



## Appeal Decision

Hearing held on 11 October 2022

Site visit made on 12 October 2022 and 23 November 2022

**by Paul Thompson DipTRP MAUD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 November 2023**

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**Appeal Ref: APP/Q2500/W/22/3296831**

**Land off High Street, Biscathorpe, Louth, Lincolnshire, LN11 9RA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Mark Abbott (Egdon Resources U.K. Limited) against the decision of Lincolnshire County Council.
  - The application Ref PL/0037/21, dated 25 February 2021, was refused by notice dated 6 December 2021.
  - The development proposed is a side-track drilling operation, associated testing and long term oil production.
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### Decision

1. The appeal is allowed and planning permission is granted for a side-track drilling operation, associated testing and long term oil production at Land off High Street, Biscathorpe, Louth, Lincolnshire, LN11 9RA in accordance with the terms of the application, Ref PL/0037/21, dated 25 February 2021, subject to the attached schedule of conditions.

### Procedural Matters

2. An accompanied site visit took place during the daytime on 12 October 2022 but, at the request of the main parties, I also undertook an unaccompanied visit during the hours of darkness on 23 November 2022.
3. In making a reasoned conclusion on my decision, I have taken into account the Environmental Statement (ES) produced by the appellant, in accordance with the EIA Regulations<sup>1</sup>; comments from statutory consultation bodies and any representations duly made by any particular person or organisation about the ES and the likely environmental effects of the proposal; and further information requested by the mineral planning authority (the MPA) under Regulation 25 of the EIA Regulations and any other information. Furthermore, all other environmental information submitted in connection with the appeal including that arising from questioning at a hearing has also been taken into account, as such material contributes to the totality of the environmental information before me.
4. At the Hearing, the main parties agreed upon the submission of several drawings and documents:
  - at my request, revision of the Statement of Common Ground to take in alterations and discussion regarding the planning conditions;

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<sup>1</sup> Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

- drawing reference 149-01-03 ZTV provided by the MPA and discussed at the Hearing as part of its evidence in connection with the zone of theoretical visibility of Phase 4 of the proposal (submitted in August but missing from the appeal file);
  - a drawing showing the location and extent of biodiversity enhancement and reinstatement planting for all phases of the proposal (reference: ZG-ER-BISC2-PROD-PA-21 Revision 2);
  - the committee report referring to the previous temporary permission for a well at the site (reference: (E)N59/2259/14);
  - the drawing in connection with the planning condition for the lighting layout of the previous exploratory phase at the site (reference: 23299(2) P 09 Revision A), the accompanying External Lighting Assessment (November 2015), and the Decision Notice approving those details (dated 11th December 2015);
  - the final executed version of the Planning Obligation by Unilateral Undertaking, pursuant to Section 106 of the Town and Country Planning Act 1990 (UU); and
  - an appeal decision relating to a similar proposal in West Sussex.
5. The main parties were either directly involved in discussion regarding these documents or were provided with an opportunity to comment on their relevance to the appeal. Furthermore, with cognisance of the Wheatcroft principles<sup>2</sup>, I am satisfied that interested parties have not been prejudiced by my acceptance of the plans and information, principally because they do not alter the nature of the proposal. My findings therefore relate to these.
6. The Decision Notice identifies concerns regarding the potential landscape effect of the proposal, including to the Lincolnshire Wolds Area of Outstanding Natural Beauty. Section 85 of the Countryside and Rights of Way Act 2000 (as amended) (the Act) requires all relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of these areas when performing their functions. I have therefore had regard to these matters in the appeal, including my statutory duty.
7. The Planning Practice Guidance refers to the relevance of management plans for Areas of Outstanding Natural Beauty for assessing planning applications. Whilst these do not form part of the development plan, they help to set out the strategic context for development and provide evidence of the value and special qualities of these areas<sup>3</sup>. In this context, the Lincolnshire Wolds Area of Outstanding Natural Beauty Management Plan 2018-2023 (AONB Management Plan) is a significant material consideration, particularly as its objectives and policies align with the aims of the Framework.
8. The Decision Notice refers to Policies DM1 and DM5 of the Lincolnshire Minerals and Waste Local Plan Core Strategy and Development Management Policies<sup>4</sup> (CSDMP). In its Statement of Case, the MPA has indicated it no longer seeks to defend the appeal in respect of compliance with the former. At the Hearing the

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<sup>2</sup> Bernard Wheatcroft Ltd v SSE.

<sup>3</sup> Planning Practice Guidance Paragraph: 040, Reference ID: 8-040-20190721, Revision date: 21 07 2019.

<sup>4</sup> Adopted June 2016.

MPA also confirmed conflict with latter only related to the third criterion to the policy, and not the first or second criterion. At the Hearing, the MPA confirmed it did not identify any conflict with the first and second criterion to Policy DM5. Despite this, I have had regard to the requirements of these policies where relevant to my decision.

9. On 5 September 2023 the Government published a revised National Planning Policy Framework (the Framework). The revised Framework was accompanied by a written ministerial statement and the only substantive revisions to it relate to national policy for onshore wind development in England. As such, I have not engaged further with the main parties regarding this revision.

### **Main Issue**

10. The main issues are:

- whether the appeal site would be a suitable location for the proposed development having regard to local and national planning policy relating to the effect of the proposed development on the landscape and scenic beauty of the Lincolnshire Wolds Area of Outstanding Natural Beauty; and
- where relevant, whether the proposed development is justified by exceptional circumstances or the public interest.

### **Reasons**

#### *Landscape and Scenic Beauty of the Lincolnshire Wolds Area of Outstanding Natural Beauty*

11. The appeal concerns a well pad and access routes to it from the east and west used in connection with exploration, production testing and evaluation<sup>5</sup> previously approved by the MPA. That permission has expired, and the site should have been returned to agricultural use, but remains as a well pad due to consideration of the appeal scheme, which would be sited in the same location.
12. The site is situated within a dip in the landscape within a part of the Lincolnshire Wolds Area of Outstanding Natural Beauty (AONB) identified in the appellant's ES as being of high landscape value, the landscape character of which is typical of the AONB, with high scenic quality, conservation interests, recreational value, perceptual value and with few detractors. The main purpose of the AONB designation is stated in the CSDMP as being the conservation and enhancement of the natural beauty of the area.
13. Despite the presence of a tree belt to its north and farm buildings east of it, at the time of my daytime visit, I observed the site of the well pad to be visible from the public right of way (PROW) to the northeast (GayW/144/3, near to the site of the Medieval Village of Biscathorpe). The site and existing enclosures were also visible from the part of GayW/146/1 to its south. There was also some limited visibility from other positions over and through gaps in hedges adjacent to Donington Road and Biscathorpe Road. Given its appearance, the well pad and its enclosures do not currently make a positive contribution to the landscape and scenic beauty of the AONB.

