



Penderfyniad ar Apêl

Ymchwiliad a gynhaliwyd ar 21&22/07/10

Ymweliad safle a wnaed ar 28/07/10

Appeal Decision

Inquiry held on 21&22/07/10

Site visit made on 28/07/10

gan/by Emyr Jones BSc(Hons) CEng MICE MCMI

**Arolygydd a benodir gan Weinidogion
Cymru**

**an Inspector appointed by the Welsh
Ministers**

Dyddiad/Date 02/09/10

Appeal Ref: APP/H6955/A/10/2122444

**Site address: Part of field east of Roden's Hall Farm, Bowling Bank, Wrexham
LL13 9RS**

**The Welsh Ministers have transferred the authority to decide this appeal to me as
the appointed Inspector.**

- 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 Composite Energy Ltd. against the decision of Wrexham County Borough Council.
- The application Ref P/2009/0449, dated 28 May 2009, was refused by notice dated 18 September 2009.
- The development proposed is the drilling of an appraisal borehole for the purposes of mineral exploration.

Decision

1. I allow the appeal, and grant planning permission for the drilling of an appraisal borehole for the purposes of mineral exploration on part of a field east of Roden's Hall Farm, Bowling Bank, Wrexham in accordance with the terms of the application, Ref P/2009/0449, dated 28 May 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than five years from the date of this decision.
 - 2) The development hereby permitted shall cease not later than 1 year from the date of commencement of development. The site shall be cleared of any portable buildings, plant and machinery associated with the use and the land restored to its previous condition within this time period.
 - 3) Noise attributable to site operations shall not exceed an external free field limit of 42dB LA_{eq 1 hour} during night-time (2300-0700) at the boundary of any noise sensitive property when measured at a height of 1.5m above local ground level.
 - 4) Noise attributable to site operations shall not exceed an external free field limit of 50dB LA_{eq 1 hour} during daytime (0700-2300) at the boundary of any noise sensitive property when measured at a height of 1.5m above local ground level.

- 5) No development shall commence until the access has been surfaced using hard bound materials for the first 15m from the edge of the adjacent carriageway.
- 6) No gates shall remain or be erected across the access within 15m of the edge of the adjacent carriageway.
- 7) No other development shall take place until the parking provision equivalent to that shown on approved indicative site layout Figure 4 dated 12/03/09 has been provided. The parking provision shall thereafter be maintained for the lifetime of the development.
- 8) Apart from the above parking provision, no other development shall take place until provision has been made within the area of the fenced compound to accommodate the turning movements of an articulated HGV. The turning provision shall thereafter be maintained for the lifetime of the development.
- 9) No development shall take place until 3 passing places have been constructed on the public highway serving the site in accordance with the details shown on AECOM Drawing No Figure 1 Revision B dated 13/07/10.
- 10) A Traffic Management Plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The approved plan shall be operated for the lifetime of the development.
- 11) The erection of fencing for the protection of trees, shrubs and the hedgerow to the south of the site shall be undertaken before any equipment, machinery or materials are brought onto the site for the purposes of the development. The fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. The fencing shall consist of a scaffold framework in accordance with Figure 2 of British Standard 5837:2005 comprising a vertical and horizontal framework, well braced to resist impacts, with vertical tubes spaced at maximum intervals of 3 metres. Onto this, 2.1 metre weldmesh panels shall be securely fixed with wire or scaffold clamps. The fencing shall be erected at the extent of each tree's Root Protection Area, as set out in BS5837:2005. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made within them without the local planning authority's written agreement.
- 12) An Ecological Method Statement and Mitigation Report prepared by specialist consultants providing details of reasonable avoidance measures and pollution prevention measures together with time scales for their implementation shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. The approved measures shall be implemented in accordance with the approved time scales.
- 13) Apart from drilling operations which can take place on a 24 hour 7 day week basis, work on site shall only be carried out between the hours of 0730 and 1830 Mondays to Fridays and 0800 to 1400 Saturdays and at no time on Sundays or Bank Holidays.

