

**DELEGATED**

**AGENDA NO  
PLANNING COMMITTEE  
21<sup>ST</sup> OCTOBER, 2020  
REPORT OF DIRECTOR OF FINANCE,  
DEVELOPMENT & BUSINESS SERVICES  
AGENDA NO**

**20/0625/VARY**

**Land North West Of National Grid Site; Cowpen Bewley Road; Billingham  
Section 73 application to vary conditions 2 (plans), 3 (materials and colours), 4 (levels), 5  
(SUDs), 9 (landscaping softworks), 10 (maintenance softworks), 13 (noise) of planning  
approval 18/2079/FUL.  
Expiry Date 23 October 2020**

**SUMMARY**

Planning permission is sought to vary some of the conditions on application 18/2079/FUL which was given approval for a gas fired generating facility (GFGF) for the generation of 49.99MW electricity to facilitate regional distribution during generation shortfall and to meet peak supply demands.

The principle of development has been accepted and therefore only the proposed revisions can be considered.

A number of objections have been received and additional technical information supplied in relation to noise. All documents and comments have been considered in full and the application is recommended for approval subject to conditions.

**RECOMMENDATION**

**That planning application 20/0625/VARY be approved subject to the following conditions and informatives;**

**01 Approved Plans**

The development hereby approved shall be in accordance with the following approved plan(s);

SL195_L_X_ELEV_1_REV B	12 October 2020
GP-WT_01_REV A	23 September 2020
1001 P4	17 March 2020
290_PPS_01	17 March 2020
290_SSC_02	17 March 2020
290_SSDP_02 REV B	12 October 2020
SL195_L_X_MP_3	17 March 2020
SL204_L_X_ELEV_2	17 March 2020
SL204_L_X_ELEV_3	17 March 2020
SL204_L_X_ELEV_4	17 March 2020
SL204_L_X_ELEV_5	17 March 2020
1176-SALT-CI-L-003 REV 5	11 May 2020
E-18091000-M-0201-00X	11 May 2020
SL195_L_1_VEH (APPROVED UNDER 18/2079/FUL)	
GP_PF_02 (APPROVED UNDER 18/2079/FUL)	
GP_EG_03 (APPROVED UNDER 18/2079/FUL)	
SL_195_L_X_LP_2 (APPROVED UNDER 18/2079/FUL)	

Reason: To define the consent.

## **02. Sustainable Surface Water Drainage Scheme**

The scheme shall be implemented and thereafter managed and maintained in accordance with the submitted management plan received by the local planning authority on the 28<sup>th</sup> September 2020.

Reason: To ensure the site is developed in a manner that will not increase the risk of surface water flooding to site or surrounding area.

## **03 Ecology**

The development shall be carried out in accordance with the recommendations set out at Section 5 of the Ecological Survey carried out by Naturally Wild (Ref SE-18-02) dated August 2018 and the Habitats Risk Assessment (project number: sec8481) dated 18 December 2018, unless updated by the Shadow Habitat Regulations Assessment Addendum (sec8481) (v2) final dated 08 July 2019; as submitted with application 18/2079/FUL . In particular;

o the cable connection works to the sub-station shall be undertaken outside of the over-wintering period as detailed in the submitted Shadow Habitats Regulations Assessment (HRA) Addendum

Reason: To ensure that the development does not have an adverse impact on protected species and wildlife.

## **04. Construction Environmental Management Plan (CEMP)**

Works shall be undertaken in accordance with the Construction Environmental Management Plan (CEMP) and associated reports as approved in writing by the Local Planning Authority under application reference 19/0187/DCH.

Reason: To ensure that the development does not have an adverse impact on protected species and wildlife.

## **05. Habitat Management, Mitigation and Enhancement Plan (HMMEP)**

Works shall be undertaken in accordance with the Habitat Management, Mitigation and Enhancement Plan (HMMEP) approved in writing by the Local Planning Authority under application reference 19/2356/DCH. The Biodiversity enhancement measures set out in the approved plan shall be implemented and maintained unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not have an adverse impact on protected species and wildlife.

## **06 Maintenance Softworks**

Planting works shall be undertaken in accordance with the approved landscaping plans. Any vegetation within a period of 5 years from the date of from the date of completion of the total works that is dying, damaged, diseased or in the opinion of the local planning authority is failing to thrive shall be replaced by the same species of a size at least equal to that of the adjacent successful planting in the next planting season.

Reason: To ensure satisfactory landscaping to improve the appearance of the site in the interests of visual amenity.

## **07 Assessment of a heritage asset through a programme of archaeological works**

A) No development shall take place other than in accordance with the Written Scheme of Investigation as approved under application 20/0183/DCH.

B) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

Reason: To determine the presence and significance of any heritage assets within the site.

**08 Construction Traffic Management Plan**

Work shall be undertaken in accordance with the submitted Construction Traffic Management Plan accompanying the application 18/2079/FUL; dated September 2018 (Project Ref: Saltholme South CTMP) unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of pedestrian and highway safety and to ensure the free flow of traffic.

**09 Control of noise during operational phase**

Within 28 days of the site becoming operational; a validation report regarding the individual and cumulative operational noise measurements at each of the identified locations must be undertaken in accordance with British Standard 4142. The results of the validation report shall be submitted to the local planning authority within three months from the date of the site becoming operational, including details of any remedial works and a programme for implementation of this remediation; should noise levels exceed the level specified in the tables below.

Individual

Location	Revised Scheme Specific Sound Level, dBA	Rating Level, dB L <sub>Ar,Tr</sub>	BS4142 Rating Level Difference dB
Cowpen Bewley Road	37	37	0 (23:00- 07:00)
Cowpen Lane	38	38	+1 (23:00- 07:00)
Haverton Hill Hotel	35	35	
Lime Tree Close	32	32	
Charlton Close	23 (South) & 24 (north)	23 (South) & 24 (North)	

Cumulative

Location	Revised Scheme Specific Sound Level, dBA	Rating Level, dB L <sub>Ar,Tr</sub>	BS4142 Rating Level Difference dB
Cowpen Bewley Road	39	39	+2 (23:00- 07:00)
Cowpen Lane	40	40	+3 (23:00- 07:00)
Haverton Hill Hotel	37	37	
Lime Tree Close	36	36	
Charlton Close	27	27	

Any remedial works must be carried out in accordance with the approved programme for implementation and the noise measurements must be repeated and submitted to the local planning authority for approval following completion of remedial works to demonstrate that the noise levels are within the limits set out in the table above. Measurements demonstrating compliance are to be made at the locations above and a sound power level at source should also be established. If however after discussions with the local planning authority this method is deemed unsuitable it may be necessary for noise measurements to be taken at source and noise modelling to be used to demonstrate compliance with the above requirements. The subsequent approved sound power level at source which demonstrates compliance shall then be maintained for the lifetime of the development.

Upon acceptance of the validation report and for the lifetime of the development thereafter, the noise levels should not exceed the sound power level at source or the above columns titled

'Revised Scheme Specific Sound Level, dBA' or 'Rating Level, dB L<sub>A,r,Tr</sub>' either individually or cumulatively at any of the locations listed above.

Reason: In the interests of protecting noise sensitive receptors from adverse noise impacts.

#### **10 Decommissioning of the plant**

In the event that the gas generators and battery storage are inoperative for a period of 12 months or longer the development hereby approved shall be removed and the site restored to green field within 18 months from the time at which it became inoperative.

Reason: In the interests of visual amenity and pollution prevention.

#### **11. Unexpected land Contamination**

In the event that contamination is found at any time when carrying out the approved development that was not previously identified, works must be halted on that part of the site affected by the unexpected contamination and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken to the extent specified by the Local Planning Authority prior to resumption of the works. Following completion of measures identified in the approved remediation scheme, a verification report must be submitted in writing and approval by the Local Planning Authority.