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<sup>5</sup> Planning Reference: (E)N59/2259/14.

14. During the hours of darkness I observed bright lights could be glimpsed through trees in the foreground of the houses to the east. The houses close to the junction of Donington Road are more open within their immediate surroundings, but lights at these properties have a limited presence. Belmont Tower and its red lights are a prominent feature of the night sky and are visible from some distance around, including north of the site. Vehicle headlights are also apparent on surrounding roads, along with lights at homes in nearby Burgh on Bain. Overall, the lights that were aglow at the time of my night visit, in the dip in the landscape either side of the site, were noticeable from distance, but did not alter the perception that the part of the AONB around the site features a dark sky. While that part of the AONB is not denoted in the CPRE Dark Skies Map as the darkest category of sky, which refers to the UNESCO categorisation, it makes a significant contribution to the peace and tranquillity that forms one of its special qualities, as referred to in the AONB Management Plan.

#### Nature and Extent of the Proposal

15. The evidence before me provides sufficient confidence and certainty that Phase 2 (Extended Well Testing) for the resource potential of the Basal Westphalian Sandstone and Dinantian Carbonate reservoirs would not extend beyond a period of twelve weeks. The maximum cumulative duration of Phases 1 (Side-track Drilling) and 2 would therefore not be expected to take any longer than twenty weeks. This provides certainty as to any impacts referred to in the ES and the assumptions made, on that basis, for any downgrading of effects due to the timeframe of that part of the operation.
16. At the Hearing, the appellant confirmed site lighting would only be required at night during Phases 1 and 2 and not during the day. The ES is also clear when lighting would be required in other phases. For example, during Phase 3 (Site Civil Works), when there is inclement weather or reduced daylight hours of operation during winter, and for similar purposes in Phase 4 (Production). I note the MPA amended its Reason for Refusal to refer to the possibility of lighting being needed at other times during daylight hours of Phases 1 and 2, but its case is not definitive and there is no substantive evidence before me to doubt the stated operational requirement for lighting.
17. I am also mindful that the rig that would be required for the proposal would likely be much smaller than that used in the previous approved scheme.

#### Effect of the Proposal

18. The viewpoint analysis undertaken in the Section 6 of the ES (Landscape and Visual Impact) for the proposal has not considered all the possible points in the locality from where the proposal may or may not be seen. This is not necessarily determinative in respect of all viewpoints, as there will be legitimate reasons why these are not carried out, including distance and intervening vegetation or landforms.
19. The proposed plant and machinery, including the much taller rigs would be visible from multiple viewpoints and would therefore be prominent. However, the effect of the proposal can be downgraded due to consideration of the temporary nature and short timeframe of most of the individual phases, embedded mitigation measures, operating hours, local topography, intervening screening, and the sequence of views available.

20. Despite the consideration of the effect of sequential views, PROW GayW/144/3 and GayW/146/1 are critical to experiencing the landscape and the sequence of views in the part of the rolling landscape of the AONB surrounding the site. Moreover, notwithstanding the proposed planting around the well pad, plant and machinery required in Phase 4B would likely be visible in views from those PROW throughout production on the site. They would not be compatible with their surroundings and appear as stark industrial features within an agricultural landscape. For example, even though it would be slow moving, the proposed beam pump would undoubtedly appear out of context in relation to other moving features such as farming and other vehicles.
21. On this basis, while the principal and sustained impact upon the landscape and scenic beauty of the AONB would be Phase 4B from those PROW, I cannot agree that there would only be a negligible adverse effect on landscape character during that timeframe, particularly as the view from GayW/144/3 has not been included in the appellant's LVIA.
22. While the appellant's evidence has not considered the effect of the proposal on the AONB, as a whole, for the above reasons, I consider that it would result in an adverse effect on the landscape and scenic beauty of the AONB.
23. Turning to lighting, the updated version of Section 12 of the ES (Lighting) provides a thorough and proportionate appraisal of the effect of the proposal and clearly articulates that there would be some harm caused by glare, light spill, and sky glow from the proposed scheme of lighting during each of the separate phases. The assumptions made for the downgrading of any effects in the evidence can be relied upon and the extent of harm would be kept to a minimum by a combination of the timeframe that lighting would be required; mitigation measures embedded in the lighting, including for reflection; the proposed operating hours; and local topography and screening.
24. Lighting mitigation measures during Phases 1 and 2, would include red strobe lights at high-level for aircraft anti-collision purposes and lower-level lighting to illuminate the working area within the site. All lighting, apart from the former, would be downward-facing and there would not be the same higher-level rig lighting used in connection with the previous approval. Lighting would also reduce significantly in Phase 2 when the workover rig is removed. During Phase 4B warm light LEDs would be used to provide greater control over the direction of lighting to reduce its impact in its context. Lighting would only likely be in use on a limited basis as most works would be carried out during daylight hours. Lighting in phases 3, 4A and 5 would also be short-term and temporary.
25. While I am mindful that the previous approval has expired, there is no indication conditions in the environment of the site have altered to warrant a different approach being taken in respect of the general presence of a temporary impact of light in the landscape. Nevertheless, the effect of lighting would either be Moderate to Minor Adverse for sky glow and Minor Adverse to Negligible for light spill and glare, which would result in unacceptable harm to the appreciation of the AONB as a largely dark sky landscape. Moreover, light pollution is identified in the AONB Management Plan as a threat to the peace and tranquillity of the AONB, which equates to one of its special qualities.

