

Planning and Environmental Appeals Division Decision Notice
Appeal Reference: PPA-110-2426
Planning Reference: APP/2019/2247
Planning Proposal: Full Planning Permission for Erection of 2 Agricultural Storage Buildings, Erection of Building to Incorporate Combined Heat and Power Plant (CHP) and Erection of SEE Building
Address: Site at Keilhill, King Edward, Banff, AB45 3LT
Summary of Decision: Appeal dismissed and planning permission refused.
Policy Issues: The main issues in this appeal are whether the proposed CHP plant is industrial development, the locational requirement, the economic benefits, the renewable energy benefits, transport and road safety, natural heritage, pollution, and flooding. While there is general support, the Aberdeenshire Local Development Plan applies spatial controls over employment development through Policy R2: Housing and Employment Development Elsewhere in the Countryside. This policy allows development for the purposes of agriculture, but otherwise restricts employment development proposals to small scale. The storage and drying of potatoes and malting barley are agricultural activities and would therefore accord with this policy. However, the burning of biomass to generate electricity and the drying of wood are industrial activities and would be limited under this policy to small scale. While it is identified that the proposals would employ five people, the figures presented on the weekly working hours for each position are unsustainable and if the proposals were to expand as indicated in the business case, the number of employees are likely to further increase. As the total area of the site of 1.97ha would exceed the small-scale threshold, the proposals therefore fail to accord with Policy R2. The proposals identify that only 21% (1.5 MWh) is required for agricultural purposes and 15% (1 MWe) required to run the CHP plant and associated buildings. No detailed proposals are provided for the capture or usage of the excess heat produced, which appears considerable. It is identified that the project could supply hot water to nineteen local houses, though the infrastructure required for distributing hot water is not included, or described, in the proposals. In addition, the supporting business case indicates that the scale of the CHP plant is linked to a future phase 2

comprising of greenhouses, which would require 6 MWh and 4 MWe to operate with evidence of favourable pre-application discussions with the council provided. This second phase does not form part of these proposals and there is no guarantee that this next stage would come to fruition. For these reasons, the council is correct in its view that the proposed CHP operation is an industrial development in its own right rather than just part of an agricultural operation.

Policy B1: Employment and Business Land supports the location of new employment developments to allocated business land within settlements. The appellant identifies that there are no suitable sites for the development on any business land in the area and all other business land in Aberdeenshire is too far from the agricultural land used by the company. It is also identified that the agricultural uses would not be suited to an industrial location. However, these claims are not supported by substantive examination of other options nor why the facilities at Inverboyndie or the recently approved site at Cairnandrew could not meet the requirements of the business. The site is within a Regeneration Priority Area and the appellant refers to Policy B4: Special development areas which supports the start-up of businesses by allowing co-funding through modest housing developments. As these proposals do not include housing development, this policy is not applicable.

Policy C2: Renewable Energy incorporates the position of Scottish Planning Policy on low carbon heat. Policy C2 supports biomass schemes, such as the proposed CHP plant, where they are on appropriate sites and of the right design. The policy treats the generation of energy through biomass schemes as industrial processes suitable for business land. The Local Development Plan settlement statements identify land allocated for business.

The appellant argues that CHP is no different from wind turbines which power agricultural operations on farms. It is considered that the two are not directly comparable as wind turbines supply electricity only and can be connected to the grid from many dispersed locations whereas for efficiency, but heat generation requires to be located close to areas of high demand. The scheme including the phase 2 greenhouses or the provision of hot water to local houses may show that the excess heat would be utilised. However, the proposals have not adequately demonstrated how the generation of substantial amounts of heat in this sparsely populated rural location fits with the concept in Scottish Planning Policy of co-locating sources of heat supply and developments with a high heat demand, or with Policy C2.

Concerns have been raised by objectors over the increased level of traffic, the existing narrow road not being suitable for HGV traffic, the impact on the junction with the A947 and the road being on two school bus routes and a cycling route, as well as the underestimated transportation calculation. The council's Roads Development and Transportation have no objection to the

proposals subject to conditions. No other concerns about traffic impacts have been raised by the council.

