



THE TOWN AND COUNTRY PLANNING SPECIALISTS

21/04629/CM - Variation of Condition 2 (24month time limit) of planning permission 14/04107/STPLF (Construction of a temporary (24 month) well site, erection of a drilling rig to a maximum of 50m with associated plant, equipment and access track followed by well site restoration) to allow for a further thirty-six (36) months to complete the approved activities.

Land at: West Newton B Wellsite, Crook Lane, Burton Constable, East Riding of Yorkshire

Applicant: Rathlin Energy Limited

Report prepared on behalf of: **Fossil Free East Yorkshire**

Date: 20th February 2022



RTPI

Chartered Town Planner



Written Representation on behalf of Fossil Free East Yorkshire

(21/04629/CM)

Application: Variation of Condition 2 (24month time limit) of planning permission 14/04107/STPLF (Construction of a temporary (24 month) well site, erection of a drilling rig to a maximum of 50m with associated plant, equipment and access track followed by well site restoration) to allow for a further thirty-six (36) months to complete the approved activities.

Applicant: Rathlin Energy Ltd

At: West Newton B Wellsite, Crook Lane, Burton Constable, East Riding of Yorkshire

Local Planning Authority Reference: 21/04629/CM

**KVA Planning Consultancy
Project Manager**

Katie Atkinson
18 Westgate
Old Town
Bridlington
East Riding of Yorkshire
YO16 4QQ

CONTRACT

This report describes work commissioned by Fossil Free East Yorkshire in January 2022. The Client representative for the contract is Richard Howarth. Report prepared by Katie Atkinson, BA (Hons), Dip TP, MA, MRTPI.

PURPOSE

This document has been prepared as a written representation on behalf of Fossil Free East Yorkshire to be submitted to the East Riding of Yorkshire Council. KVA Planning Consultancy accepts no responsibility or liability for any use that is made of this document other than by the Client for the purposes for which it was originally commissioned and prepared.

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Foreword – by Fossil Free East Yorkshire

Fossil Free East Yorkshire is part of a global campaign led by local groups asking our local communities and institutions commit to:

- A fast and just transition to 100% renewable energy for all;
- Stop and ban: no new fossil fuel projects anywhere; and
- Divest, de-sponsor, defund: not a penny more for dirty energy.

As **Frack Free East Yorkshire** the group campaigned against extreme fossil fuel extraction across East Yorkshire since 2014, when the majority of the region was identified as a northern sacrifice zone and licences for fossil fuel extraction were issued from the Wolds to the coast. Dozens of events large and small were held all over the county raising awareness and informing communities about the dangers of fossil fuel extraction in general, and the West Newton oil field, in particular. Thousands of people were engaged and numerous new groups formed. There is now a moratorium on high volume hydraulic fracturing in England.

Fossil Free East Yorkshire was formed in 2020 with a primary campaign to end East Riding of Yorkshire Council's policy of fuelling the fire of climate change by continuing to invest millions in the fossil fuel industry via their pension fund.

In 2021 Fossil Free East Yorkshire and Frack Free East Yorkshire joined forces, to share resources and campaign even more strongly, together, as Fossil Free East Yorkshire.

Following years of campaigning, in 2021 East Riding of Yorkshire Council refused a Planning Application for oil drilling for the first time. We hope that the Council continue to serve the communities of East Riding and lead by example in continuing to refuse applications which contribute to climate change both in process and downstream.

