



Applicant:
Richard Kent

Ref. No. DMOT/2021/1349
Made valid on: 23 August 2021

DECISION NOTICE

Description and location of proposal: Request from Planning Inspectorate (PINS) for SDDC's comments on a Scoping Opinion request PINS has received, under The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 relating to a proposed solar farm at Oaklands Farm, Coton Road, Walton on Trent, Swadlincote, DE12 8LP

Decision made: In exercise of its powers as the Local Planning Authority under the Town and Country Planning Act 1990 and related subordinate legislation, South Derbyshire District Council hereby gives notice that it **Objects** to the proposal as described above for the following reason(s):

You are advised of the following matters:

Thank you for consulting South Derbyshire District Council on the Scope of the Environmental Impact Assessment for the above proposed development. Having reviewed the submitted Scoping Report in detail this Council would ask that the following comments be considered:

1: Co-ordination of Habitat Regulations Assessment and Environmental Impact Assessment Requirements.

The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 2017 no 571) Regulation 27 requires that:

Where in relation to EIA development there is, in addition to the requirement for an EIA to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulation Assessment, the relevant planning authority or the Secretary of State, as the case may be, must, where appropriate, ensure that the Habitats Regulation Assessment and the EIA are co-ordinated.

Having reviewed the submitted Scoping Report it is noted that this states:

'The River Mease SAC and SSSI was recorded 4.4km to the south of the Site. No further statutory designated sites were recorded within a 5km buffer of the Site. The potential for the proposals to result in Likely Significant Effects on the River Mease SAC will be fully considered as part of the EclA process. The EclA will include sufficient information for the competent authority to discharge their duty in concluding whether the development will result in adverse effects on the integrity of River Mease SAC. The ES will specify embedded mitigation and avoidance measures during construction and operation which will ensure that contaminated run-off will not enter watercourses, and therefore adverse effects on the River Mease SAC will be avoided.

The Applicant will also undertake a shadow Habitat Regulations Assessment (HRA) as a separate requirement to EIA.

Relevant HRA documentation will be provided with the DCO application, to provide sufficient information to the competent authority in relation to their duty to conclude whether the Proposed Development will result in adverse effects on the integrity of internationally designated sites. A draft Shadow HRA Report will be issued to Natural England for consultation in advance'.

Date: 14 January 2022

Whilst the proposal to prepare a shadow HRA[1] is noted, in the view of officers of this Council the EIA can only properly take account the vulnerabilities or the Conservation Objectives of the SAC if some early assessment under the Habitat Regulations takes place to inform the scope of the EIA. In order to properly co-ordinate the EIA and HRA requirements a level 1 HRA (Screening assessment) should be undertaken as soon as practicable during the pre-application stage. An early understanding of the potential ways in which development could affect the SAC can then inform the evidence or assessment that needs collecting or preparing as part of the EIA. Obviously as it stands no substantive screening work has been undertaken.

In the absence of properly considering the potential of the SAC to be affected by the scheme, there is a risk that the issues that ought to be within the scope of the EIA could be inadequately considered. By way of an example I would highlight the statements at Paragraph 10.35 and 10.36 of the scoping report. This states that:

10.35 The River Mease SAC has been identified as a potential receptor during the desk study. The likelihood of impact is considered low due to the following reasons:

- *The site of the Proposed Development is proportionally a tiny part of the overall catchment and is distant from the SAC itself (as it is in the upper headlands of one of its tributaries).*
- *Whilst there is a watercourse shown on site on OS mapping, a site walkover and conversations with the landowners have shown this to be a dry overland flow path, rather than a watercourse. This means that there is a very limited potential for a pathway to be present between the site and nearest actual watercourse.*

10.36 This issue will be addressed in the baseline Desk Top Study to be included in the application, and is not considered to lead to significant effects.

It should be noted, however, that the requirement of the Habitat Regulations is for an operation which is, or forms part of a plan or project, which is likely to have a significant effect on a European site to be considered alone as well as in combination with other plans or projects (Clause 24 of the Conservation and Habitat Regulations 2017). Clearly, whilst it may be the case that a small part of the proposed development affects only a tiny part of the wider Mease catchment the requirement to assess the scheme in combination with other plans or programmes, coupled with the fact that the SAC is already failing to meet its Conservation Objectives in respect of water quality (with excess nutrients being delivered from all of the catchments tributaries) confirms, in my view, that it is not appropriate to rule out significant effects for this reason because if any effect is likely, however limited, it could act in combination with other development to make the condition of the SAC worse.

