

Appeal Ref. APP/Z/6950/A/11/2167112/WF

Appeal by Coastal Oil and Gas Limited

**Site at Unit 1, Llandow Industrial Estate, Cowbridge, CF31
3SH**

Summary of Proof Of Evidence Of Cliff Patten MRTPI

Contents

1. Qualifications and Experience
- 2 Scope of Evidence
4. Summary of proposed development, site location and history
5. Issues
6. Policy context
8. Assessment of proposal in relation to policies and guidance
9. Conclusion

1. Qualifications and Experience

- 1.1. My name is Cliff Patten. I am a Chartered Town Planner.
- 1.2. I have 44 years experience of working in Local Government Planning departments and since 2006 I work as an independent Planning Consultant.
- 1.3. I have appeared as an expert witness at a number of Public Inquiries and Hearings

2. Scope of evidence

- 2.1. The scope of my evidence deals primarily with the issues and planning policies relating to this development.
- 2.2 A Summary of proposed development site location and history is contained in my written statement and it is expected that a Statement of Common Ground will be agreed with the Local Authority prior to the Inquiry which will cover those matters.

3. Issues

- 3.1 .The only reason for refusal put forward by the Council is that they allege that insufficient information was submitted to satisfy them that the quantity and quality of ground water supplies in the vicinity of the site would be protected. It has been stated that in reaching that conclusion, the Council relied upon the observations from Welsh Water. .
- 3.2. In respect of ecology, the recent letter from the Countryside Council of Wales in respect of the possible effect on bats will be addressed prior to the Inquiry
- 3.3. In relation to other issues, it is not proposed to provide expert evidence but to rely on the replies from the appropriate technical bodies and organisations in response to consultations carried out via the planning application.

4. Policy Context

National Policies

4.1. Overarching National Overarching National Policy Statement for Energy EN-1 July 2011

4.2. Para 3.6. states that fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy,

4.3. Para 3.7 states that -Fossil fuel generating stations contribute to security of energy supply by using fuel from a variety of suppliers and operating flexibly. Gas will continue to play an important role in the electricity sector – providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply

4.4. Para 6.3.states that- Some of the new conventional generating capacity needed is likely to come from new fossil fuel generating capacity in order to maintain security of supply, and to provide flexible back-up for intermittent renewable energy from wind.

4.5. Planning Policy Wales (PPW), 2010, sets out the land use planning policies of the Welsh Government (WG) and is supplemented by a series of Technical Advice Notes (TANs). PPW gives advice to local planning authorities when determining applications.

Paragraph 3.1.8 states - As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting planning permission; objections, or support, must be based on valid planning considerations.

4.6. Minerals Planning Policy Wales (2000) states in para 30

Mineral planning authorities and the industry should take into account the need to protect the quantity and quality of surface and groundwater supplies.. Mineral planning authorities must consult the Environment Agency on these complex issues and, where doubt exists, should adopt the precautionary principle in taking planning decisions on mineral development.

4.7. Para 64 states-. Where oil and gas operations can be carried out in an environmentally acceptable way and consistent with the principles of sustainable development, there is no case in land use planning terms for placing more restrictions on the development than are necessary to ensure the protection of the environment

4.8. Energy Wales: A Low Carbon Transition(March 2012) states - Gas will be a key transitional fuel because greenhouse gas emissions from gas are significantly less than coal subject to the method of extraction. Gas is a flexible, responsive and reliable source of energy which can play a key role in the transition to a genuinely low carbon energy system.

4.9. Local Policy

The Adopted Vale of Glamorgan Unitary Development Plan sets out the Council's detailed policies relating to development. The most relevant policies are considered to be Policy MIN 1- Mineral Exploration, Policy ENV29- Protection of Environmental Quality and Policy ENV27- Design of new development.

5. Assessment of proposal in relation to Policy and Guidance.

5.1.. The principal of this development complies with the aims of the National Policy Statement for Energy and Energy Wales.

