

DELEGATED

AGENDA NO.

REPORT TO PLANNING COMMITTEE

25 April 2007

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

07/0388/FUL

**Land at Seal Sands, Stockton-on-Tees,
Application under section 36 of the Electricity Act 1989 for consent to construct
and operate a natural gas fired combined cycle gas turbine Power Station and
associated substation**

Expiry Date 22nd May 2007

SUMMARY

Stockton Borough Council has been consulted as the local planning authority on an application to the Secretary of State for Trade and Industry under Section 36 of the Electricity Act 1989 for deemed consent to construct and operate a natural gas fired combined cycle gas turbine power station and associated substation on land forming part of Reclamation Pond at Seal Sands. The generating plant will provide 1020MW of electricity as well as steam for local industry. Any generating station over 50MW falls to the Secretary of State to grant consent though the views of the local planning authority must first be sought and if it objects a public inquiry must be held.

The application is supported by a formal Environmental Impact Assessment (EIA) carried out by independent consultants as well as a Design and Access Statement and a Planning support document.

Permission has been previously been granted in 2004 by the Council to reclaim the site for industry, including energy related uses, in accordance with the a Memorandum of Agreement signed in 1996 by ICI C&P Limited, English Nature, Cleveland Wildlife Trust, RSPB, Teesside Development Corporation, and Stockton on Tees Borough Council. However, the reclamation works cannot commence until compensatory measures have been implemented including a replacement pond at Port Clarence and open water bodies at Cowpen Landfill site as well a protective bund to the adjacent Dormans Pool which is a Site of Special Scientific Interest.

The principle of the development is acceptable but objections have been submitted direct to the DTI from RSPB and Teesmouth Bird club. They are concerned about the premature loss of the Reclamation Pond as well as perceived failings in the EIA. The loss of the open water with Reclamation Pond for what it considers unnecessary development (lay down area for construction purposes) is viewed by these two organisations as a potential breach of the Seal Sands Agreement

With regard to the ecological issues, this is a matter for the DTI as the competent authority to determine whether the impact on the surrounding SPA has been properly and fully assessed. However, it is considered that the principle development can come forward on the site once compensation measures are in place has not been breached.

Notwithstanding the concerns raised by RSPB and the Teesmouth Bird club, it is considered, the DTI should be informed that Stockton on Tees Borough Council as the local planning authority does not object to the development subject to appropriate planning conditions to safeguard the surrounding natural environment including that no development shall commence until all the conditions attached to permission 01/2203/P have been discharged to the LPA's satisfaction and the requirements of the accompanying Section 106 complied with. In addition appropriate conditions should be imposed to control matters such as full provision of other mitigation measures, facing materials, means of enclosure, piling, plant noise protection etc.

RECOMMENDATION

It is recommended that the Secretary of State for Trade and Industry be informed that Stockton on Tees Borough Council as the Local Planning Authority has no objection to the development subject to the imposition of appropriate planning controls in respect of the following matters:

- ***No development shall commence until all the conditions precedent attached to permission 01/2203/P have been discharged to Local Planning Authority's satisfaction.***
- ***The relevant requirements of the section 106 agreement accompanying permission 01/2203/P have been met***
- ***Development to be carried out in full accordance with the mitigation measures specified in the Environmental Statement accompanying the application.***
- ***Conditions are attached in respect of agreement over finishing materials for plant and buildings; travel survey of employees mode of transport carried out within 3 months of the site becoming operational; means of enclosure; method of piling; bird monitoring, plant noise protection measures and surface treatment***

BACKGROUND

Legal

1. Section 36 of the Electricity Act 1989 states that a generating station above 50 megawatts may not be constructed, extended or operated in England and Wales except in accordance with a consent granted by the Secretary of State for Energy (now Department of Trade Industry - DTI). However, the proposed developer is required to seek the views of the local planning authority (LPA) sending all the relevant documentation (plans etc) to the LPA at the same time as seeking a grant of deemed approval from the Secretary of State.