Turning to the second point that there are no permanent waterways between the site and the 'nearest actual watercourse', the fact there is a watercourse indicated on Ordnance Survey (OS) mapping again suggests the need for a proper consideration of this issue. The most significant water quality issue affecting the Mease SAC relates to nutrients. This is mainly in the form of Phosphorous which is being delivered to the Mease through a combination of diffuse and point sources. Diffuse pollution is an identified issue in the SAC because water mobilises and transports nutrients through the landscape. The potential of land to attenuate pollutants that could affect the SAC varies considerably with hydrological settings and type of nutrient. Whilst nitrate is typically delivered to watercourses via subsurface pathways, the majority of phosphorus from diffuse sources is typically delivered in particulate form via overland flow, with the largest loads being controlled by the larger hydrological (storm) events. In simple terms a watercourse doesn't need to be permanently wet to offer a pathway to affect water quality in the tributaries of the Mease or the Mease itself. If this watercourse flows during large storm events (and the fact that it is shown on OS mapping could suggest it does flow some of the time and this is most likely during storm events) then it is entirely possible that any nutrients that could be picked up by flows from the site could transport sediments to local watercourses and ultimately to the SAC.

Finally, in respect of paragraph 10.35, whilst it may be the case, that following assessment that this site is not considered likely to lead to significant effects. The mechanism to establish the potential ways this site could affect the SAC is by undertaking a timely HRA assessment. Ahead of this, it is perhaps best not to conclude on the risk this project poses to the SAC. Moreover, the statement at paragraph 10.35 is slightly at odds with the previous statement in the Scoping Report that the *ES will specify embedded mitigation and avoidance measures during construction and operation which will ensure that contaminated run-off will not enter watercourses, and therefore adverse effects on the River Mease SAC will be avoided.* If no impact is likely as a result of undertaking this project, then mitigation would not be required. The fact that mitigation is identified to address effects could be taken as an implicit acknowledgement that this project could have a Likely Significant Effect on the SAC.

Clearly a more robust consideration of the potential ways in which this site could affect the SAC could make for a better and more co-ordinated EIA and may help to ensure issues that could turn out to be significant are not overlooked or discounted on the basis of inadequate information. Again therefore, it is suggested that greater scrutiny of the potential for effects on the SAC should be considered preferably before the final scope of the EIA is defined, but if this is not possible as early as possible during the pre-application phase so the findings of any HRA are considered within the Environmental Statement.

2: Drainage

There is evidence that proposals of this nature can alter surface water runoff and drainage within developed sites[2][3]. Indeed, a planning appeal for a solar farm scheme has addressed this issue directly. Appeal Ref: APP/D3315/A/13/2203242[4] Land at Glebe Farm, Tolland, Lydeard St Lawrence, Taunton TA4 3PR considers the issue of drainage as follows:

17. The planning application was accompanied by a Flood Risk Assessment (FRA). A carefully considered and professionally well-informed letter of objection to the proposed development makes the important point that it would be unsound to assume that rain falling on each row of solar panels would flow evenly into the rain-shadow of the row below, so as to mobilise the same percentage of the ground for infiltration as was available before the panels were installed. Rather, because the panels would be set at a downward slope and aligned to follow the contours of the land, rain-water would be likely to fall in a column from the lowest corner of each panel, and could then form rivulets flowing down through the rain-shadows of the rows below without utilising their whole area for infiltration, thus increasing the amount of water run-off from the site.

18. I find that argument persuasive. I also note that it is a concern which informed the proposed "Sustainable Drainage Scheme (SuDS)" incorporated in the appellant's FRA, following consultation with the Environment Agency. The FRA recognises that intensification of the run-off into small channels could occur beneath the lower end of the panels, and that this could increase run-off above that associated with the undeveloped appeal site: it goes on to explain that the design of the SuDS has therefore incorporated a system of bunds, swales and scrapes to promote infiltration, limit erosion and provide on-site storage, thereby effectively managing the surface water run-off from the site.

