

DELEGATED

AGENDA NO.

REPORT TO PLANNING COMMITTEE

13 September 2006

**REPORT OF THE CORPORATE
DIRECTOR OF DEVELOPMENT AND
NEIGHBOURHOOD SERVICES**

Application 06/1918/EIS

Vopak terminal Teesside limited, Seal Sands Road

Erection of renewable fuels plant with associated infrastructure and utilities work, admin building and workshops, roads, pipe bridges and car parking

Expiry date: 5th October 2006

Appropriate Assessment of Proposed Works carried out under Regulation 48 of The Conservation (Natural Habitats, &c) Regulations 1994

SUMMARY

1. Planning permission is sought to erect buildings, plant, equipment and access and car parking to produce rapeseed oil and meal on a site at Seal Sands. The oil would be used to produce biodiesel at off-site facilities and the meal as fuel for power production. The biodiesel will be used instead of ordinary diesel as a cleaner renewable energy source. Because of the nature of the proposal the application has been the subject of a formal Environmental Impact Assessment. This has not revealed any significant environmental concerns with the operation. Any adverse impacts can be mitigated with their implementation secured by planning conditions.
2. The main consideration with the application is location of the development and of the individual environmental considerations, the potential impact on the local ecology given that the site is close to the Seal Sands SSSI, which is part of the SPA and Ramsar site. English Nature has lodged an objection but it would be withdrawn if an "appropriate assessment" under the Habitats Regulations is carried which ascertains that the proposed development will not adversely affect the integrity of the SSSI or the SPA and Ramsar site.
3. An appropriate assessment has been carried out and the final views of English Nature are awaited. Amendments have been received seeking to address the concerns of the Head of Integrated Transport and Environmental Policy, and the Royal Society for the Protection of Birds is yet to comment.

RECOMMENDATIONS

It is recommended that:

As the "Competent Authority" Stockton on Tees Borough Council agree the "Appropriate Assessment" and accept its conclusions subject to the final views of English Nature; and

Subject to the withdrawal of the objections from English Nature and Head of Integrated Transport and Environmental Policy, and that RSPB do not

raise any new material planning issues, and imposition of any necessary mitigation measures by appropriate additional conditions, that planning permission for the development subject to conditions in respect of time limits, approved documents, working hours, mitigation measures, drainage, bunded storage, finished floor levels, flood evacuation plan, hard and soft landscaping, and land contamination, and any other relevant matters arising.

The submitted environmental information set out in the Environmental Statement has been taken into consideration in the permissions hereby granted.

The decision to grant planning permission has been taken having regard to the policies and proposals in the Structure Plan and Stockton on Tees Local Plan set out below

Stockton on Tees Local Plan policies GP 1, IN5b, IN6, EN 1, EN34, EN36

Tees Valley Structure Plan policies EMP10, ENV4, ENV5

Planning Policy Statements 1 and 23 and Guidance Notes Nos, 4, 9 13, 24 and 25

THE PROPOSAL

4. The application seeks permission to construct and operate a rapeseed processing facility at Seal Sands, Teesside. The application site lies in an existing industrial area of Seal Sands between the A178 and the River Tees. The site extends to some 5.32 (13 acres) hectares, and although vacant is occupied by a small derelict hut. A location plan is attached at Appendix A.
5. It is envisaged that the plant would process approximately 500,000 tonnes of oilseed per annum, principally rapeseed, to produce 225,000 tonnes of vegetable oil for biodiesel production elsewhere and 275,000 tonnes of meal to be used as a renewable fuel. The applicant envisages that the primary use of the oil would be by the Biofuels Corporation Biodiesel site on the opposite side of Seal Sands Road, and the meal exported in containers as fuel for electricity generation in UK power stations.
6. The development comprises 8 distinct elements; Office Administration Building, Workshop, Power Station, Extraction Building, Crushing Plant, Seed Silo Storage, Seed Reception Facility, Meal Loading Station and Storage. Access would be taken from Seal Sands Road; the existing access is to be improved. Parking is provided adjacent to the Office Administration Building, in the north east of the site. A site layout is attached at Appendix B.
7. The employees to operate the first plant would total 15, with a mix of day and shift working. The full five-unit development will ultimately employ up to 70 people and the intention is to recruit staff locally wherever possible.
8. A more detailed description of the process to be used in the proposed development is set out in the Environmental Statement accompanying the application, and a copy of the Non-Technical Summary of that Statement is set out at Appendix C.
9. As the development has *potential* for significant adverse impacts on the environment, as judged against the Town and Country Planning (Environmental Impact Assessment (England and Wales) Regulations and the location adjacent to part of the Teesmouth and Cleveland Coast Special

Protection Area (SPA), an **Environmental Impact Assessment (EIA)** has been submitted with the application.