Reason: To ensure the proper restoration of the site and to accord with guidance contained within Stockton on Tees Core Strategy Policy 10 (CS10) - Environmental protection and enhancement

### **INFORMATIVE OF REASON FOR PLANNING APPROVAL**

#### **Informative: Working Practices**

The Local Planning Authority has worked in a positive and proactive manner and sought solutions to problems arising in dealing with the planning application by seeking a revised scheme to overcome issues and by the identification and imposition of appropriate planning conditions.

#### **Informative: Health and Safety**

A toxic refuge shall be provided for any construction teams working in the area and provisions are made for early warning of the workers e.g. providing contact details to pipeline operators / Falck emergency services. For further information please contact the Emergency Planning Unit.

SABIC/INEOS should be consulted should any work within 50 metres of their pipeline be undertaken as this would require our approval prior to work commencing.

#### **Informative: Drainage and Permitting (Environment Agency)**

The TSL Construction Water Management Plan addresses the management of surface water during construction until the end of "inactive commissioning". Page 5 of this document describes the decision tree to be used when considering the discharge of contained water on site and appears to suggest that water contaminated with oils/greases or unusual odours will be reviewed and ultimately pumped into the large attenuation ponds. This could lead to a pollution event and must be prevented. The Plan goes on to explain the correct decision route for such potentially polluting liquids which should be reflected within the decision tree on page 5. We have noted that such contaminated liquids should be tankered off site for appropriate disposal not diluted within the attenuation ponds, and the source of the contamination investigated to prevent a reoccurrence.

Another common source of pollution during construction originates from the wash-outs from concrete mixers of all sizes and the incorrect storage of surplus concrete mix however these issues have been adequately addressed under section 5.8 of this document.

Whilst we are unable to pre-determine the EPR Permit application, a review of the submitted details suggests that the general principal of containment and control of potentially polluting

surface water and flood waters has been applied. Should you have any queries in respect to this response please don't hesitate to contact me on the number below.

## **BACKGROUND**

1. On April 2012, the Planning Inspectorate became the government agency responsible for operating the planning process for Nationally Significant Infrastructure Projects (NSIPs) which are major infrastructure projects which require a type of consent known as 'development consent' under procedures governed by the Planning Act 2008. The Act sets out thresholds above which certain types of major infrastructure projects are considered to be nationally significant and require development consent.
2. In terms of Generating stations, the Act states that a development would be considered an NSIP if;
  - (a) it is in England or Wales,
  - (b) it is not an offshore generating station, and
  - (c) its capacity is more than 50 megawatts.
3. At the time of submission of the original application, there were two applications for the same site under consideration (Applications 18/2079/FUL and 18/2082/FUL); and initial concerns were raised by the case officer that the schemes should be considered as NSIPs. Further advice was sought from the Planning Inspectorate and the Council's own Legal Team.
4. The Planning Inspectorate confirmed that they do not have the power to give a legally binding interpretation on whether the two potential gas fired power facilities would be classed as a NSIP/DCO project. Only the Courts can ultimately determine the interpretation of legislation, and at that time there had been no case law on this point and it would be for the developer to decide whether or not to apply for development consent. The developer sought their own legal advice and provided Counsels opinion on the more appropriate mechanism in which to apply for consent.
5. On considering the submitted information and the Counsel's opinion, the Local Authority Chief Solicitor has confirmed that if the two plants (of 49.99MW each) came in as separate applications, do not share infrastructure and can operate wholly independent of each other (other than the connection to the same sub-station) then the local planning authority should accept them as applications under the Town and Country Planning Act.
6. The applications were subsequently accepted and determined by the local planning authority.

## **SITE AND SURROUNDINGS**

7. The application site comprises approximately 4 hectares of farmland used primarily for arable farming. To the north of the site are open fields extending to Cowpen Bewley Village and to the south east the Saltholme Electricity Sub Station. To the north west is Cowpen Industrial Estate with Belasis Technology Park to the south west. RSPB Saltholme is to the south and the main A1185 road to the east.
8. The application site lies outside the limits to development and a small part of the site (Southern edge) lies within flood zone 2 and 3.

## **PROPOSAL**

9. Planning permission was approved for the provision of a gas fired generating facility for the generation of 49.99MW of electricity to facilitate regional distribution during generation shortfall and to meet peak supply demands.
10. Since planning permission was granted, the applicant has undertaken full civil and mechanical construction design for both facilities and commercial tendering for the engine supply and balance of plant which has led to some changes including the commissioning of MAN gas engines. These engines will replace the Rolls Royce engines that were originally proposed and following this process, the applicant seeks to amend some of the conditions on the original approval. The main changes to the approved plans and documents are as follows;
11. Conditions 2 (plans): The plans are varied and main the changes are
  - The National Grid Gas Compound – slight change in orientation and smaller in size.
  - Pressure Reduction Compound – final construction design and change in site position.
  - Internal Roads - shorter internal roads required than originally allowed for.
  - Electrical substation - smaller than originally shown and in a slightly different orientation.
  - Landscaping bunds - slight increase in bunding and slight amendments in positioning.
  - Engine Housing:
    - 4 engines instead of 5
    - 4 stacks instead of 5
    - 4 air outlet units on the roof compared to 10 originally
    - Change to orientation of radiators and stacks.
  - Integration of switch housing and spare parts room into the main building.
  - AQA and Noise modelling - increased from 2750 hours to 3500.
  - AQA modelling - updated showing less NOx deposition and Selective Catalytic Reduction in line with more accurate engine manufacture data.
  - Site Office – inclusion of a site office.
  - Heat Recovery system – include water tank, heat exchangers, pumps and circulation system.
  - Water Tank
  - Attenuation Pond - change in orientation and slight increase in size which is subject to a separate application for a full planning permission as the detailed civil design process, the pond needed to be relocated from where it was originally shown. Its new location meant an amendment to the original red line and as such a separate consent is sort to approve its new location
12. Condition 3 (materials and colours) – a condition was added to control the details which have been submitted as part of this application. The buildings and structures will be generally industrial grey or white.
13. Condition 4 (levels) a condition was added to control the details which have been submitted as part of this application.
14. Condition 5 (SUDs) a condition was added to control the details which have been submitted as part of this application and the associated application for the suds pond
15. Condition 9 (landscaping softworks) a condition was added to control the details which have been submitted as part of this application

16. Condition 10 (maintenance softworks) a condition was added to control the details
17. Condition 13 (noise) of planning approval 18/2079/FUL This Section 73 application is to seek a variation to condition No.13 (Noise) of planning approval 18/2079/FUL which stated

*“The mitigation measures as identified in the noise assessment accompanying the application (Report JAT10500-REPT-07-RO dated 4th September 2018) shall be implemented in full and retained for the life of the development”*

The applicant states that the updated noise report reflects new data following a detailed design and contracting process. Some of the original assumptions made were based on manufacturers' data which has now been updated according to the final design. The applicant claims that this is in accordance with “Best Available Techniques”, stating MAN engines are a superior, efficient, spark-ignited, two-stage, turbocharged gas-engine. Engines with two-stage turbocharging come with both a low-pressure and high-pressure compressor, which work connected in series to deliver improved power density and efficiency. Such a set-up significantly reduces fuel consumption and emissions and offers a more compact plant design.

## **CONSULTATIONS**

18. The following Consultations were notified and any comments received are set out below

19. Highways, Transport and Design Manager

The Highways, Transport and Design Manager has no objections to the proposed section 73 application to vary conditions 2 (plans), 3 (materials and colours), 4 (levels), 5 (SUDs), 9 (landscaping softworks), 10 (maintenance softworks), 13 (noise) of planning approval 18/2079/FUL.