In addition to the issue identified above, it also unclear whether any investigation or consideration of the impact of the proposal on land drainage within the site has been made. Officers at this Council have recently been involved with a Natural Flood Management (NFM) scheme close to the proposed site. This NFM scheme is being implemented because the area has recently become prone to high levels of surface water flooding/overland flows following significant tree planting locally. It appears the changes to hydrology have been caused by tree roots penetrating and breaking up land drains beneath that site which was formally in use as arable land. It is unclear whether land drains are located within the development site, however if they are present and still operative, given that the steel frames which will hold the panels will be piled into the ground to some depth there may be potential for the proposal to similarly destroy or damage existing field drains and ultimately affect land drainage across the proposal site.

Given the size of the site, and the extensive nature of the project, it is likely that should any hydrological effects occur these could be addressed on site through the incorporation of an appropriate Sustainable Drainage System (SUDS) and through the careful management of soil quality to avoid compaction during construction. In this context the Council would not necessarily object to the 'Scoping out' of hydrology from the EIA process as such a system could be accommodated as part of the wider development, though we would expect the detailed and thorough consideration of the potential for this scheme to alter flood risk from all sources and expect appropriate measures to be identified to ensure that flood risk and hydrological impacts outside of this site do not occur.

3: Decommissioning

There is a lack of clarity in the Scoping Report regarding the decommissioning of the site. The Report identifies that the effects of decommissioning will be Scoped out of the EIA for most aspects of the development (i.e. Landscape, Transport, Noise). The reason for this is that the effects of decommissioning of the proposed solar farm at the end of its operational life will be very similar to those arising from construction. In respect of transport, noise and, to a lesser extent, landscape that may be the case. However, it would be useful for any eventual ES to clearly outline how the effects associated with decommissioning phase will be controlled. A Construction and Environment Management Plan (CEMP) is proposed to control/mitigate against construction phase effects, but clearly if a similar suite of measures cannot be secured to manage the decommissioning phase effects then the impact this stage of works could have may be materially different to those during construction. Some consideration of how a Decommissioning and Environment Management Plan will be secured and the scope of that Plan should be outlined in the EIA.

Moreover, it is entirely possible that the baseline within and around the site will change over the 40 year operational life of the scheme. Although it is unrealistic to second guess all the changes that could occur it is possible to identify a small number of issues that are likely to change. For example it is entirely likely or even probable that the biodiversity interest of the site will be greater than it is now through a combination of less intensive site management, and specific measures that will likely be included within the application to deliver biodiversity gain. In such circumstances there may be a need to undertake further assessments or identify further mitigation measures prior to decommissioning. Again some consideration of this issue may be useful.

4: Landscape

Related to the above issue, it would be useful to provide some consideration of any permanent landscape changes that may continue following site decommissioning. Currently the Village Estate Farmlands[5] (the landscape Character Type within which this area sits) are characterised by extensive areas of intensive arable farming with low hedgerows and few trees. Whilst not confirmed, it seems likely that visual mitigation for this scheme could consist of allowing existing hedgerows to grow to screen development, as well as some hedgerow reinforcement. It seems unlikely that all of hedgerows will be returned to their predevelopment condition/structure following decommissioning and so some long-term effects on landscape character could arise even if the operational development is substantially removed after its 40 year life. Clearly such changes may have beneficial effects in respect of biodiversity, and may be partly mitigated by continued National Forest planting which, whilst relatively limited in this area currently, may alter local landscape character anyway. However, it may be useful to consider the potential for longer-term or potentially permanent landscape effects within the scope of the Landscape and Visual Impact Assessment chapter.

5: Biodiversity

The Council welcomes the commitment of the applicant to consult the Authority on proposals to deliver a Biodiversity Net Gain within the site. Given the sites current land use and its scale, and having regard to the proposed use clearly there is very significant potential to deliver a significant net gain, both through specific habitat creation and improvement and changes to long-term land management.

6: Heritage

Having reviewed the heritage proposals, the Council's Conservation Officer is of the view that the assessment well defines the scope of potential historic environment impacts.