No evidence suggests that the minor road or the junction with the A947 is substandard or unable to support the level of truck movements proposed. The National Cycle Route 1 runs between Turriff and Banff along the minor road and turns north on another road just past the appeal site. Conflict between cyclists on that route and trucks would be minimal. The transport statement may have underestimated the level of trips associated with the proposals. However, it is considered that the increased traffic level would be acceptable in terms of road capacity and safety and the proposals would comply with Policy RD1: Providing suitable services.

The woodland along the northern side of the site is classified as an Ancient Woodland: Long Established Woodlands of Plantation Origin. The tree report confirms that no trees require to be removed to develop these proposals. The council's Natural Heritage service confirms that there will be no adverse impact on potential bat roosts. Consequently, the proposals comply with Policy E1: Natural Heritage.

The appeal site falls within the Deveron Valley Special Landscape Area and Agricultural Heartland Landscape Character Area. It is considered that the scale of the buildings would reflect that of other agricultural buildings in the area. The scale of the chimney would not adversely impact the overall landscape character of the area. The proposals therefore comply with Policy E2: Landscape.

Air Quality Assessment and Noise Impact Assessment have been prepared in order to assess pollutant concentrations and noise level at sensitive locations as a result of the proposed CHP. The council's Environmental Health service has no objections to the proposals subject to controls being implemented over noise and flood lighting. Subject to the identified mitigations the proposals would meet the requirements of Policy P4: Hazardous and potentially polluting developments and contaminated land.

Due to the site topography, the site is unlikely to lie within the functional floodplain of any small water courses. SEPA and the council's Flood Risk and Coast Protection service have no objection to the proposals on flood grounds and the proposals would be compliant with Policy C4: Flooding.

Additional Points:

It is noted that Aberdeenshire Council on 12 May 2021 submitted the Proposed Aberdeenshire Local Development Plan 2020 to the Directorate of Planning and Environmental Appeals for examination. Currently the examination process is ongoing. Whilst the proposed plan is a material consideration, given the stage it is in the local development plan process and the adopted local development plan remains up to date, it is concluded

that in this instance limited weight should be given to the proposed plan in considering this appeal. The proposals have been considered against the updated proposed policy framework, and it does not modify the conclusions.

Actions:

Note Decision

Policy implications / lessons

None

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Appeal Decision Notice

Decision by Euan McLaughlin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-110-2426
- Site address: Site at Keilhill, King Edward, Banff, AB45 3LT
- Appeal by Keil Green Energy against the decision by Aberdeenshire Council
- Application for planning permission APP/2019/2247 dated 15 October 2019 refused by notice dated 27 January 2022
- The development proposed: Full Planning Permission for Erection of 2 Agricultural Storage Buildings; Erection of Building to Incorporate Combined Heat and Power Plant (CHP) and Erection of SSE Building
- Date of site visit by Reporter: 6 April 2022

Date of appeal decision: 20 May 2022

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. The development plan for the appeal site comprises the Aberdeen City and Shire Strategic Development Plan (2020) and the Aberdeenshire Local Development Plan (2017).
2. The key section of the Strategic Development Plan is Part 6: Our Resources. The parties refer me to the following Local Development Plan policies, R2: Housing and Employment Development Elsewhere in the Countryside, B1: Employment and Business Land, B4: Special development areas, C2: Renewable Energy, E1: Natural Heritage, E2: Landscape, C4: Flooding, RD1: Providing suitable services and P4: Hazardous and potentially polluting developments and contaminated land.
3. The appeal site extends to 1.97 hectares and lies in the countryside approximately 3.5 kilometres south of Banff and 10 kilometres north of Turriff. It is located to the south of a minor road, with the entrance 450 metres to the west of the A947 Banff/Turriff road. The site benefits from an extant planning permission for the erection of an agricultural shed. No building has been erected but the access has been formed and a large area of hardstanding created. To the east of the site, is a cluster of ten dwellinghouses near the road junction.
4. The proposals comprise of the erection of two agricultural buildings, a Combined Heat and Power Plant (CHP) building with a 29-metre high, 1.1 metre diameter chimney and a separate SSE building for connecting to the National Grid. The two agricultural buildings would be used for storage with a 440-tonne capacity for drying wet wood chips sourced from local forests, seed potatoes and malting barley.

