

Agenda Item No. 4.2

DERBYSHIRE COUNTY COUNCIL

REGULATORY - PLANNING COMMITTEE

8 July 2019

Report of the Executive Director – Economy, Transport and Environment

- 2 SECTION 73 APPLICATION TO NOT COMPLY WITH CONDITION 3 (DURATION) AND 4 (APPROVED DETAILS) OF PLANNING PERMISSION REFERENCE NUMBER CW9/0218/94: ERECTION OF A 15MW RENEWABLE ENERGY CENTRE AND ASSOCIATED INFRASTRUCTURE ON LAND AT THE FORMER DRAKELOW C POWER STATION, OFF WALTON ROAD, DRAKELOW APPLICANT: FUTURE EARTH ENERGY CODE NO: CW9/0319/108**

9.1590.4

Introductory Summary Planning permission for an energy from waste power station was granted in 2015 (planning permission code no. CW9/0615/48). A subsequent Section 73 application (CW9/0218/94) to change the design of the plant was granted in May 2018. The principle of the development of the application site for an energy from waste power station has therefore been established through the grant of these planning permissions.

The applicant now seeks further alternative external design changes, but also seeks to extend the duration of the operation of the plant from 25 to 30 years and, as such, has submitted this application to vary the latest planning permission code number CW9/0218/94.

This application proposes non-compliance with Condition 3 and a proposed variation of the condition to allow a 30 year operation of the plant (rather than the approved 25 year operation). The applicant contends that the additional five year period would be required as a result of part of the capital funding for the construction of the facility, which requires the operational period to be over a period of 30 years, rather than 25 years, to cover the term of the construction finance loan.

The applicant also proposes non-compliance with Condition 4 as there is a need to amend the design in order to cater for the change of the plant from a single-line based gasification system to a three-line gasification system, (a three line gasification system was initially approved under the original planning

permission CW9/0615/48, but altered under design changes approved under planning permission CW9/0218/94).

The main elements of the design include a reduction in height of the plant by approximately 10 metres (m), a revised built development footprint, and a general reconfiguration of layout. Fuel throughput, energy output and HGV movements would remain as previously approved.

The original planning application was accompanied by an Environmental Statement (ES) and the subsequent Section 73 application was accompanied by an addendum to the ES. The application now under consideration is also accompanied by a further addendum to the ES, which includes updated analysis with regard to air quality, noise and landscape and visual impacts.

I am satisfied that the proposed changes to the design of the facility and extended operational life of five years (from 25 to 30 years) would not result in any significant environmental or amenity impacts and would accord with the Development Plan, the National Planning Policy Framework (NPPF), and the National Planning Policy for Waste (NPPW). The application is therefore recommended for approval, subject to conditions. The applicant is also required to fulfil the obligations required under the terms of the previously agreed Section 106 agreement.

(1) **Purpose of Report** To enable the Committee to determine the planning application.

(2) **Information and Analysis**

Site and Surroundings

The site lies in the grounds of the former Drakelow C Power Station, off Walton Road, Drakelow. This former coal fired power station was decommissioned in 2003 and subsequently demolished in 2006. The site is a derelict, vegetated parcel of land, comprising mounds of demolition material, two cooling tower concrete bases, which extend off the application site, and a concrete hardstanding, formerly occupied by buildings, yard areas and access roads associated with the power station. The site is 3.75 kilometres (km) to the south of Burton upon Trent. The suburb of Branston is 2km away to the north-east and the village of Walton on Trent is located 2.2km to the south. The site is a rectangular area of approximately 2.5 hectares (ha). Access to the site is taken off Walton Road to the south-west.

Consented Development

Planning Permission was first granted for the development by this Council on 24 November 2015 under planning code number. CW9/0615/48, subject to conditions and a legal agreement under Section 106 of the Town and Country

Planning Act 1990, which includes obligations for HGV routing and Greenway and National Forest Contributions.

The original permission CW9/0615/48 was for a 15 Mega Watt (MW) renewable energy centre and associated infrastructure, utilising biomass rich fuel through gasification. The combined heat and power (CHP) ready gasification plant would be fuelled by Biomass Rich Fuel (BRF) with an annual throughput of 169,500 tonnes of fuel per annum. The system would also provide heat to the approved Drakelow Park Scheme that adjoins the former Drakelow C Power Station site. The original scheme involved the construction of a steel portal framed building measuring 23m high, 164m long and 80m wide to house the plant on a site that measures 2.54ha. The original scheme also included a 45m high flue stack.

A further application made under Section 73 of the Town and Country Planning Act 1990, planning permission code number. CW9/0218/94, was granted 17 May 2018 to vary the original permission to not comply with Condition 4 (Approved Development). This essentially agreed external design changes to the scheme as originally approved, including increasing the height of the main building to 33.5m to the central section of the plant and to 34.6m in an area over the Refuse Derived Fuel (RDF) mixing bunker, increase in flue stack height to 55m, and various other external building and layout design changes.

The development commenced under this planning permission includes access works, visibility improvements and some site clearance has been undertaken.