### Conclusion on the First Main Issue

26. For the above reasons, while the impact of the proposal on the special qualities of the AONB, including lighting, would be mitigated/moderated to an extent, I conclude that the appeal site would not be a suitable location for the proposed development having regard to local and national planning policy relating to the effect of the proposed development on the landscape and scenic beauty of the AONB. Hence, the proposal would conflict with the aims of the Act, the third criterion of CSDMP Policy DM5 (regarding whether the impact on the special qualities of the AONB can be satisfactorily mitigated); Strategic Policies 10 and 23 of the East Lindsey Local Plan Core Strategy (Adopted July 2018) (ELLPCS); and Framework paragraphs 177c and 185. The conflict with Policy DM5 would also bring conflict with CSDMP Policy M9, which requires compliance with all relevant policies of the plan.

### *Exceptional Circumstances and the Public Interest*

27. As I indicated in *Procedural Matters*, the MPA has not referred to conflict with the first and second criterion of CSDMP Policy DM5. However, given my finding in the first main issue, and reference to these matters by the appellant and interested parties, it is necessary to consider whether the proposal would be in compliance with those aspects of the policy. Framework paragraph 177 also deals with these points, so it is also a material consideration.
28. CSDMP Policy DM5 and Framework paragraph 177 both state that development in the AONB should not be granted permission except where exceptional circumstances exist. This includes whether the development is in the public interest. The Framework sets out further detail in this respect and refers to the need for the development, including any national considerations, and the impact of permitting or refusing it upon the local economy. It is also necessary to consider the cost of, and scope for, developing outside the designated area or meeting the need for it in some other way. The use of the word 'or' in this latter point implies both need not be considered. I have considered the evidence regarding alternative sites before me in this regard and also refer to other stated benefits associated with the proposal.

### Need for the Development

29. The UK Government declared a Climate Emergency in May 2019, but I have no firm evidence the MPA has followed suit. However, earlier that year it produced a Carbon Management Plan 2018-2023 which commits to reducing the impacts of climate change. The amended Climate Change Act 2008<sup>6</sup> set a goal to achieve net zero greenhouse gas emissions by 2050, from a 1990 baseline and with a 78% reduction by 2035<sup>7</sup>, partly secured by a significant reduction in demand for oil. This aim is also repeated in the UK Net Zero Strategy: Build Back Greener<sup>8</sup>, to which an interested party has referred. National Policy Statement EN-1 (2011) outlines the urgency of the UK continuing to have secure, reliable, and diverse supplies of energy during the transition to a low carbon economy. The Energy White Paper<sup>9</sup> also refers to this transition, which means reduced dependence on fossil fuels will require continued supply thereof throughout the transition. This is recognised in the British Energy Security

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<sup>6</sup> The (2050 Target Amendment) Order 2019.

<sup>7</sup> The Sixth Carbon Budget – the UK's path to net zero (2020).

<sup>8</sup> October 2021.

<sup>9</sup> December 2020.

Strategy<sup>10</sup>, which highlights the vulnerability of dependence on oil from international sources and the need to source it domestically during this time. Similarly, the CSDMP highlights the transport sector would remain particularly dependent on oil, as the main consumer; and demand would remain before and after the phasing out of the sale of new diesel and petrol vehicles.

30. The appellant estimates that the Basal Westphalian Sandstone reservoir has a mean resource of 3.95 million barrels, with further potential of 24.4 million barrels of oil in place for the underlying Dinantian Carbonate. The proposal would be to extract oil over a period of fifteen years and, at the Hearing, the appellant stated the equivalent of 6.5 million barrels of oil could be recovered collectively from the reservoirs. Correspondence with the MPA alternatively suggested the estimate was closer to 2.77 million barrels. This would not be authenticated until a discovery were made, but would only amount to several days' supply over the entirety of the production period, and could ultimately be exported. Nonetheless, the security of supply will remain a key issue, so the proposal could make a small, but important, contribution to supply from an indigenous resource and reduce reliance and competition for oil imports from abroad to help meet the continuing need for oil as the UK transitions to a low carbon economy.
31. In light of the above, and having regard to the impacts of climate change from the development, while it may not replace production overall, it may reduce the output from other countries. This may also support a decrease in carbon generated through transportation from abroad, albeit there would be some related impacts associated with regular HGV movements to the Humber refinery. Furthermore, a biproduct of the proposal could also be the production of electricity from gas evident in the target reservoirs, with surplus exported to the grid. This would ensure gas is simply not flared if volumes are sufficient to run the proposed gas turbine.
32. Accordingly, the proposal would be in the national interest, particularly in respect of energy security in accordance with UK government policy and local policy approaches, including An Energy Strategy for Greater Lincolnshire<sup>11</sup>.

Impact on the Local Economy (and other Economic Benefits)

33. The proposal would result in provision of short-term job creation during the majority of phases of the development, but lead to a small amount of sustained full-time and part-time direct and indirect jobs being created through the operational phase, including site operatives, contractors, and haulage. However, some jobs would be within the appellant's head office. There would also be support to the local economy through procurement of goods and services, including plant equipment, site infrastructure and set up works.
34. The provision of crude oil to the Humber refinery would support the regional economy and there would be further investment through procurement from supplier services, plant suppliers and building contractors. Sizable annual revenue would also be due at this time to the receiving authority through business rates, and to a much lesser extent in other phases.
35. Further standard contributions to the government would also be made through corporate and employee taxes, and national insurance. While jobs ultimately

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<sup>10</sup> Secure, Clean and Affordable British Energy for the Long Term (April 2022).

<sup>11</sup> Greater Lincolnshire Local Enterprise Partnership (2019).

created may alter, I am mindful the Framework affords significant weight to the need to support economic growth and productivity. This proposal could therefore make positive contributions in both social and economic terms, which would support the priorities of the Greater Lincolnshire Local Enterprise Partnership Strategic Economic Plan (2014-2030).