- 14) Any facilities for the storage of oils, 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%. All filling points, vents, gauges and sight glasses must be located within the bund. The drainage system of the bund shall be sealed with no discharge to any watercourse, land or underground strata.
- 15) The drilling operations shall take place on no more than 60 days in the 12 month period following the commencement of development.
- 16) Any lighting shall be in accordance with details previously submitted to and approved in writing by the local planning authority.

Background and procedural matter

2. The description of the proposal given on the application is 'The mineral exploration will initiate coal bed methane production exploration and development activities under the DECC PEDL Licence 185 and would be conducted as the first stage of resource appraisal and as part of Composite Energy's obligations as an operator in the 13th onshore oil and gas licensing round. It will comprise an appraisal borehole drilled vertically down to the coal seam to retrieve core samples. The mineral core will then be taken off site to be analysed for cleat structure permeability and gas content. Drilling will take a maximum of 60 days with 2 weeks site preparation and 2 weeks (weather dependent) site restoration. Equipment on the site layout plan is for indicative purposes only. The gated access and perimeter fencing will be in the locations shown. The bunds and internal facilities of the site are indicative as the layout will be determined by the site operating requirements and Health and Safety requirements.'
3. This was abbreviated by the Council to 'the drilling of an appraisal borehole for the purposes of mineral exploration' and the appellants accepted that this was an appropriate description of the proposal.

Main issues

4. I consider the main issues in this case to be:
 - (a) The effect of vehicular traffic likely to be generated by the proposal on highway safety on the route leading to the site and on the amenity of local residents; and,
 - (b) The effect of noise and disturbance likely to be generated by the proposal on the living conditions of neighbouring residential occupiers.

Reasons

Vehicular traffic

5. Reaching the site of the proposed borehole from the B5130 would require traffic to travel on approximately 1.5km of generally single track country lanes and around 400m of farm track. The vehicular traffic likely to be generated by the proposal would vary between the different stages.
6. Insofar as site preparation is concerned, hardcore and the required machinery would be delivered to site over a 2 week period. Three lorries would be needed for the first 2 days and last 2 days of the construction period to bring machinery and temporary site facilities to and from the site. Approximately 85 loads of

hardcore would be required over a 6 day period, typically averaging 15 per day or 2 per hour. If a concrete pad was required, 2 ready-mix lorries would also travel to the site during the site preparation phase, but it is possible that this could be obviated by the use of a geotextile grid.

7. The drilling rig would then be transported to site on 5 low-loaders with 3 cranes being required to aid with the site set up. Cabins and waste skips etc. would be brought to the site on flat bed lorries with 8 deliveries per day for 3 days and 2-3 associated smaller lorry loads. During the drilling period, which would typically last for around 28 days (60 days maximum), approximately 7 vehicles per day would be required being a mix of flat bed lorries, tankers and 4x4/lightweight deliveries. Vehicle movements associated with dismantling and restoration would largely be comparable to those associated with site set up and preparation, although agreement may be reached with the landowner as to the retention of some or all of the hardcore on the farm thereby reducing the number of lorry movements.
8. The appellants propose the construction of 3 additional passing places between Roden's Hall and the site entrance, which would be retained for the benefit of all road users after the development was completed. In addition, the hedge on the junction to the south of Roden's Hall would be trimmed and a temporary traffic mirror erected near the site entrance. The Council accepted that these measures, together with a legal undertaking in respect of repairing any damage caused to public highways on the access route and measures that could be secured through a Traffic Management Plan, would alleviate its concerns on vehicular safety. A draft of the undertaking was submitted to the Inquiry and an executed version, which has been approved by the Council, has subsequently been received.
9. Although on the B5130, rather than on the lanes between the B5130 and the site, interested persons express concern about the implications of heavy vehicles passing the local primary school. However, the appellants propose that no development related vehicles would pass the school during drop off and collection times. This could be enforced through the Traffic Management Plan and the possibility of an alternative approach through the Wrexham Industrial Estate that would obviate the need to drive past the school at all could be discussed with the Council and, if agreed, incorporated into the Plan.
10. Having regard to the anticipated number of vehicular movements and the characteristics of the roads leading to the site, I have no reason to disagree with the Council's conclusions on vehicular safety. However, the Council has outstanding concerns in respect of the safety of non-vehicular traffic and I appreciate that the roads leading to the site are used by local residents, including children, for walking, riding and cycling.
11. The rig carrier and other larger loads would be delivered to site in an escorted convoy such that an escort vehicle could go ahead to the next junction or passing place to warn other highway users. Insofar as non-escorted loads are concerned, the additional passing places proposed, together with the 4 existing passing places between Roden's Hall and the B5130 and the existing unofficial provision at gateways and accesses would give non-vehicular traffic opportunities to pull over/step aside to let development traffic pass. Equally, they would give development traffic the opportunity to wait for non-vehicular traffic to reach one of these locations.

