

PLANNING COMMITTEE – Date: 21 March 2018.

Report of the Assistant Director of Environment, Housing and Regeneration Directorate

Ref: DM2018/00299	Ward:D17 / BEDDINGTON NORTH	Expiry Date: 18 April 2018
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Site: Beddington Farmlands Waste Management Facility, Beddington Lane, Beddington, CR0 4TD.

Proposal: Non Material Amendment application to amend approved Planning Application C2012/66220/FUL to allow for alterations to the pipeline route on the western boundary.

Applicant: Mr James Groux on behalf of Sutton Decentralised Energy Network (SDEN)

Agent: N/A

Recommendation:

That the alterations to the pipeline route on the western boundary are agreed as non-material amendments to application C2012/66220/FUL

Reason for Report to Committee: At the discretion of the Head of Development Management and Strategic Planning as the Council has an interest in the land.

Summary of Reasons why proposal is acceptable:

The revisions shown on drawing P061-LBS_10_0001 REV P10, Peter Brett Associates LLP Ecological Report (37979 Rev AA) and Middlemarch Environmental Ltd Arboricultural Report (RT-MME-127296-02 Rev B) are considered not to be material amendments to planning permission D2012/66220/FUL granted in March 2014. As such, the alterations can be implemented without the need for further planning permission.

1.0 BACKGROUND

1.1 Site and its Surroundings:

1.2 The application site is located at Beddington Farmlands. The site is approximately 250 metres west of Beddington Lane from which access to the Energy Recovery Facility (ERF) site is currently gained.

1.3 The wider Beddington Farmlands site has historically been used for waste, wastewater and minerals extraction. Prior to this, the area was in agricultural use. Large parts of the site are currently being used for active landfill operations (including areas of restored landfill) or other waste uses.

- 1.4 The Beddington site is bounded to the east by industrial uses and the Thames Water Sewage Treatment Works with Beddington Lane beyond, to the west by the railway, to the north by sludge beds (part of the sewage treatment works) and to the south by Beddington Park.
- 1.5 To the east of Beddington Lane is the Beddington Lane Industrial Estate, which is a significant area of business and industrial units, and a retail park in the southern part. The nearest residential properties to the pipeline are those to the west of the railway line on or accessed from London Road, Hackbridge.
- 1.6 **Site Specific Designation:**
- 1.7 The application site is located within an Archaeological Priority Area, Area at Risk of Flooding, Existing Waste site Safeguarded by the London Plan 2011, Metropolitan Green Chain, Metropolitan Open Land, Site of Metropolitan Importance for Nature Conservation and Wandle Valley Regional Park.
- 1.8 The application site is also adjacent to an Area of Taller Building Potential, Beddington Park Conservation Area, Cycle Network, Decentralised Energy Opportunity Area, Hackbridge District Centre, Green Corridor, Beddington Park Historic Park and Garden, Limit of Sustainable Residential Limit, Priority Community Regeneration Area, Public Open Space and the Beddington Strategic Industrial Location.
- 1.9 **Relevant Planning History:**
- 1.10 The site has a lengthy history of waste management use. Permission for mineral extraction and landfill operations was first granted on appeal in 1995. This was subject to a number of conditions including a requirement to complete infilling operations by 2015 and to restore the land within 17 months thereafter. Permission for a recycling centre was first granted in 2003, linked to the life of the landfill. Following Viridor's acquisition of the land in 2004, a variation to the design and layout of the facility was granted in 2005.
- 1.11 The 1995 permission was accompanied by a unilateral undertaking from Thames Water, the owners of the land, the main purpose of which was to secure arrangements for the restoration of the land following landfill and the creation and future management of a variety of wildlife habitats. This included the formation of a Beddington Farmlands Trust to undertake the future management of the restored land. The restoration plans were embodied in a conservation management plan. (Other obligations from 1995 regarding Coomber Way and related highway measures have been largely implemented).
- 1.12 Variations to the 1995 and 2005 permissions, to allow extended hours for the reception and landfilling of local authority waste, were granted in August 2009 and September 2010. In May 2012 the Development Control Committee granted permission for a further variation to permit an increase in the number of vehicle movements associated with the night time delivery of local authority waste to the waste reception building.