5. The proposed development is in support of an existing agricultural business which dries and stores malting barley and seed potatoes. Currently 750 tonnes of malting barley and 4000 tonnes of seed potatoes are processed by the appellant at the agricultural facilities in Inverboyndie. The appellant states that this existing facility is too small and does not allow for future expansion. The proposals allow for this expansion while also allowing for the modernisation of the business. Once operational the current facility at Inverboyndie will be closed. The appellant also identifies that they have another CHP site at Cairnandrew which will also support the expansion of the business but no details as to capacity of this facility or how it relates to the proposals are provided.

6. The CHP building is shown to include twenty wood gasifiers and a single CHP gas turbine. No specification for the gasifiers is provided. Appendix O of the Business Case provides details of the Taurus 70 gas turbine. This demonstrates that the CHP would have an output power of 8.18 MWe, heat rate of 10,470 kJ/kW-hr, exhaust flow of 95,150 kg/hr at temperature of 515C (or steam production from 16.5 to 72.3 tonnes/hr).

7. The appellant indicates that the plant would have capacity to generate 6-7 MWh (Heat) and 5 MWe (Electricity) depending on the quality of the woodchips and that 100 tonnes of dry wood chips are required per day to operate. Of this generated energy 1.5 MWh is required for agricultural purposes including drying crops and woodchips. The remaining heat would be channelled into a heat exchanger generating an additional 1.5 MWe, taking the total to 6.5 MWe. The electricity usage of the buildings and drying process would be 1 MWe, with the remaining energy (5.5 MWe) delivered to the national grid.

8. The CHP would operate 24 hours a day, year-round and would use 36,500 tonnes of dry wood chips a year. Wet woodchips would be sourced from local, but unspecified forests and dry woodchips sourced from local but again unspecified sawmills. Wet woodchips would be dried on site. These comprise of up to 50% water so double the quantity is required to be transported to site prior to drying for combustion purposes.

9. The appellant indicates that the proposals would generate five plant staff jobs, with each position working full-time for 60 hours per week. No details are provided as to whether these will be new jobs or the relocation of staff from the current facility at Inverboyndie.

10. Having regard to the provisions of the development plan the main issues in this appeal are whether the proposed CHP plant is industrial development, the locational requirement, the economic benefits, the renewable energy benefits, transport and road safety, natural heritage, pollution, and flooding.

Industrial development, locational requirement, and economic benefits

11. I have considered the national and strategic policies along with the supporting documents highlighted by the appellant in the business case which encourage farming business and diversification. While there is general support, the Aberdeenshire Local Development Plan applies spatial controls over employment development through Policy R2: Housing and Employment Development Elsewhere in the Countryside. This policy allows development for the purposes of agriculture, but otherwise restricts employment development proposals to small scale. The Plan defines small scale as being sites of under 0.5 hectares and employing five or less full-time people.

12. The storage and drying of potatoes and malting barley are agricultural activities and would therefore accord with this policy. However, the burning of biomass to generate electricity and the drying of wood are industrial activities and would be limited under this policy to small scale. While it is identified that the proposals would employ five people, I am concerned that the figures presented on the weekly working hours for each position are unsustainable and if the proposals were to expand as indicated in the business case, the number of employees are likely to further increase. However, as the total area of the site, at 1.97ha, would exceed the small-scale threshold I find the proposals therefore fail to accord with Policy R2.