2. In addition, as in this case, if the development requires a formal EIA the applicant is also required to consult Natural England (formerly English Nature) and the Environment Agency.
3. On receipt of its copy of the application the LPA is required to carry out the normal statutory consultations other than those already undertaken by the applicant.
4. Publicity (newspaper advert and site notice) is carried out by the applicant.
5. If LPA objects to the development these views are required to be passed direct to the DTI and the Secretary of State must hold a public inquiry. Other comments are simply forwarded to the applicant utilising Form B as set out in the relevant regulations who is then required to forward the form onto the DTI.
6. The Secretary of State cannot grant deemed planning consent unless the LPA has had the opportunity to comment.

Site Description

7. The site is located within the Seal Sands area and comprises approximately 10.4 hectares of vacant reclaimed industrial land lying approximately 500m west of the North Tees Works oil refinery now operated by the Saudi Basic Industries Corporation (SABIC), (formerly owned by Huntsman).
8. The site currently consists of uneven ground resulting from disposal over time of slag from nearby industrial facilities. Historical data indicate that the site was part of the Tees Estuary until the early part of the 20th Century when it was reclaimed.
9. There are no residential settlements within 1 km of the site. The Port Clarence residential area is approximately 2 km to the south-west.

Planning History

10. In 1996 a Memorandum of Agreement was signed by ICI C&P Limited, English Nature, Cleveland Wildlife Trust, RSPB, Teesside Development Corporation, and Stockton on Tees Borough Council concerning the future development of Reclamation Pond for industrial use. The Agreement arose out of the Stockton on Tees Local Plan public inquiry and its signatories are, in effect, committed to not opposing a planning application by ICI to make Reclamation Pond available for appropriate industrial development, subject to appropriate compensation measures.
11. The proposed development site forms part of Reclamation Pond an area of land and industrial reservoir located north of Huntsman drive and adjacent to North Tees Works. Planning permission was issued in January 2004 (01/2203/P) to reclaim the area for industrial use, including potentially hazardous or energy related in accord with the 1996 agreement. The whole site extends to some 66ha and the permission also included the creation of a new wetland habitat on 12 ha of land south of the Petroplus Depot, Seaton Carew Road.

12. The permission recognised that the application site is within an area identified as suitable for industrial development, including potentially hazardous and polluting industry, and major energy developments, in the development plan. The site was also of local nature conservation importance as an area that has important numbers of birds and had dual allocation in the local plan as a Site of Nature Conservation Importance. It was reflecting this dual use that the Memorandum of Agreement was signed in 1996.
13. In view of the scale of the proposal and the location of Reclamation Pond adjacent to part of the Teesmouth and Cleveland Coast Special Protection Area (SPA), an **Environmental Impact Assessment (EIA)** had been submitted with the 2001 application. The EIA concluded that the reclamation process would have no adverse impact upon the general population or other man-made features of Teesside. Positive benefits are identified to the local economy and local employment opportunities resulting from the eventual development of Reclamation Pond for industrial use.
14. It was recognised that one of the major impacts of the development would be upon the ornithological interest of Reclamation Pond and its surroundings. Objections to the development had been received from the Teesmouth Bird Club and the Durham Bird Club and concerns raised by English Nature. To satisfy these concerns the scheme was amended to tie in with the approved re-profiling of the Cowpen landfill scheme (application 02/1609/P), which includes the provision of a number of additional wetland areas. This provided further compensatory habitats for the loss of Reclamation Ponds. The EIA, as amended considered that the creation of new permanent wetland habitats and facilities (which would be known as Port Clarence Pool), south of the Petroplus Depot, the inclusion of the new Cowpen wetland areas and securing the long term future of Dorman's Pool (which is part of the SPA and adjoins Reclamation Pond) solely for nature conservation purposes, wholly mitigates the loss of Reclamation Pond and creates a long term wildlife and conservation gain.
15. In granting approval in 2004 for the reclamation the Council accepted that from the planning standpoint, whilst the loss of Reclamation Pond as nature conservation area is regrettable, the provision of Port Clarence Pool and the Cowpen wetland areas are an adequate compensation measure. It recognised that the land was always intended for use for new industry and its ultimate development for this use would have important economic benefits for the area. Other mitigation measures ensured the protection of Dorman's Pool.
16. Because the site was adjacent to the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site and as the proposed works were not directly related to the management of the site an "**appropriate assessment**" of implications of the development for conservation objections also had been carried out by the Borough Council as the "competent authority". This assessment determined the proposed development without the proposed mitigation measure is likely to have a significant effect on the integrity of the SPA but the integrity can be secured by the implementation of the mitigation imposed by means of both conditions attached to the planning permission and a **Section 106 legal agreement**. The 106 agreement included the following measures:

- Phasing of works to ensure the maintenance of the ecological integrity of the reclamation Pond as long as possible
- Completion of the agreed mitigation works including the provision of new wetland habitats at the Cowpen Landfill site
- Ownership of both Dorman's Pool and the new Port Clarence Pool to be transferred to an appropriate Conservation Body, and shall not be developed or used for any purpose other than wildlife habitat.
- Further that work on reclaiming Reclamation Pond to industry shall not be commenced until the work on the replacement Port Clarence Pool has been substantially completed to the satisfaction of Stockton Borough Council.

17. The current application is sited within the Phase 1 area on a section which is not part of the open water area but the applicant states it has the option to use other land in Phase 1 and Phase 2 for a lay down area during construction. The application and its supporting Environmental Impact Assessment (EIA) assumes that the requirements of the Permissions 01/2203/P (Reclamation Pond) & 02/1609/P (Cowpen Landfill) in terms of planning conditions and the 106 agreement have been fully and satisfactorily met as it recognises no development can commence on the site until these works have been implemented.

THE PROPOSAL

18. The proposal is for consent to construct and operate a natural gas fired combined cycle gas turbine power station and associated substation. The power station will provide steam to local industry (up to 300t/hr of process steam) and provide electricity for export to customers on the national grid via the existing overhead lines located adjacent to the northern boundary of the site.

19. The plant will comprise two natural gas fired turbines with associated heat recovery steam generators and one steam turbine. A gas insulated substation, to be constructed and owned by National grid will connect the plant to the National grid transmission network. It will generate 1,020 MW of electricity and is aimed at helping fill the 'generation gap' associated with the future closure of UK coal, oil and nuclear power stations and the predicted growth in electricity demand. It will operate primarily on natural gas fed by a short pipeline link connection to an existing pipeline located to the north. However, it will have the option to operate on propane in times of heavy demand.

20. The cogeneration plant will generate steam and electricity using Combined Cycle Gas Turbine technology, which it is claimed is a highly efficient means of generating electricity compared with other forms of fuel combustion, due, primarily, to the combination of both a gas turbine and a steam turbine. It is further stated the use of the latest gas turbine technology will allow the plant to achieve an efficiency of about 58%. This compares with an efficiency of about 35% achieved by a coal-fired power station.

21. An air cooled condenser has been chosen as the means of cooling the facility as it:

- avoids the need for large quantities of water for cooling purposes;
 - minimises the quantity of chemicals consumed as a result of water treatment;
 - reduces the quantity of waste water arising and requiring disposal;
 - avoids the generation of 'clouds' (plumes) of visible water vapour otherwise frequently associated with cooling towers; and
 - avoids the need for the abstraction of water from, and discharge to, the River
22. As well as the main plant and sub station ancillary works include an Administrative building, Control Room, Maintenance workshop, stores building, gatehouse and car parking outside of the main site. The highest structure will exhaust stacks standing 75m above ground level.
23. The construction and commissioning of the power station is expected to take 26 months. During the construction period, up to 31 hectares of land will be required for lay down (the short-term storage and fabrication activities required for building the plant), and car parking for construction workers.
24. The development will provide approximately 1000 construction and 60 permanent jobs.
25. Access to the site will be via a private road known as Huntsman Drive, which serves the existing oil refinery and chemicals works. Huntsman Drive is accessed from the A178. A second point of access for emergency services will be provided to the north of the site
26. A design and access statement, planning background document and a formal EIA, supports the application.

