

**Application Number: 19/10138** Demolition Determination

**Site:** SITE OF FAWLEY POWER STATION, FAWLEY ROAD, FAWLEY  
SO45 1TW

**Development:** Dismantling, removal and site clearance of buildings at Fawley  
Power Station and remediation of the site (Approval under  
Regulations 73 and 75 of The Conservation of Habitats and Species  
Regulations 2010)

**Applicant:** Fawley Waterside Ltd

**Target Date:** 26/02/2019

**Extension Date:** 31/05/2019

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**19/10138**

**1 SUMMARY OF THE MAIN ISSUES**

1.1 This application has been made pursuant to the Habitat Regulations. The application is not a typical planning application, and there is, in fact, just one issue to consider, namely:

whether or not the proposed demolition of Fawley Power Station would have an adverse effect on the integrity of the designated European nature conservation sites that are situated in close proximity to the power station.

1.2 Approval of the application can only be given if an Appropriate Assessment concludes that the proposed demolition would not have an adverse effect on the integrity of the adjacent European sites, taking into account any mitigation measures that may be proposed.

1.3 This matter has been brought before Committee because Officers do not have specific delegated powers to determine an application of this type.

**2 THE SITE**

2.1 Fawley Power Station is a large brownfield site that is completely surrounded by land that is within the New Forest National Park. The existing power station buildings are of a hyper scale. The main power station building is 354 metres in length, with the turbine hall element being about 50 metres in height. The power station chimney is approximately 198 metres in height. The power station is bounded to the east by land that forms part of the Solent and Southampton Water Special Protection Area (SPA), the Solent and Southampton Water Ramsar site, and the Solent Maritime Special Area of Conservation (SAC).

### **3 THE PROPOSED DEVELOPMENT**

#### Introduction

3.1 This application relates to a project for the demolition of Fawley Power Station. This covers all of the main elements of the power station including the turbine hall, the DA bay, the boiler house, the control building, the canteen, and the chimney.

3.2 Two applications are before the Council, namely this application for Approval under the Habitat Regulations and a separate Prior Approval application regarding the method of demolition and the proposed restoration of the site.

3.3 The applications are accompanied by a report entitled "Information for Appropriate Assessment of Proposed Demolition of Fawley Power Station, Fawley, Hampshire" and a number of detailed reports and method statements. In addition, a Unilateral Undertaking has been submitted by the applicants which would ensure that they are bound to adhere to the submitted methodology and all of the control, avoidance and mitigation measures contained therein.

#### The Prior Notification Application

3.4 The proposed demolition of the power station can be carried out as permitted development pursuant to Part 11, Class B of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, provided certain conditions and criteria are satisfied.

3.5 One of these conditions is that the applicant must apply to the Local Planning Authority as to whether or not the prior approval of the Local Planning Authority is required as to the method of demolition and any proposed restoration of the site. As indicated above, the applicants have duly submitted a Prior Notification application to the Local Planning Authority for the demolition of all of the main power station buildings (Ref:19/10131). This application is scheduled to be determined at Officer level, using delegated powers by the end of May 2019. As such, the Prior Notification application is not a matter for Committee consideration.

#### The Habitats Regulations Application

3.6 For a project where there is the likelihood that the development could have a significant effect on designated European sites, demolition can also only proceed as permitted development if the relevant Competent Authority (in this case the Local Planning Authority) has carried out a Habitats Regulation Assessment (Appropriate Assessment) of the project and reached the conclusion that the integrity of the adjacent European sites will not be adversely affected. This is what is required of this particular application.

### **4 PLANNING HISTORY INCLUDING NOTES OF ANY PRE-APPLICATION DISCUSSIONS**

## Relevant Planning Applications

- 4.1 Demolition of Fawley Power Station (EIA Screening Opinion) (14/10238) - EIA not required - 30/05/14
- 4.2 Demolition of Fawley Power Station (Habitats Regs Screening Opinion) (14/10248) - Opinion given 29/05/14
- 4.3 Demolition of Pump House; associated fuel pipework / ducting; four former fuel tank bases (Demolition Prior Notification) (17/10795) - details not required to be approved 29/06/2017
- 4.4 2 steel portal framed buildings (Use Class B2); mobile portable cabin; use of land for storage of wind turbines (Use Class B8) - 10 year temporary permission granted 8/9/17
- 4.5 Demolition of Fawley Power Station (EIA Screening Opinion) (17/11706) - EIA not required 22/2/18 - Screening Direction by Secretary of State endorsed this opinion in July 2018.
- 4.6 Dismantling and removal of external structures including tanks, ductwork and bunds (Demolition Prior Notification) (18/11048) - details not required to be approved 28/08/18
- 4.7 Use of land to provided open storage gravel (Use Class B8) and associated works including provision of containment bunds, drainage channels and excavation (18/11169) - temporary 5 year permission granted 29/11/18
- 4.8 Dismantling, removal and site clearance of buildings (Demolition Prior Notification application) (19/10131) - application being considered concurrently with this application.