We have considered the 2.5km scoping area. Given the landscape scale of the proposed development, notwithstanding its low-lying nature, it would certainly be possible for impacts to be felt beyond 2.5 metres, particularly on any heritage assets intended to command extensive landscape views. Having considered heritage assets just outside of the proposed study area, and further afield in areas where the visibility study suggests large parts of the site would be visible, we have not identified any such assets within these areas which might justify attention, save for one which might be worth mention but is unlikely to suffer, that being Brizlincote Hall – a grade II* listed building with some grade II listed associated structures. The building was built with the intention of being a grand country house, and some work was undertaken to lay out a landscaped park, later becoming a tenanted farmhouse. The visibility assessments suggest a sizable proportion of the site would be visible from here, albeit in this direction the site would be 'narrow edge-on' minimising appreciation of its scale. As a high graded asset and one designed to relate to a wider parkland setting it could be impacted by development in the wider landscape, however the park is degraded (if it was ever fully completed) and there is other modern development nearby such that impacts will likely be considered minor at most.

As such we have no general issues with the 2.5km study area as proposed subject to some mention of Brizlincote Hall being made.

Beyond that, the approach and level of detail proposed all seems reasonable. Given the scale of the proposal officers are particularly concerned about the impact on setting of Walton on Trent Conservation Area, also the list of potential mitigation doesn't include anything that might mitigate visual impacts on setting of assets. That being said, any attempt to screen visual impacts would result in screening, the scale of which might itself have adverse impacts of its own.

7: Transport

Having reviewed the transport section of the Scoping report, it is advised that you review the recently signed section 106 agreement for the Drakelow Park site. This is available to view on the Council's website[6]. In summary this requires that a new bypass and river crossing north of the existing Bailey Bridge in Walton on Trent be constructed before the completion of 400 dwellings on the Drakelow Park Site. It is also sets aside £130,000 to be paid to and used by Derbyshire County Council for the purposes of carrying out improvements on the Derbyshire County highways network to the junction of Caldwell Road and Rosliston Road South Cross Roads and other highway improvements within the vicinity of the Drakelow Park Site as well as sets aside around £560,000 towards improvements to the A38.

Clearly there remains some uncertainty regarding when this scheme will commence and more importantly will be completed. However, it is entirely possible that it will be completed ahead of constructions works on the proposal site commencing and it is likely that timing of works will be clarified in the near future. I would recommend the developer continues liaising with this Council, or Derbyshire County Council as Transport Authority on the status of improvements to the local road network, but in particular the delivery of the proposed Walton Bypass and new river crossing as it may significantly inform any future transport routing options available to the developer.

8: Noise, Vibration, and Glare

I have appended comments relating to the scope of the Environmental Impact Assessment received back from the Head of Environmental Services regarding noise, vibration and glare. I have appended this submission at appendix 1 of this report and would request that due consideration is had to the comments made. I would also highlight that comments have been included in this response regarding the methodology for the proposed climate change assessment.

9: Other (Miscellaneous) Comments:

It is requested that:

- The National Forest are included in list of consultees at para 2.7. (It is noted that the LVIA chapter proposes to include the National Forest within the post-scoping consultation process for the LVIA).
- SDDC Local Plan Part 2 should also be considered in any policy review to be undertaken (noting policy consideration is likely to be set out in a supplementary document outside the ES). The Local Plan Part 2 includes policies on woodlands, trees and hedgerows and historic environment that may be material to this scheme. I trust the information and comments set out in the document are useful, should you seek any clarification on any of the issues highlighted above please feel free to contact Steve Mott on [REDACTED]@southderbyshire.gov.uk

Your faithfully

[REDACTED]

Steffan Saunders
Head of Planning and Strategic Housing.

[1] which having reviewed the above statement is likely to be a stage 2 Habitat Regulations Assessment sometimes known as an Appropriate Assessment given that the scoping report is already identifying a potential need for mitigation measures to protect the integrity of the River Mease Special Area of Conservation.