The Proposals

The planning application now under consideration seeks, under Section 73 of the Town and Country Planning Act 1990, to:

- Not comply with Condition 3 of planning permission CW9/0218/94 (Duration); and
- Not comply with Condition 4 of planning permission CW9/0218/94 (Approved Details).

The applicant now seeks further alternative external design changes, but also seeks to extend the duration of the operation of the plant from 25 to 30 years and, as such, has submitted this application to vary the latest planning permission ref: CW9/0218/94.

Condition 3 of planning permission CW9/0218/94 states:

“3) The use under this permission shall cease not later than the expiration of 25 years from the date of commencement of commercial operations at the development. The date of the commencement of commercial waste

operations shall be notified to the Waste Planning Authority within seven days of the commencement.

Reason: *To avoid the use of the facility to be developed under this permission continuing beyond 25 years duration without a prior assessment taking place of the case for the continuation of use.”*

Condition 4 of planning permission CW9/0218/94 requires that the development shall be carried out in accordance with all plans and supporting documents submitted with that application.

The application under consideration now seeks not to comply with Condition 4 of CW9/0218/94 and proposes that the development be carried out in accordance with revised design details as submitted.

The main changes to the design from that approved under planning permission CW9/0218/94 and which are now proposed include:

- Revised built development footprint to a rectangular plan view incorporating office block. Revised built development footprint of approximately 10,850m². (The footprint approved under the previous Section 73 application CW9/0218/94, was 9,160m². The footprint approved under the original application CW9/0615/48, was 12,200m²).
- Roof height revised to a simpler design, largely single level 25m in height with 1m parapet to main building (parapet excluded on cooling plant area. (Maximum height previously approved was under Section 73 CW9/0218/94 at 34.6m in part).
- Location of fire water storage tanks and pump house to be within the screened area north of the building (were to be positioned to the south-east corner of the site under approved Section 73 permission CW9/0218/94).
- Removal of previously approved ash silo's (now a different system inside the building to be installed).
- Location of weighbridges now proposed to be close to the service entrance and exit.
- Removal of external fuel oil tank.
- No bio-filter now required and there is no separate RDF reception building.
- Design of the workshop and office space will now be over four floors and with the office block moved to a more central position.

Operational Aspects

The power output at 15 MW, the fuel feedstock type (BRF), waste fuel throughput of maximum 169,500 tonnes of per annum, and predicted vehicle movements would remain the same as they are for the development proceeding as approved under planning permission CW9/0218/94.

It is proposed to utilise the existing access road to the former Drakelow C Power Station, off Walton Road. Daily heavy lorry loads would vary over the construction period, with a predicted daily peak of 200 (100 in/100 out) HG movements over a 10 hour working day. When operational, the Renewable Energy Centre would produce up to 60 two way HGV trips per day.

As currently approved, it is proposed to operate the amended facility on a continuous basis, 24 hours per day, 7 days per week, for 365 days per year. Waste deliveries to the facility, removal of ash and maintenance, would be during normal working hours, being 0700 hours to 1800 hours Mondays to Saturdays and no working on Sundays or Bank Holidays (Condition 12 of planning permission ref. CW9/0218/94). Hours for construction activities are set out in Condition 13 of the planning permission at 0700 hours to 1800 hours Mondays to Fridays, 0800 hours to 1300 hours Saturdays and no working on Sundays or Bank Holidays.

Updated Environmental Assessment

An ES Addendum has been produced to accompany this application. It has focused on those areas where the proposed development has potential to result in changes to the previously approved scheme. The main sections of the updated ES are:

- Air Quality;
- Noise Update; and
- Landscape and Visual Impact Assessment Update.

Site Planning Application History

- CW9/0615/48 - Planning permission was granted 30 June 2015 for a 15MW renewable energy centre and associated infrastructure utilising biomass rich fuel through gasification.
- CW9/0218/94 - Planning permission was granted 17 May 2018 pursuant to Section 73 of the Town and Country Planning Act 1990 for the erection of a 15MW renewable energy centre and associated infrastructure on land at the former Drakelow C Power Station, off Walton Road, Drakelow without complying with Condition 4 (Approved Details) of the previous permission (CW9/0615/48).

Consultations

Local Member

Councillors Swann (Swadlincote South), Murray (Linton), Mussan (Swadlincote Central) and Bambrick (Swadlincote North) were consulted and comments were requested by 11 April 2019.

South Derbyshire District Council (Planning)

No objections.

South Derbyshire District Council (Environmental Health)

No objections.

East Staffordshire Borough Council (Planning)

No objection.

Staffordshire County Council (Planning)

No objection. An updated environmental assessment has been carried out and finds that the changes would not result in any further significant environmental effects.