February 2022

1. Introduction

- 1.1 KVA Planning Consultancy ('KVA') has been instructed by Fossil Free East Yorkshire ('FFEY') to consider the below referenced Planning Application submitted by Rathlin Energy Ltd ('the applicant') to East Riding of Yorkshire Council ('ERYC' / 'the Council') who are the Minerals Planning Authority ('MPA'), MPA reference: *21/04629/CM - Variation of Condition 2 (24month time limit) of planning permission 14/04107/STPLF (Construction of a temporary (24 month) well site, erection of a drilling rig to a maximum of 50m with associated plant, equipment and access track followed by well site restoration) to allow for a further thirty-six (36) months to complete the approved activities. At land at West Newton B Wellsite, Crook Lane, Burton Constable, East Riding of Yorkshire .*
- 1.2 KVA, on behalf of FFEY, responded to the Council's consultation on the recent West Newton A wellsite application (21/02464/STFUL) that was refused by Members at the Planning Committee held on 30th September 2021 with the decision notice being issued 8th October 2021. KVA has extensive experience in assessing planning proposals for the exploration of hydrocarbons, including shale gas and oil from hydraulic stimulation techniques, including proposals at Kirby Misperton (North Yorkshire), Grange Road (Lancashire), Preston New Road – 2x appeals (Lancashire), Roseacre Woods - 2x appeals (Lancashire), Wressle 1A Well – 3x appeals (Northern Lincolnshire), Marsh Lane (Derbyshire), Woodsetts (Rotherham), Biscathorpe (Lincolnshire) and Great Altcar (Lancashire). KVA has also been heavily involved with the preparation of the Joint Minerals and Waste Plan for North Yorkshire County Council, North York Moors and the City of York and participated fully in the recent Examination sessions and a recent High Court Judgement in a challenge against a Written Ministerial Statement over the ambiguities surrounding the definition of 'fracking' in the Infrastructure Act and the Planning Practice Guidance Minerals.
- 1.3 KVA reserves the right on behalf of FFEY to make additional comments should further information be submitted on behalf of the applicant as part of the planning process.

2. Grounds for Objection

- 2.1 Comments are limited to the principle of the variance of time limit in question which is the subject of this application.
- 2.2 The applicant applied for the original development proposal in 2014. The application was approved by the Council on 16th June 2015.
- 2.3 Condition 2 of the Decision Notice is of most pertinence to this S.73 application and states:

The site preparation and construction, drilling and testing activities approved by this permission shall be carried out for a limited period of 24 months and commencement of such period shall be notified to the Local Planning Authority in writing. Such notification to be received by the Local Planning Authority a minimum of 14 days prior to the commencement of activities on site. The drilling rig shall only remain on site for a maximum of two periods of ten weeks unless otherwise agreed in writing with the Local Planning Authority. The Local Planning Authority shall be notified in writing within one week of the drilling rig arriving on site. At the end of the 24 month period, all drilling and test activities shall cease and all equipment, access structures and buildings shall be removed from the site, the borehole shall be plugged and abandoned, the bunding and perimeter fences and ditches removed, the site levels re-graded and the site shall be restored to agriculture in accordance with the details set out in Section 2.6 Restoration and Aftercare of the Planning Application document received December 2014 to the satisfaction of the Local Planning Authority.

- 2.4 The condition as worded above, permits site preparation and construction, drilling and testing of two wells to be carried out for a limited time-period of 24 months. It details that at the end of the 24-month period, all drilling and test activities shall cease, all equipment should be removed from the site, the wells plugged and abandoned, fencing and bunds removed, and the site restored and regraded to its previous state.
- 2.5 The applicant seeks to vary this condition to allow a further 36 months to explore and appraise the second well on this site which was approved under the original permission. The Planning Statement for the applicant sets out that due to circumstances beyond their control only half of the activities permitted have been undertaken, therefore, the justification for an additional 3 years is to complete the drilling and testing of the second well and allow sufficient time for a variance to the Environmental Permit Application to be determined which must be obtained from the Environment Agency prior to drilling.
- 2.6 FFEY understands that both land-use planning permissions and environmental permits are issued under 2 separate regulatory regimes and are not contingent on each other, meaning that either can be awarded in advance of the other. As such, it is not understood why a

planning permission should be made to consider potential timescales of other regulators. Also, the applicant has already completed the site preparation and construction works required, therefore, a proposal for a 24-month time extension would seem excessive, nevermind the 36 months applied for, especially when considering the suggested timescale required for exploratory drilling in the Planning Practice Guidance for Minerals ('PPGM') '*Typically, site construction, drilling and site clearance will take between 12 to 25 weeks.*' (PPGM Paragraph: 098 Reference ID: 27-098-20140306).