36. Unlike a National Park, the recreational value of the AONB is not as important to its designation. Nevertheless, its peace and tranquillity and landscape properties are undoubtedly characteristics important to the experience of visitors to the countryside therein, including walking and cycling routes nearby. The number of people visiting the AONB on this basis is therefore likely to contribute to the local economy. I have concluded above that the proposal would be experienced from the footpaths in the locality and there would be some harm associated with this. The noise that would be likely to be experienced from the site during times of walking and cycling would be most likely during daylight hours. The evidence before me indicates that this would be amongst background noise from local and distant traffic and mostly during the short term and temporary phases of the development. Despite this, there is no substantive evidence before me to demonstrate that these impacts of the proposal would weaken the contribution made by tourism to the local economy.

#### Alternative Sites Outside the Designated Area

37. Conventional and unconventional hydrocarbons, such as oil, are defined in Framework Annex 2 as mineral resources of local and national importance and paragraph 209 states these can only be worked where they are found. Framework paragraph 215 and the Planning Practice Guidance<sup>12</sup> also establish that different phases of onshore oil development should be separated out.
38. Accordingly, despite most of the appellant's Petroleum Exploration and Development Licence for Area 253 lying within the AONB and exploration having already taken place at the site under the previous approval, consideration as to why the same wellsite should be used for production purposes is necessary. However, the appellant has satisfactorily demonstrated in the ES, Planning Statement, and Statement of Case, that it would be inherently cost prohibitive to re-drill from another location outside of the AONB, as this would be too far away from the target area and subject to greater risk of mechanical failure from the sub-surface geology. Furthermore, the existing wellsite would enable reuse of existing infrastructure, including direct access to the strategic road network. It would therefore be impractical for exploration and production from the target reservoirs to take place from a surface location outside the AONB.
39. Even if it was necessary for me to consider whether the need for the development could be met in some other way, the proposal has been demonstrated to be a credible and viable option to secure onshore oil production and it would not be appropriate to solely rely on alternative imported oil supplies. Furthermore, I have not been pointed to any other new alternative means of onshore or offshore production in the UK that would yield equivalent supply that could be available within the same timeframe.

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<sup>12</sup> Paragraph: 120 Reference, ID: 27-120-20140306, Revision date: 06 03 2014.



### Other Benefits

40. The proposed UU would control the operation of a Community Liaison Group (CLG) and implementation and maintenance of two phases of landscape and biodiversity planting referred to in the suggested conditions in the updated SoCG (numbering of which is affected by reordering of conditions – see below). Implementation of the CLG would amount to social benefit, albeit it would be required to maintain communication with the local community throughout the proposed development.
41. Biodiversity net gain (BNG) is not yet mandatory for new developments but the Framework is supportive of measurable attempts to secure such benefits. There would be an overall gain of 0.91 Habitat Biodiversity Units and 5.56 Hedgerow Biodiversity Units, respective gains of 10.83% and 3455.37% in comparison to the existing baseline. This would include habitat connectivity and native tree and shrub species to supplement existing mature vegetation. However, bird and bat boxes, and an owl platform, would also be installed. Planting would be brought about before exploration begins. These would therefore amount to environmental benefits.
42. I am satisfied that these provisions meet the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and the Framework. They are directly related to the development and are also reasonable in scale and kind in the context of the nature of the development.

### Conclusion on the Second Main Issue

43. With reference to the provisions of CSDMP Policy 5 and Framework paragraphs 177, 209, 211 and 215, the need for the development, impact on the local economy (including other economic benefits), the other benefits associated with the proposal, and the absence of evidence of any other cost-effective alternative beyond the AONB would amount to exceptional circumstances and sufficient public interest to justify this major development within the AONB.

### **Other Matters**

#### Living Conditions

44. The potential glare that would be experienced at nearby residences has been modelled in the ES and while there would be some minor-moderate adverse impact for residents in Phases 1, 2, and 4A, these would be temporary and over a short timeframe. The use of warm LED lighting in the production phase would also address the issues with lighting that led to a complaint with the previous approval. The measures employed in the proposal would therefore address the harmful effect of glare to residential receptors from the site, but the ES includes clear procedures for dealing with any complaints due to light.
45. There is likely to be some noise associated with construction, demobilisation, and restoration operations within the site, but these would be temporary and over a short timeframe. While the long-term production would be a 24 hour operation throughout the year and the drilling and appraisal phases would be operated in a similar manner, there is no substantive evidence before me that would lead me to doubt the findings of the appellant's noise assessment regarding the effect of the proposal on residential receptors. Furthermore, the noise from drilling can be restricted by planning condition, alongside other conditions to deal with complaints.

### Water Pollution and Other Ecological Impacts

46. Containment measures are proposed to protect against any above or below ground leaks and Environmental Permitting, administered by the Environment Agency, would include monitoring to ensure site operations would not impact above or below ground water, including aquifers and the internationally rare and threatened habitat of chalk streams. Furthermore, the appellant's Flood Risk Assessment is thorough and satisfactorily demonstrates the containment berm around the well pad would ensure it can contain floodwater during a prolonged event; and surface water can be drained satisfactorily from the site. I also note environmental monitoring was undertaken before, during and following exploration in connection with the previous approval and no effects were reported.
47. The Ecological Impact Assessment included in the ES also demonstrates there would not be significant adverse effects on ecology from the proposal, including to non-statutory designated sites within 2 km of the wellsite. The assessment of the effects of lighting also reaches a similar conclusion. I find these to be proportionate and well-related to the proposal and there is no substantive evidence before me that would lead me to reach an alternate conclusion regarding their findings, including in relation to any implications associated with light spill and glare to foraging bats or owls.

### Air Pollution and Human Health

48. The proposal could require gas flaring and/or the use of a gas turbine, which could lead to combustion from the site, alongside that associated with vehicle movements to and from the well pad. However, the ES (Air Quality and Dust) outlines total concentrations of pollutants would remain within environmental standards and air quality would continue to be of a good standard. There is no substantive evidence before me to lead me to a different conclusion that there would not be any risk to human health from airborne pollution from the site.