Walton on Trent Parish Council

Objects to the application. The Parish Council objects on the following grounds:

- The original plans have now significantly altered.
- The increase in the number of HGVs visiting and leaving the site with industrial waste.
- The cumulative effect of traffic passing through the village.
- The concern that the bypass may now not be happening. The original planning application had been approved when it had been assumed that the bypass would be built prior to the 100th house being built. The conditions for the Drakelow Park development have, in the meantime, been altered to allow more houses to be built prior to the bypass being completed. Therefore, the Parish Council is concerned that increased traffic will arise during both the construction and operation of the site without adequate road infrastructure being in place.

Branston Parish Council, Barton Under Needwood Parish Council, and Drakelow Parish Meeting

Comments were requested by 11 April 2019. No comments have been received.

The Environment Agency

No objection. The applicant will need to ensure it has contacted the Environment Agency (EA) with regards to its permit as the EA may have comments to make regarding the proposed changes under the Environmental Permitting Regulations.

Natural England

No objection. Natural England considers that the proposed development will not have significant adverse impacts on designated sites. Natural England considers that the proposed development will not have likely significant effects

on the River Mease Special Area of Conservation (SAC) and has no objection to the proposed development.

With regard to meeting the requirements of the Habitats Regulations, Natural England has advised that:

The proposal is unlikely to have any significant effect on the River Mease Special Area of Conservation (SAC) as the development will not be permitted to proceed until the LPA is satisfied that there will be no harmful discharges of foul or surface water from the application site into the River Mease SAC or its tributaries.

Derbyshire Wildlife Trust

No objection. Derbyshire Wildlife Trust (DWT) advises that no new adverse ecological impacts are anticipated as a result of the proposal not to comply with conditions 3 and 4 of the permitted CW9/0218/94.

The Coal Authority

No objection. The site does not fall within the defined Development High Risk Area.

Western Power

No comments received.

Severn Trent Water Limited

No comments received.

National Air Traffic Services

No comments received.

Lead Local Flood Authority

No objection.

Local Highways Authority

No objection. The impact of the development on highway conditions with the approval of the above application would not differ from those assessed in respect of previous approvals for the above site. Therefore, there are no objections to the proposal from the highway point of view.

Publicity

The application was advertised by a press notice in the Burton Mail with a request for observations by 3 May 2019.

The application was also advertised by seven site notices with a request for observations by 5 May 2019.

No representations have been received from the public.

One letter of support has been received from Cushman and Wakefield (Commercial Property Consultants) on behalf of EON UK plc. The letter supports the proposals and states that they are fully compliant with planning policy.

Planning Considerations

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. In relation to this application, the relevant policies of the development plan are the saved policies contained within the Derby and Derbyshire Waste Local Plan (DDWLP) (2005) and the South Derbyshire Local Plan (SDLP) (2017). Other material considerations include national policy, as set out in the 2019 NPPF, and associated Planning Practice Guidance (PPG), the Waste Management Plan for England (WMPE) and with the NPPW.

Whilst the original planning permission (CW9/0615/48), granted on 24 November 2015, pre-dated the adoption of the SDLP 2017, relevant planning policy documents largely remain as that which were considered under the previous and most recent planning permission CW9/0218/94, granted on 17 May 2018, which this application seeks to vary. The NPPF was revised in 2019, however, it is not considered that the content of the revisions are of particular relevance to this application.

The Development Plan

Saved Policies of the Derby and Derbyshire Waste Local Plan (2005)

- W1b: Need for the Development.
- W5: Identified Interests of Environmental Importance.
- W6: Pollution and Related Nuisances.
- W7: Landscape and Other Visual Impacts.
- W8: Impact of the Transport of Waste.
- W9: Protection of Other Interests.
- W10: Cumulative Impacts.

South Derbyshire Local Plan (2017) Policies

- S1: Sustainable Growth Strategy.
- S2: Presumption in Favour of Sustainable Development.
- BNE1: Design Excellence.
- BNE4: Landscape Character and Distinctiveness.
- BNE12: Former Power Station Land.
- SD6: Sustainable Energy and Power Generation.

INF1: Infrastructure and Developer Contributions.

Neighbourhood Plan

The site is within Drakelow Parish for which there is yet no emerging or adopted Neighbourhood Plan.

National Planning Policy Framework (Revised 2019)

The NPPF sets out the Government's planning policies for England and how these should be applied. It states that the purpose of the planning system is to contribute to the achievement of sustainable development and the framework, as a whole, contains a presumption in favour of sustainable development. The term '*sustainable development*' is defined as '*meeting the needs of the present without compromising the ability of future generations to meet their own needs*'. The NPPF goes on to say that achieving sustainable development means that the framework has three overarching objectives, economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives).

Those sections of the NPPF that are particularly relevant to this proposal are:

Section 2: Achieving sustainable development.

Section 12: Achieving well designed spaces.

Section 15: Conserving and enhancing the natural environment.

Planning Policy Guidance (Waste)

On-line national planning policy guidance.

National Planning Policy for Waste (2014)

Determining Planning Applications.

Appendix A: The Waste Hierarchy.

Appendix B: Locational Criteria.

Waste Management Plan for England (2013)

The Waste Hierarchy.