12. Insofar as pedestrians not accompanied by prams or pushchairs are concerned, they would also be able to step off the carriageway onto the verge, subject to the verge being trimmed if necessary. On the basis of what I saw at the site visit, the existence of ditches and hedges beyond would pose no particular difficulties and verge trimming could be secured through the Traffic Management Plan.
13. The maximum additional vehicular traffic likely to be generated by the proposal is only 2 vehicles per hour. With the additional passing places and Traffic Management Plan, I am satisfied that such an increase would not materially increase the risk of accidents involving non-vehicular traffic.
14. The Council's first reason for refusal also refers to the impact on the amenity of local residents. However, its witnesses were inconsistent in their interpretation of this aspect of the reason for refusal. The highway witness referred to the impact of having to wait for any damage to be remedied, but accepted that this would be addressed through the legal undertaking. The planning witness adopted a somewhat broader interpretation referring to the impact of the additional traffic on enjoyment. However, I do not accept that the anticipated traffic levels over a relatively short period would be sufficient to have a significant effect in that respect.
15. For the above reasons, I conclude that the proposal would ensure safe and convenient access to and from the development site and the amenity of the public such that, in respect of the first main issue, it does not conflict with *Wrexham Unitary Development Plan* (UDP) policy GDP1.

Noise and disturbance

16. The drilling stage would involve 24 hour working and the Council's second reason for refusal refers specifically to this. The evidence submitted to support the need for 24 hour working was initially limited to three bullet points in the statement supporting the planning application.
17. However, in response to the Council's cross-examination and my questions, further explanation was provided. This related particularly to borehole stability issues and the risk involved in not drilling through difficult geological strata in one go, the impracticability of removing the drill-string at the end of each day's operations, the risk of losing the equipment and even the well as a whole if this were not done, and the limited number of opportunities to step down in casing size. The explanation was sufficient to convince me of the need for 24 hour working during the drilling phase, which is anticipated to typically last for 28 days or so (60 maximum).
18. The main noise sources during drilling operations would be the engine compartment, the engine exhaust and the top drive which drives the drill. Based on survey data relating to the noisiest of the three rigs operated by the appellants, and using the soft ground calculation method of *BS 5228-1:2009*, the maximum predicted noise level at the nearest sensitive receptors is 39 dB LA_{eq 1 hour}. The relevant receptors being No 9 The Stables, which would be around 575m from the centre of the top drive, and other properties at The Stables, as well as Cobham Farm, East Way, Roden's Hall and Sutton Lodge which would be marginally further away.

19. It is common ground that this is a quiet area with night-time background L90 noise values of around 21.5 dB(A). *Technical Advice Note 11: Noise* (TAN 11) advises that the introduction of noise generating activities into areas where the background levels are very low may be especially disruptive. *BS 5228-1:2009* notes that it is generally assumed that a greater difference between the noise generated and the existing background noise might be tolerated where it is known that the operations are of short or limited duration. The BS also indicates that very strict noise control targets might need to be applied to any site which is to operate at night with the periods when people are getting to sleep and just before they wake being particularly sensitive.
20. According to World Health Organisation guidelines, for a good night's sleep, the equivalent sound level in bedrooms should not exceed 30 dB(A) for continuous background noise. Even with windows open, the noise reduction from the outside to the inside of a building would ensure that the predicted maximum of 39 dB LA_{eq}
1 hour outside would not result in the above threshold being exceeded inside the bedroom of any noise sensitive receptor.
21. The day time noise climate is dominated by occasional agricultural noise/activity, livestock, birdsong and limited vehicle movements with background L90 noise values of around 38.5 dB(A). No predicted noise level at the nearest sensitive receptors has been calculated for the daytime non-drilling operations. Nonetheless, having regard to the limited duration of the works and the distances involved, I have no reason to believe that noise levels would be sufficient to materially impact on residential living conditions. In any event, such living conditions could be safeguarded by setting an appropriate limit through a planning condition.
22. For the above reasons, I conclude that the proposal would not generate levels of noise and disturbance that would be sufficient to materially harm the living conditions of neighbouring residential occupiers. It does not, therefore, conflict with UDP policy GDP1 insofar as the second main issue is concerned. Further comfort can be drawn from the experience of Falkirk Council where no complaints regarding either day or night time noise levels have been received in respect of exploratory operations in areas where dwellings were as close to the rig as would be the case here.