- 2.7 Further, the condition sets out clearly that '*The drilling rig shall only remain on site for a maximum of two periods of ten weeks unless otherwise agreed in writing with the Local Planning Authority.*' It is assumed that the two periods of 10 weeks are associated with the drilling of each well. Given that one has already been drilled it is considered that only 1 period would be required going forward. Therefore, this element of the condition should also be varied in the interests of '*protecting the visual amenities of the area*' which is given in the formal reason for the time limiting condition being imposed by the Council originally.
- 2.8 Having taken the opportunity to consider the documents submitted on behalf of the applicant in support of the planning application, **FFEY strongly objects to the proposals** for the following reasons:
- The application for a time extension to allow for further exploration and appraisal of an oil well is considered wholly inappropriate in the context of climate change;
 - The cumulative impact of this and other tall infrastructure in the area is detrimental to the rural landscape; and
 - Documents associated with the proposal indicate hydraulic fracturing will be used which is prohibited under Condition 12 of the original application.
- 2.9 Thus, it is considered that the proposals are not in conformity with relevant planning policies and material considerations relevant to the determination of the proposal.
- 2.10 The following part of this representation deals with each reason in turn.

Exploration and appraisal of an oil well is considered wholly inappropriate in the context of climate change

- 2.11 The original application was approved by the Council in 2015. Since then, the UK Government has declared an 'Environment and Climate Emergency' (May 2019) and committed to a legally binding target of net zero greenhouse gas ('GHG') emissions by 2050 via the Climate Change (2050 Target Amendment) Order 2019. The UK government is also a signatory of the 'Paris Agreement', which seeks to strengthen the global response to the threat of climate change by keeping the global temperature rise this century well below 2°C above pre-industrial levels and to limit the temperature increase even further to 1.5°C. The

UK alongside other participatory nations adopted the 'Glasgow Climate Pact 2021' at COP26, agreeing to reduce the gap between existing emission reduction plans and what is required to reduce emissions, so that the rise in the global average temperature can remain limited to 1.5°C.

- 2.12 Furthermore, the Committee for Climate Change ('CCC') published The Sixth Carbon Budget – 'the UK's path to net zero' (2020) in December 2020. The CCC's pathway requires a 78% reduction in UK emissions between 1990 and 2035. The economy is forecast to become more energy efficient with total energy falling circa 33% between now and 2050. Importantly for this application the demand for oil is forecast to fall by 85% to 360,000 barrels per day. The UK is currently able to produce approximately 1.6 million barrels per day at existing sites both on and offshore. Due to the rate of decline forecast by the CCC FFEY consider that there is simply no need for any further oil extraction to take place which will inevitably contribute to climate change.
- 2.13 It is acknowledged that current government policy sees UK oil production as a necessity to transition towards net zero. However, FFEY believe that the development of a new fossil fuel extraction site is wholly inappropriate and cannot comprehend how the proposed development of this oil production site would fit with these statutory commitments to decarbonise the economy.
- 2.14 As recently as February 2021, the Council declared a Climate Emergency as a result of a panel report. One of the recommendations was that the Council *'buys only renewable energy, generating more of its own electricity and implements more heat networks.'* Approving this application would be wholly contradictory to the Council's aims and objectives in terms of tackling climate change.
- 2.15 The NPPF directs MPAs to place great weight on the benefits of mineral extraction, including to the economy. Equally, the Council's Development Plan is supportive of mineral exploration sites, subject to certain criteria being met. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires an application to be determined in accordance with the development plan *'unless material planning considerations indicate otherwise'*. In this case, FFEY consider that the impact of the Climate Emergency and the legal agreements signed up to by the Government to reduce emissions are such material considerations that weigh heavily against the proposal in the planning balance and, therefore, strongly object to the proposal for the extension of time.
- 2.16 It is acknowledged that current government policy sees UK oil production as a necessity to transition towards net zero. However, FFEY believe that the development of a new fossil fuel extraction site is wholly inappropriate and cannot comprehend how the proposed development of this oil production site would fit with these statutory commitments to decarbonise the economy.