## Pre-application discussions

- 4.9 Pre-application discussions have been held with the applicants for some time, mostly concentrating on the subsequent proposed redevelopment of the site. The demolition process and the inherent requirements have been discussed as a small part of this wider process.

## **5 THE DEVELOPMENT PLAN AND OTHER NFDC GUIDANCE RELEVANT TO THE APPROPRIATE ASSESSMENT**

### **Core Strategy**

#### Objectives

1. Special qualities, local distinctiveness and a high quality living environment
8. Biodiversity and landscape

#### Policies

- CS1: Sustainable development principles  
CS3: Protecting and enhancing our special environment (Heritage and Nature Conservation)

CS5: Safe and healthy communities

**Local Plan Part 2 Sites and Development Management Development Plan Document**

DM2: Nature conservation, biodiversity and geodiversity

**The Emerging Local Plan**

Policy 1: Achieving Sustainable Development

Policy 9: Nature Conservation, biodiversity and geodiversity

Policy 29: Safe and healthy communities

Strategic Site 4: The Former Fawley Power Station

**Supplementary Planning Guidance and other Documents**

None relevant

**6 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

**Relevant Legislation**

The following legislation and regulations are relevant to this application:

The Conservation of Habitats and Species Regulations 2010

The Conservation of Habitats and Species Regulations 2017

The Town and Country Planning (General Permitted Development) (England)

Order 2015

**Relevant Advice**

National Planning Policy Framework - Paragraphs 174-177 relating to Habitats and biodiversity

There are also a number of legal cases that are of relevance, which are discussed in the Appropriate Assessment.

**7 PARISH / TOWN COUNCIL COMMENTS**

Fawley Parish Council: Are happy to accept the decision reached by the District Council's Officers under their delegated powers.

**8 COUNCILLOR COMMENTS**

None

**9 CONSULTEE COMMENTS**

The following comment is summarised, with the full comment being available to read online.

9.1 Natural England:- Notes that the LPA's Appropriate Assessment concludes that the LPA is able to ascertain that the proposal will not result in adverse

effects on the integrity of the sites in question. Having considered the assessment and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal and the method for securing these, Natural England advise that they concur with the assessment conclusions. NE advise that their conclusion is based on the mitigation measures as set out in the Shadow Appropriate Assessment and Site Management Reports produced by the applicant that are to be secured by the signing of a Unilateral Undertaking.

## **10 REPRESENTATIONS RECEIVED**

10.1 The following representations are summarised, with full comments being available to view online. It should be noted that the majority of the representations received (bar those raising legal and process issues) are related to the Demolition Prior Notification application and are not relevant to the matters that can be considered through this application. However, for the record, the representations that have been submitted are as follows:-

10.2 34 letters of objection from local residents:- many of the letters raise objections to the demolition of the chimney and control tower, which the objectors would like to see retained as landmark structures and as part of the area's industrial heritage. There are also concerns about the potential impact on rare nesting birds - e.g. peregrines. There are concerns that demolition proposals are being considered before an application for redevelopment of the site is being considered. There are concerns that demolition waste traffic would have an adverse impact on the local road infrastructure. There are concerns about dust and pollution, and the impact this could have on human health and the local environment. There are concerns about noise disturbance. Concerns have also been raised about the subsequent proposed redevelopment of the site.

10.3 2 individual local objectors to the application raise substantive legal issues, asserting that:

- the information provided by the developer does not provide sufficient identification of all aspects of the proposed works that might affect the conservation objectives of the site;
- there are gaps in the information that has been submitted;
- It is not possible to provide complete, precise and definitive findings capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on protected sites;
- Not all aspects of the plan or project in question, either individually or in combination with other plans or projects, are sufficiently identified to ensure that undue harm will not be done to the protected sites.
- For these reasons, it is considered the application should be refused.
- If the Competent Authority does not accept these arguments and considers that prior approval is not required, then a signed Unilateral Undertaking to secure the mitigation measures is essential.

10.4 Twentieth Century Society:- Objects - considers the site holds historic interest as a now rare surviving example of the immense growth of the electricity generation industry in the post-war period, and to additionally hold an outstanding level of architectural interest. Consider the core buildings to be the

combined boiler and turbine houses; the administration blocks, the canteen and the chimney. Consider the buildings to be a non-designated heritage asset, and regard must therefore be had to national planning policy guidance for such heritage assets. The Society is alarmed that the proposals seek demolition without any clear vision for later development of the site. The planning balance between the loss of a heritage asset and proposed public benefits cannot be satisfied without a full understanding of the long-term use of the site.

