

Planning Committee

Tuesday, 23rd February, 2021

PRE DETERMINATION HEARING HELD REMOTELY VIA MICROSOFT TEAMS

Members present: Councillor Hussey (Chairperson);
Councillors Matt Collins,
Garrett, Groogan, Hutchinson,
Maskey, McCullough, McKeown
and O'Hara.

In attendance: Mr. A. Thatcher, Director of Planning and
Building Control;
Mr. E. Baker, Planning Manager
(Development Management);
Ms. N. Largey, Divisional Solicitor;
Ms. C. Donnelly, Democratic Services Officer; and
Mrs. L. McLornan, Democratic Services Officer.

Apologies

Apologies for inability to attend were reported from Councillors Brooks, Carson, Hanvey, Murphy and Nicholl.

Declarations of Interest

No declarations of interest were recorded.

Pre Determination Hearing

LA04/2019/1540/F - Centralised Anaerobic Digestion (CAD) plant to include a bunded tank farm, (6no. digester tanks, 2no. buffer tanks, 1no. storage tank and associated pump rooms), biogas holder, biogas conditioning system, temperature control system, waste-water treatment plant (WWTP), motor circuit control room building, hot/cold water recovery system, feedstock reception and digestate treatment building, product storage building, odour control system and associated tanks, emergency gas flare, back-up boiler, administration/office building, car parking, 3no. weighbridges, fire water tank and pumphouse, pipelines to existing combined heat and power (CHP) plant engines, switchgear, earth bunding, 3no. accesses to existing Giant's Park Service road infrastructure and ancillary plant/site works

The Planning Manager provided the background to the application and explained that it had been due to be considered by the Committee on 18th August 2020, but that it

had been deferred due to correspondence received from an objector's legal representative. He explained that the Committee had undertaken a site visit in respect of the application in September 2020 and then, at its meeting on 19th January, 2021, the Committee had subsequently agreed to defer the application for further information on the Habitats Regulations Assessment (HRA), which had been carried out by Shared Environmental Services (SES), and to hold a non-mandatory Pre Determination Hearing.

He advised the Members that SES had completed the HRA in December 2020 but they had not submitted the HRA Appropriate Assessment to the Council until just before the Planning Committee meeting in January, 2021. The Committee was advised that the HRA Appropriate Assessment had concluded that, provided the mitigation measures detailed in the assessment were conditioned in any planning approval, there would be no adverse effects on site integrity of the Belfast Lough Open Water SPA, Belfast Lough SPA/Ramsar site and East Coast (Northern Ireland) Marine Proposed SPA.

The Committee was advised that the proposal was for a Central Anaerobic Digestion (CAD) facility capable of processing up to 99,999 tons of brown bin waste per year. The Planning Manager explained that a CAD plant would turn household waste into gas, and then electricity, which would feed the adjacent Combined Heat and Power (CHP) plant and grid. The Members were advised that it would produce 4.1MW renewable energy per annum.

The Planning Manager outlined that the site was un-zoned "white land" within the Belfast Area Urban Plan (BUAP) 2001 and was located within the development limits of Belfast in the draft Belfast Metropolitan Area Plan 2015 (dBMAP 2015) with a number of relevant zonings. It was within BHA 05 - Mixed Use Site North Foreshore, within close proximity to a National Designated Site (Inner Belfast Lough Area of Special Scientific Interest), within close proximity to two European Designated Sites –Belfast Lough Special Protection Area (SPA) and Belfast Lough Open SPA and it was within close proximity to an International Designated Site Belfast Lough Ramsar Site.

The site was within Zoning BHA 07 Employment/Industry for North Foreshore in the draft BMAP 2004 and was within the mixed use site North Foreshore Zoning BHA 05 in draft BMAP 2015. He explained that both zonings listed a number of Key Site Requirements (KSRs) and, given the advanced stage that draft BMAP 2015 had reached, it was considered to hold significant weight.

The Committee was also advised that an overall Comprehensive Masterplan had been agreed by the DOE Planning Service in January 2010. The Planning manager explained that the Masterplan recommended waste management facilities in the area and also promoted economic development on the site. It was therefore considered that the proposal complied with the overall aspiration of the Masterplan to seek the regeneration and development of the site and wider North Foreshore land.