- 1.13 In 2005 Viridor submitted an application (D2005/54794/FUL) to build a 75,000 tonnes per annum anaerobic digestion plant adjacent to the existing recycling centre and to extend the duration of all waste management activities on the site from 2015 to 2023, reflecting its contract with the Partnership. The application also sought permission to export and stockpile clay from the site prior to landfill. The application was first reported to Committee in April 2008 when it was resolved to grant permission subject to, inter-alia, the completion of a legal agreement with Viridor to ensure the restoration and future management of the land. The application was accompanied by an amended conservation management plan that drew on the practical knowledge gained from the restoration and conservation work undertaken on site since 1995.
- 1.14 Resolution of the legal agreement was protracted, so the application was reported back to Committee on 18 July 2012 to review and refresh the 2008 resolution. The delay provided an opportunity to review the restoration plans for the land and the best management arrangements for achieving these. A conservation management scheme, to replace the 2008 management plan, was reported to the Committee. Committee confirmed its earlier resolution to grant permission subject to the completion of the legal agreement. The agreement was completed and permission approved in June 2013. Restoration of the landfill approved under this permission has been implemented and the recycling facility currently operates in accordance with this permission.
- 1.15 In March 2010 Viridor submitted an application to build a smaller (30,000 tonnes per annum) anaerobic digestion plant, again reflecting its contract with the Partnership. This remains outstanding. However, in February 2013 the Partnership confirmed that it does not intend to pursue the anaerobic digestion proposals and Viridor has now committed not to build the agreed, larger facility.
- 1.16 In July 2012 Viridor submitted an application (2012/66220/FUL) to demolish the existing buildings on site and to build an energy recovery facility (ERF) along with buildings ancillary to the ERF, construction of two combined heat and power (CHP) pipelines, revisions to the approved restoration plan for the Beddington landfill site approved under application ref:D2005/54794/FUL, amendments to the existing in-vessel composting operations, removal of existing access and provision of new access road and reconfiguration of access to Thames Water site to north.
- 1.17 The planning application was reported to the Development Control Committee on the 24 April 2013 with the recommendation of approval subject to the conclusion of a legal agreement, the provision of additional areas for habitat and access and no adverse direction being received from the Mayor of London to whom the application had been referred.
- 1.18 The application was deferred so that further investigation on air quality and traffic issues, and to consider reinforced conditions on these topics and related provisions within the draft S106 agreement. In May 2014 planning permission was granted subject to conditions and the execution of a S106 agreement.
- 1.19 Following the granting of planning permission, permission was given in June 2014 to challenge the decision through a Judicial Review which was brought to the High Court. Following the Courts investigation the Judge dismissed the case for Judicial Review

on 6 November 2014. A further claim for permission to the court of appeal was made and subsequently refused on 15 February 2015. Viridor are currently implementing the ERF permission on site.

- 1.20 Application D2015/72902/FUL was submitted in October 2015 for the 'use of existing composting and waste product storage buildings and hardstandings for the receipt, bulking and transfer of residual waste, street sweepings, green waste, mixed recyclates and food waste for temporary period until 31 December 2022. The application was granted 21 January 2016.
- 1.21 Application D2015/72898/FUL was submitted in October 2015 for the 'Variation of Condition 13 of previously approved application D2005/54794/FUL, to permit the disposal of Local Authority waste between 13.00 and 16.30 for six Saturday afternoons in any one calendar year'. The application was granted 25 January 2016.
- 1.22 Two applications were submitted by SDEN in February 2017 for a pipeline and pumphouse to connect to the ERF.
- 1.23 Application C2017/76396/FUL was submitted in February 2017 for the 'Installation of pipeline including the construction of pipe bridge to connect between an approved Energy Recovery Facility (and its associated approved pipelines) and a housing development site, the 'Felnex Site' to deliver Combined Heat and Power (CHP) provision'. The application was granted 20 March 2017.
- 1.24 Application D2017/76395/FUL was submitted in February 2017 for the 'Erection of a pump house, metering enclosure and associated works for a temporary period of seven years'. The application was granted 20 March 2017.
- 1.25 **Background**
- 1.26 This is an application in which the Council has an interest. The applicant, Sutton Decentralised Energy Network (SDEN) Limited is a Local Authority Energy Services Company (ESCo) wholly owned by the London Borough of Sutton. It should be noted, however, that whether this proposal is by or on behalf of the Council or by a Company of which it is owner, the identity of the applicant is not a material planning consideration and no weight must be given to this in the determination of this application by the Local Planning Authority (LPA). This application must be assessed on its merits and against the policies contained in the Development Plan having regard to all material considerations.