The Principle of the Development

The principle of the development of the application site for an energy from waste power station has previously been established through the grant of the original planning permission to construct a waste to energy facility at this location, and subsequent Section 73 application CW9/0218/94 to change the design of that plant.

The imposition of new policies under the SDLP were noted in the decision to approve the most recent planning permission for the development, to which this proposal relates. The use of the site for the construction and operation of an energy from waste plant would be in general accordance with local and

national planning policies identified above. The principle of development therefore requires no further consideration in the planning assessment.

The Need for Development

The need for the wider development of the energy from waste plant has previously been assessed which has been accepted in consideration of the previous planning applications. The key question here now focusses on whether the need for changes to the design of the approved scheme, and also an increase of five years to the approved limited duration of the development and whether the impacts of these proposed changes differ to what has previously been assessed.

The applicant proposes non-compliance with Condition 3 and a proposed variation of the condition to allow a 30 year operation of the plant (rather than the approved 25 year operation). The additional five year period is required as a result of part of the capital funding for the construction of the facility, which requires the operational period to be over a period of 30 years rather than 25 years to cover the term of the construction finance loan.

This would reflect the statement within the 2014 publication "*Energy from Waste - A guide to the debate*" by the Department of Environment, Food and Rural Affairs (DEFRA), which acknowledges that plant is built with a minimum planned lifetime of typically between 25-30 years.

The applicant proposes non-compliance with Condition 4 as design alterations are required to cater for the change of the plant from a single-line based gasification system to a three-line gasification system, (a three line gasification system was initially approved under the original planning permission CW9/0615/48, but altered under design changes approved under planning permission CW9/0218/94).

Whilst in principle these changes would appear acceptable, the potential environmental impacts which may occur as a result of the changes must be considered further and assessed against relevant planning policy. The areas which are considered to have the most potential for change upon environmental impact are:

- Air Quality.
- Noise.
- Landscape and Design.

Air Quality

Paragraph 170(e) of the NPPF, Appendix B (g) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP, seek to ensure that environmental effects (such as upon air quality) are appropriately considered and that proposals do not significantly harm human health and the environment.

An updated air quality assessment has been undertaken for the proposed development and forms part of the addendum to the ES. This has focussed on the effects resulting from operation emissions on human and habitat receptors. The application site is not within a designated Air Quality Management Area (AQMA). Modelling of the revised design of the proposed development has shown that predicted concentrations at sensitive receptors of substances emitted from the proposed development would be similar to those predicted in the original assessment. For sensitive habitat sites, which include the River Mease SAC, the impact of airborne Nitrogen Oxide (NO_x), Ammonia (NH₃), Sulphur Dioxide (SO₂) and Hydrogen Fluoride (HF) have been assessed, as well as acidification and nutrient nitrogen deposition. Predicted concentrations and deposition rates have been compared to background information and relevant critical levels and critical loads for the sensitive habitats identified.

For the majority of the pollutants considered, the impact on human health was assessed as 'negligible' in accordance with the Institute of Air Quality Management (IAQM) planning guidance for air quality. For arsenic, the impact was assessed as 'slight to moderate adverse' but the predicted total concentration (contribution of the Proposed Development plus background) was predicted to be 41% of the most stringent air quality objective and it is very unlikely that this would be exceeded as a result of the development. For habitat sites, the impact of emissions from the proposed development would not be significant. No significant effects on air quality or human health are predicted.

The impacts of harmful airborne substances, as well as acidification and nutrient nitrogen deposition, have therefore been assessed for human receptors and sensitive habitat sites, which include the River Mease SAC. The predicted impacts are similar to those within the original Environmental Impact Assessment (EIA) and subsequent ES Addendum under the previous application that there would be no significant effects with regard to air quality as a result of the design changes proposed.

The Town and Country Planning system is concerned with control of the development of land. The regulator of waste management processes is the EA and, in the assessment and determination of such proposals, the two regulatory regimes complement each other. The applicant is therefore also required to obtain an appropriate permit from the EA for the operation of the plant. In assessing an Environmental Permit application, the EA would address the issues relating to emissions/health impacts which objections relate to. Neither the EA nor South Derbyshire District Council (SDDC), which has an environmental health function, have objected to this application.

Given the findings of the update air quality assessment, I am satisfied that no significant effects on air quality or human health are likely to result as a

consequence of the design change and extension of the operating life of the plant by an additional five years. In this regard, the application is considered to be in accordance with Paragraph 170(e) of the NPPF, Appendix B (g) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP.

Noise

Paragraph 170(e) of the NPPF, Appendix B (j) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP are relevant to the consideration of noise issues.

An updated noise assessment submitted as part of the addendum to the ES has considered the proposed changes to operational plant to be installed and has predicted noise levels based on the maximum sound levels which may be emitted from the site.

The assessment of operational noise levels has been undertaken against the fixed daytime and night time noise level limits that were detailed within the original ES and that are taken from World Health Organisation (WHO) documentation and BS8233:2014.