The Planning Manager explained that, following the Planning Committee of 19th January, the applicant had provided additional information in relation to the 'need' for the proposal, with particular regard to regional policies set out in Planning Policy Statement 11 (PPS11) and the Strategic Planning Policy Statement (SPPS).

In that correspondence, the applicant had stated that the proposed CAD facility was consistent with the objective of regional policy of promoting such proposals. It referred to regional policy, which stated that the need was identified in the Waste Management Strategy/ Waste Management Plan and that the proposal was consistent with those documents, the overarching waste policy and the future direction of travel in diverting organic waste from landfill. The applicant had advised that the need to identify the source of the feedstock that would supply the CAD facility was beyond the requirements of planning policy and that ongoing discussions in relation to potential sources were commercially sensitive. Furthermore, they added that further progress with feedstock contracts could not be advanced until planning permission had been granted.

The applicant had also provided a response to the further objection from Giant's Park Belfast Limited (GPBL), as had been reported to the Committee, on 19th January, in the Late Items pack. He explained that the information had been uploaded to the Planning Portal and a copy had been sent to the objectors.

The Planning Manager provided the Committee with the proposed plans for the site and showed a number of views of the proposal from different locations.

The Committee was advised that there were two objectors to the application, GPBL and Belfast Harbour. GPBL stated that they were the preferred bidder for the development of 250 acres of land at the North Foreshore. GPBL objected to the proposal as it was immediately adjacent to the site for their major leisure-based development, and expressed significant concerns that the proposed CAD facility could impact on the deliverability and success of it. GPBL stated in their objections that the proposal was contrary to planning policy and should be refused.

GPBL also advised that they believed that the CAD proposal was not in accordance with the agreed masterplan because the site of the CAD proposal was identified in the agreed masterplan for logistical warehousing, and not waste management. They believed that the CAD proposal was therefore incompatible with the other identified uses in the masterplan and would undermine the development of the North Foreshore site.

Belfast Harbour had concerns that the proposed CAD facility would be incompatible with the film studios and raised issues regarding noise, environmental and ecological impact, future expansion of the film studios and with the process.

He explained that DFI Roads, NI Water, Rivers Agency, NIEA Marine and Fisheries Division, NIEA Water Management Unit, NIEA Land, Soil, and Air, NIEA Natural Environment Division, Shared Environmental Services and Belfast City Airport had all been consulted as statutory consultees and had no objections.

He also advised that officers had consulted the Council's Environmental Health Unit, the Tree Officer, the City and Neighbourhood Landscape Team and the Economic Development Team, as non-statutory consultees, and that they also had no objections.

The Members asked the Planning Manager a number of questions, including:

- what precisely the Committee was being asked to make its decision based upon, given that there had already been deviations from the overall Masterplan adopted in 2010 by DOE, and that Giant's Park had subsequently been designated as the "preferred developer" for the leisure aspect of the site;
- the need for an Anaerobic Digestion facility and how it had been assessed;
- where the 99,000 tons of waste per year would be coming from and whether it would require a significant number of HGVs making numerous trips to and from the area, along the Shore Road;
- whether there was, in fact, 99,000 tons of brown bin waste per year that needed processing, and where it was currently going;
- how the Transport Assessment had been carried out - was it assessed as the site was currently, or was it assessed for the whole Masterplan area;
- whether the potential negative economic impact on the Giant's Park plans or on the Film Studios had been considered by the Economic Development unit;
- under section WM2 of PPS11, how had the need for the facility been established;
- the impact of the facility on the air quality;
- the noise generated from the site and whether it would impact on the recently approved Phase 2 Film studios;
- the Masterplan and the compatibility of the proposed uses;
- whether the facility was of regional significance and therefore whether it should be considered by the Department for Infrastructure; and
- the long-term viability of the application.

The Planning Manger advised the Committee that, in respect of issues surrounding the compatibility of various uses and the economic impact of the application, very limited weight should be given to the Giant's Park application as a Pre Application Notice (PAN) for it had been submitted one month ago. It was therefore not reasonable to delay consideration of the CAD plant application which had been in the Planning system since 2019. He added that the impact on the nearby Film Studios had been considered as part of the application and that Environment Health had considered issues such as noise and had concluded that the application would not have adverse impact on the studios.

In relation to where the waste for the site would be coming from, he explained that the applicant had stated that negotiations were ongoing and commercially sensitive, but that the agent might be able to provide further information. The Director of Planning and Building Control added that DFI Roads' assessment of the application would focus on the highway safety and capacity issues in relation to the site, and the number of vehicles coming in and out of it, rather than where the HGVs were coming from.