### Risk of Hydraulic Fracturing ('Fracking'), Further Drilling, Accidents, and Precedent

49. At the Hearing, the appellant referred to the underlying rock formations as being porous, a point also made in the CSDMP. Accordingly, despite concerns there could be fracking with the proposal and implications for ground stability, there is no substantive evidence before me to demonstrate that oil could not be extracted using the conventional methods proposed in the appeal scheme.
50. The phasing of the proposal is clear, and the appellant is required to notify the MPA of any phasing change. While there is no substantive evidence before me to suggest future drilling would be needed should flow reduced from the well, the appellant would need to seek the MPA's agreement to such works.
51. There are regulations in place to ensure that proposals such as the appeal scheme are operated and plans put in place to prevent and deal with any accidents, including but not limited to fire, explosion or uncontrolled escape of flammable gases. This provides sufficient confidence that the site would be unlikely to be at risk of a major incident or disaster.
52. I have also considered the argument by numerous interested parties that the grant of planning permission would set a precedent for other similar developments in the AONB, but I have not been referred to other comparable

sites to which this might apply and, in any event, each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.

#### Traffic and Road Safety

53. At the Hearing, an interested party raised that light from the proposal would likely distract motorists. However, this was not raised by the highway authority or MPA and there is no evidence before me to suggest lighting of site previously led to such issues or it would do in the future, as there were no reports of any collisions when the site was previously operational.
54. The proposal would result in an increase in traffic utilising local roads, including HGVs from the access taken from the B1225. However, the change in vehicle numbers associated with the development would be unlikely to be perceptible. With the measures to be employed through the proposal, including restricting the number and hours that HGVs can access the site, there is no substantive evidence before me to suggest there would be any harmful implications to highway safety or the effective operation of the highway network.

#### Heritage

55. The Grade II\* listed Church of St Helen, situated in Biscathorpe is around 730m east of the well pad. I have therefore had regard to the statutory duty referred to in the Planning (Listed Buildings and Conservation Areas) Act 1990. However, given the proximity and physical relationship of the proposal with this designated asset and the temporary nature of the tall drilling and workover rigs, the setting of the listed building would be preserved, and the proposal would not detract from it.
56. The appellant's Planning Statement identifies there are four Scheduled Monuments within 1km of the site, with the access track from the B1225 situated between two of these. As I alluded to above, the vehicles movements between the monuments would be limited, the principal impacts of lighting from taller plant and infrastructure would also be temporary and lighting would be restricted to the times personnel would be on site. Similarly, mitigation of noise would also be controlled by condition. Plant and machinery utilised in the longer production phase would also be partly screened by planting around the well pad. As such, there would not be harm caused to the setting of the monuments. There would also be limited alterations to the access track surfacing and the implications upon archaeology would be satisfactorily managed through a written scheme of investigation secured by condition.

#### **Planning Balance**

57. I have found that all adverse impacts of the development, referred to in 'Other Matters' could be acceptably mitigated in planning terms, but there would be an adverse impact on the landscape and scenic beauty of the AONB, contrary to one criteria of CSDMP Policy DM5, as well as Policy M9; Strategic Policies 10 and 23 of the ELLPCS and Framework paragraphs 177c and 185. However, the proposal would accord with the two criterion of CSDMP Policy DM5 and Framework paragraphs 177, 209, 211 and 215 in respect of the need for the development, its impact on the local economy and consideration of alternatives beyond the AONB. There would also be other associated benefits.

58. In my overall judgement, the national need identified for oil production would amount to a national interest in the context of ensuring energy supply security in the transition to a low carbon economy. This would meet the test of providing exceptional circumstances to justify the proposed major development in the AONB. Accordingly, despite giving great weight to conserving the landscape and scenic beauty of the AONB, the proposed development would be in the public interest.
59. All aspects of CSDMP Policy DM5 need to be satisfied to ensure accordance with the plan, including Policy M9. The proposed development would, therefore, be contrary to the CSDMP, and ELLPCS, when both are considered as a whole. However, the Framework is the most up-to-date expression of national policy regarding consideration of impacts to AONBs and minerals development, and there is greater flexibility in demonstrating compliance with paragraph 177. When assessed against the policies in the Framework, taken as a whole, including in respect of sustainable development, this leads me to an overall conclusion that material considerations indicate the decision should be taken otherwise than in accordance with the CSDMP and ELLPCS. This would therefore justify the grant of planning permission for the appeal.

### **Conditions**

60. I have considered the conditions agreed in the revised SoCG and altered the wording, where it adds clarity, and order in line with the Planning Practice Guidance<sup>13</sup>, except where subsequent follow-up conditions apply to the same subject matter, such as for archaeology. For reasons of clarity and highway safety, I have also merged two conditions regarding HGV movements from the proposed access in forward gear and to secure a scheme of signage to direct HGVs to turn right from the access onto the B1225.
61. Due to the timeframe from when the timing condition was first drafted for consideration at the MPA's Planning and Regulation Committee and the date of my decision, I have extended the timeframe for cessation of development by two years. This would be a reasonable approach considering the phases of the development, as this would maintain a similar timeframe to that originally intended by the MPA. That condition would subsequently ensure that clearance and restoration of the site is carried out in the interests of the AONB.
62. It is necessary to require compliance with the submitted drawings and documents in the interests of achieving a satisfactory development.
63. It is also necessary to ensure planting and wildlife measures, required in the interests of the landscape character of the site's surroundings and its biodiversity, are implemented before any operations begin on site to enable these to establish as quickly as possible. Further pre-commencement conditions are necessary to ensure site access works are carried out in the interests of safety of users of the site and the B1225; to secure a scheme of archaeological works for safeguarding potential deposits in the site; and to secure the terms of reference for the proposed community liaison group to ensure engagement with residents and other parties occurs.
64. The main parties have proposed alternate versions of a condition to provide certainty over the start of each phase, of which the MPA should be notified. The

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<sup>13</sup> Paragraph: 024 Reference ID: 21a-024-20140306, Revision date: 06 03 2014.