Noise modelling has been updated to reflect the proposed design changes and utilising source sound level data that is available at this stage in the design process. Predictions have been made based on broadband noise levels. The assessment has concluded that the predicted operational noise levels are below the fixed noise guideline levels and that, with an appropriate Noise Management Plan in place, the development would be able to operate in accordance with the previously applied planning conditions. There would be no significant effects.

Cumulative assessment has considered other development (constructed and approved) and has found that cumulative noise levels are unlikely to result in an adverse noise impact at any receptor with total noise levels remaining below fixed guideline levels.

A Noise Management Plan was submitted to Derbyshire County Council (DCC) to satisfy conditions 13, 16 and 17 of the Section 73 Approved Development (permission reference CW9/0218/94). The measures, limits and complaints investigation procedure included in that Noise Management Plan remain applicable to this proposal and a condition requiring that the development and operation of the plant be carried out in accordance with the agreed Noise Management Plan is recommended.

No objections have been received from the EA or SDDC's Environmental Health with regard to noise issues as a result of the proposal.

I am satisfied that, subject to a condition requiring on going compliance with the agreed Noise Management Plan, the proposal would accord with Paragraph 170(e) of the NPPF, Appendix B (j) of the NPPW, Policy W6 of the DDWLP and Policy SD6 of the SDLP in this regard. No significant effects on noise are likely to result as a consequence of the design change and extension of the operating life of the plant by an additional five years.

Landscape and Design

At national level, the NPPF promotes good design and seeks to protect landscape and local character. The most relevant section of the NPPF in this regard is considered to be Section 12: Achieving Well Designed Places. Appendix B (c) of the NPPW similarly identifies landscape impact as a consideration in the determination of waste planning applications.

Paragraph 127(c) of the NPPF requires that planning decisions are sympathetic to local character, including the surrounding built and landscape setting, whilst not preventing or discouraging appropriate innovation or change.

With regard to the Development Plan, Policy W7: *Landscape and Other Visual Impacts* of the DDWLP states that waste development will be permitted only if:

“...the appearance of the development would not materially harm the local landscape or townscape and would respect the character and local distinctiveness of the area; and the development would be located and designed to be no larger than necessary and to minimise its visual impact on or to improve the appearance of the townscape or landscape.”

Policies BNE1 and BNE4 of the SDLP promote good design principles and seek to minimise impact upon the landscape and its character.

The site is located within both the Mease/Sence Lowlands National Character Area (as defined by Natural England), and the Village Estate Farmlands Landscape Character Type (LCT), as defined in the Derbyshire Landscape Character Assessment.

A revised assessment has been undertaken that considers the proposed changes against a baseline that includes the approved development. It finds that the proposed development would result in a number of limited landscape and visual effects against the baseline of the Section 73 Approved Development, and has therefore assessed the impacts of the proposed development on landscape character and visual receptors using the same study parameters as the original Landscape and Visual Impact Assessment (LVIA).

Visualisations have been updated from selected viewpoints where the proposed development would be visible or proximate enough to warrant detailed assessment. These visualisations have been used to inform the updated assessment. The majority of additional effects occur at long distances and all are against a backdrop that includes electrical transmission infrastructure. None of the limited effects identified are considered to be significant (in landscape or visual terms, during the construction or operational period). The updated LVIA concludes that no additional significant cumulative landscape and visual effects are likely to arise as a result of the proposed development.

Given that a major change from the approved scheme would be to the overall height of the building, which would be a reduction of 10m, I would concur with the findings of the updated LVIA that no significant landscape and visual impacts are likely to result as a consequence of the design revisions.

The revised built development footprint of approximately 10,850m² is slightly more than that approved under the previous Section 73 application CW9/0218/94, of 9,160m², however, it is less than the footprint approved under the original application CW9/0615/48, of 12,200m². I do not consider that the modest increase in footprint from application CW9/0218/94 would have any significant visual impact upon the landscape, particularly given the reduction in overall height proposed.

With conditions to agree an appropriate landscaping scheme and maintenance, and agreement of materials and colour finishes, I am satisfied that the revised design is acceptable and in accordance with Paragraph 127(c) of the NPPF, Appendix B (c) of the NPPW, Policy W7 of the DDWLP, policies BNE1 and BNE4 of the SDLP.

Other Issues

Section 106 Legal Agreement

The original Section 106 agreement, dated 24 November 2015, for CW9/0615/48 provided for the following obligations:

1. To pay the Greenway Contribution (£25,000) and the National Forest Contribution (£10,000) prior to commencement of development.
2. Prior to commencement to implement the Visibility Improvements (works to provide visibility sightlines at junction with Walton Road which are to extend from 2.4m back from the north-western carriageway edge of Walton Road for a distance of 150m in each direction.
3. To maintain the land in advance of the Visibility Improvements from obstructions for the lifetime of the development.
4. To use reasonable endeavours to ensure HGVs entering and leaving the Site do so via the Approved Vehicular Routes.