13. The proposals identify that only 21% (1.5 MWh) is required for agricultural purposes and 15% (1 MWe) required to run the CHP plant and associated buildings. No detailed proposals are provided for the capture or usage of the excess heat produced, which appears considerable. It is identified that the project could supply hot water to nineteen local houses, though the infrastructure required for distributing hot water is not included, or described, in the proposals. In addition, the supporting business case indicates that the scale of the CHP plant is linked to a future phase 2 comprising of greenhouses, which would require 6 MWh and 4 MWe to operate. Evidence of favourable pre-application discussions with the council is provided. This second phase does not form part of these proposals and there is no guarantee that this next stage would come to fruition. For these reasons, I consider that the council is correct in its view that, at this point in time, the proposed CHP operation is an industrial development in its own right rather than just part of an agricultural operation.

14. Policy B1: Employment and Business Land supports the location of new employment developments to allocated business land within settlements. The appellant identifies that there are no suitable sites for the development on any business land in the area and all other business land in Aberdeenshire is too far from the agricultural land used by the company. It is also identified that the agricultural uses would not be suited to an industrial location. However, I do not find that these claims are supported by substantive examination of other options nor why the facilities at Inverboyndie or the recently approved site at Cairnandrew could not meet the requirements of the business.

15. The site is within a Regeneration Priority Area and the appellant refers me to Policy B4: Special development areas which supports the start-up of businesses by allowing co-funding through modest housing developments. As these proposals do not include housing development, I do not find this policy directly applicable.

Renewable energy

16. The appellant argues that the Scottish Government has ambitious targets for renewable energy and wishes to see a diverse range of technologies adopted and refers to the Scottish Government Route Map for Renewable Energy in Scotland 2050 – Summary of call for evidence responses, which supports biomass CHP plants. The appellant also argues that the proposed CHP plant would produce electricity from a source on a continual basis, unlike that from wind turbines, and would help Aberdeenshire Council achieve its targets for renewable energy. I consider that the Aberdeen City and Shire Strategic Development Plan, Part 6: Our Resources, supports this position as it seeks to tackle the supply of energy during the plan period which includes opportunities for this to come from biomass.

17. Local Development Plan Policy C2: Renewable Energy incorporates the position of Scottish Planning Policy on low carbon heat. Policy C2 supports biomass schemes, such

as the proposed CHP plant, where they are on appropriate sites and of the right design. The policy treats the generation of energy through biomass schemes as industrial processes suitable for business land. The Local Development Plan settlement statements identify land allocated for business. As these are located within existing built-up areas, they are more likely to be located closer to existing uses associated with high heat demand.

18. The appellant argues that CHP is no different from wind turbines which power agricultural operations on farms. I do not find that the two are directly comparable as wind turbines supply electricity only and can be connected to the grid from many dispersed locations whereas, for efficiency, heat generation requires to be located close to areas of high demand. A comprehensive scheme which includes the full extent of the phase 2 greenhouses or the provision of hot water to local houses may show that the excess heat would be utilised. However, I do not find that the proposals before me adequately demonstrate how the generation of substantial amounts of heat in this sparsely populated rural location fits with the concept in Scottish Planning Policy of co-locating sources of heat supply and developments with a high heat demand, or with Policy C2.

Transport and road safety

19. The appellant's transport statement estimates the traffic movements associated with the proposals and that all transport would take place in 25-tonne and 30-tonne trucks. All woodchips will be retained and used on the site. No indication is provided as to the export method for the Carbon Powder by-product which in accordance with Appendix I of the business plan is to be sold to industry at 20 tonnes per day for 354 days per annum.

20. Concerns have been raised by objectors over the increased level of traffic, the existing narrow road not being suitable for HGV traffic, the impact on the junction with the A947 and the road being on two school bus routes and a cycling route. It is also suggested that the transportation calculation is underestimated. The council's Roads Development and Transportation service has no objection to the proposals subject to conditions. No other concerns about traffic impacts have been raised by the council.