5.2.In respect of UDP Policy MIN1, it is considered that the proposal would not have an unacceptable impact on any of the seven criteria listed. With regards to (vi), surface water and ground water resources, the Council relied upon correspondence from Welsh Water, a private company who are not a statutory consultee, who considered that there would be a very small risk of contamination to their reserves groundwater sites. Since the determination of the application, further correspondence and a meeting has been held between the Appellants and Welsh Water and it is clear that no detailed technical appraisal was carried out by Welsh Water of how the proposed development would affect these reserves. In their letter to the Council on the of 19th October 2011 they stated that they expect the Environment Agency to consider the vulnerability of their ground water sources and wider impact on the water environment. Welsh Water have since confirmed that they did not, and do not, object to the application (letter of the 16/12/11)and in a further letter of the 27/03/12 that they consider that there would be an insignificant risk.

- 5.3. The Council had consulted with the Environment Agency, who are the statutory consultee in respect of the water environment and have the necessary expertise and experience in dealing with such boreholes. After carrying out an assessment of the information submitted, they considered that they had no objections, subject to certain planning conditions. This was reiterated in a further letter to the Council on the 10th October 2010 where they stated that all matters within their environmental remit can be satisfied through the relevant planning measures.
- 5.4. In the Planning Officers Report to the Planning Committee of the 20th of October, it was concluded that subject to the imposition of relevant conditions, the proposal meets the objective in respect of this part of the Policy.
- 5.5. It is contended therefore that the Council and the Environment Agency had sufficient information to assess the impact on the water environment and the Council had no justifiable reason to consider that the proposal would adversely impact on surface and groundwater resources.
- 5.6. It should be noted that in respect of a number of third party responses, the explanation of this Policy states that the grant of planning permission for mineral exploration will not indicate a presumption in favour of future exploitation of any minerals found
- 5.7. It should also be noted that the drilling of similar boreholes for the purpose of mineral exploration, other than for petroleum, would be permitted development under Part 22 of The Town and Country Planning General Permitted Development Order 1995 subject to certain criteria. Whilst this application does not fall within this category, the method and technical details of the operation are the same, other than for 24 hour drilling and height of rig.
- 5.8. In respect of Policy ENV29, in the explanation to the policy, it is stated that in assessing whether development would be liable to have an unacceptable effect on water pollution, advice will be sought from the relevant regulatory authority, (in this case the Environment Agency). It adds that if the pollution can be controlled to the satisfaction of the regulatory authority, permission may be granted subject to conditions. If it is considered that satisfactory

standards cannot be achieved or sufficient doubt exists, then permission will not be granted.

5.9.The response from the regulatory authority was perfectly clear in that any pollution could be controlled to their satisfaction. , had no justifiable grounds to consider that the development would be liable to have an unacceptable effect on the environment by releasing pollutants into the water or sufficient doubt existed.

5.10.In respect of Policy ENV27-Design of new development, it is considered that due to the nature, time period and location, the proposal would not adversely impact on any of the appropriate listed criteria.

6. Conclusion

6.1.The principle of exploring the potential of gas reserves is in line with national policies relating to providing varied energy resources for Wales and the UK.

6.2.The proposal complies with the relevant UDP policies

6.3.The Council did not carry out any technical assessment to support their refusal.

6.4.The Council did not rely on the advice of the regulatory consultee but chose to rely on observations from a private company, Welsh Water, without first assessing the technical information that led that company to those observations.

Appellant
C.Patten
No of Statement: 1st
Dated: April 2012

IN THE MATTER OF LLANDOW INDUSTRIAL ESTATE
AND IN THE MATTER OF AN APPLICATION MADE UNDER SECTION 78 THE TOWN AND
COUNTRY PLANNING ACT 1990 AND TOWN AND COUNTRY PLANNING (GENERAL
DEVELOPMENT PROCEEDURE) ORDER 1995
APPEAL REFERENCE APP/Z/6950/A/11/2167112/WF

B E T W E E N

COASTAL OIL AND GAS LIMITED

Appellants

And

VALE OF GLAMORGAN COUNTY COUNCIL

Respondent

WITNESS STATEMENT OF MR CLIFFORD PATTEN

1. Qualifications and Experience

- 1.1. My name is Clifford Patten. I am a Chartered Town Planner.
- 1.2. I have 44 years experience of working in Local Government Planning departments.
- 1.3. From 1976 to 2000 I was a Senior Development Control Minerals Planning Officer for West Glamorgan County Council.
- 1.4. In 2000, I become Principal Planner in charge of all Development Control for Neath Port Talbot CBC, until my retirement in 2006 when I become a Planning Consultant.