The original agreement was varied by Deed of Variation dated 23 August 2018, pursuant to the Section 73 application CW9/0218/94. This Deed applied the terms of the original Section 106 to the Section 73 permission. It further included a clause stating that should DCC grant a planning permission pursuant to a Section 73 application, references in the Agreement to Application and Planning Permission shall be deemed to include any subsequent planning applications and permissions and the Agreement will take effect provided that the Parties agree in writing.

The financial commitments in clause 1 of the legal agreement have been paid in full to DCC, and EON and the applicant have confirmed their commitment in writing to honour clauses 2-4.

The application is therefore in accordance with Policy INF1 of the SDLP which states that development, that is otherwise in conformity with the Local Plan but generates a requirement for infrastructure, will normally be permitted if the necessary on and off-site infrastructure required to support and mitigate the impact of that development is provided.

The objection expressed by Walton Parish Council is not considered to indicate any unacceptability in the proposed changes associated with this application, because there is no reason to expect that the changes would increase the number of HGV movements of waste involved with the development.

Conclusions

I am satisfied that the proposed variation of planning permission CW9/0218/94 to not comply with conditions 3 and 4, for design variations and to extend the operational life of the plant by five years, is acceptable.

The applicant has provided valid reasons for the need for the variation and has provided an addendum to the ES considering likely significance of effects upon air quality, noise and visual impacts.

The updated ES concludes that the proposed changes to the consented design would not result in any significant effects. The proposed development accords with national and local planning policies, and this application is therefore recommended for approval subject to the conditions below.

(3) **Financial Considerations** The correct fee of £234 has been received.

(4) **Legal Considerations** This is an application submitted under Part III of the Town and Country Planning Act 1990 which falls to this Authority to determine as Waste Planning Authority.

I do not consider there to be any disproportionate impacts on anyone's human rights under the European Convention on Human Rights as a result of this permission being granted subject to the conditions referred to in the Officer's Recommendation.

(5) Environmental and Health Considerations The Conservation of Habitats and Species Regulations 2017 consolidate earlier regulations and now transpose the European Union (EU) Directive on Natural Habitats, and Wild Fauna and Flora (92/143/EEC) into national legislation. They afford a high level of protection to a variety of species that are considered important at a European scale. The Regulations identify European Protected Species and various habitats of importance within the EU, with important sites being designated as SAC. Any proposed development that may have a significant effect on a SAC (either direct, indirect, temporary or permanent) should be assessed in relation to the site's 'conservation objectives', i.e. the reasons for which the site is designated.

Under the 2017 Regulations, an "appropriate assessment" of the implications of the proposed development, in view of the site's conservation objectives must be made in respect of any decision to be taken for any consent for a project (or a plan) or which either alone or in combination with other plans or projects would be likely to have a significant effect on a European Site, and is not directly connected with the management of the site for nature conservation.

Natural England has stated that it is satisfied the predicted emissions from the development would not have a significant effect on the River Mease SAC. A screening assessment has been undertaken by the Authority to consider the need for an appropriate assessment to be undertaken under the Habitat Regulations 2017. The screening assessment has found that the proposed development will have no likely significant effect on the River Mease SAC, and that (in line with the comments received from Natural England) there is no requirement to undertake an appropriate assessment for the proposed development.

Other Considerations

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

(6) Background Papers File No 9.1590.4
Application documents as submitted dated 15 March 2019, valid 18 March 2019.
Correspondence from the Coal Authority dated 25 March 2019, East Staffordshire Borough Council dated 28 March 2019, the Environment Agency

dated 28 March 2019, the Lead Local Flood Authority dated 1 April 2019, Natural England dated 8 April 2019, Staffordshire County Council dated 10 April 2019, Walton on Trent Parish Council dated 18 April 2019, Derbyshire Wildlife Trust dated 3 June 2019, and South Derbyshire District Council dated 7 June 2019.

Representations from an interested party dated 8 April 2019.

(7) **OFFICER'S RECOMMENDATION** That the Committee resolves that planning permission is **granted** subject to the following conditions:

Duration

- 1) The use under this permission shall cease not later than the expiration of 30 years from the date of commencement of commercial operations at the development. The date of commencement of commercial waste operations shall be notified to the Waste Planning Authority within seven days of the commencement.

Reason: To avoid the use of the facility to be developed under this permission continuing beyond 30 years duration without a prior assessment taking place of the case for continuation of use.

Approved Development

- 2) The development shall be carried out in full compliance with the details contained in the Planning Application dated 25 June 2015 and accompanying Environmental Statement documents, submitted by TNEI Services, on behalf of Future Earth Energy Limited on 26 June 2015 and received as valid by the Waste Planning Authority on 30 June 2015, as amended by the planning application received by the Waste Planning Authority as valid 18 March 2019 and accompanying Environmental Statement Addendum documents, submitted by TNEI, except insofar as otherwise specified under the terms of the conditions below. For the avoidance of doubt, this condition requires the full implementation of all mitigation measures proposed in the Planning Applications and Environmental Statement.