10.5 3 letters of support from local residents - the chimney no longer has a useful function and its removal will be visually beneficial.

10.6 Friends of the New Forest / New Forest Association:- Support some of the other concerns that have been raised; feel that sufficient time must be given to allow careful consideration of the application; are concerned with the proposals for the redevelopment of the site and its detrimental impact on the National Park.

## 11 OFFICER COMMENTS

### Introduction

11.1 The application, as submitted, specifically and solely seeks the Local Planning Authority's approval under Regulations 75 & 77 of the Conservation of Habitats and Species Regulations 2017. As noted above, Fawley Waterside Ltd are proposing to demolish the existing buildings at Fawley Power Station through a demolition Prior Notification application. Regulation 75 of the Conservation of Habitats and Species Regulations 2017 indicates that it is a condition of any planning permission granted by a general development order made on or after 20th November 2017, that development which:

a) is likely to have a significant effect on a European site (either alone or in combination with other plans or projects) and

b) is not directly connected with or necessary to the management of the site

must not be begun until the developer has received written notification of the approval of the Local Planning Authority under Regulation 77 (approval of local planning authority).

11.2 Regulation 77 of the Conservation of Habitats and Species Regulations 2017 indicates that an application to the Local Planning Authority for approval, as mentioned in regulation 75, must give details of the development to be carried out. The Local Planning Authority may only approve the development after having ascertained that it will not adversely affect the integrity of the European Site.

11.3 Although the application has been expressed to be under regulation 77 of the 2017 Regulations, regulation 77 is concerned with planning permissions granted by a General Development Order made on or after 30th November 2017. For planning permissions granted under a General Development Order before that date, the relevant provision requiring written notification of approval remains regulation 73 of the 2010 Conservation of Habitats and Species Regulations, which is expressly saved by Schedule 7 of the 2017 Regulations. It

is considered that this application therefore needs to be treated as if being made in response to regulation 73. However, it will be noted that the provisions of regulation 77 of the 2017 Regulations relating to the grant of approval are precisely the same as those in regulation 75 of the 2010 Regulations. The Council's substantive decision would therefore be the same, no matter which Regulations were applied.

#### Appropriate Assessment

11.4 As is required by the Habitats Regulations, officers have carried out a very thorough Appropriate Assessment, which is attached as Appendix A to this report. This Appropriate Assessment draws heavily on the information provided within the applicant's 'shadow' Appropriate Assessment that was prepared by the applicant's ecologist.

11.5 Before officers carried out their Appropriate Assessment, they took expert advice from Land Use Consultants (LUC), who are a leading firm of environmental consultants. LUC reviewed the 'shadow' Appropriate Assessment and considered the following key questions:

- Does the assessment include consideration of the appropriate European sites?
- Does the assessment include appropriate consideration of all potential impact types?
- Is the approach in line with the requirements of the Habitat Regulations including recent changes in case law, and current best practice guidelines?
- Are the HRA decisions informed by appropriate and robust sources of information?
- Are the avoidance and mitigation measures deliverable with certainty?

11.5 LUC's reached the following conclusions on the 'shadow' Appropriate Assessment:

- It is robust and appropriate in terms of the European sites which have been included in the assessment.
- All impact types with the potential to result in likely significant effects at the HRA Screening stage, or Adverse Effects on Integrity at the Appropriate Assessment stage have been considered.
- The approach is in accordance with current guidelines for undertaking HRA and the requirements of the Habitats Regulations.
- It has been informed by a range of appropriate and robust baseline information, specific survey effort and existing evidence. As a result, there is a high level of certainty in the conclusions reached.
- The avoidance and mitigation measures specified are considered feasible, appropriate and robust.

11.6 LUC recommended that the required mitigation measures be secured

within a Unilateral Undertaking and that an Environmental Clerk of Works be appointed for the duration of works. LUC's overall conclusion was that providing the mitigation and avoidance measures set out in the applicant's various reports are secured, then "it can be concluded that NFDC can be satisfied that application 19/10138 to demolish and remediate the Fawley Power Station site would not result in adverse effects on the integrity of European sites, either alone or in-combination with other plans and projects".

11.7 Before officers carried out their Appropriate Assessment, they also consulted Natural England. Natural England made the following initial comment: "Having considered the information provided by the applicant to inform your Appropriate Assessment, Natural England is satisfied, subject to the comments set out below, that the mitigation measures proposed will mitigate for all identified adverse effects that could potentially occur as a result of the proposal". (The "comments below" have been subsequently addressed by the applicants amending some of their initial demolition methodology reports.)