- principal difference being control over Phase 2 not extending beyond twelve weeks. I favour inclusion of such controls as it provides clarity of the extent of that phase, which has been satisfactorily demonstrated in the evidence.
65. The layout and section drawings for Phase 2 of the development do not show the proposed workover rig. At the Hearing, the appellant stated it would be a temporary structure, smaller than the drilling rig in Phase 1. The ES has had regard to effect of the equipment required for each phase, particularly to the landscape including through lighting and there was sufficient detail in other visuals, to enable me to consider the effect of such a structure. Nevertheless, it would be a reasonable approach to impose a further condition to update drawings to ensure the proposed details are consistent across the application documents. Conversely, given the timeframe of its use in other phases, it would not be necessary to insist that details of the workover rig are required on drawings for later phases in connection with any occasional maintenance.
  66. It would also not be reasonable or necessary to insist that details of mobile cranes or plant are required for installation or demolition of any structures or restoration of the site. These would likely only be needed over a very short timeframe so it would be an overly burdensome task for the appellant and MPA to consider these. Put simply, the appellant is likely to use what is required to ensure these operations are carried out safely and conveniently and there would be no other alternative.
  67. The nature of any connection to the national grid for electricity supply would be determined through engagement with an operator. A temporary generator to provide electricity onsite prior to such a connection may be required but this is not uncommon in new developments. There are sufficient controls in place through other planning conditions to ensure that noise for any such generator would not harm nearby receptors.
  68. Conditions are necessary to secure further details before Phases 3 and 4 commence regarding the provisions to be made to ensure contaminated water does not discharge from the site; and for the proposed gas engine in order to protect air quality, the natural environment and nearby receptors.
  69. Further conditions are also necessary to ensure measures to protect and enhance biodiversity and habitats are secured during production and restoration of the site and maintenance thereafter. Separate conditions are required to ensure site restoration and closure is carried out in accordance with the programme set out in the Planning Statement; and perimeter bunds are retained throughout the development to ensure soil therein can be utilised for site restoration.
  70. In the interests of the living conditions of nearby receptors, conditions are necessary to clearly state the hours of operation and times when HGVs can serve the development; and noise mitigation measures, including measures to deal with noise complaints. The condition is also reasonable to ensure that any gas flaring and use of lighting in conjunction with the operating hours specified.
  71. The main parties do not agree on the number of HGVs per day during the production phase. The Transport Assessment (TA) indicates that there would be an average of three HGVs (six movements) each day, but no overall total is specified for that phase. There are no assumptions set out in the ES, TA, or Planning Statement. The appellant has assumed a maximum of 21 HGVs each

week, based on three for each day of the week. This accounts for no trips being made on Sundays and other public holidays but caters for the operational need generated over the course of the whole week. The condition proposed is for a maximum of four HGVs (eight movements) in any one day, but no more than 21 over the course of the week, all of which would be recorded by the appellant. The MPA has agreed the same principle for the maximum HGVs for any one day but considers the maximum weekly figure should be 18, based on three HGVs on the six days they are permitted to enter the site. There are likely to be sound reasons for more vehicles needing to be onsite to deal with production over excluded days, or for maintenance or other reasons. On this basis an average is a sensible approach. In any event, the difference between the parties amounts to 3 HGVs (six movements), which is generally a low amount and negligible in terms of its environmental impacts. I have therefore imposed the condition suggested by the appellant.

### **Conclusion**

72. The proposed development would be contrary to the CSDMP and ELLPCS, when considered as a whole. Despite this, the material considerations I have set out, including the Framework, indicate that the appeal should be determined other than in accordance with them. Accordingly, for the reasons given, I conclude that the appeal should be allowed.

*Paul Thompson*

INSPECTOR

### **APPEARANCES**

I have excluded qualifications, as not all parties provided these to me.

FOR LINCOLNSHIRE COUNTY COUNCIL:

Natalie Dear (Natalie Dear Planning Consultancy)

Nigel Rockliff (Landscape Architect)

FOR THE APPELLANTS

Mark Abbott (Managing Director, Egdon Resources)

Martin Brooks (Production and HSE Manager, Egdon Resources)

Paul Foster (Head of Minerals and Waste and Planning Lead for the East of England, AECOM)

David Hardy (Partner CMS)

Megan O'Loughlin (Principal Lighting Designer, AECOM)

Nigel Weir (Associate Landscape Architect, AECOM)

## INTERESTED PARTIES

Nick Bodian

Theo Chambers

Matilda Dennis

Stephen Jack (Lincolnshire Wolds Countryside Service)

Hugo Marfleet (County Councillor for Louth Wolds)

Peter Richards

Alison Spittles

Amanda Suddaby

Maureen Salmon

## DOCUMENTS HANDED UP AT THE HEARING

Drawing reference 149-01-03 ZTV, referred to in Procedural Matters.

## DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE HEARING

### 19 October 2022

A revised version of the Statement of Common Ground and an electronic copy of drawing reference 149-01-03 ZTV.

### 20 October 2022

The details of the location and extent of biodiversity enhancement and reinstatement planting; and previously approved lighting of the site, referred to in Procedural Matters

### 26 October 2022

Executed version of the Unilateral Undertaking.

### 9 March 2023

Appeal Decision Reference: APP/P3800/W/21/3282246.

## SCHEDULE OF CONDITIONS

1. The development hereby permitted shall cease on or before 30 November 2039 and by that date all portable buildings, plant and machinery associated with the use hereby permitted shall have been removed, the well capped and the land, including the access track, returned to its previous use as agricultural land or wildlife habitat.