Highways Comments There are no highways objections to the proposed changes to the approved plans.

Landscape & Visual Comments There are no landscape and visual objections to the proposed variations to the conditions.

Flood Risk Management: The applicant has provided sufficient information to satisfy the Local Lead Flood Authority that a surface water runoff solution can be achieved without increasing existing flood risk to the site or the surrounding area.

All works must be carried out in strict accordance with the following document;

- SuDS Maintenance & Management Plan – Submitted on 28/09/2020

20. Environmental Health Unit

Environmental Health note the objectors have raised the following concerns regarding the noise report/ planning application:

- **Inappropriate Background LA90 Level used for BS4142 Assessment at some locations**- Objectors believe background level should be 35dB instead of 37dB.
- **Tonality Penalty/ ‘Other Sound’ Characteristic Penalty**- Objectors believe a tonal penalty of either +3dB or +4dB should be applied as part of the BS4142 Assessment.
- **Intermittent Penalty**- Objectors believe a penalty should be applied for the noise being intermittent.
- **The Engine is untested in the UK**- Objectors believe this creates uncertainty around the noise levels.
- **Lack of noise data for radiators**- Objectors believe this data should be made available.

- **Measurement position/ properties within 1KM of development-** Objectors believe the properties are closer to the development than the noise report suggests.
- **Noise Creep-** Objectors believe the development will result in noise creep in the area.

Environmental Health have carefully considered all of the objectors concerns noted above are satisfied that the submitted noise assessments (JAT11291-REPT-03-R0-REV0 & JAT11291-REPT-02-R0) have been carried out in accordance with BS4142:2014 methodology. Following further discussions with the Noise Consultant the correct background noise levels (25<sup>th</sup> percentile) were provided as the original report included the 'average' background levels. The use of the 25<sup>th</sup> percentile background level subsequently lowered the original background levels which the assessment were based upon. The figures reflecting this updated cumulative assessment are taken from an email received from Simon Stephenson on 17<sup>th</sup> April 2020 which can be found below:

Location	25 <sup>th</sup> %ile Background Sound Level, dB LA90,T	Specific Sound Level, dB Ls	Rating Penalty, dB	Rating Level, dB LAr,Tr	Rating Level Difference, dB	Assessment
Day						
Cowpen Bewley Road	42	39	0	39	-3	Level below adverse impact
Cowpen Lane	42	40	0	40	-2	Level below adverse impact
Evening						
Cowpen Bewley Road	39	39	0	39	0	Level below adverse impact
Cowpen Lane	39	40	0	40	+1	Level below adverse impact
Night						
Cowpen Bewley Road	37	39	0	39	+2	Level below adverse impact
Cowpen Lane	37	40	0	40	+3	Level below adverse impact

I would recommend the column titled "Rating Level dB LAr,Tr" is conditioned so that the levels detailed by the noise consultant are not to be exceeded at any time during the lifetime of the proposal.

I also recommend the specific noise levels listed below, also from an email received from Simon Stephenson on 17<sup>th</sup> April 2020 are conditioned so that the levels specified are not exceeded at any location during the lifetime of the proposal:

Location	Revised Scheme Specific Sound Level, dBA
Cowpen Bewley Road	39
Cowpen Lane	40
Haverton Hill Hotel	37
Lime Tree Close	36
Charlton Close	27

Environmental Health are satisfied that the reports conclude that there should be no significant impact upon residential properties when the plant is operating, both individually and cumulatively. All mitigation measures detailed within the submitted reports are to be implemented in full prior to bringing the plants into operation and are to be maintained for the lifetime of the development.

I would however request an acoustic validation report to be complete by a noise consultant prior to bringing the plant into full operation. The validation report is required to determine noise levels (specific noise level, rating noise level and BS4142 assessment) of both plants operating, both individually and cumulatively at each of the residential locations detailed within the submitted noise reports.

It is acknowledged that the column titled "Rating Level Difference dB" may not be condition for the lifetime of the development as background noise level are not within the applicants control as the background levels may change over time. I would however request that the figures provided in this column be achieved as part of the validation report as the acceptance of the noise reports and approval of the development is based upon these levels being achievable when the plant is first brought into use and the background level should not have changed substantially from the time the noise assessment was produced to the plant becoming operational.

The validation report shall assess levels of frequency and tonality created by the plant at the residential properties; if it is deemed that there are audible frequencies or tonality at the residential properties then additional mitigation measures will be required to fully mitigate these noise characteristics. Should the validation report demonstrate that the specific noise, rating level or BS4142 assessment of the plants (either individually or cumulatively) operates above the approved levels detailed above at any residential location then further mitigation measures will be required to be implemented on the plant to achieve the approved noise levels prior to it being brought into full operation. Any additional mitigation measures will be required to be installed and a further validation report be produced demonstrating compliance with the approved noise levels prior to the plant being brought into full use.

I therefore recommend a condition on the application which conditions the "Rating Level dB  $L_{Ar,Tr}$ " and the "Specific Noise Levels" to be achieved for the lifetime of the development at each location. As well as the proposed mitigation measures to be installed and maintained for the lifetime of the development.

A further condition should be applied relating to the requirement of a validation report to be submitted as detailed above.

21. The Environment Agency

11 May 2020: Environmental Permitting Requirements (EPR) - Advice to LPA/Applicant  
This development will be required to obtain an Environmental Permit from the Environment Agency prior to commencement of operations. This is yet to be determined.

The variation has modelled the environmental impact of emissions to air whilst operating at 3,500 hours pa. It should be noted that Environment Agency currently limits peaking plant operations to between 500 and 1,000 hours pa. This may change if our guidance is varied.

The noise, air and habitats impacts assessment will be considered during the determination of the environmental permit. The Environment Agency will not permit an activity which causes significant impact on local residents or the environmental.

We have NO OBJECTION to the proposed variations. Please refer to my earlier comments made 11 May 2020. Beyond this, please see the below comments:

Drainage and Permitting - The TSL Construction Water Management Plan addresses the management of surface water during construction until the end of "inactive commissioning". Page 5 of this document describes the decision tree to be used when considering the discharge of contained water on site and appears to suggest that water contaminated with oils/greases or unusual odours will be reviewed and ultimately pumped into the large attenuation ponds. This could lead to a pollution event and must be prevented. The Plan goes on to explain the correct decision route for such potentially polluting liquids which

should be reflected within the decision tree on page 5. We have noted that such contaminated liquids should be tankered off site for appropriate disposal not diluted within the attenuation ponds, and the source of the contamination investigated to prevent a reoccurrence.

Another common source of pollution during construction originates from the wash-outs from concrete mixers of all sizes and the incorrect storage of surplus concrete mix however these issues have been adequately addressed under section 5.8 of this document.

Whilst we are unable to pre-determine the EPR Permit application, a review of the submitted details suggests that the general principal of containment and control of potentially polluting surface water and flood waters has been applied.

22. HSE

This consultation, which is for such a development and also within at least one Consultation Distance, has been considered using HSE's Land Use Planning Methodology. Consequently, HSE does not advise, on safety grounds, against the granting of planning permission in this case.

23. RSPB

My response confirms the position of the RSPB to the changes proposed by the applicant in respect of the change to a Mann Power Plant and the increase in noise levels on RSPB Saltholme and the Teesmouth and Cleveland Coast Special Protection Area (SPA) and Ramsar site, and the SSSI.

Having examined the available data, we conclude that the increase in noise levels will not result in potentially significant effects on the designated site or our reserve. We have provided more detail below to explain our response :

RPS the applicant's ecological consultant has produced an additional report dated 06 May 2020, which is a "Noise Assessment - Impact on Birdlife", this report outlines the increase in noise as a result of the change from Rolls Royce to Mann engines.