For ease of reference, these documents comprise the following:

- Application form
- Cover Letter
- Environmental Statement Addendum (March 2019)
- Air Quality Assessment (March 2019)
- Appendix B and Appendix B1, Noise Impact Assessment (March 2018)
- Landscape and Visual Impact Assessment 2019 Addendum (March 2019)

- Drawing Figure 1 Doc ref: 13239-002 Site Location Plan dated 8 March 2019
- Drawing no. 17315/P-01 Site Plan undated
- Drawing no. 17315/P-02 Ground Floor Layout
- Drawing no. 17315/P-03 Proposed Front and Rear Elevations
- Drawing no. 17315/P-04 Proposed Side Elevations
- Drawing no. 17315/P-05 Cross Section
- Drawing no. 17315/P-08 Drainage Layout
- Drawing no. 17315/P-09 Longitudinal and Site Sections
- Drawing no. 17315/P-10 First-Second & Third Floor Office Layouts
- Drawing no. 17315/P-07 Roof Plan View

Except in so far as the approved documents and plans listed above are amended by the conditions specified below.

Reason: To ensure that the development is carried out in accordance with the details in the submitted planning application of 2015 as amended by the details in the submitted planning application of 2019, in the interest of the amenity of the area.

Capacity

- 3) The development shall not receive more than 169,000 tonnes of material per annum. The operator shall maintain records of the tonnage of waste delivered to the site and shall make these records available to the Waste Planning Authority at any time upon request.

Reason: To control the impact of the development.

- 4) No waste shall be deposited or stored at the site except within the designated areas of the site.

Reason: In the interests of visual amenity.

- 5) Prior to the commencement of use under this planning permission, a study detailing the demand for feasibility and commercial viability of, exporting heat from the gasification plant for use by local domestic, commercial and/or industrial users (together with the demand for such heat), shall be submitted to and approved in writing by the Waste Planning Authority. If the study concludes that exporting heat from the plant is not immediately feasible or commercially viable, then a timetable for the review of the study shall be agreed in writing with the Waste Planning Authority.

Reason: To facilitate full energy recovery.

Visual Amenity

- 6) No construction works of the main plant building shall be commenced until details of the composition and colour of materials have been submitted to and approved in writing by the Waste Planning Authority. The materials used in the construction shall accord with the approved details.

Reason: To control the design of the building.

- 7) The proposed waste management facility shall not be brought into use until the site boundary has been secured and treated in accordance with details which shall have been submitted to and approved in writing by the Waste Planning Authority.

Reason: To protect the visual amenities of the area.

- 8) No external lighting shall be installed or operated except in accordance with a scheme that shall have been submitted to and approved in writing by the Waste Planning Authority.

Reason: In the interests visual amenity and light pollution mitigation.

Hours of Delivery, Removal and Maintenance

- 9) No delivery of fuel, removal of ash or other waste, or routine maintenance, shall be undertaken outside of the hours of 0700 hours to 1800 hours from Mondays to Saturdays inclusive, or at any time Sundays or bank holidays.

Reason: To safeguard the amenity of local residents and adjacent properties and land users.

Construction Activities

- 10) All demolition and construction activities shall be undertaken in accordance with the following:
- (i) No construction or demolition works, movement of traffic, or deliveries to and from the premises, shall take place other than between 0700 hours and 1800 hours Mondays to Fridays, and 0800 hours on Saturdays, and at no time on Sundays or bank holidays.
 - (ii) All construction (and any remediation) activities shall comply with the guidance in British Standard BS5228 Noise and Vibration, and Control on Construction and Open Sites. Efficient silencers shall be fitted to, used and maintained in accordance with the manufacturers' instructions on all vehicles, plant and machinery to be used on the site. Save for the purposes of maintenance, no machinery shall be operated with the covers open or removed.

- (iii) During dry and/or windy weather, dust suppression methods, such as water bowsers or hosepipes, shall be used to prevent dust being blown off the site. At such times as the prevention of dust nuisance by these means is not possible, the movement of vehicles, soils, or dusty materials shall temporarily cease until such times as the weather conditions improve so as to enable the recurrence of dust nuisance to be prevented by these means.
- (iv) All vehicles entering or leaving the site and carrying materials likely to deposit dust or mud on the highway, shall be adequately sheeted.
- (v) No vehicle shall leave the site unless in a clean condition, such that it does not deposit dust or mud on the highway. Any dust or mud deposited on the highway shall be removed daily.
- (vi) No waste arising from demolition or construction activities shall be disposed of by burning on site.

Reason: To safeguard the amenity of local residents, adjacent properties and land owners.

Landscaping

- 11) No construction works as hereby approved shall commence before a scheme for landscaping of the site has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall be implemented as approved within the first planting and seeding seasons after the completion of construction works. Within five years of the implementation of the scheme, any tree, shrub or hedgerow which die or become seriously damaged, diseased or are removed, shall be replaced with plants of the same species or such alternatives as may be approved by the Waste Planning Authority.

Reason: In the interests of the amenity of the local area and to ensure the development is adequately screened.

Dust

- 12) The development shall be undertaken and in accordance with the Construction Phase Dust Management Plan produced by TNEI approved by the Waste Planning Authority 1 November 2018.