2. Except as otherwise required by other conditions attached to this permission, the development hereby permitted shall be carried out in strict accordance with the submitted details and recommendations set out in the following documents and drawings (received dates relate to the date they were originally received by the mineral planning authority):
  - Application documentation received by the mineral planning authority on 25 February 2021;
  - Planning Statement;
  - Socio-Economic Report as amended by Further Information;
  - Statement of Community Involvement;
  - Environmental Impact Assessment – Environmental Statement Volume I Main Text Chapters 1 – 15 inclusive as amended by Further Information; ES Main Text Appendices 2A & B; 06A, B & C; 07A, B & C; 08A; 09A; 10A; 11A; 12A & B as amended by Further Information; Environmental Statement – Volume IV: Non-Technical Summary.
  - Regulation 25 Further information: Additional Information (Noise); Lighting; and Additional Information (Socio-Economic Considerations), all received 2 July 2021. Additional Information (Landscape and Visual Considerations), Photomontages, 'Zone of Theoretical Visibility and Viewpoint Locations'; and Outline Biodiversity Net Gain Assessment, both received 7 July 2021. 'Response to Natural England Letter dated 04/08/2021', received 19 August 2021.
  - Drawing References: ZG-ER-BISC2-PROD-PA-01; ZG-ER-BISC2-PROD-PA-03; ZG-ER-BISC2-PROD-PA-06; ZG-ER-BISC2-PROD-PA-07; ZG-ER-BISC2-PROD-PA-08; ZG-ER-BISC2-PROD-PA-09; ZG-ER-BISC2-PROD-PA-10; ZG-ER-BISC2-PROD-PA-11; ZG-ER-BISC2-PROD-PA-12; ZG-ER-BISC2-PROD-PA-15; ZG-ER-BISC2-PROD-PA-16; ZG-ER-BISC2-PROD-PA-17; ZG-ER-BISC2-PROD-PA-18; ZG-ER-BISC2-PROD-PA-19; ZG-ER-BISC2-PROD-PA-20, all received 25 February 2021.
  - Drawing References: ZG-ER-BISC2-PROD-PA-13 - Rev3; ZG-ER-BISC2-PROD-PA-14 - Rev2); and ZG-ER-BISC2-PROD-PA-21 - Rev2), all received 2 July 2021.
  
3. No engineering operations in relation to the access road shall take place until a written scheme of archaeological investigation has been submitted to and approved in writing by the mineral planning authority. This scheme should include the following:
  - An assessment of significance and proposed mitigation strategy (i.e. preservation by record, preservation in situ or a mix of these elements);
  - A methodology and timetable of site investigation and recording;
  - Provision for site analysis;
  - Provision for publication and dissemination of analysis and records;



- Provision for archive deposition; and
- Nomination of a competent person / organisation to undertake the work.

The scheme of archaeological investigation must only be undertaken in accordance with the approved details.

4. The archaeological site work must be undertaken only in full accordance with the approved written scheme referred to in Condition 3. The applicant will notify the mineral planning authority of the intention to commence at least fourteen days before the start of archaeological work in order to facilitate adequate monitoring arrangements.
5. A report of the archaeologist's findings shall be submitted to the mineral planning authority and the Historic Places Record Officer at Lincolnshire County Council within three months of the works hereby given consent being commenced; and the condition shall not be discharged until the archive of all archaeological work undertaken hitherto has been deposited with the County Museum Service, or another public depository willing to receive it.
6. HGVs shall access and egress the site in a forward gear and shall only use the entrance constructed off the B1225. However, prior to commencement of development, signage shall be erected on the site access track requiring all HGVs to turn right upon exiting the site and thereafter all HGVs exiting the Site shall turn right for the duration of the development hereby permitted.
7. No operations shall commence until the mitigation advanced landscape planting identified in Section 2.1.2 of the 'Additional Information (Landscape and Visual Considerations)' and illustrated in the Biodiversity Enhancement Plan (drawing number ZG-ER-BISC2-PROD-PA-21 Rev2) has been implemented in full.
8. No operations shall commence on site until a scheme of bird and bat box construction and installation has been submitted to and approved in writing by the mineral planning authority. The details shall include type, materials, dimensions, and proposed locations, of five bird boxes and five bat boxes identified in the ES Chapter Ecology 7.7.6. The approved bird and bat boxes shall be installed in accordance with the approved details and retained and maintained for the duration of the development.
9. Before development commences, the Terms of Reference for establishment and operation of a Community Liaison Group shall be submitted to and approved in writing by the mineral planning authority. The Terms of Reference shall provide details of:
  - a contact on behalf of the appellant who shall be responsible for the organisation and minutes of meetings of the group;
  - a list of members of the group. This should include, but not be limited to, the County Councillor, relevant Parish Councils, the mineral planning authority, Environment Agency and local residents; and

- the frequency of group meetings, the first of which will be held within four months of the date of this permission.

The Community Liaison Group shall be in operation in accordance with the agreed Terms of Reference for the duration of the development hereby permitted.

10. The operator shall notify the mineral planning authority in writing within three working days of the commencement of each Phase and Sub-Phase identified in Condition 17. The operator shall also notify the mineral planning authority in writing of the planned start date for Phase 2, and shall provide this notice at least three working days before this date. In addition, the operator shall also notify the mineral planning authority in writing within three working days of the completion of Phase 2 identified in Condition 17. The duration of Phase 2 shall not exceed 12 weeks in total.
11. Phase 2 of the development hereby permitted shall not commence until layout and sectional drawings for that phase, showing the proposed workover rig have been submitted to and approved in writing by the mineral planning authority. The workover rig shall thereafter be installed for Phase 2 only in accordance with the approved details.
12. Phase 3 of the development hereby permitted shall not commence until full details of the design and technical specification of the proposed Class 1 full retention separator (interceptor) identified in the ES Chapter Hydrogeology, Hydrology and Flood Risk 10.7.2 have been submitted to and approved in writing by the mineral planning authority. The submitted details shall include construction materials and management measures. The interceptor shall thereafter be installed and maintained in accordance with the approved details.
13. The gas engine proposed to be located within the site compound and identified on the Indicative Site Layout Plan Production Mode - Without Security (drawing number. ZG-ER-BIC2-PROD-PA-13 Rev3) for Phase 4 of the development hereby permitted shall not be installed until full details of its design and technical specification have been submitted to and approved in writing by the mineral planning authority. The submitted details shall include construction materials and finishes, and management measures. The gas engine shall thereafter be installed and maintained in accordance with the approved details.
14. The demobilisation and restoration in Phase 5 of the development hereby permitted shall not commence until a scheme of biodiversity net gain habitat creation along the access track as illustrated in Dwg. No. ZG-ER-BISC2-PROD-PA-15, as modified by Dwg. No. ZG-ER-BISC2-PROD-PA-21 REV2 has been submitted to and approved in writing by the mineral planning authority. For avoidance of doubt the detail shall provide the methodology for the creation of scrub grassland along the route of the access track between the Site and the entrance off the B1225 and hedgerow planting at the entrance off the B1225. The approved scheme thereafter shall be

implemented in full in the first available planting season following approval of the scheme.