This increase in noise modelled for both plants running simultaneously takes the sound level from 42 dB(A) at the site known locally as the Pipeline Pools1 as predicted for the original application with Rolls Royce power plants to 53dB(A) for the 2020 variation/s using Mann units.

The standard text for measuring the impacts of sound from industry on water birds is Cutts et al2. Within this report the authors suggest that of the birds identified (by RPS) as using the pipeline pools, only redshank *Tringa tetanus* is (particularly sensitive" to noise, and then only at levels over 55 dB(A).

So the predicted sound level at the pipeline pools is at 53dB(A) well below the level at which redshank may be displaced, and to put this into context, with both plants operating simultaneously the sound level at the pipeline pools will be equivalent to that recorded during a normal conversation, cited almost everywhere as being between 50 and 60dB(A).

In addition, RPS provide data to show that the frequency of the predicted sound is low, mostly below 1 kHz, as the hearing range of birds is mostly limited to the higher frequencies, RPS state that this impact will be lessened further, we agree with this assessment. We there conclude that this variation to the Mann power plant will not result in adverse or negative impacts to either birds on the reserve or the SPA/Ramsar/SSSI site.

24. Teesmouth Bird Club

Teesmouth Bird Club wishes to object to this latest application to modify the consent for noise levels generated whilst the plant (s) are operational. The basis of the objection is the short time allowed for comments to be submitted for consideration (9th June). RSPB is presently just emerging from furlough, and Stockton has, I understand, at present, no ecologist available to examine critically the statements at the moment. Natural England's latest comments on this on-going process, were made before the applicant submitted their latest model of noise levels around the site. In short, N E too has little time to comment. Earlier ecological reports on the matter of noise disturbance on wintering, and indeed

summer breeding species, have previously assured that there will not be sudden impacting sounds, which indeed well known to be very significant. However, I do not recall seeing data on the rates at which the noise levels ramp up when the turbines are fired at the start of a run. Is this a matter of seconds or minutes? Also, how many hours of operation would be expected a year and how many starts-up would these entail? The disturbance elements of the operation have not been fully explored or mitigated.

The latest analysis provided by the applicant on the apportionment of sound energy to various frequencies, whilst interesting, claims much of the sound is at lower frequencies less audible to birds. This may indeed be the case, but no evidence is submitted to prove that this is the case for the species resident, breeding or wintering in the immediate environs of the site. It is necessary to have these data available for professional scrutiny.

Further, studies have shown that the noise produced by heavy and constant, motorway traffic creates a cordon sanitaire on each side, effectively inhibiting birds breeding adjacently. This is particularly true of passerines. This phenomenon is analogous to the noise associated operation of the generators. Confidence in the applicant's latest assurances would be hugely enhanced if their anticipated noise levels, were demonstrated not to replicate this "motorway effect". A desk study citing relevant literature, would be informative and help the planning decision process.

In summary, these constantly evolving and shifting operational criteria for these, now two, already partially completed plants, has reached a critical juncture. Guarantees, safeguards and if necessary remedial obligations must be embedded in any approval planning. Alternatively, the applicant should be required to submit a new application for the two power generating plants.

25. Natural England

18 August 2020 - Natural England has previously commented on this proposal. The advice provided in our previous response applies equally to this amendment. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal. Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again. Before sending us the amended consultation, please assess whether the changes proposed will materially affect any of the advice we have previously offered. If they are unlikely to do so, please do not re-consult us.

27<sup>th</sup> May 2020 SUMMARY OF NATURAL ENGLAND'S ADVICE - NO OBJECTION

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection. Natural England's further advice on designated sites/landscapes and advice on other natural environment issues is set out below.

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site and has no objection to the proposed development.

To meet the requirements of the Habitats Regulations, we advise you to record your decision that a likely significant effect can be ruled out. The following may provide a suitable justification for that decision:

- The noise modelling submitted indicates that the noise levels experienced at the nearest ecologically sensitive receptors to the proposal site in a worst case scenario, despite being higher than that previously assessed as being within an acceptable level and subsequently approved, will at a level that is not likely to cause disturbance to SPA interest features;

- The continuous nature of any noise when the plant is operational rather than sudden, unexpected noises, is also unlikely to cause significant disturbance to designated site interest features.

Teesmouth and Cleveland Coast Site of Special Scientific Interest

Based on the plans submitted, Natural England considers that the proposed development will not damage or destroy the interest features for which the site has been notified and has no objection.

Our concerns regarding potential impacts on the Teesmouth and Cleveland Coast SSSI in this area reflect our concerns regarding the Teesmouth and Cleveland Coast SPA and Ramsar site, and the reasons why Natural England considers there will be no damage or disturbance to interest features are detailed in the previous section.

26. CPRE

I refer to these Planning Applications under Section 73 of the Town and Country Planning Act 1990, which have been brought to our attention by a concerned resident of Cowpen Bewley. We were unaware of the original applications made in 2018 for the two gas plants. We note that there are also two full planning applications to change Sustainable Drainage Systems at the site. We have no comment to make to these applications.

Background - We note planning permission was granted for each of these two gas plants in 2019. The plants are adjacent to each other, effectively within the same site, and have a combined output of 99.98MW. While we appreciate that this would make the proposal a National Infrastructure Project, we are surprised that these applications were dealt with separately. However, we accept that this decision is now final. As the Council has mentioned to the MP, whatever happens with the current applications, the existing ones will continue.

Scope of Section 73 - We represent that it is appropriate to address the scope of applications under Section 73. While it is not possible to revoke or restrict the existing permission, it is open to the Council, when determining whether or not to issue a new planning certificate under Section 73, to impose reasonable conditions that could have been imposed in the original permission - see Paragraph: 040 Reference ID: 21a-040-20190723 of the Planning Practice Guidance. In full, this paragraph states "The original planning permission will continue to exist whatever the outcome of the application under section 73. The conditions imposed on the original permission still have effect unless they have been discharged. In granting permission under section 73 the local planning authority may also impose new conditions - provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission. For the purpose of clarity, decision notices for the grant of planning permission under section 73 should (sic) set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect." (Our emphasis). It is also important to note that a new permission under a Section 73 application must fall within the general description of the original planning application. In *Finney v Welsh Ministers* [2019]EWCA Civ 1868, Lewison LJ said at paragraph 42 "The question is one of statutory interpretation. Section 73 (1) is on its face limited to permission for the development of land "without complying with conditions" subject to which a previous planning permission has been granted. In other words the purpose of such an application is to avoid committing a breach of planning control of the second type referred to in section 171A. As circular 19/86 explained, its purpose is to give the developer "relief" against one or more conditions. On receipt of such an application section 73 (2) says that the planning authority must "consider only the question of conditions". It must not, therefore, consider the description of the development to which the conditions are attached. The natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development. That coincides with Lord Carnwath's description of the section as permitting "the same development" subject to different conditions. Mr Hardy suggested that developers could apply to change an innocuous condition in order to open the gate to section 73, and then use that application to change the description of the permitted development. It is notable, however, that if the planning authority considers that the conditions should not be altered, it may not grant permission with an altered description but subject to the same conditions. On the contrary it is required by section 73 (2) (b) to refuse the application. That requirement

emphasises the underlying philosophy of section 73 (2) that it is only the conditions that matter. It also means, in my judgment, that Mr Hardy's suggestion is a misuse of section 73." And in *London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government* [2019]UKSC 3, Lord Carnwath stated at paragraph 38 " Although we have not heard full argument, my provisional view is that Mr Reed's current submission is correct. It will always be a matter of construction whether a later permission on the same piece of land is compatible with the continued effect of the earlier permissions (see the principles discussed in *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, 144).....".