11.8 Having had this advice from LUC and Natural England, officers have been able to carry out their Appropriate Assessment with the necessary degree of confidence. The Appropriate Assessment has a number of key stages. It sets out the project that is being assessed, before going on to look at the relevant legal and planning context. Having considered Stage 1 HRA Screening Requirements, the Appropriate Assessment then considers each of the European sites that would have the potential to be significantly affected by the proposed demolition, and this includes a consideration of the sites' conservation objectives. Relevant background information and baseline conditions are considered, before the potential impacts of demolition are reviewed. 5 main potential impacts are considered:

- Direct impacts to habitats
- Potential Indirect Impacts of Drainage
- Potential Impacts of Dust
- Potential Impacts of Noise and Vibration
- Potential Impact of Visible Movement

11.9 The Appropriate Assessment prepared by officers then goes on to consider in-combination effects, before considering in some detail the applicant's proposed schedule of mitigation. Finally, the Appropriate Assessment considers the likely impacts arising from demolition against the conservation objectives of the European sites, before making a conclusion on the effects of demolition on the integrity of the European sites.

11.10 The key conclusion of the Appropriate Assessment undertaken by officers is:

*"taken as a whole, including all of the identified mitigation measures, the proposed project to demolish Fawley Power Station would not have an adverse effect on the integrity of the following European sites:*



- *Solent and Southampton Water SPA*
- *Solent and Southampton Water Ramsar Site*
- *Solent Maritime SAC*
- *River Itchen SAC"*

#### Natural England response

11.11 Having carried out its Appropriate Assessment, the Local Planning Authority have sought the further views of Natural England, who have confirmed that they agree with the Local Planning Authority's conclusions, as set out within its Appropriate Assessment.

#### Comment on representations

11.12 The Local Planning Authority has had regard to the views of objectors, but does not accept their main concerns. Specifically, the Local Planning Authority considers that the information provided by the developer does provide sufficient identification of all aspects of the proposed works that might affect the conservation objectives of the site. It is considered that there are no gaps in the information submitted that have impeded the Council's ability to come to a conclusion of the likely effects on protected European sites. The Local Planning Authority is satisfied that the information submitted with the application is sufficiently robust and comprehensive to make it possible to come to a reasonable conclusion that there would be no significant adverse effect on these sites. The Unilateral Undertaking that has been submitted would help ensure that all of the relevant control, avoidance and mitigation measures are delivered.

## **12 CONCLUSION ON THE PLANNING BALANCE**

In the light of the above conclusions, it is considered, firstly, that the Local Planning Authority can formally adopt the Appropriate Assessment prepared by Officers, and secondly, having done this, it can then proceed in approving this application.

## **13 OTHER CONSIDERATIONS**

#### Proactive Working Statement

In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council take a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome.

This is achieved by

- Strongly encouraging those proposing development to use the very thorough pre application advice service the Council provides.
- Working together with applicants/agents to ensure planning applications are registered as expeditiously as possible.

- Advising agents/applicants early on in the processing of an application (through the release of a Parish Briefing Note) as to the key issues relevant to the application.
- Updating applicants/agents of issues that arise in the processing of their applications through the availability of comments received on the web or by direct contact when relevant.
- Working together with applicants/agents to closely manage the planning application process to allow an opportunity to negotiate and accept amendments on applications (particularly those that best support the Core Strategy Objectives) when this can be done without compromising government performance requirements.
- Advising applicants/agents as soon as possible as to concerns that cannot be dealt with during the processing of an application allowing for a timely withdrawal and re-submission or decision based on the scheme as originally submitted if this is what the applicant/agent requires.
- When necessary discussing with applicants/agents proposed conditions especially those that would restrict the use of commercial properties or land when this can be done without compromising government performance requirements.

In this case, additional information has been submitted since the application was first registered, including a Unilateral Undertaking, and this has enabled a positive recommendation to be made.

#### Crime and Disorder

There are no relevant crime and disorder implications.

#### Local Finance

Local financial considerations are not material to the decision on this application.

#### Human Rights

Human Rights are not a relevant consideration for an application of this type.

#### Equality

The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics, namely: age, disability, gender reassignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers including planning powers. The Committee must be mindful of this duty *inter alia* when determining all planning applications. In particular the Committee must pay due regard to the need to:

- (1) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- (2) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (3) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

**14 NOTES FOR INCLUSION ON CERTIFICATE:**

None

**15. RECOMMENDATION**

**Grant**

Further Information:

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