15.The demobilisation and restoration in Phase 5 of the development hereby permitted shall also not commence until details of a barn owl box have been submitted to and approved in writing by the Mineral planning authority. The details shall include materials, dimensions, and location, of the barn owl box identified in the ES Chapter Ecology 7.7.6. The approved barn owl box shall be installed in accordance with the approved details.

16.The site shall subsequently be restored in accordance with the details set out in the approved Planning Statement Appendix B Site Closure and Restoration Programme.

17.The site shall only operate, including vehicle movements to and from the site, between the hours set out below:

HGV Deliveries

	Mondays to Fridays	Saturdays	Sundays, Bank Holidays and Public Holidays
Phase 1 – Drill rig mobilisation and demobilisation	07:00 – 19:00 hours	07:00 – 19:00 hours	none
Phase 1 – Drilling operation	07:00 – 19:00 hours	07:00 – 13:00 hours	none
Phase 2 – Appraisal/testing mobilisation and demobilisation	07:00 – 19:00 hours	07:00 – 19:00 hours	none
Phase 3 Site Civils	07:00 – 19:00 hours	07:00 – 13:00 hours	none
Phase 4 – Production mobilisation and demobilisation	07:00 – 19:00 hours	07:00 – 19:00 hours	none
Phase 4 Production	07:00 – 19:00 hours	07:00 – 13:00 hours	none
Phase 5 Demobilisation and Restoration	07:00 – 19:00 hours	07:00 – 13:00 hours	none

Operating Hours

	Mondays to Fridays	Saturdays	Sundays, Bank Holidays and Public Holidays
Phase 1 – Drill rig mobilisation and demobilisation	07:00 – 19:00 hours	07:00 – 19:00 hours	none
Phase 1 – Drilling operation only	24 hours	24 hours	24 hours
Phase 2 – Appraisal/testing equipment	07:00 – 19:00 hours	07:00 – 19:00 hours	none

mobilisation and demobilisation			
Phase 2 – Appraisal/testing (other than equipment mobilisation and demobilisation)	24 hours	24 hours	24 hours
Phase 3 – Site Civils	07:00 – 19:00 hours	07:00 – 13:00 hours	none
Phase 4 – Production equipment mobilisation and demobilisation	07:00 – 19:00 hours	07:00 – 19:00 hours	none
Phase 4A Production	24 hours	24 hours	24 hours
Phase 4B Production (personnel on-site)	07:00 – 19:00 hours	07:00 – 19:00 hours	07:00 – 19:00 hours
Phase 4B Production	24 hours	24 hours	24 hours
Phase 4B Production	24 hours	24 hours	24 hours
Phase 5 Demobilisation and Restoration	07:00 – 17:30 hours	07:00 – 13:00 hours	none

However, prior to any operational personnel attending the Site outside the operating hours during Phase 4B in which personnel are allowed on-site, details of the proposed attendance including the number of personnel involved, the duration of the attendance and the reason(s) for the attendance outside the permitted hours must be submitted to, and approved in writing by, the mineral planning authority at least three working days prior to the proposed attendance. For the avoidance of doubt, this does not include for any security or alarm responses or patrols, or in the event of an operational emergency.

18.Noise levels arising from the development hereby permitted measured at a height of 1.5 metres at the boundary of the properties at the identified locations shall not exceed the limits set out below:

Noise sensitive location	Construction Noise Limit dB LAeq, 1hr	Drilling Noise Limit dB LAeq, 1hr between 07:00 and 23:00 hours	Drilling Noise Limit dB LAeq, 5min between 23:00 and 07:00 hours
Yard Cottage	50	42	42
Biscathorpe House	50	42	42
Church Cottage	50	42	42
West Lodge	50	42	42
South Walk Farm	50	42	42
Burgh Top	50	42	42
Baxter Square	50	42	42

Farm			
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19. The embedded mitigation measures identified in the ES Chapter Noise 9.5 shall be implemented in full for the duration of the development.
20. In the event of a complaint received by the applicant or agents or the mineral planning authority, noise monitoring shall be carried out at the closest boundary of the nearest receptor location identified in ES Chapter Noise Figure 9.1 – Noise monitoring locations and receptor locations to demonstrate compliance with the Noise Limits set out in condition 18. Noise monitoring shall be carried out in accordance with BS.4142:2014+A1:2019 and the results made available within ten working days of the monitoring being carried out and on request by the mineral planning authority.
21. In the event of a substantiated complaint, identified as a consequence of monitoring as set out in condition 20, all operations giving rise to noise levels above those approved in condition 18 at the site shall cease. A scheme of mitigation measures shall be submitted to and agreed in writing by the Mineral planning authority and all agreed mitigation measures shall be implemented in full.
22. There shall be no gas flaring outside of the operational hours as set out in condition 17. Lighting is only permitted during the hours when personnel are permitted to be on-site, as set out in condition 17. The operator shall retain a record of emergency access of the site and the record shall be made available on request within five working days by the mineral planning authority.
23. The entrance off the B1225 shall be retained for the duration of the development and shall be maintained to standard so as not to cause damage to the publicly maintained highway.
24. All HGVs exiting the Site shall not deposit extraneous or deleterious material onto the publicly maintained highway.
25. All signage erected on or near the Site relating to the development shall be retained and maintained for the duration of the development.
26. During Phase 4 production no more than 4 HGVs (8 movements) in any one day and no more than 21 HGVs (42 movements) in any calendar week may access / egress the Site Monday to Saturday and no HGVs may access / egress the Site on Sundays, Bank or Public Holidays. The operator must keep and retain a record of all HGV movements to and from the Site and the record shall be made available on written request within five working days by the Mineral planning authority.
27. All perimeter bunds shall be retained and maintained for the duration of the development.
28. The mitigation measures to protect Great Crested Newts within 250 m of Pond 4 shall be implemented throughout the duration of the development and in accordance with the details set out in the ES Chapter Ecology 7.7.4.

29. All tree, shrub and hedgerow planting and biodiversity enhancements approved and implemented in accordance with conditions 2, 7, 13, and 28 above shall be maintained for a period of five years and any dead, damaged or diseased plants shall be replaced with trees or shrubs of such size and species as may be specified by the Mineral planning authority in the planting season immediately following any such occurrences.

**END OF SCHEDULE**