Other matters

23. The Council's Statement of Case and its planning witness refer to the possibility of a precedent for extraction of coal bed methane at the site being established if the appeal was allowed, although this was not part of the reasons for refusal. Nonetheless, any subsequent development would require further planning permission and the Council would be free to consider any such application on its merits. Furthermore, the witness accepted that it would not be unreasonable to extend the principle in *Minerals Planning Policy Wales* that, insofar as onshore oil and gas are concerned, policies should distinguish clearly between the three stages of exploration, appraisal and development to development control decisions.
24. It was suggested by interested persons that the exploratory borehole could be drilled on land within the Wrexham Industrial Estate. However, the appellants' Petroleum Exploration and Development Licence issued by the Department of Environment and Climate Change does not encompass the industrial estate. The

built up areas within the geologically preferred area in the relevant block is predominantly residential in nature such that a rural location is preferable in terms of providing a reasonable buffer between the borehole and residential property.

25. Concerns as to potential light pollution could, in my opinion, be appropriately addressed by a condition requiring the Council's prior approval of any lighting.
26. Interested persons refer to the visual impact of the proposal with the drilling rig being up to 18m in height. Nonetheless, having regard to the short term nature of the development, I am satisfied that there would be no unacceptable visual impacts. No valid comparison can be made between the proposal currently before me and my previous dismissal of an appeal relating to the retention of an existing greenhouse, garden shed, pergola and arch at a neighbouring property. This is because the appeal proposal is temporary in nature, minerals can only be explored where they are likely to exist with the site having been selected following an extensive search process, and there is a need to secure a sustainable indigenous energy supply within the next few years. None of these considerations were relevant to the above dismissal.

Conditions

27. The Council submitted a list of suggested conditions with reasons which were discussed at the Inquiry. Subject to minor modifications in the interests of clarity and precision and the following specific matters, I am satisfied that these should be imposed for the reasons given. Notwithstanding the appellants' lack of objection, there is no convincing reason to reduce the time limit for commencement from the standard 5 years and I will not do so. The Council does not object to the period when non-drilling operations can be carried extending to 1830, rather than the 1800 originally sought, and I have no reason to object.
28. The principal parties accepted that there was a need for separate daytime and night-time noise conditions and that in both cases the limit should apply at the boundary of any noise sensitive receptor. Insofar as the night-time limit is concerned, the Council requested that it be expressed as a 15 minute value, but all relevant guidelines refer to a 1 hour value and the appellants predictions are also expressed as 1 hour values. As a result, I consider that it would be appropriate to use 1 hour values.
29. The 1993 *Mineral Planning Guidance: The Control of Noise at Surface Mineral Workings* (MPG 11) generally recommends a free field night-time value of 42dB LA_{eq 1 hour} for site-attributable noise. The same limit is recommended in the 2004 *Minerals Technical Advice Note (Wales) 1: Aggregates* (MTAN 1). Although the proposal does not relate to aggregates, MTAN 1 is much more recent than MPG 11 and reflects the Assembly Government's continued support for the MPG 11 limit. MPG 11 recognises that night-time limits may be a particular issue in quieter rural areas, but that needs to be balanced by the relatively short duration of the drilling operations proposed in this case.
30. BS5228-1:2009 advises a night-time threshold value of significant effect at dwellings of 45dB LA_{eq} when ambient noise levels are less than this value. However, this appears to relate to total noise levels, not just that attributable to site operations. In any event, I have no evidence as to whether earlier versions, which would have informed MPG 11 and MTAN 1, advised a different approach.

