

Planning Reference No:	10/2551W
Application Address:	Land off Pochin Way, Middlewich
Proposal:	Great Crested Newt Receptor Site, to include the creation of three ponds, creation of four hibernaculums, wet grassland and areas of scrub.
Applicant:	Covanta Energy Ltd
Application Type:	
Grid Reference:	371482 365398
Ward:	Middlewich
Earliest Determination Date:	
Expiry Dated:	09 Sept 2010
Date of Officer's Site Visit:	11 August 2010
Date Report Prepared:	
Constraints:	

SUMMARY RECOMMENDATION:

Refuse as the application is considered premature.

MAIN ISSUES:

- The application is an integral part of, and dependant on, the Covanta application 09/0738W for an Energy from Waste Plant
- The application is part of an EIA development and therefore needs to be considered in conjunction with it.
- Impact on protected species.
- Need for development.

1. REASON FOR REFERRAL

The proposal is considered a major waste application on the basis that it covers 2.9ha of land and is linked to the Covanta Middlewich Energy from Waste application (09/0738W), which is the subject of an Environmental Statement.

2. DESCRIPTION OF SITE AND CONTEXT

The proposed site consists of the eastern half of the Sanderson Brook valley, sandwiched between the brook and existing built development off ERF Way, Midpoint 18 Business Park, Middlewich. This corridor varies in width between 45 and 115 metres and stretches for 530 metres from ERF Way to the north, to Cledford Lane to the south. Sanderson Brook meanders in a south to north direction forming the west boundary of the site.

The valley bottom consists of marshy grassland and scrub running into improved grassland with recently planted broadleaf plantation (approximately 10 years old) forming the upper slopes and providing a landscaped screen to the industrial development and ERF Way.

The site is on the opposite (eastern) side of Pochin Way adjacent to the site of the proposed Covanta Waste Plant. Middlewich town centre is approximately a kilometre north west of the site.

The application has been submitted in connection with the Covanta Waste plant application which is the subject of a forthcoming Public Inquiry.

3. DETAILS OF PROPOSAL

It is proposed to construct three ponds and four hibernaculares within wet grassland and areas of scrub. The site would be enhanced to accommodate and provide a receptor for great crested newts that would need to be relocated from the Waste plant site, should this be granted planning permission.

The three ponds would be created within the slope of the valley, above the 31m contour level and thus beyond the 1 in 25 year flood level. The ponds would have surface areas of 155 square metres, 202 square metres and 240 square metres and be constructed with graduated slopes to a maximum depth of between 1.5 and 1.9 metres. Each pond would require material to be excavated and relocated to form a downslope bund.

The four hibernaculares would consist of mounds of rubble and logs approximately 2m by 1m by 1m high and covered with turf. Their purpose is to provide a refuse within which newts and other amphibians can safely hibernate. Each would be located along the eastern boundary of the site within and adjoining the woodland and elevated on the valley side sufficiently to ensure they are above the floodplain. Scrapes and wet grassland would also be created to provide a suitable habitat for the newts.

4. RELEVANT HISTORY

Planning permissions (07/0323/OUT and 08/0557/REM) give consent for the development of Phase 3 of Midpoint 18 and construction of the remaining section of Pochin Way (the Middlewich By-pass). An ecological mitigation strategy, to compensate for habitat losses caused by the proposed development of the business park and by-pass, includes the ecological enhancement of the proposed newt receptor site. The site is therefore already the subject of proposed ecological and landscaping works.

5. POLICIES

Regional Spatial Strategy

- DP7 Promote Environmental Quality
- EM1 Integrated Enhancement and Protection of the Regions Environmental Assets.

Local Plan Policy

Cheshire Replacement Waste Local Plan

- Policy 17, Natural Environment.

Congleton Borough Local Plan

- GR21 Areas at risk from flooding
- NR4 Wildlife and Nature Conservation

- RC2 Protected Area of Open Space / Recreational Facility

Other Material Considerations

The Strategic Planning Boards decision on application 09/0738W, Covanta Energy from Waste Plant, Pochin Way, Middlewich.

EC Habitats Directive

Conservation (Natural Habitats &c.) Regulations 1994

PPS9 Biodiversity and Geological Conservation and guidance ODPM Circular 06/2005

6. CONSULTATIONS (External to Planning)

The **Environment Agency** has not objected to the proposal but notes that Sanderson Brook is a main river and therefore any works within 8 metres of it will require the Agency's written consent under the Water Resources Act 1991 and Land Drainage Byelaws. They also note all works must comply with an approved Natural England European Protected Species Mitigation Licence.

Natural England has indicated that it is unable to comment on the details of this application or the adequacy of the mitigation strategy. It notes the presence or likely presence on site of European Protected Species and notes they may be a material consideration in planning terms and points out that these should be taken into account by the Local Authority in determining the application. It also indicates that a licence would be required and any applicant would need to meet the criteria set out in Regulation 53.

The **Council's Ecologist** has not objected to the proposal, subject to conditions requiring a detailed species list for planting, protection for breeding birds and a management plan.