- 1.5. From June 2006 to September 2008 I was contracted solely to Neath Port Talbot County Borough Council as Team Leader for Special Projects where I was responsible for dealing with all major applications including energy proposals, minerals, waste, industrial, residential, commercial and infrastructure projects.
- 1.6. From September 2008 to the present I work as an independent planning consultant dealing with various projects, applications and appeals, including energy, minerals and waste.
- 1.7. I have appeared as an expert witness at a number of Public Inquiries and Hearings
- 1.8. References made in square brackets within this statement are references to the main bundle of documents that will be produced for the Inquiry. I have not produced the same herewith to avoid unnecessary replication

2. Scope of evidence

2.1. This Proof of Evidence is prepared on behalf of Coastal Oil and Gas Ltd

2.2. The scope of my evidence is as follows:

Section 3: Summary of proposed development and site location and history.

Section 4: Issues

Section 5: Description of relevant national, regional and local policy and guidance.

Section 6: Assessment of proposal in relation to Policy and Guidance.

Section 9: Conclusions and summary.

2.3. A proof of evidence providing a detailed assessment of the technical and geological issues has been prepared by Oliver Taylor.

3: Summary of proposed development ,site location and history.

3.1. The proposed Development

The proposal is a full application for the drilling of a single vertical 160mm bore hole to investigate potential gas resources that may exist in the Carboniferous Lower Limestone and Upper Devonian measures to test for the presence of conventional and unconventional gas. This proposal forms part of a continuing programme, by the Company, of sampling across South Wales, the Bristol area and Kent. Planning permission for such boreholes has also been granted in Bridgend (4), Neath Port Talbot (5) and Kent (1). Planning consent has also been granted in principle (subject to the signing of a Section 106 Agreement) by Bridgend CBC for a production well for Coal Bed Methane gas and its conversion to electricity. It is proposed to drill to a depth of approximately 650 m. The borehole will be constructed to comply with current legislation and applicable codes and rules. The hole will be constructed under the governance of the Health and Safety Executive Oil and Gas Division. A final Department of Environment and Climate Change permission in the form of a Well Operation Notice is required before work can commence. The full technical details are provided by Oliver Taylor in his written statement.

3.2. Description of Site and Surroundings

The site occupies approximately 0.2 ha of land within the Llandow Business Park (Llandow Industrial Estate) The land is within an open area of reasonably level concrete hard standing and is vacant, although part of the site is used for storage of vehicles and construction waste which does not have a planning permission. There are a number of industrial units adjoining and in the vicinity, some of which are vacant. The nearest occupied units are some 60-100m. Access is derived from the southern access road into the Estate and then via an internal estate road. The nearest residential properties are Six Wells Cottage, within the Estate which is some 260m to the north, Grove Farm House,

some 530m to the west, Sheeplys Guest House, some 530m to the north and a house on Sutton Road, some 620m to the north.

3.3. Relevant Development Control History

The only relevant previous planning history relates to application number 2011/00115/FUL which was for the same development, but was withdrawn due to the discovery of a dwelling within the Industrial Estate which had not been considered in the noise assessment.

The current application was placed before the Planning Committee on the 29/09/10 when it was deferred for a site visit. The site visit was held in the afternoon of the 20/10/2010 and the application reported back to Committee that evening. The application was refused for the reason stated.

4. Issues

- 4.1 . In light of the above, the only reason for refusal put forward by the Council is that they allege that insufficient information was submitted to satisfy them that the quantity and quality of ground water supplies in the vicinity of the site would be protected. It has been stated that in reaching that conclusion, the Council relied upon the observations from Welsh Water.
- 4.2. With respect to the technical details of the above, my colleague, Oliver Taylor, will address the level of information submitted and the impact of the development on groundwater.
- 4.3. In respect of ecology, the recent letter from the Countryside Council of Wales in respect of the possible effect on bats will be addressed prior to the Inquiry
- 4.4. In relation to other issues including need, hydraulic fracking, visual amenity, noise, vibration, dust, lighting and traffic considerations, it is not proposed to provide expert evidence but to rely on the replies from the appropriate technical bodies and organisations in response to consultations carried out via the planning application. However these issues will be

mentioned, where appropriate, in as far as they relate to planning policy and the concerns of third parties.