[2] Solar Array Development | Essex Design Guide

[3] Cook L.M. and McCuen R.H (2013) Hydrologic response of Solar Farms. Journal of Hydrologic Engineering 18: pp 536-541

[4] Planning application details (somerwestandtaunton.gov.uk)

[5] Part 1.10 Mease-Sence Lowlands (derbyshire.gov.uk)

Appendix 1 email response from Environmental Health

From: Matthew Holford [REDACTED]
Sent: 02 September 2021 17:32
To: Kevin Exley [REDACTED]
Cc: Heather Foster [REDACTED] John Kinderman
Subject: FW: EN010122 Oaklands Farm Solar Scoping Report
Importance: Highs

Hi Kevin

Thanks for inviting comment.

With my carbon reduction hat on my initial instinct is to be supportive, however clearly I would expect the climate reduction chapter of the EIA to explore in some depth whether the project delivers net carbon reduction benefits given the large land-take which it will require.

My responses to the specific scoping questions:

Q8.1 Are there any other noise sensitive receptors that should be included in the assessment, for example amenity spaces? We are not aware of any additional noise sensitive receptors not identified in the scoping report (including ecological or amenity). However due to the large scale of the development we cannot provide the developer with completed certainty on this question, although we are confident that additional receptors can be identified during the production of the Noise chapter.

Q8.2 Should noise from off-site vehicle movements (during construction) on public roads be assessed? If this is a yes, we would propose to carry out a commentary level of assessment by reviewing significant increases in traffic movements I agree that off-site vehicle movements can be scoped out from the quantitative assessment in the Noise chapter

Q8.3 Can vibration from vehicle movements on roads and tracks be excluded from the scope? I agree that vibration from vehicle movements on roads and tracks can be scoped out from the quantitative assessment in the Noise chapter

Q8.4 Should construction vibration be included in the scope? I agree that construction vibration can be scoped out from the quantitative assessment in the Noise chapter provided that the piling activities do not significantly exceed those described in para 8.3.

Q8.5 Can assessment of overhead cable noise for cables below 350kV be excluded from the scope? Agreed

Q8.6 Are there any other stakeholders that should be consulted with respect to the assessment of noise and vibration (other than South Derbyshire District Council)? None known of

Q10.1 Are consultees in agreement with the scoping out of the following topics, as explained in Chapter 10 - Glint and Glare; Major Accidents and Disasters; Human Health; Ground Conditions; Hydrology; Telecommunications, Television Reception and Utilities; Waste; and Air Quality. Agreed

Q10.2 Are consultees in agreement with scoping in Climate Change? Agreed

I note that the report proposes the use of guidance from the Institute of Environmental Management and Assessment (IEMA) entitled Environmental Impact Assessment Guide to Climate Change Resilience and Adaptation (2020) as the means by which to structure the impact assessment. This is not a methodology with which I am familiar and, given its date, it appears to be a new and perhaps relatively untested methodology. I do not have any alternative methodologies which I am aware of which I consider to be superior to this although John or Heather may be able to offer opinion.

Most EIA chapters which I am qualified to comment on (noise, air quality, land contamination, light, etc) require the assessment to consider more than one methodology in order to provide a fully rounded understanding of the development under consideration. I would simply make the suggestion that reliance on a single, new methodology as the way by which to assess such a complex topic as climate change may not provide sufficient depth.

Matt Holford

Head of Environmental Services

www.southderbyshire.gov.uk

Changes in intention: any deviation from the approved plans/drawings and/or details should be discussed with the Local Planning Authority in advance. This includes circumstances where the applicant/developer subsequently identifies inaccuracies with the approved documents or conflict with other regulatory requirements. A formal application to amend the proposals or secure a revised permission may be necessary. Failure to secure necessary approval may result in the commencement of enforcement proceedings.

Scope of this decision: this is a planning decision notice which, unless expressly applied for and stated in the description of development above, conveys no decision of associated planning consent (such as listed building or advertisement consent); nor does it convey a decision under, or override, supersede or negate, any other legislation or the need to comply with restrictive covenants under Civil Law. In particular the necessary approval under the Building Regulations and the Public Health Acts must be obtained before the carrying out of building works. Where the adopted highway, including verges and pavements, is to be altered, the Local Highway Authority (Derbyshire County Council) should be contacted to establish its requirements.

Enquiries: Any correspondence or enquiries concerning this decision should be sent to [REDACTED] quoting the above reference number.