THE ENVIRONMENTAL IMPACT ASSESSMENT

27. The EIA examines the potential environmental effects expected during the building and running of the power station as well the need for the development and the appropriateness of the selected site.
28. The assessment studies:
- Air Quality
 - Ecology
 - Water Resources
 - Landscape and Visual Issues
 - Noise
 - Traffic
 - Geology, Soils and Hydrogeology
 - Archaeological Features
29. Following the assessment of these issues a number of mitigation measures are proposed.

- The plant will incorporate an air cooled condenser thereby avoiding the use and subsequent discharge of large quantities of water and chemicals associated with conventional power plant cooling techniques. Potential impacts on the nature conservation interest and water quality of the Tees Estuary are also avoided via the use of an air cooled condenser.
- Measures will be developed, in association with Natural England (previously English Nature) and the Royal Society for the Protection of Birds (RSPB) to minimise construction disturbance to Dorman's Pools and the birds that use them. In particular, a four metre bund will be installed between the site and Dorman's Pools by the landowner, prior to the commencement of construction, to act as a screen and minimise potential disturbance to birds. Environmental awareness training will be provided to construction and operational staff. Bird monitoring will be undertaken throughout construction and at least the first year of operation to assess the effect of the development on local bird numbers and activities.
- Noisy items of plant will be housed in sound-proof enclosures to reduce noise levels to acceptable levels.
- A Green Traffic Plan will be implemented during the construction phase to minimise the potential for inconvenience to existing road users.

30. The impacts predicted to remain after the adoption of mitigation measures, are summarised as follows:

Impacts on the Local Community

- Significant positive impacts on the regional employment market and local economy, due to the recruitment of approximately 1,000 construction workers and 60 operational staff, and the effects of maintenance and service contracts let to local businesses.
- The development is expected to have wider, indirect effects associated with the provision of steam and electricity. This will benefit existing industry which will be supplied by the plant and facilitate new industrial development by companies attracted by the supply of such local services.
- The proposed development is located within an established industrial area thereby minimising the potential for significant impacts on landscape resources.
- Visual impacts will be experienced by residents of Port Clarence.
- Air quality limits and objectives, designed to protect human health, will not be exceeded as a result of the operation of the cogeneration plant.
- There will be no sources of odour associated with the construction or operation of the cogeneration plant.
- No effects on local residents are predicted to result from dust generated by construction.

- The construction and operation of the proposed cogeneration plant is not predicted to result in noise impacts to residential receptors.
- There is no significant impact on the surrounding transport network due to the cogeneration plant during operation. Mitigation measures will minimise the potential for short-term impacts to users of the local road network during the construction phase.

Impacts on the Natural Environment

- The design of the cogeneration plant has been developed to minimise the potential for impacts to water resources associated with the operation of the facility. In particular, the plant incorporates an air cooled condenser thereby minimising the quantity of water required and the resulting quantity of discharges. In particular, there will be no impacts to the Tees Estuary as there will be no need to abstract water from, or discharge to, the watercourse.
 - Mitigation measures will be adopted during construction and operation to minimise the potential for impacts to Dorman's Pools, to the west of the site, as a result of the accidental loss of potentially-polluting substances (e.g. oils, lubricants and chemicals).
 - The installation of a four meter bund, by the landowner, prior to commencement of construction, will act as a shield to birds using the adjacent Dorman's Pools and minimise disturbance. A construction code of practice will be developed in association with Natural England and the RSPB and implemented to further minimise the potential for construction impacts to birds. Bird and noise monitoring will be undertaken throughout construction and for at least the first year of operation.
31. The EIA concludes that the range of mitigation measures incorporated, at the design, construction and operation stages, to minimise potential environmental impacts, particularly construction-related disturbance to birds using Dorman's Pools will ensure that environmental management initiatives are maintained and will be subject to ongoing and continuous improvement.