Applying the above to these applications In view of the above, we represent that it is necessary to consider the nature of the applications in 2018. Each stated that it was an application for "a gas fired generating facility (GFGF) for the generation of 49.99MW electricity to facilitate regional distribution during generation shortfall and to meet peak supply demands." These applications were approved subject to a number of conditions. Although these applications were for "generation shortfall" and "to meet peak supply demands", no hours of operation were included in the permissions. The Section 73 applications state that they are for "20/0647/VARY | Section 73 application to vary condition(s) 2. (approved plans), 3. (Materials and Colours), 4. (Levels) 5. (SUDS), 9 (Landscaping softworks) 10. (Maintenance softworks) 13. (Noise) of planning approval 18/2082/FUL - Development of Gas Fired Generating Facility for the generation of 49.99MW of electricity to facilitate generation shortfall and to meet peak supply demand."

The other Section 73 application is in similar terms. On the face of it, this seems to be within the ambit of a section 73 application. There may be concern as to whether the proposed changes are acceptable, and we note in particular the concerns expressed in relation to noise. Regrettably, we do not have the expertise to address the noise issue, but the remaining proposals appear reasonable. However, we note concerns expressed by a number of people about an increase in hours of operation. While this does not appear to be part of the applications, we note the following in the covering letter "Each of Statera's power plants will be fitted with a selective catalytic reduction unit, which will ensure that exhaust emissions of NOx will be a 1/3 of the regulated level set by the Environment Agency (EA). An application for a Part A Permit is currently being processed by the EA following grant of planning consent in Jan 2019. As part of this application, the EA is reviewing the permitted hours of operation for flexible plant and the most efficient and least polluting (this application's technology) are likely to have the current cap restricting hours of operation to 1500 hours raised to 3500 hours a year. This is a reflection of the increasing requirement to cover the imbalance in a grid supply system dominated by renewables and the EA's recognition that this type of plant saves CO2 and is less polluting than the incumbent older plant." (Our emphasis). We must now question the hours of operation at this site. The total number of hours in a year is 8760. To increase operations from 1500 hours to 3500 hours appears to be a considerable leap which takes this operation beyond the "generation shortfall" and "peak supply demands" mentioned in the original applications. 3500 hours a year would represent approximately 67 hours a week, well above the average working week. We represent that this is an important issue that has to be addressed. We note there were no objections to the original applications, including from the Residents' Association. We also note the Association's comments to the current applications, referring to the caveat in their original letter. There is clearly now considerable concern to the prospect of more than doubling the hours of operation. This may cause an actionable nuisance to residents of Cowpen Bewley.

Nuisance and Planning Permission - We draw attention to the judgment of Lord Neuberger in *Coventry v Lawrence* [2014] UKSC 13 where, at paragraph 77 onwards, he considered the effect of planning permission on an allegation of nuisance. In short, the grant of a permission and compliance with all the conditions is not, of itself, necessarily a defence to a claim of nuisance. At paragraph 94, he said "Accordingly, I consider that the mere fact that the activity which is said to give rise to the nuisance has the benefit of a planning permission is normally of no assistance to the defendant in a claim brought by a neighbour

who contends that the activity cause a nuisance to her land in the form of noise or other loss of amenity." We are not alleging that a nuisance will be caused in this case as we do not have the necessary expertise. However, in view of the concerns raised about this point, we represent that this issue must be carefully addressed.

Conclusion - We therefore represent that it must now be established

1) Whether these applications do, by implication, seek an increase in hours of operation

2) If not, whether the original permissions do permit such an increase in hours of operation

3) Whether a noise nuisance is likely to be caused to the residents of Cowpen Bewley that will affect their residential amenity

In our opinion, increasing hours of operation to this extent goes beyond the original applications to the extent that, if that is indeed within these Section 73 applications, they are not compatible with the original ones. If that is correct, then this must be made clear and, we believe, these applications are not valid in view of the judgments in Finney and Lambeth above.

However, we also represent that, if it is determined the current Section 73 applications are in fact compatible with the existing permissions and should be approved, a condition should be included in each new permission to clarify exactly what are the maximum permitted hours of operation to ensure that the gas stations are used only for "generation shortfall or peak supply demand".

27. Northumbrian Water

Thank you for consulting Northumbrian Water on the above proposed development. In making our response to the local planning authority Northumbrian Water will assess the impact of the proposed development on our assets and assess the capacity within Northumbrian Water's network to accommodate and treat the anticipated flows arising from the development. We do not offer comment on aspects of planning applications that are outside of our area of control. Having assessed the proposed development against the context outlined above I can confirm that at this stage we would have no comments to make.

28. Tees Archaeology

Thank you for the consultation. I have no objection to the proposed variations however the existing archaeological condition requiring archaeological monitoring of the site still applies.

29. National Grid

No objection

30. Principal Environmental Policy officer

Re: Application 20/0625/VARY above, there are no comments from Environment Policy

31. Councillor Evaline Cunningham

Thank you for the information regarding these planning applications. I am disappointed that this has returned. I am also disappointed that this company has not engaged with the residents who will be most affected by the noise. I would like to object to this new variation proposal for the construction of gas engine power plants for the Saltholme facility.

I have read the variation information to the best of my ability and find that every time they give information on the engines etc they give it in a different format so that it is very difficult to compare like for like. I notice that the 8 engines that are proposed to be installed are the first of their kind to be used in Britain. If this is the case where is the evidence that would prove their claims relating to them? On page 24 of the report it refers to the new acoustic shielding being reduced by 43 db. Reduced to what? The previous report stated the level of noise that could be expected for it to reduce to. The noise assessment team that write the noise assessment report have made a desk based report of the site and area ( page 34

,9.3). The quantitative assessment has been based on source levels provided by the plant manufacturer. This does not sound independent. I am concerned for my residents that their quality of life will be seriously affected by this plant. I would expect this contentious application to go to planning committee for judgement as it is detrimental to the residents. What arrangements are in place for this to go to committee whilst current restrictions are in place?

32. Alex Cunningham MP

I would like to make some comments on this latest attempt to vary the terms of the planning application and pose some questions. I was sorry to even see an application for such a facility in an area which is part of or adjacent to the Saltholme nature reserve and annoyed, like many residents, I missed it and didn't object. I'm surprised and personally disgusted that the RSPB which campaigns against similar developments near their reserves hadn't opposed this one.

That said I recognise that the Planning Authority approved the original application, I believe by delegated decision as there were insufficient objections but laid down stringent conditions to protect the environment and against noise nuisance.

This particular application - and the attempts to vary the planning approval - has a long history and I am concerned that yet again, the applicant is seeking variations which I believe lower the standards in relation to both noise and required protective landscaping.

Just as I objected to noisier Mann engines replacing the quieter Rolls Royce ones and the variations to landscaping which reduced protection in what I believe was a previous variation application, I now formally object to any variation that reduces the protections which were included in the original application and which effectively compromise the conditions laid down for the development by the Planning Committee. If the applicant could deliver on the conditions at the time of the original approval, why can they no longer do so?

I am no expert on noise, but I know that residents in Cowpen Bewley village in particular are concerned about the proposed changes and have questioned the validity of the noise surveys carried out on behalf of the company. I trust the planning authority will take expert guidance on the claims from the applicant who has form in applying for one thing, being successful and then making variation applications to make substantial changes to what had been approved.

Doubtless local residents who has sought expert help will formally object to the proposal and I hope the Planning Committee will confirm the original application with the conditions laid out and refuse any variation that compromises that approval and those conditions.