10. Because the site is adjacent to the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site and as the proposed works are not directly related to the management of the site, at the request of English Nature, an “**appropriate assessment**” of implications of the development for conservation objections needs to be carried out **prior to any planning decision being made**. This assessment has to be carried by the Borough Council as the “competent authority”.

APPROPRIATE ASSESSMENT

11. The “Appropriate Assessment” has been drafted in accordance with the Habitat Regulations 1994. The scope of the assessment and the ecological matters considered follows that recommended by English Nature utilising additional information provided by the applicant’s ecological consultant. A copy of the Summary and Conclusions of that assessment is attached as Appendix C.

ENVIRONMENTAL IMPACT ASSESSMENT

12. The Environmental Impact Assessment process has been undertaken by the applicant to establish the extent to which **potentially** significant adverse effects on the environment are likely to arise. The scope of the Tees Valley Biofuels Environmental Impact Assessment has included the following areas of potentially significant environmental impact: geotechnical contamination and water quality, flood risk and site drainage, ecology and nature conservation, landscape and visual effects, archaeology and cultural heritage, traffic and transport, air quality, noise and vibration, socio-economics.
13. The Environmental Impact Assessment process undertaken for the Biofuels Plant has considered the value and importance of various key environmental receptors against the magnitude of change likely to arise from the proposals. This has enabled the identification of potentially significant impacts associated with the proposals. Where appropriate, specific measures to mitigate for potentially significant impacts have been identified. An assessment of any residual impacts has then been undertaken.

CONSULTATIONS

14. No response has been received to the development have been received from:

- Tees Valley Wildlife Trust
- Tees and Hartlepool Port Authority
- Northumbrian Water
- County Fire Officer
- Nuclear Directorate
- Royal Society for the Protection of Birds

15. English Nature **objects** to the development. It notes that the site lies within 1 km of the Seal Sands SSSI, and also forms part of the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site. It is concerned that the development has the potential to “likely have a significant effect” on the interest feature for which the site is internationally designated.

Accordingly, it has requested the planning authority to undertake an “**Appropriate Assessment**” in accordance with Habitat Regulations 1994 so that the ecological implications of the proposals can be assessed. Of particular concern are disturbance to feeding and roosting birds during construction and potential indirect effects on habitat extent and character, and noise disturbance to SPA bird populations using the Vopak land and foreshore to the east of the application site caused by piling. However, whilst an objection is lodged it would be withdrawn if it can be ascertained that the proposed development will not adversely affect the integrity of the SSSI or the SPA and Ramsar site. Furthermore, it is recommended that a detailed conservation plan is drawn up for the site, based on the general principles outline in Section 9.6 of the E.S. (Mitigation Measures)

16. The Environment Agency has no objections to the proposal subject to conditions in respect of finished floor levels, a flood evacuation plan, details of surface water drainage, (recommend SUDS), and bunded storage facilities
17. Countryside Agency has no objections to the proposal, commending the Environmental Statement. Further comment is made in respect of the use of the Landscape approach set out in ‘Landscape Character Assessment – guidance for England and Scotland’ 2002, published by the Countryside Agency and Scottish Natural Heritage. The Agency welcomes the approach used, and are pleased to see it reflect the contents of Countryside Character Volume No 1:North East.
18. The Head of Integrated Transport and Environmental Policy comments that the development can be accommodated on the highway network. However, details are requested in respect of accident analysis, the need for a 4.5 metre x 90 metre visibility splay, an amended junction/roundabout layout, a swept path analysis, amended travel plan and parking layout.
19. The Landscape Officer comments that the site is contained within an area of similar and associated heavy industry and comprises mainly of rough grassland, and that views into the site from surrounding areas are restricted by adjacent structures and as a result the development will have very little impact upon the surrounding area. On that basis, the Landscape Officer has no objections to the scheme subject to a condition in respect of hard and soft landscaping.
20. The Environmental Health Unit has no objections but recommends conditions in respect of possible land contamination, working hours and odour abatement.
21. Northern Gas Networks has no objection to the proposals
22. C E Electric UK has no objection to the proposals
23. CPRE welcomes this exciting new industry to this traditionally industrial zone, and hopes that this would be the first of many similar renewable developments, which can establish in the area. The location has long been a base for energy production so the existing access and service provision is ideally suited to this development.
24. The application has also been advertised on-site and in the press and affected landowners notified. No representations have been received as a result of this process.