7. VIEWS OF THE PARISH / TOWN COUNCIL:

Middlewich Town Council believes that any consideration of this application should be deferred until after a decision has been made on the appeal against the refusal of permission for the Covanta Waste plant.

8. OTHER REPRESENTATIONS:

No further representations have been received.

9. APPLICANT'S SUPPORTING INFORMATION:

- a) **Ecological Assessment** dated April 2010 including a **Great Crested Newt Mitigation Strategy** dated November 2009 both prepared by Parsons Brinckerhoff Ltd.
- b) **Arboricultural Survey** dated June 2010 prepared by Tyler Grange Ltd.
- c) **Flood Risk Assessment** dated April 2010 prepared by Parsons Brinckerhoff Ltd.

10. OFFICER APPRAISAL

Principle of Development

This application is directly linked to the Covanta Waste facility application which is the subject of an appeal and Public Inquiry commencing on 8th March 2011.

Great crested newts are present on the Covanta site and would be adversely affected by that development. A mitigation strategy has been suggested whereby the newts would be captured and relocated to a specially prepared receptor site should planning permission be eventually granted for the Waste plant. The receptor site would therefore not be required should the Secretary of State dismiss the appeal.

The site is allocated within the Congleton Borough Local Plan as an area at risk from flooding and a protected area of open space / recreational / leisure or community use. It is not considered that the development would be an unacceptable risk of flooding or exacerbate flooding elsewhere, nor is it expected that it would negatively impact on open space provision. There is no objection to the proposal in land use terms.

Ecology

The proposed receptor site is currently subject to a landscaping and habitat enhancement scheme required as mitigation for the further development of the Middlewich By-pass and Phase 3 of the Midpoint 18 Business Park. The ecological mitigation strategy includes;

- excavation works for backwaters,
- feed channels and floodplain scrapes, within the flood plain,
- grassland, scrub, shrubs and woodland on the valley sides.

The proposed development of ponds, hibernaculars and habitat favourable for newts, would be in addition and in replacement to that required above, should the By-pass and Business Park be developed. The newt receptor site therefore provides no additional areas for nature conservation.

To accommodate the newt receptor site there would be a small loss of proposed woodland, shrub and scrub mix, and grassland. In view of the scale of the ponds proposed, this loss is not considered significant. In principal there is no objection to the works proposed.

The receptor site has not been subject to a recent newt survey. Surveys undertaken in 2006 identified a number of ponds containing GCN's to the north and south of the site. It is considered that the receptor site is already part of the terrestrial habitat of the local newt population. The proposed excavation of ponds is likely therefore to affect great crested newts during construction and will itself necessitate a licence from Natural England.

Badgers are known to be present in the general area and the site has the potential to provide foraging opportunities. Otters are known to traverse along Sanderson Brook. It is considered the proposed works are unlikely to affect either species. However, the submitted assessment recommends, as a

precautionary measure, that surveys are undertaken prior to development commencing.

The potential impact on breeding birds would need to be minimised by the use of suitable conditions, restricting works to acceptable times of the year.

Article 12 (1) of the EC Habitats Directive requires Member states to take requisite measures to establish a system of strict protection of certain animal species prohibiting the deterioration or destruction of breeding sites and resting places. Art. 16 of the Directive provides that if there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species at a favourable conservation status in their natural range, then Member States may derogate "in the interests of public health and public safety or for other imperative reasons of overriding public interest, including those of a social and economic nature and beneficial consequences of primary importance for the environment" among other reasons.

The Directive is then implemented in England and Wales by the Conservation (Natural Habitats etc) Regulations 1994 ("the Regulations"). The Regulations set up a licensing regime dealing with the requirements for derogation under Art. 16 and this function is carried out by Natural England.

Regulation 3(4) of the Regulations provides that the local planning authority must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of their functions.

It should be noted that since a European Protected Species has been recorded on site and is likely to be adversely affected by the proposed development, the planning authority must have regard to the requirements for derogation referred to in Article 16 and the fact that Natural England will have a role in ensuring that the requirements for derogation set out in the Directive are met.

If it appears to the planning authority that circumstances exist which make it very likely that the requirements for derogation will not be met, then the planning authority will need to consider whether, taking the development plan and all other material considerations into account, planning permission should be refused.

This development is only required if the Covanta Waste plant is allowed on appeal. The Council's position on that proposed development is that it is not necessary and there are already satisfactory alternatives to it. It is also considered that the Waste plant has not been demonstrated to be in the interests of public health and safety or for an imperative reason of overriding public interest. As such the requirements of Article 16 of the Directive are not met.

11. CONCLUSIONS

The proposed newt receptor site would be required as a mitigation measure to accommodate great crested newts from the proposed Covanta Energy from Waste site off Pochin Way, should that proposal, which was refused permission by the Board and then appealed, be allowed following a Public Inquiry due in March next year.

European protected species are present within the receptor site and whilst the applications purpose is to provide habitat enhancement for great crested newts, the construction involved would in itself disturb the existing terrestrial habitat of that species and potential individuals. The Habitat Directive only allows such disturbance where there is no satisfactory alternative to the development or that there is an imperative reason of overriding public interest. The Council in refusing the Covanta Waste plant, indicated that it considered there was no need for the facility and hence no overriding public interest in developing the plant and that alternatives already existed. Development on the receptor site is therefore considered contrary to the Habitat Directive.