I'd also be interested in the timescales and restrictions facing the planning authority in determining this application. With a host of objections, I assume the matter will be referred to the full Planning Committee yet to my knowledge it has not met and is unlikely to do so perhaps for some time depending on the restrictions being placed on us all.

I am aware there is a fixed timescale within which it ought to be determined but given the Coronavirus pandemic, will the authority be able to extend the timeframe within which a decision needs to be taken?

Thank you for taking my comments into consideration - I look forward to a response on the timescale issue and I hope a determination that is fair to the community.

**PUBLICITY**

33. Neighbours were notified by letter, site notice and press advert and comments were received from the following addresses with the content summarised below. Full detailed comments can be found at <http://www.developmentmanagement.stockton.gov.uk/online-applications/>

1. Jane Bowman Wayside Cowpen Bewley Billingham TS23 4HS
2. Maria Shannon Earls Nook Cottage Cowpen Bewley Billingham TS23 4HS
3. P Hogg The Granary Cowpen Bewley Billingham TS23 4HS

4. Mr Paul Wilson Ivy House Cowpen Bewley Billingham TS23 4HS
5. Mr Stewart Swales 2 Earls Cottages Cowpen Bewley Billingham TS23 4HS
6. Ian Elves The Old Mill Cowpen Bewley Billingham TS23 4HS
7. Mr C Hann 1 Manor House Farm Cottages Cowpen Bewley Billingham TS23 4HS
8. Mr David Turner Little Marsh Farm Cowpen Bewley Billingham TS23 4HS
9. I M Moodie 1 Earls Cottages Cowpen Bewley Billingham TS23 4HS
10. Dawn McKenna Orchard Farm Cowpen Bewley Billingham TS23 4HS
11. B Hutchinson And Claire Lester Little Marsh Cottage Cowpen Bewley Billingham
12. Mrs Vivienne Swales 2 Earls Cottages Cowpen Bewley Billingham TS23 4HS
13. Cowpen Bewley Residents Association Orchard House Cowpen Bewley Billingham
14. Mr Trevor Steele The Bungalow Cowpen Lane Billingham TS23 4HU
15. Kathryn Lennox Ivy House Barn Cowpen Bewley Billingham TS23 4HS
16. Gary McKenna Orchard Farm Cowpen Bewley Billingham TS23 4HS
17. Michael McKenna Orchard Farm Cowpen Bewley Billingham TS23 4HS
18. D Sayers & L Johnson The Stables Manor House Farm Cowpen Bewley Billingham
19. Mr Sam Swales 2 Earls Cottages Cowpen Bewley Billingham TS23 4HS
20. Julie Harrison 4 Durham Road Wolviston Billingham TS22 5LP
21. G R Laing Colemans Nook Bungalow Cowpen Bewley Road Billingham TS23 4HR
22. Cowpen Bewley Residents' Association The Granary Cowpen Bewley Billingham
23. Anita Stitt Orchard House Cowpen Bewley Billingham TS23 4HS
24. Ms S Peel Colemans Nook Bungalow Cowpen Bewley Road Billingham TS23 4HR

The main material considerations raised are detailed below;

- Noise and impact on the amenity of residents; which includes an independent noise report from 24 Acoustics to support the objections
- Impact on the character of Cowpen Bewley
- Impact on Wildlife
- The application should be a NSIP and determined as such
- Hours of operation for the peaking plant
- Engine Selections and the difference
- pSPA is now a SPA
- Safety of pipelines
- Need to for the facility

## **PLANNING POLICY**

34. Where an adopted or approved development plan contains relevant policies, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that an application for planning permissions shall be determined in accordance with the Development Plan(s) for the area, unless material considerations indicate otherwise. In this case the relevant Development Plan is the Stockton on Tees Borough Council Local Plan 2019.
35. Section 143 of the Localism Act came into force on the 15 January 2012 and requires the Local Planning Authority to take local finance considerations into account, this section s70(2) Town and Country Planning Act 1990 as amended requires in dealing with such an application the authority shall have regard to a) the provisions of the development plan, so far as material to the application, b) any local finance considerations, so far as material to the application and c) any other material considerations.
36. National Planning Policy Framework  
The purpose of the planning system is to contribute to the achievement of sustainable development. Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways. These are economic social and environmental objectives.

So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11) which for decision making means;  
 approving development proposals that accord with an up-to-date development plan without delay; or  
 where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:  
 the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or  
 any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

37. National Planning Policy Guidance - Noise (extracts) (<https://www.gov.uk/guidance/noise-2>)

The guidance states that noise needs to be considered when new developments may create additional noise and when new developments would be sensitive to the prevailing acoustic environment.

Local planning authorities' plan-making and decision taking should take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved.

At the lowest extreme, when noise is not noticeable, there is by definition, no effect. As the noise exposure increases, it will cross the no observed effect level as it becomes noticeable. However, the noise has no adverse effect so long as the exposure is such that it does not cause any change in behaviour or attitude. The noise can slightly affect the acoustic character of an area but not to the extent there is a perceived change in quality of life. This table summarises the noise exposure hierarchy, based on the likely average response.

Perception	Examples of outcomes	Increasing effect level	Action
Not present	No Effect	No Observed Effect	No specific measures required
Present and not intrusive	Noise can be heard, but does not cause any change in behaviour, attitude or other physiological response. Can slightly affect the acoustic character of the area but not such that there is a change in the quality of life.	No Observed Adverse Effect	No specific measures required
Present and intrusive	Noise can be heard and causes small changes in behaviour, attitude or other physiological response, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a small actual or perceived change in the quality of life.	Observed Adverse Effect	Mitigate and reduce to a minimum
Present and disruptive	The noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to cha	Significant Observed Adverse Effect	Avoid

Perception	Examples of outcomes	Increasing effect level	Action
Present and very disruptive	Extensive and regular changes in behaviour, attitude or other physiological response and/or an inability to mitigate effect of noise leading to psychological stress, e.g. regular sleep deprivation/awakening; loss of appetite, significant, medically definable harm, e.g. auditory and non-auditory.	Unacceptable Adverse Effect	Prevent

What factors are relevant to identifying areas of tranquility? There are no precise rules, but For an area to justify being protected for its tranquillity, it is likely to be relatively undisturbed by noise from human sources that undermine the intrinsic character of the area. It may, for example, provide a sense of peace and quiet or a positive soundscape where natural sounds such as birdsong or flowing water are more prominent than background noise, e.g. from transport. Consideration may be given to how existing areas of tranquility could be further enhanced through specific improvements in soundscape, landscape design (e.g. through the provision of green infrastructure) and/or access. It is considered Such areas are likely to be already valued for their tranquility, including the ability to perceive and enjoy the natural soundscape, and are quite likely to be seen as special for other reasons including their landscape.

38. Local Planning Policy

The following planning policies are considered to be relevant to the consideration of this application.

Strategic Development Strategy Policy 1 (SD1) - Presumption in favour of Sustainable Development

1. In accordance with the Government's National Planning Policy Framework (NPPF), when the Council considers development proposals it will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. It will always work proactively with applicants jointly to find solutions which mean that proposals for sustainable development can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
2. Planning applications that accord with the policies in this Local Plan (and, where relevant, with polices in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.
3. Where there are no policies relevant to the application or relevant policies are out of date at the time of making the decision then the Council will grant permission unless material considerations indicate otherwise - taking into account whether:
  - Any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole;
  - or,
  - Specific policies in that Framework indicate that development should be restricted.

Strategic Development Strategy Policy 2 (SD2) - Strategic Development Needs

Other Development Needs

7. Where other needs are identified, new developments will be encouraged to meet that need in the most sustainable locations having regard to relevant policies within the Local Plan.