PLANNING POLICY

National Planning Policy

25. National Planning policies are set out in Planning Policy Guidance Notes (PPG) and the newer Planning Policy Statements (PPS).

Particularly relevant to this application are:

- PPS 1 “Delivering Sustainable Development”
- PPG 4 “Industrial, Commercial Development and Small Firms”
- PPG 9 “Nature Conservation”
- PPG 13 “Transport”
- PPS 23 “Planning and Pollution Control”
- PPG 24 “Planning and Noise”
- PPG 25 “Development and Flood Risk”

26. Regard also has to be given to the emerging Regional Spatial Strategy

27. Section 54a of the Town and Country Planning Act 1990 states that all planning applications have to be determined in accordance with the Development Plan(s) for the area unless material considerations indicate otherwise. The development plan for the purposes of the application comprises the adopted Tees Valley Structure Plan 2004 and the adopted Stockton on Tees Local Plan 1997.

Tees Valley Structure Plan

28. The Tees Valley Structure Plan indicates the development is in an area broadly identified for potentially polluting or hazardous industrial development (Policy EMP 10).

29. Other relevant policies include:

- ENV4 which seeks protect for the SPA and Ramsar site
- ENV5, which seeks to protect SSSIs

Stockton Borough Local Plan

30. Policy GP1 is the general policy and sets out ten criteria that all development proposals need to be assessed against. These criteria are as follows: -

- The external appearance of the development and its relationship with the surrounding area.
- The effect on the amenities of the occupiers of nearby properties.
- The provision of satisfactory access and parking arrangements.
- The contribution of existing trees and landscape features.
- The need for a high standard of landscaping.
- The desire to reduce opportunities for crime.
- The intention to make development as accessible as possible to everyone.
- The quality, character and sensitivity of existing landscapes and buildings.
- The effect upon wildlife habitats.
- The effect upon public rights of way.

31. Policy IN5 of the adopted Stockton on Tees Local Plan permits within the Seal Sands area, potentially polluting or hazardous industrial uses provided they do not significantly affect neighbouring uses or discourage the development of adjacent sites.
32. Policy IN6 states that hazardous installations will normally be permitted on land at North Tees to the east of Seal Sands Branch Railway provided that they meet the criteria outline in policies (EN36 and EN 37)
33. Policy EN34 states that development will be permitted provided that:
 - The nature and extent of the contamination has been established,
 - The proposal will not add to the site's contamination,
 - Measures are included to reduce the hazard posed by contaminants to an acceptable level at which it can be maintained,
 - No significant adverse effect on the environment results from any disturbance of contaminants or their movement into surrounding ground during and after development.
34. Policy EN36 states that any new hazardous installations will only be permitted if:
 - a. It is on land identified in policies IN6 and IN7; and
 - b. It does not prejudice the development of adjacent land;
 - c. There is no increased hazard to existing residential areas, prestige industrial sites or any site attracting large numbers of people.
35. Policies EN 1(a) and EN 1(b) state proposals in or likely to affect a SSSI or European (SPA) or Ramsar site will be subject to a special and rigorous scrutiny and examination to safeguard their integrity. No development will be permitted that has a significant adverse effect unless the benefits outweigh the costs and no other sites are available.

MATERIAL PLANNING CONSIDERATIONS

36. In view of the of the location and nature of the development, planning policy and consultation responses, the main material planning considerations with this development are the principle of development, landscape and visual amenity, the likely impact on the local ecology given its location adjacent to Sites of Special Scientific Interest and the SPA, and access and highway safety.

Principle of Development

37. The site is allocated in the Local Plan as suitable for potentially polluting or hazardous industrial uses, provided that they do not significantly affect neighbouring uses or discourage the development of adjacent sites, and existing residential areas, prestige industrial sites or any site attracting large numbers of people. In principle, it is considered that the proposed development would be appropriately located on this site, but subject to the remaining individual environmental considerations set out below.