DESIGN AND ACCESS STATEMENT

32. The Design and Access Statement (DAS) sets out the design principles and concepts with operating efficiency and Environmental impact being the two of the main design considerations. The proposed layout for the site shows 6.24 ha (15 acres) will be utilized for the main buildings with the remaining 4.16 ha (10 acres) retained for lay down and maintenance. The layout allows for safe pedestrian vehicle access with orientation of buildings and plant selected to allow the cooling system to benefit most from the prevalent wind direction which will help maintain high plant operating efficiency.
33. In an attempt ensure the impact on the skyline is kept to a minimum horizontal boilers have been selected in preference to vertical ones to minimize the height of the main turbine building. The highest parts of the development are the 75m

exhaust stacks, which have been designed in order to minimize potential for impact from emissions – principally oxides of nitrogen – on nearby wildlife sites.

34. It is acknowledged that the development will change the character of the site, which is currently open and undeveloped. However, no notable landscape features will be lost.
35. The statement also sets out the pre-applications consultations carried including with the DTI, National Grid Company, Environment Agency, the local planning authority, RSPB, Teesmouth Bird Club and INCA. It also states specialist consultants, Envest and Gair Consulting, have been commissioned to prepare an independent Environmental Statement for submission to the DTI.
36. Following the discussions with RSPB the applicant has promised that Bird monitoring will take place to confirm impact predictions and if necessary provide an informed basis for any required changes to construction practices. The discussions with the Bird club revealed that associated construction noise disturbance to bird life was their primary concern. Accordingly the DAS states that silent piling along with other noise abatement techniques are to be used.

Planning Background Document

37. This document provides a stand-alone summary of the planning history, background and land provisions relating to the scheme and the arrangements in place between the landowner and the applicant.
38. In respect of the planning history of the site it specifically refers to the planning conditions attached to the approved scheme for the reclamation of “Reclamation Pond” and in particular that the development would be phased (4 phases). The first three phases should not commence until the mitigating works at Port Clarence Pool had been completed and that the fourth and final phase should not be commenced until water bodies at the Cowpen Bewley site had been completed. Other condition relating to the need for bunding and landscaping on the eastern boundary to Dormans Pool, and monthly bird counts are also referred to as well the section 106 agreement (see above).
39. The co- generation plant is located within Phase 1 with an option for lay down areas to extend into Phase 2. However, the applicant recognizes that that its proposal cannot be implemented until all the relevant conditions attached to the reclamation approval and the requirement of the 106 agreement have been fully and satisfactorily implemented. In order to ensure this, the applicant has secured the right to enable it to perform all the necessary works to allow construction to commence.

THE CONSULTATIONS

40. One NorthEast comments that:

“Providing a clean, secure and stable energy supply is presently a key challenge and a key opportunity for the region’s economy. Efficient use of low carbon energy is the key policy driver that the Agency is promoting through its plans and programmes ... the

Agency is currently working alongside regional stakeholders and other RDAs to assist and influence the Government during their Review of National Energy Policy. It is hoped that the regime in support of renewable energy will continue, allowing the North East to continue demonstrating its support for renewable and low carbon technology development and deployment. In the context of the above One NorthEast is fully supportive of the application.”

41. Head of Technical Services comments:

“I have no objection to the application, however section 11.3 of the Traffic Assessment requires a more appropriate form of wording to ensure that HGV's are directed not to travel through the Clarence's.

The Green travel plan for the above plant meets requirements. However a condition should be imposed that a travel survey of employee's mode of transport should be carried out within 3 months of the plant becoming operational, and forwarded for consideration.”

42. Environmental Health Unit

“I have examined the Environmental Statement which accompanies the application and it would appear that this document adequately addresses all the areas of potential concern on this application. I have therefore no objection to this application.”