21. I have no evidence before me that the minor road or the junction with the A947 is substandard or unable to support the level of truck movements proposed. In line with the Transport Statement the level of additional vehicles on the short stretch of road between the site and the A947 will vary throughout the year. The National Cycle Route 1 runs between Turriff and Banff along the minor road and turns north on another road just past the appeal site. Conflict between cyclists on that route and trucks would therefore be minimal.

22. I have identified that the transport statement may underestimate the level of trips associated with the proposals, but the export of Carbon Powder would equate to less than a single truck load per day based on a 25- or 30-tonne truck load. Therefore, taking account of the information before me I accept that the increased traffic level would be acceptable in terms of road capacity and safety and the proposals would comply with Policy RD1: Providing suitable services.

Natural heritage

23. The woodland along the northern side of the site is classified as an Ancient Woodland: Long Established Woodlands of Plantation Origin. The tree report confirms that no trees require to be removed to develop these proposals. The council's Natural Heritage service confirms that there will be no adverse impact on potential bat roosts. Consequently, I find the proposals comply with Policy E1: Natural Heritage.

24. The appeal site falls within the Deveron Valley Special Landscape Area and Agricultural Heartland Landscape Character Area. I consider the scale of the buildings would reflect that of other agricultural buildings in the area. I agree with the council's assessment that the scale of the chimney would not adversely impact the overall landscape character of the area and that the proposals comply with Policy E2: Landscape of the Local Development Plan.

Pollution and flooding

25. An Air Quality Assessment has been prepared in order to assess pollutant concentrations at sensitive locations as a result of the proposed CHP, this includes the nearest residential properties. Detailed dispersion modelling was undertaken which indicated that pollution levels would not be significantly affected. The council's Environmental Health service has no objections in terms of air quality.

26. A Noise Impact Assessment has been prepared which demonstrated the noise level at the nearest noise sensitive property to be neutral or slight. The council's Environmental Health service has no objections subject to operational controls being implemented when accessing the drying sheds and the installation of insulated cladding panels to all three sheds.

27. The Environmental Health service also has no objections to the proposed flood lighting subject to the incorporation of adequate controls in the design and positioning of floodlighting to ensure that no nuisance arises from glare or light intrusion at neighbouring residential properties. Overall, I am satisfied that subject to the identified mitigations the proposals would meet the requirements of Policy P4: Hazardous and potentially polluting developments and contaminated land.

28. Due to the site topography, I agree with the council's assessment that the site is unlikely to lie within the functional floodplain of any small water courses. SEPA and the council's Flood Risk and Coast Protection service have no objection to the proposals on flood grounds and I find the proposals would be compliant with Policy C4: Flooding.

Overall conclusions on the development plan

Overall, I find that whilst in general terms the proposals would have some employment, economic and renewable energy benefits, I do not consider that sufficient information has been provided to justify an exemption from the council's policies on employment development in the countryside and on renewable energy development. I find these to be the key determining issues and as a result the proposals would conflict with the development plan overall.

Material considerations

29. I have noted that Aberdeenshire Council on 12 May 2021 submitted the Proposed Aberdeenshire Local Development Plan 2020 to the Directorate of Planning and Environmental Appeals for examination. At this point in time, the examination process is ongoing. Whilst the proposed plan is a material consideration, given the stage it is in the local development plan process and the adopted local development plan remains up to date, I have concluded, in this instance, that limited weight should be given to the proposed plan in considering this appeal. I have considered the proposals against the updated proposed policy framework, and it does not modify my conclusions above.

30. I have considered the representations in full. The concerns relating to the location of the CHP plant, air, noise and light pollution, traffic, flood risk and impact on natural heritage have been considered above.

Conclusion

31. Overall, I recognise that there is widespread support through national and local policy for renewable energy developments. However, I find the proposals, as presented, to be an industrial operation that does not require a countryside location, and I do not consider that this policy support provides a sufficient justification for these particular proposals at this location.

32. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission.

Euan McLaughlin

Reporter