Reason: To protect the amenities of the locality from the effects of any dust arising from the development.

Noise

- 13) The development shall be carried out in accordance with the Noise Management Plan produced by TNEI and approved by the Waste Planning Authority 1 November 2018.

Reason: To safeguard the amenity of local residents, adjacent properties and land users.

- 14) The level of noise emitted from the site during construction shall not exceed 70 db LAeq during any 30 minute period between 0800 hours to 1700 hours Mondays to Fridays and 0830 hours to 1300 hours in Saturdays, measured at, or recalculated as, a height of 1.2m above ground level and 3.5m from the façade of any residential property or other noise sensitive building that faces the site. Construction noise at any other permitted time shall not, so measured, exceed 60 db LAeq during any 30 minute period.

Reason: To safeguard the amenity of local residents, adjacent properties and land users.

Chemical Storage

- 15) Any facilities for the storage of oil, fuels or chemicals shall be sited on impervious bases and surrounded by impervious bund walls. The volume of the bunded compound shall be at least equivalent to the capacity of the tank plus 10%. If there is multiple tankage, the compound shall be at least equivalent to the capacity of the largest tank, vessel or the combined capacity of interconnected tanks or vessels plus 10%. All filling points, associated pipework, vents, gauges and sight glasses shall be located within the bund or have separate secondary containment. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata. Associated pipework shall be located above ground and protected from accidental damage. All filling points and tank/vessels and overflow pipe outlets shall be detailed to discharge downwards into the bund.

Reason: To minimise the pollution of watercourses and aquifers.

Highway Safety

- 16) The construction process shall be carried out in accordance with the Construction Traffic Management Plan reference CTMP01/1 or such alternative Management Plan as may subsequently be agreed in writing with the Waste Planning Authority.

Reason: In the interests of highway safety.

- 17) Space shall be provided within the site for storage of plant and materials, site accommodation, loading, unloading and manoeuvring of goods vehicles, parking and manoeuvring of employees' and visitors' vehicles, laid out and constructed in accordance with detailed designs which have been submitted to and approved in writing by the Waste

Planning Authority. Once provided, the spaces shall be retained free from any impediment to their designated purposes throughout the construction period.

Reason: In the interests of highway safety.

Ecology

- 18) No clearing of vegetation shall be carried out in the period between 1 April and 31 August unless approved in writing by the Waste Planning Authority.

Reason: To protect nesting birds.

- 19) The development shall be carried out in accordance with (i) the Pre-Commencement Ecology Walkover Report (document number EES18-034) produced by Elliott Environmental Surveyors Limited, as submitted by TNEI to the Waste Planning Authority on 31 August 2018, as amended by the supplementary Pre-Commencement Ecology Walkover Report produced by Elliott Environmental Surveyors Limited and submitted by TNEI to the Waste Planning Authority on 16 October 2018, in particular, the mitigation measures regarding nesting birds in Appendix 1, badgers in Appendix 3, and reptiles in Appendix 4, as summarised in Section 3 of the report; and (ii) the Method Statement for Translocation of Open Mosaic Priority Habitat (document reference EES18-034), produced by Elliott Environmental Surveyors Ltd and submitted to the Waste Planning Authority on 25 October 2018 by TNEI, as supplemented by the Bunding Plan (document reference 10226-030) produced by TNEI and submitted the Waste Planning Authority on 26 October 2018.

Reason: To ensure that the ecology of the site is protected from the effects of the development.

Remediation Strategy

- 20) Unless otherwise agree in writing by the Waste Planning Authority, the development shall be carried out in accordance with the Remediation Strategy produce by EAME and approved by the Waste Planning Authority 1 November 2018.

Reason: In the interests of remediation of any contamination found present at the site.

- 21) No occupation of any part of the development shall take place until a verification report, demonstrating completion of measures set out in the approved remediation scheme and the effectiveness of the measures, shall be submitted to and approved in writing by the local planning

authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a “long-term monitoring and maintenance plan”) for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan.

Reason: To ensure that any measures required as an outcome of the site investigation and risk assessment are completed to a satisfactory standard.

Decommissioning

- 14) Decommissioning shall not commence until a Decommissioning Traffic Management Plan has been submitted to and approved by the Waste Planning Authority. Decommissioning shall be carried out in accordance with the approved Decommissioning Traffic Management Plan.

Reason: In the interests of highway safety.

Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015

The Council, as Waste Planning Authority, worked with the applicant in a positive and pro-active manner based on seeking solutions to problems arising in the processing of planning applications in full accordance with this Article. The applicant has engaged in pre-application discussions with the Authority prior to the submission of the application. The applicant was given clear advice as to what information would be required.

Footnote

Environment Agency Advice to Applicant

- 1) The applicant will need to ensure it has contacted the Environment Agency with regards to its permit as officers may have comments to make regarding the proposed changes under the Environmental Permitting Regulations.

Executive Director – Economy, Transport and Environment

CW9/0319/108 - Land at Former Drakelow C Power Station, Drakelow