2.0 **APPLICATION PROPOSALS**

2.1 **Details of Proposal:**

- 2.2 This is an application by Sutton Decentralised Energy Network (SDEN) to make changes to the approved route of the pipeline granted in respect of D2012/66220/FUL, which was an application by Viridor for an Energy Recovery Facility (ERF) on this site, together with associated works and infrastructure which included a pipeline from the ERF to transfer heat and power from the ERF which is now substantially completed. The approved route of the pipeline follows an east to west direction to the north side of

the lakes before broadly following a course due south close to the public footpath to the west of the lakes. Some work has already commenced to construct the pipeline on the approved route in application D2012/66220/FUL by contractors on behalf of SDEN. Works to remaining sections of the route have been temporarily suspended whilst possible changes to the pipeline route have been under discussion with officers.

- 2.3 The reason for proposed changes are due to a number of factors that have become apparent as the detailed routing of the pipeline has been reviewed. It involves a number of necessary diversions including the avoidance of a culvert on the east to west arm of the route where it deviates to the north by approximately 18 metres at its maximum point of divergence before re-joining the line of the approved route to the west. From this point, the pipeline turns south to the west of the earth mound located in the north east section of the approved pipeline route to avoid disturbance of this mound which acts as a physical wooded barrier to protect wildlife. The north-south leg of the approved route would have involved considerable disruption of wooded habitat and so for a distance of approximately 300 metres due south, it is proposed to step the pipeline to the west in sections by between 6-10 metres approximately to protect these habitats. This arrangement of set backs would be along the majority of this north-south leg.
- 2.4 At the end of this north-south leg the approved pipeline follows a route to the east of the path where its geometry follows a shape broadly equating to two equal sides of a triangle to respond to the footpath which arrives at the site over the railway line from the west. To avoid disruption to existing habitats, raised ground which acts as a flood defence and also a section of newly planted saplings beyond the path on the gently sloping bank leading to the southern lake, the proposed changes follow the line of the path so as to minimise harm. This accounts for a section of pipeline approximately 170 metres in length.
- 2.5 The pipeline then returns to a broadly north-south route, where it then exactly follows the line of the approved pipe for a distance of approximately 150 metres before it steps in to the west to continue on the line of the path for approximately 40 metres, at a point where the approved pipeline route continued directly south to the east of the fence line. Beyond this point is the part of the route which connects to the separate part of the overall route which was completed by the granting of planning permission C2017/76396/FUL linking the pipeline approval on part of the ERF with the Felnax site. This section not under consideration as part of this application.
- 2.6 The width of the construction is equal to a 5 metre wide prohibited activity area in which the pipes are laid, within a 10 metre wide working corridor. All of the 10m working zone will require clearance of trees, shrubs and ground cover. The working zone will be restored post completion. However, for trees and shrubs within 2.5m of the pipe centreline, there cannot be any replacement planting. As such, any and all replacement planting must occur within the remaining 5m of the working zone.
- 2.7 The application is accompanied by an Arboricultural Impact Assessment (Middlemarch Environmental, 2018) and Ecology Report to Discharge Planning Conditions (Peter Brett Associates, 2018) which provide an assessment of the impact of the proposed works and the mitigation proposed.

2.8 **Significant amendments to application since submitted:**

2.9 None.

3.0 **PUBLICITY**

3.1 An application to make a non-material amendment is not an application for planning permission and therefore the existing publicity arrangements set out in the Town and Country Planning (Development Management Procedure)(England) Order 2015 (DMP Order 2015) are not applicable. The advice in the Planning Policy Practice Guidance is that by definition, because the changes sought are considered to be non-material, consultation or publicity are unlikely to be necessary, and there are unlikely to be effects which would need to be addressed under the Environmental Impact Assessment Regulations 2011.

3.2 In accordance with the DMP Order 2015, the applicant must give notice to any person who is an owner of the land to which the application relates before making an application.

3.3 **Internal consultees**

3.4 Biodiversity Team - changes to the route of the approved pipeline are supported as the revised route will result in less impact on biodiversity interests.

3.5 Interim Principal Tree Officer - No objection in principle subject to clarification of tree protection measures.

3.6 Environmental Health - No objection raised

4.0 **PLANNING CONSIDERATIONS**

4.1 When planning permission is granted, development must take place in accordance with the permission and conditions attached to it, and with any associated legal agreements. However, it is not uncommon for new matters to arise after planning permission has been granted which may require changes to the permitted application. Where the modifications are fundamental or substantial, a new planning application will be required, but where the changes are less than substantial it is possible to seek variations either through a minor material amendment application under section 73 of the Planning Act or to apply to the Local Authority for changes which the applicant considers to be non-material amendments. There is no statutory definition of what constitutes 'non-material' and so the changes need to be considered in the context of the scheme as a whole, and so relies on the application of a fact and degree test.

4.2 In deciding whether a change is material S96A (2) of the Town and Country Planning Act 1990 (as amended) states that, 'a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted.'