Landscape and Visual Impact

38. The site, albeit close to the River Tees, is within a landscape dominated by existing industrial features, and would not result in the loss of important

landscape features. The Landscape Officer raises no objection to the development and subject to a scheme for hard and soft landscaping it is considered that the proposed development would be acceptable in this respect.

Nature Conservation

39. English Nature (EN) has objected to the proposal concerned as the potential to damage the SPA and Ramsar site. EN, whilst objecting to the proposal has stated this objection would be withdrawn if it can be ascertained that the proposed development will not adversely affect the integrity of the SSSI or the SPA and Ramsar site. Of particular concern are disturbance to feeding and roosting birds during construction and potential indirect effects on habitat extent and character, and the impact of and noise disturbance to SPA bird populations using the Vopak land and foreshore to the east of the application site caused by piling operations. To establish the extent of the likely impact on these concerns, and as requested by both EN, an "Appropriate Assessment" has been drafted in accordance with the Habitat Regulations 1994. The scope of the assessment has followed that recommended by English Nature utilising additional information provided by the applicant's ecological consultant.
40. This assessment concludes that without mitigation there is the potential for adverse effects in terms of visual and noise disturbance on wintering bird populations associated with the Seal Sands SSSI, which is part of the Teesmouth and Cleveland Coast SPA. However, mitigation measures which involve screening and acoustic barrier fencing, timing of construction works at height, and the restriction on type and timing of piling operations are proposed and these are designed to limit the risk of disturbance to the SPA wintering bird populations, and that these could be implemented through a condition on planning permission granted for the proposals. These mitigation measures include avoidance of works during the period of greatest sensitivity screening to avoid disturbance to roosting waders and wildfowl on adjacent land, works at a height over 2 metres would be restricted to those months outside November to March and piling rigs either continuous flight auger or by avoiding the winter months.
41. Whilst, the response from English Nature to the assessment is awaited, it is considered that from the planning standpoint, adequate safeguards and mitigation measures can be secured by use of appropriate planning conditions to protect features of ecological importance, particularly timing of the works, sufficient to satisfy the concerns of both EN.

Access and Highway Safety

42. Access to the site is via the A1185 (Seal Sands Link Road) to A689 and to the A19. Highway use during the construction may be sporadic, however the site is likely to employ 150 construction workers and this level of vehicular movement may well have an adverse impact on the local highway network. In order to address this issue the applicant envisages that each contractor and the site operators produce a Travel Plan to ensure that travel to work is undertaken in a sustainable manner. This detail can be secured by condition. However, highway matters including design details are outstanding and therefore a full assessment in respect is not possible at this time.

Residual Matters

Working hours and Odour Abatement

43. The Environmental Health Unit has requested the imposition of conditions, which would limit the construction working hours and a scheme for odour abatement. Given that Seal Sands is an existing industrial estate where businesses typically operate on a twenty-four hour basis, it is not considered reasonable or necessary to impose such a restriction. Furthermore, a scheme for odour abatement would be required, implemented and monitored by the Environment Agency under the Integrated Pollution Prevention and Control regime.

CONCLUSION

44. This application potentially represents a conflict of the needs of industry against possible damage to areas of national and international ecological interest. However, it should be recognised that any disturbance to roosting birds will be very short-term, and the works designed and timed to avoid critical nesting periods and general disturbance. Mitigation measures are proposed, and can be controlled by planning conditions. Accordingly, notwithstanding the final views of English Nature, Head of Integrated Transport and Environmental Policy and RSPB have not yet been received; it is considered the proposed development is acceptable in this location with no identified adverse impact on the environment or visual amenities. Therefore, approval is recommended subject to appropriate conditions, that no new material planning issues are raised by RSPB, a resolution of the issues raised by the Head of Integrated Transport and Environmental Policy, and the objection from English Nature being withdrawn

Director of Development & Neighbourhood Services

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Financial Implications:

None

Environmental Implications:

See report

Human Rights Implications

The provisions of the European Convention of Human Rights 1950 have been taken into account in the preparation of this report.

Community Safety Implications

None

Background Papers:

Application file: 06/1918/EIS

Ward and Ward Councillors:

Billingham South Councillor J O'Donnell & Councillor M Smith