider the application and approve or refuse the issue of a certificate of lawfulness.

(2) **Information and Analysis**

The Site

The application site is located close to the existing Ashbourne Sewage Treatment Works, established in the early 1900's, on the south-western outskirts of Ashbourne, and extends to approximately 2 hectares (4.9 acres) of enclosed land. The land is bounded to the north, east and west by agricultural land, with the south and south-western boundaries formed by the historic sewage treatment works. The site is situated in a rural location and the nearest residential property lies to the south-west within 100 metres. The application site is enclosed by hedgerows and agricultural fences, and the general topography of the site is undulating and typical of this part of the County. Vehicular access to and from the sewage works site is via Watery Lane, then Mayfield Road (A52).

Application Details

The application, which is part of an efficiency programme by Severn Trent Water Ltd, proposes the installation of a series (or strings) of ground mounted solar panels (photovoltaic cells), associated cabling and transformers which would be located towards the northern boundary of the site and erected in rows. The unspecified number of solar panels would be mounted on galvanised metal frames and the maximum inclined height of the panels would be approximately 2.4 metres from ground level. The applicant contends that once operational, the solar panels would off-set approximately 26% of the energy consumption at the sewage treatment plant. The application has been submitted seeking a Certificate of Lawfulness of Proposed Use or Development, principally to establish the lawfulness of the proposed development. In addition, because the applicant is the Statutory Undertaker, claims by virtue of Part 13 Class B (development by or on behalf of a sewage undertaker and Part 13 Class B (f) of the Town and Country Planning (General Permitted Development) (England) Order 2015, the proposed use of this land in the manner proposed is permitted development. The applicant has indicated that all the electricity generated will be used for the sewage works at Ashbourne.

Supporting Information

Accompanying the application is:

- a land registry plan which identifies the application site;
- a Deed of Conveyance dated 7 July 1946; and

- a supporting statement which includes a copy of 1922 Ordnance Survey showing extend of the sewage treatment works.

Consultations

Local Member

Councillor Bull has been consulted but has not commented.

Derbyshire Dales District Council and the Environment Agency

No information to support or otherwise challenge or contradict the application details, statements or any of the evidence submitted.

Offcote and Underwood Parish Council

No comments received.

Case Analysis

The issue at the centre of this application is whether or not the proposal is permitted by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015.

The Part 13 Class B of the GPDO states that development (by or on behalf of a sewage undertaker) is permitted for:

“any other development in, on, over or under their operational land, other than the provision of a building but including the extension or alteration of a building”.

I consider that the first point in this case is the meaning of operational land. If the land were not, then the proposed use would not be lawful. Section 263 of the Town and Country Planning Act 1990 states that (operational land means):

“(a) land which is used for the purpose of carrying on their undertaking and (b) land in which an interest is held for that purpose”.

The applicant company has submitted evidence which indicates that the land was first purchased in 1946 by the (then) Ashbourne Urban District Council which were, at this time, the authority responsible for water supply, sewage disposal and treatment. There is also evidence, from the 1922 edition of the Ordnance survey plan, that at this time, a small part of the site was included within the sewage treatment works site. The applicant contends that the land has been reserved for future development at the existing sewage works and other than grazing, there is no evidence which would suggest that the site has been put to any other use in the intervening period. In this regard, the County Council, the Derbyshire Dales District Council and the Environment Agency have no evidence to contradict the contention that the application site was

purchased for future development related to the existing sewage work. Given this information, I have accepted that the application site is operational land.

The proposed solar installations would clearly be ancillary to operation of the treatment works, since the applicant has confirmed that the energy will be used only in the power requirement for the sewage works. The evidence provided by the applicant is, in my opinion, sufficient to show that on the balance of probability, the application site at Ashbourne has been reserved by the Statutory Undertakers as operational. Neither the County Council or its consultees has evidence of its own to contradict the statements made by the applicant and Government guidance contained in Paragraph 8.15 (Annexe 8) of the Department of Environment (DOE) Circular 10/97 states amongst other things that:

“If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant’s version of events less than probable, then there is no good reason to refuse the application.”

It is concluded therefore that the development proposed complies with the criteria set out in Part 13 A(g) of the Town and Country Planning (General Permitted Development) (England) Order 2015, and would be lawful. I therefore consider that a Certificate of Lawful Proposed Use or Development for use of the application site for the installation and use of solar panels, to provide solar energy generated electricity for use at the Ashbourne Sewage Treatment Works, as described in this application should be granted.

(3) **Financial Considerations** The Correct fee of £845 has been received.

(4) **Legal Considerations** This is an application submitted under Section 192 of the Town and Country Planning Act 1990, as amended by Section 10 of the Planning and Compensation Act 1991.

I do not consider that there would be any disproportionate impacts on anyone’s human rights under the European Convention on Human Rights as a result of this permission being.

(5) **Environmental and Health Considerations** As contained in the report.

Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property and transport considerations.

(6) **Background Papers** File No. 3.1612.3

Application details, together with plans and supporting statement dated September 2015. Letters/e-mails from the Environment Agency dated 4 November 2015 and Derbyshire Dales District Council dated 6 November 2015. Planning Permission Code No. CW3/1198/90 dated January 1999 and Code No. CW3/0204/202 dated May 2004.

(7) **OFFICER'S RECOMMENDATION** That the Committee **approves** the grant of a Certificate of Proposed Lawful Use or Development in accordance with the application details submitted, including plan reference Ashbourne 001 dated August 2015.

Mike Ashworth
Strategic Director – Economy, Transport and Environment