43. Northern Gas Networks and NEDL have no objections

44. Environment Project Manager, Development and Regeneration and Northumbrian Water Limited, have not responded.

PUBLICITY

45. Publicity has carried out by the applicant which included newspaper advert, site notice, depositing copies of the submission for public viewing in Stockton central Library and Middlesbrough Central library and a public consultation event held at New Life Resource and Conference Centre on Low Grange Avenue in Billingham last month (2nd March). In addition the Council has also advertised the proposal and notified neighbours.

46. As result of this publicity James Henderson of 1 Nunthorpe Gardens' Middlesbrough has commented by email that “this site is adjacent to an environmentally sensitive area and it is inconceivable that no assessment of its impact has been carried out”.

47. In addition the Council has been copied in on representations made direct to the DTI from the Royal Society for the Protection of Birds (RSPB) and the Tees Mouth Bird Club.

48. The RSPB objects to the application on the basis that that it considers the applicant has not provided sufficient information to enable the DTI to carry out a thorough “Appropriate Assessment” under the Habitat Regulations of the impacts of the development on the Teesmouth and Cleveland Coast Special Protection Area (SPA). Also it believes that the assessment of impacts on the Tees & Hartlepool Foreshore and Wetlands Site of Special Scientific Interest (SSSI) is inadequate. Detailed comments are made and are summarised as follows:

- *“Potential breach of the North Tees Agreement*
- *Inadequate survey effort: limitations of survey methodology used to assess impacts*
- *Inadequate assessment of impacts on the SPA, including failure to carry out an in-combination assessment*
- *Inadequate assessment of impacts on the SSSI breeding bird assemblage”*

49. The Teesmouth Bird Club lodges a similar objection and believes the applicant and its environment consultant have:

- *“inadequately assessed the potential environmental impacts on the adjacent SPA and some elements of the ES are dismissive, superficial or inaccurate;*
- *not carried out a comprehensive assessment of the likely impacts on Reclamation Pond; a nationally important ornithological site, which contains Schedule 1 bird species and nationally threatened, protected Water Voles;*
- *included in the application a huge 31 hectare, temporary “lay-down area”, which will destroy part of the Reclamation Pond, for which there has been no assessment of the environmental impacts; we believe that this is a violation of both the ‘North Tees Agreement’ and Stockton on Tees Borough Council’s ‘Local Plan’;*
- *not considered adequate mitigation measures, which reflect the nature and scale of the development.”*

PLANNING POLICY CONSIDERATIONS

National Planning Policy

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

51. 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”

52. In addition to supplementary planning guidance, the Government Energy White Paper: Our Energy Future - Creating a Low Carbon Economy (2003) is also relevant.

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

54. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. In

this case the relevant Development Plans are the Tees Valley Structure Plan 2004 and the Stockton Borough Local Plan 1997.

Tees Valley Structure Plan

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

56. Policy EN1 which requires major non renewable energy developments to be normally located on land identified for potentially polluting or hazardous industry subject to impact on areas of ecological value, particularly nationally important sites.

57. Other relevant policies include:

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

Stockton Borough Local Plan

58. 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: -

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

59. Policy IN 5 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.

60. Policy EN5 states that development on land adjoining the North Tees works that is likely to have an adverse effect upon the Sites of Nature Conservation Importance will only be permitted if appropriate compensatory measures are provided.

61. Policies EN 1(a) and EN 1(b) states 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

62. In light of the consultation responses, ecological and ornithological concerns raised, planning policy and the planning history of the site, a number of planning issues are considered material to the consideration of this application.