Should the Secretary of State allow the appeal, thereby confirming there are no satisfactory alternatives to the Waste plant and it is of overriding public interest, there would be no objection to the receptor site, subject to appropriate conditions being developed. Under such circumstance the determination of this application is considered premature, and it is considered necessary to co-join its determination into the public inquiry for the waste plant.

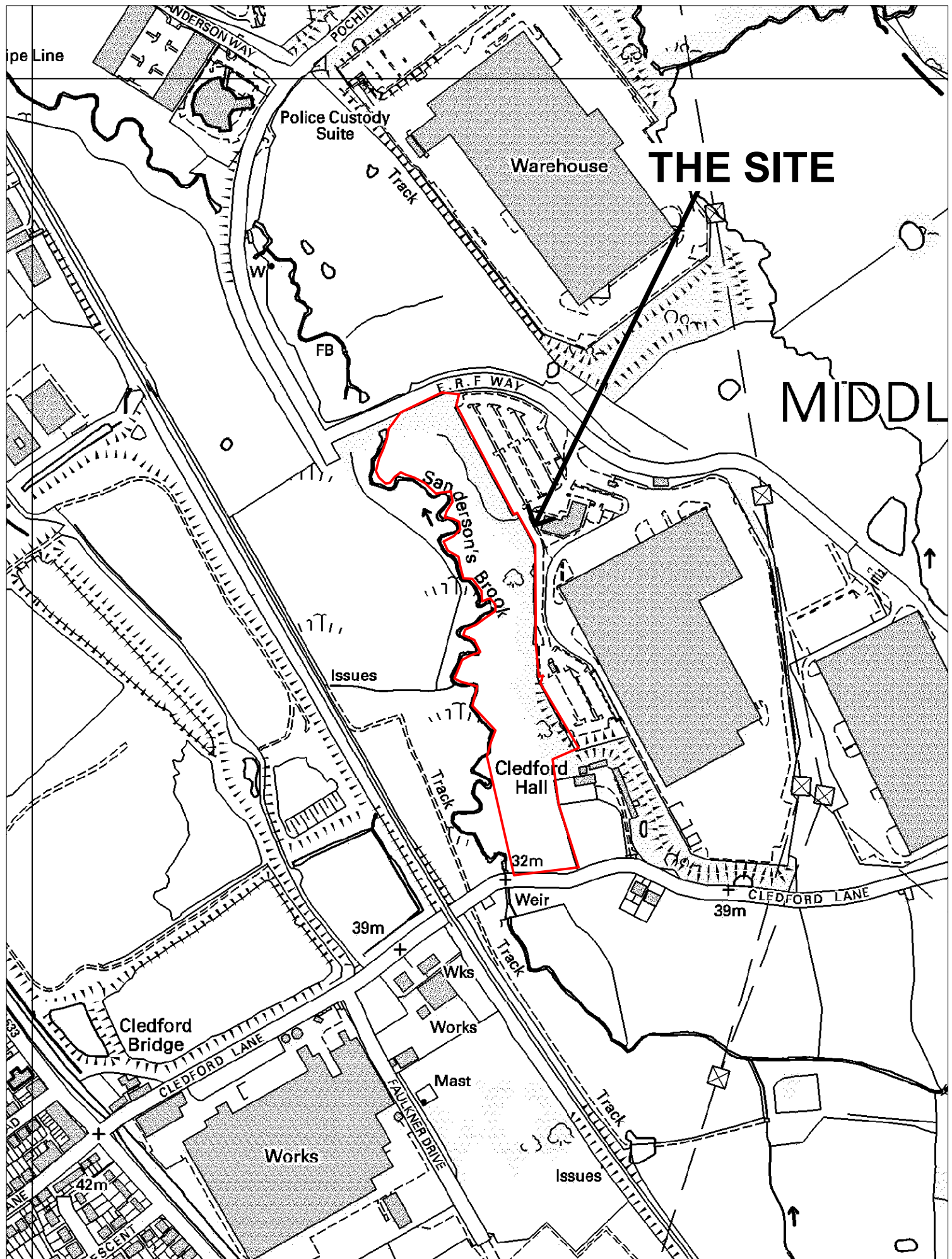
12. RECOMMENDATIONS

REFUSE for the following reasons:-

1. The proposed development is considered premature and would unnecessarily affect protected species.

Reason(s) for Decision:-

The development forms an integral part of the Covanta Energy from Waste proposal, and is unnecessary in isolation. The Energy from Waste proposal is an EIA development and the subject of a current appeal. There is no requirement to disturb protected species unless the above appeal is upheld. The application is currently contrary to policies 12 Impact of Development Proposals and 17 Natural Environment of the Cheshire Replacement Waste Local Plan and policies NR2 Statutory Sites and NR3 Habitats of the Congleton Borough Local Plan which seek to protect habitats and species.



10/2551W - LAND OFF, POCHIN WAY, MIDDLEWICH

N.G.R. - 371,510 - 365,410

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