In terms of the zoning of the site, the Planning Manger explained that the Masterplan was one of a number of relevant material considerations as previously outlined. He explained that the Masterplan included an aim to bring forward a waste management facility and that the Film Studios were on a part of the site which had originally been zoned for a waste management facility. The Committee was advised that the previous permissions for the film studios had already deviated from the Masterplan. The adjacent uses to the immediate north, south, east and west of the proposed CAD plant were for commercial use.

In respect of Policy WM2 of PPS11, he explained that the need for the facility been established as the applicant had demonstrated that the proposal was consistent with the wider aims of the waste management policy, insofar as AD moved waste up the hierarchy from disposal to recycling and recovery, thereby diverting organic waste from landfill.

The Planning Manager confirmed to the Members that the application did not exceed the thresholds to be considered by the Department for Infrastructure as regionally significant.

In response to a Member's comment regarding Belfast City Council's current waste contract, the Director of Planning and Building Control advised the Committee that officers would seek to provide confirmation of that at the next meeting. In response to a further Member's query as to how and where food waste across Northern Ireland was currently being processed, the Director suggested that the agent might be able to provide that information. However, if the agent was unable to, he agreed that officers would make enquiries to provide that information at its next meeting.

The Chairperson welcomed Councillor Whyte to the meeting, who wished to speak against the application. He advised the Committee that:

- no independent economic analysis had been carried out on the figures which had been provided by the applicant;
- visual impact was not suitable
- there was a lack of demand, well known that other sites were not operating at full capacity;
- it was unclear where the waste would come from;
- DfI Roads had based its decision on what lorries would be entering and not where they were coming from and that it was not sure of the volume of traffic for the site;
- with regards to Appendix 6 – Air Quality and Odour, the dispersion assessments were based on meteorological data taken at Aldergrove, and not at Belfast City Airport, which was 15 miles away from the site. He highlighted that the geography and wind patterns were entirely different and the particular impact the proposal could have on sites R5, R6 and R7.

The Chairperson then welcomed Mr. K. Carlin, Project Manager, and Mr. T. Clifford, Environmental Advisor, who were representing Giant's Park Belfast Limited (GPBL) and objecting to the application. They advised the Members that they were objecting to the proposal for the following reasons:

- GPBL had been appointed as the preferred developer by the Council in September, 2018;
- at the same Council meeting, reference was made to a potential Anaerobic Digestion Plant on lands adjacent to the Giant's Park proposals, which was the first they knew of the proposal, and which they had opposed from the outset;
- for two years GPBL had worked on a detailed vision for the site that addressed a comprehensive set of social and economic requirements set by the Council, which had required significant time and financial resource;
- they had progressed with their commitment and, following submission of their Proposal of Application Notice, they had commenced a comprehensive programme of public engagement with local community groups, having held their first public meeting last week;
- if the CAD plant was to be approved it would have a significant impact on the vision of GPBL for the site, in planning terms, as PPS11 included policy that could restrict future development in the vicinity of existing or approved waste management facilities;
- that they had consulted both CBRE and Colliers International, who advised that it would be almost impossible to attract investors and potential tenants if the AD plant went ahead at that location;
- Policy BHA 5 of Draft BMAP required the preparation of a comprehensive masterplan for the site, to consider detailed aspects of the site layout and design, not just land uses;
- there was no established need for the facility;
- Policy WM2 required that need be established through the Waste Management Strategy and the relevant Waste Management Plan, both of which were now a decade old;
- in Northern Ireland, the annual tonnage of Local Authority collected waste was steadily falling, and would continue to do so;
- the Granville Eco Park at Dungannon, a CAD plant of a similar scale, was struggling to attract NI based feedstock 8 years after it opened;
- only half of the incoming waste would be handled via the AD process, whereby the other half would be handled by an operation akin to MBT (Mechanical Biological Treatment) and MBT operation produced less electricity and more landfill waste, than the AD process;
- Arc21 held the brown bin waste contract for Belfast and 5 adjacent Councils until 2029 which suggested that waste would need to be transported from across NI and even other countries;
- they questioned the proportion of output which would be sent to landfill, and that it could be significantly higher than claimed;
- the proposed plant's contribution to renewable energy, of 4.1MW, was equivalent to one large wind turbine; and
- the carbon benefits from renewable energy production needed to be considered against the carbon impacts of the vehicle movements associated with waste delivery and by-product removal/disposal.