5. Policy Context

National Policies:

5.1. The Department of Energy and Climate Change(DECC) published the Overarching National Policy Statement for Energy EN-1 in July 2011[]

5.2. Para 3.6. states that fossil fuel power stations play a vital role in providing reliable electricity supplies: they can be operated flexibly in response to changes in supply and demand, and provide diversity in our energy mix. They will continue to play an important role in our energy mix as the UK makes the transition to a low carbon economy,

5.3. Para 3.7 states that -Fossil fuel generating stations contribute to security of energy supply by using fuel from a variety of suppliers and operating flexibly. Gas will continue to play an important role in the electricity sector – providing vital flexibility to support an increasing amount of low-carbon generation and to maintain security of supply

5.4. Para 6.3.states that- Some of the new conventional generating capacity needed is likely to come from new fossil fuel generating capacity in order to maintain security of supply, and to provide flexible back-up for intermittent renewable energy from wind.

5.5. Planning Policy Wales (PPW), 2010,[] sets out the land use planning policies of the Welsh Government (WG) and is supplemented by a series of Technical Advice Notes (TANs). PPW gives advice to local planning authorities when determining applications.

Paragraph 3.1.8 states -When determining planning applications local planning authorities must take into account any relevant view on planning matters expressed by neighbouring

occupiers, local residents and any other third parties. While the substance of local views must be considered, the duty is to decide each case on its planning merits. As a general principle, local opposition or support for a proposal is not, on its own, a reasonable ground for refusing or granting planning permission; objections, or support, must be based on valid planning considerations. There may be cases where the development proposed may give rise to public concern. The Courts have held that perceived fears of the public are a material planning consideration that should be taken into account in determining whether a proposed development would affect the amenity of an area and could amount to a good reason for a refusal of planning permission. It is for the local planning authority to decide whether, upon the facts of the particular case, the perceived fears are of such limited weight that a refusal of planning permission on those grounds would be unreasonable

5.6. Minerals Planning Policy Wales (2000)[] states in para 30 Mineral planning authorities and the industry should take into account the need to protect the quantity and quality of surface and groundwater supplies. Changes in the water table as a result of mineral extraction or the disposal of mineral wastes must not cause unacceptable impact, or otherwise damage or adversely affect water resources or sources of water which might be an integral part of sites of high landscape value or nature conservation importance. De-watering that would lead to an offence against a protected species would normally require a licence. Changes in the water table may also cause significant geohazards such as the shrinkage of clay soils leading to subsidence or karstic collapse in limestone areas. The impact of changes to surface and groundwater are likely to require monitoring and require remedial measures to be introduced. Mineral planning authorities must consult the Environment Agency on these complex issues and, where doubt exists, should adopt the precautionary principle in taking planning decisions on mineral development.

5.7. Para 64 states-. Where oil and gas operations can be carried out in an environmentally acceptable way and consistent with the principles of sustainable development, there is no

case in land use planning terms for placing more restrictions on the development than are necessary to ensure the protection of the environment

5.8. Energy Wales: A Low Carbon Transition (March 2012)[] states - Gas will be a key transitional fuel because greenhouse gas emissions from gas are significantly less than coal subject to the method of extraction. Gas is a flexible, responsive and reliable source of energy which can play a key role in the transition to a genuinely low carbon energy system.

5.9. Local Policy

The Adopted Vale of Glamorgan Unitary Development Plan [] sets out the Council's detailed policies relating to development. The most relevant policies are considered to be Policy MIN 1- Mineral Exploration, Policy ENV29- Protection of Environmental Quality and Policy ENV27- Design of new development.

