

IN THE MATTER OF:
RECHARGE ONE, BURITON, HAMPSHIRE

OPINION

1. I am instructed by Asserson on behalf of Recharge One Ltd (“**RC1**”) in relation to its site off the A3 at Buriton, Hampshire (“**the Site**”).
2. In a decision letter (“**DL**”) dated 29th March 2023, planning permission (“**the Permission**”) was granted on appeal by Inspector Michael Boniface MSC MRTPI for development of the Site described in the following terms:

“Change of use and redevelopment of the site to provide a recharge centre for electrically powered vehicles, with control and battery room and secure area for the delivery and storage of Bio Gas. Up to 60 eco-lodges (Use Class C1), and engineering work to create an earth sheltered block comprising up to 1,330m² of tunnel floor space for a flexible mix of uses within classes C1 and E(a)(b)(c). The formation of a two-way entrance off the B2070, the laying of a perimeter vehicular access road, with link roads, cycle tracks, and areas of hardstanding to provide up to 127 parking spaces. Engineering work for the purpose of landscaping and operations to install drainage infrastructure.”

3. By decision dated 21st December 2023, the local planning authority, South Downs National Park Authority (“**SDNPA**”) made a non-material amendment to the Permission under s.96A of the Town and Country Planning Act 1990 (“**the 1990 Act**”), changing the description of development to:

“Change of use and redevelopment of the site to provide a recharge centre for electrically powered vehicles, with control and battery room and secure area for the delivery and storage of Bio Gas. Up to 60 eco-lodges (Use Class C1), and engineering work to create an earth sheltered block comprising tunnel floor space for a flexible mix of uses within classes C1 and E(a)(b)(c). The formation of a two-way entrance off the B2070, the laying of a perimeter vehicular access road, with link roads, cycle tracks, and areas of hardstanding to

provide up to 127 parking spaces. Engineering work for the purpose of landscaping and operations to install drainage infrastructure.”

4. On 8th February 2024 RC1 applied for planning permission under s.73 of the 1990 Act without complying with conditions 2, 3, 4, 6, 14 and 33 of the Permission, proposing to substitute varied conditions to replace the approved drawings and references to those drawings and associated details. The main changes are: changing the overall design of the earth sheltered building to allow for a less undulating roof, the inclusion of a battery store, making the lodges slightly larger, installing mezzanine floors in the earth sheltered building, changing the design to allow for local biogas to be delivered by HGV if necessary (though I am instructed that the primary intention is to use converted biogas obtained from local farms as described in the planning application and that HGV deliveries would be for backup and resilience purposes), and associated indicative landscape changes and drainage information.
5. The s.73 application does not propose any changes to condition 13 of the Permission, but that condition lies at the heart of the issue on which I am asked to advise. I set it out below:

“13) The development hereby approved shall incorporate and utilise a fully installed off-grid Combined Heat and Power system, in accordance with the approved plans, to be fuelled by biogas sourced from within the National Park and battery and solar PV attached to the 44 detached lodges. Once installed, the approved power generation shall be operated and maintained in perpetuity. Only in exceptional circumstances shall the development rely on power from the National Grid.

REASON: To achieve a highly sustainable development, in accordance with the terms of the application proposals.”

6. In short, Condition 13 requires that the development is ordinarily off-grid and may only rely on power from the National Grid in exceptional circumstances. This condition was discussed in detail during the planning inquiry and was imposed by the Inspector with the agreement of both

parties.

7. The s.73 application was recommended for approval by the case officer, Richard Ferguson. On 11th July 2024, however, the SDNPA Planning Committee voted to defer the application to its next meeting. This appears to have been at least in considerable part due to concerns about whether the inclusion of a substation meant that the development would no longer be ordinarily off-grid (i.e. suggesting that Recharge One would seek to use the substation and therefore the grid other than in exceptional circumstances) and/or would make Condition 13 harder to enforce, leading members to query whether Condition 13 should also be varied to impose new reporting and monitoring requirements.
8. I am asked to advise on the validity of these concerns.
9. I consider they are ill-founded, for the following reasons.
10. First, there is no inconsistency between the inclusion of a substation and Condition 13. Condition 13 does not contain an absolute prohibition on use of the National Grid. The development may rely on the National Grid, albeit only in “*exceptional circumstances*”. In order to cater for those exceptional circumstances, a connection needs to be made to the National Grid and associated infrastructure (such as the substation) put in place. That was always the case given the wording of Condition 13. Far from undermining or being inconsistent with Condition 13, the substation facilitates it.
11. Secondly, changes to Condition 13 are outside the scope of the s.73 application. The application relates only to conditions 2, 3, 4, 6, 14 and 33. If there are no changes to Condition 13, its requirements will remain precisely as they always have been under the Permission – and its enforceability will be entirely as before also. It would be wholly irrational,

and unreasonable, to withhold permission on the basis that allowing the s.73 application would change the requirements or undermine the enforceability of a condition that would remain unaltered.

12. Thirdly, because changes to Condition 13 are outside the scope of the application, it is unreasonable and unlawful for the Committee unilaterally to seek to make changes to that condition which have not been sought or indeed consulted upon.
13. Each of these considerations would be sufficient on its own to justify the conclusion that the Committee's stance is indefensible and places SDNPA at a high risk of a costs award on appeal if permission continues to be withheld. Taken in combination, they present a most compelling basis for that conclusion.
14. Whilst SDNPA officers have invited RC1 to amend the section 73 application to include Condition 13, there is no basis in law for SDNPA to insist on this. If RC1 were to decline this invitation, that would not be a legally material consideration in the determination of the section 73 application.
15. I have nothing further to add as currently instructed. If those instructing me have any further questions, please do not hesitate to contact me in Chambers

LORD BANNER K.C.

**Keating Chambers
15 Essex Street
London WC2R 3AA**

9th August 2024