A Member stated that they were concerned that the representatives from GPBL had stated they were not aware of the waste facility until September 2018. He stated that the Council had always talked about the creation of green jobs in respect of the site and had advertised for private sector operators to submit proposals for such a plant in 2011.

Mr. Carlin stated that, in 2011, the Council had put out an expression of interest for a “clean tech” development and that it did not have a definition in terms of what that was.

In response to a further question as to what detrimental impacts they felt the proposal would have on the Giant’s Park site, Mr. Carlin stated that they were concerned about odour, spillages, traffic movements, vermin and the visual impact within the site, given that the Council wanted to attract 1 million people to visit the site each year.

The Chairperson welcomed Mr S. Beattie QC and Ms C. McParland, planning agent, to the meeting who were representing the applicant.

Mr. Beattie advised the Committee that:

- the application had been the subject of an Environmental Statement (ES) and Further Environmental Information (FEI) and that none of the statutory consultees had objections to it;
- the masterplan was mere guidance and was subordinate to the zoning. The zoning had been known since it was whiteland under BUAP and mixed used development since BMAP 2004;
- that Zone 4 was marked for a “waste recovery facility” on the leisure park site, so it did not add up that GPBL were unaware of the waste management;
- their client wished to place the CAD plant beside the existing rock credited CHP engines;
- in respect of ammonia and nitrogen, it was a zero baseline, and there would be no harmful impact on Belfast Lough and both DAERA and SES were content with the modelling;
- in terms of waste, the facility was strategically important and needed, as demonstrated in the Waste Management Plan and Strategy, and, in terms of landfill, between July – September 2020, 62,000 tons of waste from local councils went to landfill;

Ms. McParland advised the Committee that:

- the leisure proposals were purely aspirational at that point and they were not wholly in accordance with the uses identified in the masterplan or in planning policy, and that you could not therefore assume that permission would be granted if an application was to be submitted and therefore minimal weight should be afforded to it;

- the Giant's Park site was a mixed-use site zoning which expressly included a waste management facility and that there had always been a presumption and expectation that a proposal like the AD plant would be acceptable;
- there was the additional benefit of producing renewable energy making best use of the existing CHP engines;
- the Council's expression of interest for a clean tech hub and environmental resource recovery park had been publicised long before the application for an AD plant had been submitted;
- a capital investment of £40million had already been committed to its delivery;
- there was no policy basis for the City to lose out on this opportunity.

Mr. Beattie advised the Committee that a number of expert witnesses were in attendance at the Hearing in order to answer any technical questions from the Members.

In response to a Member's question as to why the air quality analysis had been carried out at the airport at Aldergrove, Mr. S. Carr, Irwin Carr Consulting, explained that the Local Air Quality Technical Guidance 9 set out very specific guidelines, where sequential hourly data had to be carried out over a period of three to five years. He clarified to the Members that all assessments for Belfast were based on data coming from the measuring station at Aldergrove airport, and that the data was then applied to the specific topography of the site.

In relation to the Traffic Assessment, Mr. R. Agus, MRA Partnership, advised the Committee that Belfast Metropolitan Area was the greatest source of existing household waste and also had the best road network. All traffic had been assessed coming via Dargan Road and that the impact on the road network was 0.6% and that there was considered to be no significant impact on Dargan Road or the surrounding area. He added that the cumulative impact of the site had been factored in, including Phase 2 of the Film Studios, and that there was still considered to be considerable capacity for further development. He added that the Giant's Park had its own access and would not be used by traffic heading for the AD plant.

In relation to the Municipal solid waste product which would end up in landfill, and the environmental impact of that, it was estimated that 5,000 tons out of 99,000 tons would be the worst case scenario.

In response to a question regarding the nitrogen and ammonia emissions and the impact on European designated sites within the vicinity of the application, Mr. Beattie advised that both Belfast Lough SPA were not ammonia sensitive as they were tidal, and that the modelling, even at its maximum, would not reach anywhere near the maximum.

Dr. J. O'Neill, JONA, explained that the data in relation to the nitrogen and ammonia emissions, within the tables 6.28 and 6.29, were post-mitigation. Mr. S. Carr advised the Members that the emissions containing ammonia would come through the air filtration system.