Policy MINS1-MINERAL EXPLORATION

Proposals to carry out mineral exploration will be permitted unless there would be an unacceptable impact on any of the following

- (i) Landscape Character**
- (ii) (ii) Visual Amenity**
- (iii) (iii) Nature Conservation**
- (iv) (iv)**
- (v) Residential Amenity**
- (vi) The Glamorgan Heritage Coast**
- (vii) Surface Water and Ground Water Resources**
- (viii) Scheduled Ancient Monuments and Historic Landscapes**

Explanation

Exploration is an essential activity for proving the existence of a mineral deposit and evaluating its potential for extraction. Information resulting from mineral exploration is required by the Council in the processing of applications for quarrying development. Many small scale and temporary mineral exploration operations such as the drilling of boreholes, excavation of trial pits and seismic surveys are permitted development under the Town and Country (General Permitted Development) Order 1995, subject to restrictions on their duration and the type of equipment used. For longer periods or where, for example, large drilling rigs are to be used, planning permission is required. In such cases the Council will seek to ensure that there will be no adverse effects on residential amenity or other sensitive land uses. The grant of planning permission for mineral exploration will not indicate a presumption in favour of future exploitation of any minerals found.

Policy ENV29- PROTECTION OF ENVIRONMENTAL QUALITY

Development will not be permitted if it would be liable to have an unacceptable effect on either people's health and safety or the environment:

- (i) By releasing pollutants into water, soil or air, either on or off site; or**
- (ii) From smoke, fumes, gases, dust, smell, noise, vibration, light, or other polluting emissions**

Explanation

The aim of this policy is to prevent adverse effects of pollution both in terms of the impact on local environmental quality and their contribution to global damage. The UK Government is committed to reducing existing pollution levels and therefore future developments should not exacerbate the current situation. Accordingly, any polluting or hazard risk will be judged in the context of both UK and EC legislation/standards. Advice will be sought from the relevant regulatory authorities, including the Environment Agency, Health and Safety Executive and Local Authority Environmental

Health Officers. Whilst light pollution is not covered by legislation, the Council will have regard to the recommendations of the Institute of Lighting Engineers and the joint Department of Environment/Countryside Commission publication "lighting in the Countryside: Towards Good Practice" (1997) when dealing with applications that could conceivably have unneighbourly consequences. If the pollution can be controlled to the satisfaction of the regulatory authorities, permission may be granted subject to conditions. In such cases, operations will need to be monitored appropriately to ensure continued compliance. In accordance with the precautionary principle, if it is considered that satisfactory standards cannot be achieved or sufficient doubt exists, then permission will not be granted. In order to allow the regulatory authorities to assess the full implications of any development, where applicable, applicants will need to submit an Environmental Impact Assessment in accordance with the Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999.

ENV27- DESIGN OF NEW DEVELOPMENT

Proposals for new development must have full regard to the context of the local natural and built environment and its special features, new development will be permitted where it:

- (i) Compliments or enhances the local character of buildings and open spaces**
- (ii) Meets the council's approved standards of amenity and open space, access, car parking and servicing**
- (iii) Ensures adequacy or availability of utility services and adequate provision for waste management**
- (iv) Minimises any detrimental impact on adjacent areas**
- (v) Ensures existing soft and hard landscaping features are protected and complemented by new planting, surface or boundary features**
- (vi) Ensures clear distinction between public and private spaces**

- (vii) Provides a high level of accessibility, particularly for public transport, cyclists, pedestrians and people with impaired mobility
- (viii) Has regard to energy efficiency in design, layout, materials and technology: and
- (ix) Has regards to measures to reduce the risk and fear of crime.

Explanation

This policy establishes a framework to achieve appropriate sensitive new development that promotes creative and imaginative design within the Vale of Glamorgan, In view of the wide variety of architectural styles and contrasting identities of the Vale's towns, villages and open countryside, it would be inappropriate to introduce rigid, over prescriptive design controls for new development within the Plan. However, to further promote the above good design principles and provide better advice to architects and their clients, the Council will prepare guidance and design briefs for specific topics or sites. Similarly, advice on plant species in landscaping schemes can help meet the criteria set out above. In many circumstances the use of native provenance tree and shrub species in landscaping schemes can provide benefits for bio diversity as well. Volume Two of "Landscapes Working for the Vale of Glamorgan" study provides some guidance on this point. Supplementary Planning Guidance has been produced in respect of amenity standards.