31. I note that the appellants search criteria uses a 400m minimum separation, which effectively represents a 45dB LA_{eq 1 hour} threshold, and they are concerned that the adoption of a lower limit could create precedence for other cases. However, where relevant national planning guidance and advice can be complied with, I see no reason to depart from it and am of the view that 42dB LA_{eq 1 hour} would be an appropriate night-time limit in this case. Where this cannot be achieved, the decision maker would need to consider whether achieving 45dB LA_{eq 1 hour} would suffice having regard to the need to secure a sustainable indigenous energy supply.
32. Turning to the daytime value, MPG 11 normally recommends a daytime (0700 to 1900) site-attributable limit of 55dB LA_{eq 1 hour}, but recognises that a lower limit might be appropriate in quieter rural areas. Where ambient noise levels are less than the relevant figures, BS5228-1:2009 recommends total daytime (0700 to 1900) and evening (1900 to 2300) thresholds of significant effect of 65dB LA_{eq} and 55dB LA_{eq} respectively. The World Health Association recommended upper limit to prevent moderate annoyance at outdoor living areas, during both daytime and evenings, is 50dB LA_{eq}. In this case the principal parties agree that the daytime limit should be 50dB LA_{eq 1 hour}.
33. The only disagreement related to the extent of the daytime period. The Council suggested 0700 to 1900, in line with MPG 11, and the appellants requesting the TAN 11 daytime (and BS5228-1:2009 combined day and evening period) of 0700 to 2300. In all the circumstances of this case, I consider that allowing the agreed limit to apply until 2300 would not significantly impact on residential living conditions.
34. Circular 35/95 on *The Use of Conditions in Planning Permissions* advises that conditions requiring development to be carried out in complete accordance with the approved plans often fail the test of need by requiring more than is needed to deal with the problem they are designed to solve. In this case, the Council adduced no evidence that such a condition would solve any particular problem and I will not impose one.
35. The site access is located on the outside of a bend giving good visibility in both directions when emerging there from such that a condition in this respect is unnecessary. Subject to the Traffic Management Plan incorporating measures to ensure that 2 development related vehicles would not meet, there is no need to widen the access track to enable such vehicles to pass each other. Given the short term nature of the proposals with the site being restored at the end, there is no need for the ecological condition to provide appropriate conservation schemes.

Overall conclusion

36. For the reasons given above I conclude that the appeal should be allowed.

E Jones

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Lloyd, of Counsel	instructed by Mr A Rowlands
He called	
Mr J G Kellett DipEP MRTPI	Wrexham County Borough Council
Mr C Simpson BTech CEng MICE	Wrexham County Borough Council
Mrs S Evans BA(Hons) MSc PGDip(Acoustics) MCIEH	Wrexham County Borough Council

FOR THE APPELLANTS:

Mr S Telfer	DLA Piper
He called	
Mr C Volker BSc(Hons) MLI	Composite Energy Ltd.
Mr P J Neaves BA(Hons) MRTPI	CB Richard Ellis
Mr J P Redding BEng CEng MICE MCIHT	AECOM
Mr S Fraser BSc MPhil CEnv CIWM MIOA	The Airshed

INTERESTED PERSONS:

Mr R A Dewey BA(Hons) MBA MRTPI	Bob Dewey Planning
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DOCUMENTS SUBMITTED AT THE INQUIRY

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| 1 | Council's notification of Inquiry and list of persons notified |
| 2 | Extract from BS5228-1:2009 |
| 3 | Mr Dewey's Statement |
| 4 | Mr Redding's Rebuttal Statement of Evidence |
| 5 (CEL25B) | Drg. No P185/096 |
| 6 (CEL40) | Draft Deed |
| 7 (CEL41) | Drg. No Fig 1B |
| 8 (CEL42) | Drg. No P185/097A |
| 9 (CEL43) | Statutory Undertakers Information |
| 10 (CEL44) | Figure 4 |
| 11 (CEL45) | Further extract from BS5228-1:2009 |