In response to questions regarding the need for the facility, Ms. McParland advised the Committee that PPS11 was met through the Waste Management Plan and Strategy. She added that the need focused on the waste hierarchy, it was a renewable energy proposal, it made best use of CHP engines and that it would contribute to future renewable targets.

Ms. McParland advised the Members that, between July and September 2020, 62,000 tons of waste from local councils had been sent to landfill. She added that a report entitled "Reducing Emissions in Northern Ireland" stated that 95% of emissions from waste were methane gas created from the anaerobic decomposition of materials. The Committee was advised that the proposed AD plant would essentially divert biodegradable waste from landfill, thereby reducing methane gas emissions.

In response to a question regarding the objectors' statement that the proposed plant's contribution to renewable energy would be equivalent to one large wind turbine, Mr. S. Hegarty, Energia, outlined that wind turbines would normally generate 2.3 – 3 Mw, operating between 20 – 25% capacity. He explained that an AD plant would operate at up to 85% capacity and did not have the variability of wind power.

A Member questioned the foul drainage from the site during the construction phase. Dr. S. Wise, Energia, advised the Committee that any foul liquid on site during construction would be collected, put into sealed containers and taken off the site to a licensed waste water treatment facility.

The Chairperson thanked Mr. Beattie, Ms. McParland and the expert witnesses that had provided the Committee with clarity in relation to a number of queries.

He advised the Committee that Ms. S. Allen, Principal Environmental Planning Officer at Shared Environmental Service (SES), was in attendance in order to answer any questions from the Members.

A Member sought further information on how SES had carried out the Habitats Regulations Assessment (HRA); information relating to the critical loads, and the different policy positions for SES and DAERA; and, given the current levels of nitrogen or ammonia, what the rationale was for allowing anything additional at the sites.

Ms. Allen advised the Committee that SES required the applicant to provide the initial information that went into the HRA, including an Air Quality Impact assessment. She explained that SES had satisfied themselves that anyone carrying out the assessment had the necessary qualifications and experience, and that they therefore did not replicate it. The Members were advised that, in this case, the applicant had provided a shadow HRA. However Ms. Allen explained that, when they were working on behalf of a Council, they carried out their own robust, independent assessment and that was what had taken place in this case.

In relation to thresholds, she explained that the predicted environmental concentrations of ammonia were significantly lower than the guideline level as provided by NIEA. Therefore they were satisfied that the level of emissions resulting from the project were well within the environmental capacity of the site.

In relation to nitrogen loading, she advised that the additional amount for the site was 0.9% which was well within the range. She provided further clarity in relation to the NIEA's policy in relation to nitrogen loading in comparison with the approach by SES.

The Chairperson then welcomed to the meeting Mr. K. Finegan, NIEA, who was available to answer questions from the Committee. He explained that NIEA applied the same protocol to all designations, whereby if the process contribution of the development was under 1% of the critical load or level, no further consideration was required.

He added that there was the potential for marine habitats to be sensitive to ammonia and nitrogen deposition. He confirmed that it was not NIEA which set the critical loads, rather, they were derived from the Convention on Long-Range Transboundary Air Pollution (LRTAP), which used updated scientific evidence and literature.

In relation to further questions regarding nitrogen, he advised the Committee that the 1% figure came from the UK Conservation and Regulatory bodies as a means of identifying the projects which would most likely have an impact. He explained that there was no scientific basis for the use of 1% and that it was currently under review in order to bring it more into line with the evidence of damage and case law.

The Chairperson thanked Ms. Allen and Mr. Finegan for their contributions to the meeting.

Mr. Beattie was permitted to provide a response to what had been discussed. He advised the Committee that the applicable law, as approved by the Courts in Judicial Review in NI over last two years was that the decision maker was entitled to place considerable weight on the opinion of the expert National Agency with the responsibility for oversight of nature conservation and ought to do so. He explained that expressing a mere doubt without providing reasonable objective evidence was insufficient. He added that the DAERA/NIEA policy did not matter, as the SES criteria was significantly more robust, and that all three experts with international reputations, were content with the proposal beyond reasonable scientific doubt.

The Chairperson thanked all the speakers for their attendance.

The Director of Planning and Building Control advised the Committee that the officers would endeavor to bring the application to the next monthly meeting, depending on gathering the requested information by then.

Chairperson