The cumulative impact of this and other tall infrastructure in the area is detrimental to the rural landscape

- 2.17 Paragraph 17 of the PPGM sets out clearly that the MPA should ‘ensure that the **cumulative impact of a proposed mineral development on the community and the environment will be acceptable**. The cumulative impact of mineral development is also capable of being a material consideration when determining individual planning applications.’ (PPGM paragraph: 017 Reference ID: 27-017-20140306) (KVA emphasis).
- 2.18 Paragraph 211b of the NPPF sets out that great weight should be given to the benefits of mineral extraction including to the economy. Despite this clear direction, it also ensures that these benefits do not outweigh other important considerations by clearly stating that MPAs, when determining mineral extraction proposals should: (inter alia)
- b. “Ensure that there are no unacceptable adverse impacts on the natural and historic environment, human health or aviation safety, and take into account the **cumulative effect of multiple impacts from individual sites and/or from a number of sites in the locality**. (KVA emphasis).
- 2.19 The national policy above is replicated in local policy via the Council’s Local Plan policy EC5:
- “Proposals for the development of the energy sector [...] will be supported where any significant adverse impacts are addressed satisfactorily, and the residual harm is outweighed by the wider benefits of the proposal. Developments and associated infrastructure should be acceptable in terms of:*
1. ***The cumulative impact of the proposal with other existing and proposed energy sector developments.***
 2. ***The character and sensitivity of landscapes to accommodate energy development, with particular consideration to the identified Important Landscape Area...*** (KVA emphasis).
- 2.20 The policies detailed above highlight the importance of cumulative impacts development can have on a landscape, the environment, and local communities. Indeed, PPGM states that the cumulative impact can be a material consideration when determining applications.
- 2.21 FFEY are aware that the applicant has submitted a revised application for a further 4 wells (totalling 6) at their West Newton A site (21/04625/CM). Furthermore, the published response by the Council to the applicant’s pre-application advice sets out that ‘*up to 14 (6 at WNA and 8 at WNB) additional petroleum appraisal and production wells will be drilled followed by appraisal testing and subsequent production.*’

- 2.22 FFEY consider that the proposed 14 wells across 2 sites, only 1.4km apart, alongside other tall energy infrastructure in the immediate vicinity of the site (Withernwick Windfarm and the Tansterne Biomass Plant – itself subject to a live application for a substantial extension) and associated vehicular movements to each site would be totally unacceptable in such a flat rural location and in combination with the narrow rural lanes. It is also understood that the applicant submitted screening requests to the Council for further well sites known as WNC and WND which would further increase the potential for cumulative impacts on the landscape and rural road network.
- 2.23 Furthermore, the Council identified in their communications with the applicant that 9 phases have been identified for each site but that *‘several phases will be carried out simultaneously, particularly the drilling and appraisal testing of wells.’* Which will inevitably mean that tall infrastructure will be visible in the landscape at both sites concurrently. This includes the potential for the 55m drilling rig, 60m cranes, 37m workover rigs, alongside storage, welfare units, tall security fencing, lighting and CCTV poles as well as a proposed 15m flare at each site.
- 2.24 FFEY assert that whilst the original application was approved in 2015, the proposal for the extension of time should be assessed against evidence at this current time juncture. As such, a full and updated LVIA addressing cumulative development should be undertaken to fully determine the potential impact of allowing this extension of time. Further, FFEY are aware that the applicant submitted an EIA screening request to the Council prior to the submission of this application. Whilst the requirement for EIA was ruled out, the report does state that *‘Despite the fact the site stands within the open countryside it is not defined as a ‘sensitive area’ by Part 1(2) of the Regulations. **Any future application will be submitted with a full reports cover matters of hydrology; ecology; the developments environmental effects; including emissions to air, transportation of fuel; risk of accidents and visual impacts.**’* (KVA emphasis). This has not occurred – the only report submitted is in relation to air quality. The Council should request this information from the applicant prior to determination. If this is not provided the proposal should be refused as any detrimental impact cannot be ruled out.