Strategic Development Strategy Policy 4 (SD4) - Economic Growth Strategy

1. Economic development needs will be directed to appropriate locations within the Borough to ensure the delivery of sustainable economic growth.

5. Economic growth proposals which attract significant numbers of people will be permitted in the vicinity of a hazardous installation only where there is no significant threat to public safety.

#### Strategic Development Strategy Policy 8 (SD8) - Sustainable Design Principles

1. The Council will seek new development to be designed to the highest possible standard, taking into consideration the context of the surrounding area and the need to respond positively to the:

- a. Quality, character and sensitivity of the surrounding public realm, heritage assets, and nearby buildings, in particular at prominent junctions, main roads and town centre gateways;
- b. Landscape character of the area, including the contribution made by existing trees and landscaping;
- c. Need to protect and enhance ecological and green infrastructure networks and assets;
- d. Need to ensure that new development is appropriately laid out to ensure adequate separation between buildings and an attractive environment;
- e. Privacy and amenity of all existing and future occupants of land and buildings;
- f. Existing transport network and the need to provide safe and satisfactory access and parking for all modes of transport;
- g. Need to reinforce local distinctiveness and provide high quality and inclusive design solutions, and
- h. Need for all development to be designed inclusively to ensure that buildings and spaces are accessible for all, including people with disabilities.

2. New development should contribute positively to making places better for people. They should be inclusive and establish a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit.

3. All proposals will be designed with public safety and the desire to reduce crime in mind, incorporating, where appropriate, advice from the Health and Safety Executive, Secured by Design, or any other appropriate design standards.

4. New development will seek provision of adequate waste recycling, storage and collection facilities, which are appropriately sited and designed.

#### Economic Growth Policy 4 (EG4) - Seal Sands, North Tees and Billingham

2. Development proposals in the North Tees and Seal Sands area will recognise the cumulative importance for bird species associated with the Teesmouth and Cleveland Coast SPA and Ramsar site. Appropriate development proposals will be encouraged at locations within the limits to development where:

- a. If necessary, land has been identified to provide appropriate strategic mitigation; or
- b. The applicant can demonstrate that the proposed development, in-combination with other proposals, will not adversely impact the Teesmouth & Cleveland Coast SPA and Ramsar site.

#### Natural, Built and Historic Environment Policy 4 (ENV4) - Reducing and Mitigating Flood Risk

1. All new development will be directed towards areas of the lowest flood risk to minimise the risk of flooding from all sources, and will mitigate any such risk through design and implementing sustainable drainage (SuDS) principles.

#### Natural, Built and Historic Environment Policy 5 (ENV) - Preserve, Protect and Enhance Ecological Networks, Biodiversity and Geodiversity

1. The Council will protect and enhance the biodiversity and geological resources within the Borough. Development proposals will be supported where they enhance nature conservation and management, preserve the character of the natural environment and maximise opportunities for biodiversity and geological conservation particularly in or

adjacent to Biodiversity Opportunity Areas in the River Tees Corridor, Teesmouth and Central Farmland Landscape Areas.

4. Sites designated for nature or geological conservation will be protected and, where appropriate enhanced, taking into account the following hierarchy and considerations:

a. Internationally designated sites - Development that is not directly connected with or necessary to the management of the site, but which is likely to have a significant effect on any internationally designated site, irrespective of its location and when considered both alone and in combination with other plans and projects, will be subject to an Appropriate Assessment. Development requiring Appropriate Assessment will only be allowed where:

i. It can be determined through Appropriate Assessment, taking into account mitigation, the proposal would not result in adverse effects on the site's integrity, either alone or in combination with other plans or projects; or

ii. as a last resort, where, in light of negative Appropriate Assessment there are no alternatives and the development is of overriding public interest, appropriate compensatory measures must be secured.

b. Nationally designated sites - Development that is likely to have an adverse effect on a site, including broader impacts on the national network of Sites of Special Scientific Interest (SSSI) and combined effects with other development, will not normally be allowed. Where an adverse effect on the site's notified interest features is likely, a development will only be allowed where:

i. the benefits of the development, at this site, clearly outweigh both any adverse impact on the sites notified interest features, and any broader impacts on the national network of SSSI's;

ii. no reasonable alternatives are available; and

iii. mitigation, or where necessary compensation, is provided for the impact.

c. Locally designated sites: Development that would have an adverse effect on a site(s) will not be permitted unless the benefits of the development clearly outweigh the harm to the conservation interest of the site and no reasonable alternatives are available. All options should be explored for retaining the most valuable parts of the sites interest as part of the development proposal with particular consideration given to conserving irreplaceable features or habitats, and those that cannot readily be recreated within a reasonably short timescale, for example ancient woodland and geological formations. Where development on a site is approved, mitigation or where necessary, compensatory measures, will be required in order to make development acceptable in planning terms.

#### Natural, Built and Historic Environment Policy 7 (ENV7) - Ground, Air, Water, Noise and Light Pollution

1. All development proposals that may cause groundwater, surface water, air (including odour), noise or light pollution either individually or cumulatively will be required to incorporate measures as appropriate to prevent or reduce their pollution so as not to cause unacceptable impacts on the living conditions of all existing and potential future occupants of land and buildings, the character and appearance of the surrounding area and the environment.

3. Where development has the potential to lead to significant pollution either individually or cumulatively, proposals should be accompanied by a full and detailed assessment of the likely impacts. Development will not be permitted when it is considered that unacceptable effects will be imposed on human health, or the environment, taking into account the cumulative effects of other proposed or existing sources of pollution in the vicinity. Development will only be approved where suitable mitigation can be achieved that would bring pollution within acceptable levels.

### **MATERIAL PLANNING CONSIDERATIONS**

39. The principle of development has been established on this site and approval given in January 2019 for the two plants. Work has commenced on the development.

40. The background to the original decision-making process is detailed in Paragraphs 1 - 6 of this report and concerns have been raised by the CRPE as to whether the proposed changes to the approved scheme could be sought through a section 73 application as submitted. The view of the Councils Chief Solicitor was obtained on this matter who confirmed that the application can be dealt with as a Section 73 application and therefore the material considerations will concentrate on the variation of the conditions.

#### Condition 2 – Variation of the approved plans

41. Whilst there are changes to the approved plans these changes are not considered to be significant in scale when considering the approved layout. Given the overall scale of the proposal the changes are relatively minor and would not warrant refusal of the application. The condition has therefore been varied to recommend approval of the amended plans.

#### Condition 3 – Materials

42. The condition required details of the materials and finish to be submitted and agreed in writing with the local planning authority. The buildings have been erected and the materials used are a variant of grey and are considered acceptable. This condition does not need to be repeated.

#### Condition 4 - Levels

43. The condition required details of the existing and proposed levels to be submitted and agreed in writing by the Local Planning Authority. The plans submitted have included these details and as they form part of the plans recommended for approval this condition does not need to be repeated.

#### Condition 5 - Sustainable Surface Water Drainage Scheme

44. The condition required the submitted of a scheme for 'the implementation, maintenance and management of a Sustainable Surface Water Drainage Scheme. The SUDs pond forms part of an associated application which is considered acceptable and is recommended approval, however alongside this the drainage details have been submitted and are considered acceptable. The condition has therefore been varied to ensure the maintenance and management plan is adhered to.
45. Whilst no objections have been raised, comments have been received from the Environment Agency regarding the drainage and permitting process. These comments have been added as an informative.

#### Condition 9 Landscaping Softworks

46. The condition required details of a scheme for Soft Landscaping to be submitted. The Highways Transport and Design Manager has considered the submitted details and raises no objections. The landscaping details forms part of the approved plans and this condition doe not need to be repeated.