4.3 In making an assessment of the materiality of the changes regard has been given to the relevant Development Plan Policies applicable at the time the decision was made

to grant permission for the original application D2012/66220/FUL as updated by any relevant changes to National Planning Policy, the London Plan and the newly adopted Sutton Local Plan 2018 policies.

- 4.4 S96A of the Town and Country Planning Act 1990 provides for applications for non – material amendments. Such amendments effect a change in the original planning permission but do not result in a second planning permission. If such changes were implemented without planning permission, no enforcement action could be taken in the event the Council decided the changes were non material. The aim of s96A was to provide comfort to both local planning authorities and developers that non material amendments do not require a new permission and all the costs and time delays thereof.
- 4.5 When considering the changes to the route of the pipeline in the context of the whole planning permission granted under D2012/66220/FUL, it is noted that the ERF and associated works constitute a major infrastructure project located on Metropolitan Open Land, for which ‘Very Special Circumstances’ were necessary to be demonstrated in order to justify such inappropriate development. On this point, it is considered that the pipeline formed a relatively small element in the development, although its inclusion demonstrated the intention to take energy from the processes within the ERF to be distributed beyond the site boundary to homes and businesses, and this was considered to be one of the ‘Very Special Circumstances’ that justified the approved development. The changes proposed to the route of the pipeline in the context of its size, direction and impact are not considered to substantially or fundamentally alter the basis on which planning permission was granted, as the routing will broadly follow that which was granted planning permission, nor is there any substantial or fundamental change to the purpose of the pipeline, which continues to provide a means of exporting heat and power as set out in the original planning permission.
- 4.6 Taking the changes to the route into consideration, it is relevant to note that the pipeline, although an engineering operation which constitutes development, will not in of itself, display a substantial or fundamental difference from the approved route when completed as it will be underground and not visible. Furthermore, although the deviations effect the majority of the route from the gas engines to its point of termination to the south west corner of the site, in the context of such a significant engineering project and the size of deviation below the surface, this would not constitute a material change. It is not considered that there will be any adverse impact on the openness of the Metropolitan Open Land or its functions as the public footpath will be re-opened when the works have been completed
- 4.7 The consideration of whether the changes can be regarded as non-material therefore turns on the degree to which the construction of the revised route will impact on important habitats, any known land contamination or increased risk of flooding compared to that set out in the approved planning permission. The consideration of the changes relating to habitats is set out below, but matters arising that concern any changes to land contamination reports submitted with the original application will be addressed through condition (35) of the original planning permission. Given that the variations to the approved pipeline route are to protect topographical features that perform a flood prevention function that might otherwise have been materially changed

it is not considered that the changes result in any additional concerns in respect of flood risk.

- 4.8 In support of the application an updated ecological report, which would have been necessary to update the baseline conditions reported in the 2012 planning permission, outlines the timings and impacts of the proposed works and how these will be mitigated as far as possible. This report has been assessed by the Senior Biodiversity Officer who agrees that this is an accurate view of the development footprint and has addressed residual impacts from the works, except for the ongoing management of the 5m 'no grow' strip along the centre of the pipeline route. In addition, an updated Arboricultural Impact Assessment (AIA) as in accordance within British Standard 5837: Trees in Relation to design demolition and construction-Recommendations: 2012 has been submitted. It is noted in the AIA that this is not an Arboricultural Method Statement (AMS) and that an AMS should be drafted once the route has been confirmed. Within the AIA the trees within the approved and proposed routes have been categorised as in accordance with the recommendations in BS 5837:2012. The AIA states that the proposed route will reduce the number of the proposed tree removals from the approved route. The proposed route would also limit the impacts on the recently planted whips adjacent to the Southern Lake.
- 4.9 However, it also states that the majority of trees requiring removal in the approved route are of a generally low quality and not considered to pose significant constraints upon the development. By contrast, the proposed route would involve the removal of a greater proportion of trees of moderate value. The removal of these category B trees from the site will require compensatory replacement tree planting to mitigate the impact on visual amenity.
- 4.10 Whilst the trees provide public visual amenity value to the immediate landscape within and adjoining the site the wider public visual amenity value of the trees is more limited given their age, class and topography of the surrounding areas. The recently planted trees have a significant landscape, cultural and biodiversity value given they were planted in to create a biodiversity interest within the landscape to remediate for the past land use. The loss of these recently planted whips can be compensated for by like for like tree planting. The proposed loss of the mature age class trees are made up of a significant number of Norway maple that has been established by natural regeneration. The removal of the naturalised Norway maple will be compensated for by planting native trees and shrubs species, which is considered an enchantment to the biodiversity of the area. The compensating tree planting for all trees will be submitted to the Council for its approval within a landscape scheme and landscape management plan. Within these documents it will be stated that the landscape strategy will be to enhance the biodiversity value and landscape character of the immediate and surrounding area. This will have details on how the different planting communities will be established and managed for the next 5 years. Any proposed compensating tree planting should be to "British Standard 8545 Trees: from nursery to independence in the landscape. Recommendations (2014)". This is in order to ensure that the compensating landscape scheme and biodiversity enchantments will be in accordance with the Sutton Local Plan 2018. The mitigation measures for proposed retained trees on the proposed route need to be submitted to the Council for its approval within a site specific AMS. The site specific AMS must have taken into consideration the finalised Construction Management Plan (CMP) for all construction activities associated with