Hydraulic fracturing is indicated which is prohibited under Condition 12 of the original application

- 2.25 This S.73 application deals specifically with Condition 2 relating to an extension of time. The applicant has not proposed to remove or vary any other condition associated with the original application at this time. Condition 12 of the application expressly prohibits hydraulic fracturing on the site. The Council’s response to the applicant’s pre-application advice specifically states that the supporting documentation, submitted by the applicant, suggests that *‘low volume hydraulic fracturing is proposed.’* The Council does not distinguish between low-volume and high-volume hydraulic fracturing in its Policy EM6 recognising a similar

environmental impact can occur. The PPGM defines hydraulic fracturing as *‘the process of opening and/or extending existing narrow fractures or creating new ones (fractures are typically hairline in width) in gas or oil-bearing rock, which allows gas or oil to flow into wellbores to be captured.’* (PPGM paragraph: 129 Reference ID: 27-129-20140306). It does not detail a technique as to how these fractures occur. Nor does it differentiate between high or low volume hydraulic fracturing merely stating that it is the act of fracturing a rock or ‘fracking’.

- 2.26 Since 2nd November 2019, the Government introduced a moratorium against ‘fracking’ (high-volume) for shale gas (an unconventional hydrocarbon) in the UK – ending all support for such activities. This is not an application to extend the time-period for shale gas extraction, but the undertaking of hydraulic fracturing must have been indicated by the applicant to prompt the Council’s response above. The proposal for the time extension should therefore be refused in line with Condition 12 of the original application which prohibits hydraulic fracturing.

3. Conclusion

- 3.1 This report has been commissioned by Fossil Free East Yorkshire to form a written representation to an application submitted on behalf of Rathlin Energy Ltd to East Riding of Yorkshire Council for the *Variation of Condition 2 (24month time limit) of planning permission 14/04107/STPLF (Construction of a temporary (24 month) well site, erection of a drilling rig to a maximum of 50m with associated plant, equipment and access track followed by well site restoration) to allow for a further thirty-six (36) months to complete the approved activities*. The site is located at land at *West Newton B Wellsite, Crook Lane, Burton Constable, East Riding of Yorkshire* .
- 3.2 It is the opinion of FFEY that whilst directed to give great weight to mineral extraction when determining applications, due to the significant change of direction in recent government policy in relation to climate change made since the original application was approved in 2015 and since the publication of the NPPF and the Development Plan, the proposed application to increase the time permitted for activities at the well site should be refused and very little weight should be attributed to any perceived government support for new oil developments as a benefit of the proposals in the planning balance when determining the application.
- 3.3 The Council declared a Climate Emergency in 2021 and as such this proposal is wholly contradictory to those aims and objectives set out to tackle climate change in the county since the original application was approved.
- 3.4 Further, it is considered that the proposal is wholly contrary to the Government's aim to achieve net zero greenhouse gas emissions by 2050 and approving this application for planning permission would be fundamentally flawed.
- 3.5 It is considered that the lack of information relating to cumulative development of tall energy infrastructure in the local landscape is such, that the MPA could not satisfactorily determine that the proposals would result in no detrimental harm to the surrounding environment and therefore the proposal should be refused.
- 3.6 The Council's response to the pre-application enquiry submitted by the applicant relating to both West Newton B and A did not differentiate between the 2 sites. The Council identified that hydraulic fracturing was proposed as one potential method to extract oil. Condition 12 of the original application strictly prohibits hydraulic fracturing to take place, therefore, the proposal should be refused.
- 3.7 Notwithstanding the above, FFEY consider that in the interests of '*protecting the visual*

amenities of the area' (the reason for Condition 2 as described by the Council) the proposed timeframe being requested by the applicant is excessive in light of the fact that over half of the original approved activities have been completed and the time set out by the PPGM for preparation, construction, drilling and appraisal is highlighted as being '*between 12-25 weeks*' in total. The Environmental Permit process is entirely independent of the planning process and therefore, any planning consent does not need to take this into account. If the applicant is concerned that a revised permission would expire prior to the award of the permit, then the applicant should withdraw the planning application at this time and re-apply once the permit has been awarded.

- 3.8 It is, ergo, respectfully recommended that these proposals be refused for the reasons set out above.
- 3.9 FFEY reserve the right to comment further as necessary, should the applicant submit further information to the MPA.

**This report has been commissioned by
Fossil Free East Yorkshire**