Planning Policy

63. The planning permission granted in 2004 followed on from the 1996 Memorandum of Agreement which established the principle that the site is appropriate for the industrial development including potentially polluting and hazardous industry, and major energy developments. This itself follows from the reclamation works on the north bank of the Tees started in the 1920's to create land for industrial purposes. For unknown reasons it was not completed in this area and whilst the site was left in an unfinished and degraded condition it became an area attractive to birds visiting other pools in the area. Its 'dual designation' in the local plan for both industrial development and nature conservation both reflects this historical development and seeks to ensure that the site can remain as an environmental and ecological asset until such time as development is required. The 2004 permission reflects that need with its requirement that no reclamation works shall commence until the agreed mitigation measures have been fully implemented in line with both the planning conditions and the section 106 agreement as well as the earlier Memorandum of Agreement.

64. Both the RSPB (which was a signatory to 1996 agreement) and the Teesmouth Bird Club have raised concerns of a potential breach of this agreement. The RSPB's concern is primarily with the lay down area (an area of up to 31 acres) and that the applicant should have examined alternative locations and/or practices that would allow the development to proceed without filling in the water areas as the actual development site does not require this to happen. It is concerned that the site is being reclaimed earlier than it needs to be for what is a temporary use and considers alternative sites should have been examined first.

65. Teesmouth Bird Club which objected to the permission granted in 2004 to infill Reclamation Ponds, raises similar concerns to RSPB adding also that it is in conflict with the local plan which states nature conservation interests must be taken into account by developers. It considers that the EIA by failing to properly take account of such matters on the basis that Reclamation Pond will be infilled by the time development commences is nonsensical. It adds also concerns about contaminants on this site being disturbed by the infilling and that the site contains protected species.

66. Noting the concerns raised, it also has to be recognised that no infilling of the site to allow the construction of the Co-generation plant can place until the mitigation measures – new Port Clarence Pool, new water bodies at Cowpen landfill site and the provision of a protecting bund to Dormans Pool has been provided. The ornithological and general ecological concerns were also fully examined in the

previous application which took nearly two years to secure English Nature's (now Natural England) agreement. That included carrying out by Stockton on Tees Borough Council as the 'Competent Authority' an Appropriate Assessment under the Habitat Regulations.

67. Other ecological issues are discussed below.

Ecological Implications

68. Both the RSPB and Teesmouth Bird Club in their objections to the DTI raise more general ecological issues focussing on what it considers to be failings in the ecological assessment included in the EIA. As noted above the ecological issues in respect of the infilling a Reclamation Pond were fully and comprehensively examined at the time the application was determined. Ultimately Natural England as the statutory body withdrew any objections it had to the development subject to the implementation of the necessary mitigation measures. The implementation of these measures is secured both by planning conditions and a section 106 agreement that has to be fully complied with before the reclamation works commence.

69. Nevertheless, it is recognised that the development now proposed will have an impact on the surrounding SPA outside of Reclamation Pond and the application needs to fully address those issues and concerns. The EIA goes into some detail with regard to these matters and proposes a series of mitigation measures including minimising the impact through the layout, design and use of modern technology. It will, however, be a matter for the DTI, as the competent authority and not Stockton on Tees Borough Council, to ensure an Appropriate Assessment under the Habitat Regulations is prepared and be satisfied that the development will not cause unreasonable damage to ecological interests. In this it will be advised by Natural England.

70. The one objection from a member of the public is not agreed. The EIA and its Environmental Statement provides a detailed assessment of the impact on the adjacent environmentally sensitive area. However, if his concern is about the lack of an assessment of the impact on Reclamation Ponds, that matter is discussed earlier in this report.

Need for the development

71. It is recognised that over the next 20 years, the UK will need substantial investment in new power stations to replace out dated and high carbon emitting coal power stations with about 1/3 having to close by 2015 as a result of European Union (EU) environmental legislation. Furthermore, approximately 10 gigawatts (GW) of the UK's nuclear power stations will close by 2023 as they come to the end of their lifetimes.