the proposed pipeline. The AMS will also provide the Council with proposed details of Arboricultural Supervision by an Arboricultural Clerks of Works (ACoW). The ACoW will ensure that the approved AMS is completed with during all the construction phase. This includes the preconstruction instalment of the approved tree protection measures. This is to ensure compliance with BS5837:2012 and the Sutton Local Plan 2018. The mechanism to secure the AMS is through an update of condition 42 of the D2012/66220/FUL, and an informative is added to this effect.

4.11 Having considered the two reports and from discussions with the applicants contractors including a site inspection of the entire route, the Senior Biodiversity Officer is of the opinion that the proposed route represents an improvement over the approved route because of the following:

- It will minimise the impact on the remainder of Beddington Farmlands, particularly in retention of the bunds adjacent to the new wet grassland area to the north of the SDEN route,
- It will reduce the changes in levels of ditches and bunds, which would lead to greater temporary and permanent impacts, especially around the lake edges south of Mile Road,
- It will remove potential impacts on over 400 recently planted whips as part of Phase 4 scrub planting adjacent to the southern lake in Beddington Farmlands
- It will reduce the overall number of trees lost,
- It will provide a tussocky grassland 5m 'no grow' strip, rather than allowing natural regeneration, which is likely to produce an ephemeral / ruderal / bramble mix, although, it is not clear how this tussocky grassland will be managed in the long term,
- It will remove non-native Norway maple,
- It will enable officers working with the Biodiversity Team and the Principal Tree Officer to deliver bespoke tree replacement in the next planting season (winter 2018/19).

4.12 Given the above, the Senior Biodiversity Officer concludes that the proposed route is acceptable in terms of its relative lesser impacts on the Beddington Farmlands Site of Metropolitan Importance (SMI) than the approved route.

4.13 Given the above, it is considered that the above surface impacts are such that there will be an enhancement to arboricultural and biodiversity interests by agreeing that the proposed amendments to application D2012/66220/FUL granted in March 2014 are considered not to be materially different. On this basis it is considered that the changes to the pipeline route are acceptable and can be agreed as a non-material amendment.

5.0 **CONCLUSION AND RECOMMENDATION**

5.1 Officers consider the revisions shown on the submitted plans to be non-material amendments to planning permission D2012/66220/FUL granted on the 14 March 2014. As such, it is recommended that the non-material amendment application is approved as further planning permission is not required to implement the alterations proposed.

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DM2018/00299/NMA

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WARNING: It is in your interests to ensure you obtain the approval of the Local Planning Authority, where the conditions require that to occur. Failure to comply with the following conditions may lead to enforcement action to secure compliance.

FIRST SCHEDULE

Beddington Farmlands Waste Management Facility, Beddington Lane, Beddington, CR0 4TD

Non Material Amendment application to amend approved Planning Application
D2012/66220/FUL.

SECOND SCHEDULE

(1) Pursuant to The Town and Country Planning (General Development Procedure)(amendment No 3)(England) Order 2009, the revisions as shown on the plan nos. P061-LBS_10_0001 REV P10, Peter Brett Associates LLP Ecological Report (37979 Rev AA) and Middlemarch Environmental Ltd Arboricultural Report (RT-MME-127296-02 Rev B) and attached schedule are not considered to be materially different from the approved plans and may therefore be implemented without the need for further planning permission.

INFORMATIVES.

(1) Should you require details of the consideration of the application that has led to this decision, the file may be inspected under the provisions of the Local Government (Access to Information) Act 1985. An appointment can be made for this purpose by telephoning 020 8770-5070.

(2) The submitted application complied with the relevant planning policies and Sutton Council has accordingly granted planning permission.

(3) Prior to works along the western boundary, an amended Arboricultural Method Statement in respect to condition 42 of application ref:D2012/66220/FUL shall be submitted to and agreed in writing by the Local Planning Authority.