#### Condition 10 - Maintenance Softworks

47. The condition required the submission of a soft landscape management plan which has been submitted. The Highways Transport and Design Manager has considered the submitted details and raises no objections. The condition has therefore been varied to ensure the scheme is implemented in accordance with this submitted details/document and

to ensure that any planting is replaced should they die/be damaged within 5 years of planting

#### Condition 13 - Noise

- 48 The condition required compliance with the mitigation measures as identified in the noise assessment accompanying the original application which were based on the use of the Rolls Royce technology. Since detailed design the applicant has proposed changes to the engines and equipment which required the submission of a revised noise report.
- 49 Objections have been raised regarding the noise report, its format, and the levels predicted taking into account the background noise levels which differ from those detailed in the noise report submitted on behalf of the residents. Objectors consider that the proposed changes will result in a loss of amenity to the residents of Cowpen Bewley and the character of the historic village.
- 50 A meeting was held between the applicant, RPS (noise consultant for the applicant); Ms Shannon (acting on behalf of the residents of Cowpen Bewley); 24 Acoustics (acting on behalf of the residents of Cowpen Bewley); the Case Officer and Stockton Borough Councils Environmental Health Service Manager and the Environmental Health Officer dealing with the application. During these discussions the main issues (and differing opinions) were debated.
- 51 The main issues outstanding were the correct background level to be used; the penalties to be applied; data for the radiators and potential noise creep.
- 52 Background Noise Level: Environmental Health have carefully considered the submitted information and the submitted data readings and are satisfied that the Applicants submitted noise assessments by RPS have been carried out in accordance with BS4142:2014 methodology and the background noise levels of 37dB is an appropriate measurement in which to assess the application against. Whilst this is not the lowest level recorded; the 25<sup>th</sup> percentile noise level has been used which is lower than using the average sound level which was submitted in the noise reports and gives an accurate reflection of background noise level.
- 53 Penalties: Penalties are applied for certain noise levels and 24 acoustics (acting on behalf of the residents) consider that penalties should be applied for tonal; intermittency and character. The applicant states that there will be no tonal noise element and information within the RPS noise report suggests that the only tonal noise would be from the transformers and as this noise is so low it would not be noticeable at the sensitive receptors. The Environmental Health Team raise no concerns with this conclusion and no tonal penalty is to be applied. Intermittency is not a factor as the noise consultant for RPS advised this is not required as the on/off element of the noise is unlikely to happen within the time period within the BS4142 reference periods (1hr for day time and 15mins for night time), again the Environmental Health Team raise no concerns with this conclusion and no penalty is to be applied. In terms of Character penalties BS4142 states "*where the specific sound features characteristics that are neither tonal nor impulsive, nor intermittent, though otherwise are readily distinctive against the residual acoustic environment, a penalty of 3dB can be applied*". RPS confirmed that noise from the proposed plant will be broadband and continuous in nature when running. As a result, it is considered that noise from the plant will not be readily distinctive against the residual acoustic environment. Environmental Health considered this and as noise is typically below the residual noise at each location, with the noises combined there is an increase of +1dB which is not significant and therefore justifies that no penalty should be applied for 'other sound characteristics'. Overall the

Environmental Health Team are satisfied that no penalties should be applied in this instance.

- 54 Data for the radiators: Whilst there is no specific data for the radiators due to commercial sensitivities; the predicted sound levels have been provided and are lower than the background noise level. It is therefore considered that the noise will not give rise to an adverse impact on sensitive receptors.
- 55 Nosie Creep: This is when noise 'creeps' up following the approval of applications which raise the background noise levels. However, whilst these concerns were discussed and noted; there are noise levels which would give rise to disturbance to residents and at that point the Environmental Health Team would raise objections or ask for mitigation. In this instance it is considered that the noise levels as predicted would not give rise to a significant adverse impact.
- 56 The submitted noise reports show that the worst-case scenario with both plants running at full capacity the cumulative noise impact will increase levels by 3dB above background noise levels as part of the BS4142 assessment.
- 57 The Councils Environmental Health Team have assessed the findings and confirm that the increase in background noise levels by 3dB (BS4142 assessment) would not be significant and would result in "No observed adverse effect" level which in accordance with the National Planning Policy Guidance (detailed at paragraph 37) would not result in specific mitigation measures to be implemented over and above the measures already taken to achieve this level. The relevant noise contour maps can be found at Appendices 4 and 5.
- 58 Whilst acknowledging the objections and the change in plant increasing noise impacts, this in itself would not be a reason for refusal unless adverse effects would occur. The report demonstrates that this is not the case. However to ensure that these predicted levels are not exceeded a condition has been recommended control this matter and to also ensure a validation report is submitted and approved to confirm the levels as predicted. Should these levels significantly exceed those demonstrated then further mitigation may be required.

### **Impact on the SPAs**

- 59 The applicant has submitted additional information in relation to the impact of noise on birds associated with the Teesmouth and Cleveland Coast SPA. The supporting information states that the revised design is predicted to generate cumulative increased average noise levels at the boundary of the SPA of 53Db. In terms of how the predicted noise levels may affect birds, 55dB is the level below which the literature says that effects will be low (negligible), and so are not expected to significantly affect birds within the existing designated site.
- 60 Whilst Teesmouth Bird Club state that the Council has not allowed sufficient time for the information to be considered by Natural England; no requests for extensions were received and in fact further information was submitted at the request of Natural England.
- 61 Following the receipt of further information Natural England and the RSPB have raised no objections. The modelled contour maps included in the updated noise report show the combined impacts of both developments as creating noise levels of less than 53dB at the ecologically sensitive receptors within the RSPB reserve at Saltholme which is within acceptable limits. In addition; the continuous nature of any noise when the plant is operational (rather than sudden unexpected noises), is also unlikely to cause significant disturbance to designated site interest features.

- 62 Accordingly, it is considered that the change in the equipment leading to the revised noise assessment will have no likely significant effects on designated and protected areas and the condition as recommended will ensure that the noise levels in the report are monitored and adhered to.
- 63 Overall, it is considered that the submitted noise report is robust, and in accordance with the appropriate British standard and no significant adverse effects will occur from the change in technology.

#### **Other matters**

- 64 Concerns have been raised regarding the number of hours the plant will operate. Whilst this is acknowledged, there would be no resultant harm in the facility operating for the maximum hours as proposed and no need to apply conditions to restrict this matter. It should be noted that the Environment Agency have criteria in relation to these plants and place restrictions on the permit in relation to the maximum operating hours for a peaking plant. Should the plant operate beyond the scope of the description of the development then a further planning application may be required for the plant(s).
- 65 Comments have been made in relation to the change in supplier of the engines which increase noise, however the applicant states there are positive changes by using these engines. The NPPF states "the focus of planning policies and decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes). Planning decisions should assume that these regimes will operate effectively. The consideration of BAT (best available techniques) falls within the Environmental Permitting Process and is not a planning consideration, the Environment Agency confirmed that they have been in discussions with the applicant and early indications show that the proposed technology is extremely efficient but detailed consideration will take place during the permitting process.

#### **CONCLUSION**

- 66 It is recommended that planning permission be granted with Conditions for the reasons specified above

**Director Of Finance, Development & Business Services**  
**Contact Officer Elaine Atkinson Telephone No 01642 526062**

#### **WARD AND WARD COUNCILLORS**

**Ward Billingham East**  
**Ward Councillor Councillor Mick Stoker**

**Ward Councillor Councillor Evaline Cunningham**

#### **IMPLICATIONS**

*Financial Implications: None*

*Environmental Implications: All environmental considerations have been addressed in the main body of the 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; National Planning Policy Framework; Adopted Local Plan; Planning application files.*