72. The UK is predicted to require approximately 25 GW of new electricity generation capacity by 2025 to fill this so-called 'generation gap' and to meet expected growth in electricity demand. This is equivalent to over 30 % of the current capacity. New power stations are therefore required to come on stream in a manner consistent with the expected closure of coal and nuclear power stations to enable the supply of electricity to meet requirements during times of very high

demand. The applicant argues that its plant would be a significant new electricity generation source, generating approximately 1,020 MW of electricity. The development will help fill the 'generation gap' associated with the future closure of UK coal, oil and nuclear power stations and the predicted growth in electricity demand.

73. As One NorthEast notes that providing a clean, secure and stable energy supply is a key challenge and a key opportunity for the regions economy. The government's strategy set out in the Energy White 2003 for creating a low carbon economy recognises the need to update much of the country's energy infrastructure as well as promoting the benefits of combined heating and power and highlighting their efficiency advantages.
74. The development now proposed will help to meet the generation gap and the demand for cleaner and more efficient energy production.

Other matters

75. Matters such noise protection, travel surveys, details of building materials, means of enclosure etc are normally controlled by planning conditions and it would be expected that the DTI in granting any approval to condition the development appropriately.
76. Flood risk is dealt with in the submission by noting the site will be reclaimed in accordance with the existing permission to provide a development platform 6.1m AOD which is above the Environment Agency's requirement. The applicant as required by the Regulations has consulted the Agency separately and it will be responding directly to the DTI. The Agency will further advise on the need for a separate permit from the EA and that the plant must incorporate Best Available Techniques (BAT) to control emissions and maximise the efficient use of raw materials and energy.

CONCLUSIONS

77. This application potentially represents a conflict of the needs of industry and the national energy economy against possible damage to areas of national and international ecological interest. The concerns raised by RSPB and the Teesmouth Bird Club about the infilling of Reclamation Pond are understandable. However, it should be recognised that permission has already been granted for the infilling of the area to allow it to be redeveloped for such uses as now proposed. Furthermore, infilling cannot commence until extensive compensatory measures have already been provided. The applicant is fully aware of those requirements. The only issue is whether it is premature to do so for the open water areas given that the plant itself is on part of the area (though within the original planning permission site) that is dry land. Primarily the reclaimed water areas would be used potentially as a lay down area.
78. The principle behind reclaiming the land is that the open water areas are retained doe a long a physically possible. Nevertheless, at some point in the future the land will be in filled when required for new industry and on the basis that replacement open water areas have been provided. Work has already started on

that provision in the Cowpen Landfill area. It is the applicant's argument that the land is required for a use important to the national economy but that construction will not commence until the previously agreed compensation measures are in place. Given this background the principle of the proposed development is acceptable.

79. With regard to the other ecological issues, this is a matter for the DTI as the competent authority to determine whether the impact on the surrounding SPA has been properly and fully assessed. In light of past proposals in the Seal Sands area it has usually been the case that following extensive negotiations with the statutory body, Natural England, adequate mitigation measures are agreed which will allow the development to go forward. It is expected that this should be possible in this case particularly as the site has always been identified for such uses.

80. Accordingly, on balance it is considered that the development is acceptable, notwithstanding the concerns raised by RSPB and the Teesmouth Bird club. Accordingly the DTI should be informed that Stockton on Tees Borough Council as the local planning authority does not object to the development subject to appropriate planning conditions to safeguard the surrounding natural environment including that no development shall commence until all the conditions attached to permission 01/2203/P have been discharged to the LPA's satisfaction and the requirements of the accompanying Section 106 complied with. In addition appropriate conditions should be imposed to control matters such as full provision of other mitigation measures, facing materials, means of enclosure, piling, plant noise protection etc.

Director of Neighbourhood Services and Development

Contact Officer: Peter Whaley - Telephone No. 01642 526061

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

The provisions of Section 17 of the Crime and Disorder Act 1998 have been taken into account in the preparation of this report.

Background Papers:

Application files: 01/2203/P, 02/1609/P & 07/0388/FUL

Ward and Ward Councillors:

Ward	Billingham South
Ward Councillors	Councillors M Smith and Mrs J O'Donnell