6. Assessment of proposal in relation to Policy and Guidance.

6.1.The proposal seeks to explore the potential of extracting conventional and unconventional gas without causing any significant harm to the environment or public health and safety. The principal of this development therefore complies with the aims of the National Policy Statement for Energy and Energy Wales.

6.2.In respect of UDP Policy MIN1[], it is considered that the proposal would not have an unacceptable impact on any of the seven criteria listed. With regards to (vi), surface water

and ground water resources, the Council relied upon correspondence from Welsh Water, a private company who are not a statutory consultee, who considered that there would be a very small risk of contamination to their reserves groundwater sites. Since the determination of the application, further correspondence and a meeting has been held between the Appellants and Welsh Water and it is clear that no detailed technical appraisal was carried out by Welsh Water of how the proposed development would affect these reserves. In their letter to the Council on the of 19th October 2011 they stated that they expect the Environment Agency to consider the vulnerability of their ground water sources and wider impact on the water environment. Welsh Water have since confirmed that they did not, and do not, object to the application (letter of the 16/12/11) and in a further letter of the 27/03/12 that they consider that there would be an insignificant risk.

6.3. The Council had consulted with the Environment Agency, who are the statutory consultee in respect of the water environment and have the necessary expertise and experience in dealing with such boreholes. After carrying out an assessment of the information submitted, they considered that they had no objections, subject to certain planning conditions. This was reiterated in a further letter to the Council on the 10th October 2010[] where they stated that all matters within their environmental remit can be satisfied through the relevant planning measures.

6.4. In the Planning Officers Report to the Planning Committee of the 20th of October[], it was concluded that subject to the imposition of relevant conditions, the proposal meets the objective in respect of this part of the Policy.

6.5. It is contended therefore that the Council and the Environment Agency had sufficient information to assess the impact on the water environment and the Council had no justifiable reason to consider that the proposal would adversely impact on surface and groundwater resources.

6.6. It should be noted that in respect of a number of third party responses, the explanation of this Policy states that the grant of planning permission for mineral exploration will not indicate a presumption in favour of future exploitation of any minerals found

6.7.It should also be noted that the drilling of similar boreholes for the purpose of mineral exploration, other than for petroleum, would be permitted development under Part 22 of The Town and Country Planning General Permitted Development Order 1995[] subject to certain criteria. Whilst this application does not fall within this category, the method and technical details of the operation are the same, other than for 24 hour drilling and height of rig.

6.8.In respect of Policy ENV29, in the explanation to the policy, it is stated that in assessing whether development would be liable to have an unacceptable effect on water pollution, advice will be sought from the relevant regulatory authority, (in this case the Environment Agency). It adds that if the pollution can be controlled to the satisfaction of the regulatory authority, permission may be granted subject to conditions. If it is considered that satisfactory standards cannot be achieved or sufficient doubt exists, then permission will not be granted.

6.9.The response from the regulatory authority was perfectly clear in that any pollution could be controlled to their satisfaction. Having regard to my comments in paras 6.2-6.6 above and to the evidence presented by my colleague, Oliver Taylor, the Council again, had no justifiable grounds to consider that the development would be liable to have an unacceptable effect on the environment by releasing pollutants into the water or sufficient doubt existed.

6.10.In respect of Policy ENV27-Design of new development, it is considered that due to the nature, time period and location, the proposal would not adversely impact on any of the appropriate listed criteria.

7. Conclusion

7.1.The principle of exploring the potential of gas reserves is in line with national policies relating to providing varied energy resources for Wales and the UK.

7.2.The proposal complies with the relevant UDP policies

7.3.The Council did not carry out any technical assessment to support their refusal.

7.4.The Council did not rely on the advice of the regulatory consultee but chose to rely on observations from a private company, Welsh Water, without first assessing the technical information that led that company to those observations.

I confirm the contents of this statement are true

Signed

Mr Clifford Patten

Dated this the day of April 2012