

Lambert, Fiona

From: Robinson, Ian
Sent: 08 January 2021 09:41
To: Steve Butler; Charlie.Reid@ashurst.com
Cc: Docherty, James; Goldsworthy, Marcus J; Feist, Sarah J
Subject: Barry Biomass

Dear Steve,

Further to previous discussions, we have now had opportunity to meet with counsel to discuss the current situation on site and how those discrepancies could/should be regularised.

In respect of the site layout being a 'mirror image' of the approved layout, we feel this could potentially be reasonably dealt with through the Non Material Amendment (NMA) procedure. However, it is my opinion that any submissions for NMAs are likely to be called in to Planning Committee. You may or may not be aware that there is no right of appeal against a refusal of a NMA application and consequently if Planning Committee did refuse the application, that would leave the matters un-regularised and you would be no further forward. In respect of the other on site issues, it appears that the WPD equipment is permitted development and the items on plan OS01A at locations 1 and 7 could arguably be appropriately dealt with by NMA applications (notwithstanding the above points regarding committee decisions). It is more questionable whether certain other items (such as the development at location 2) can be NMA- it is a relatively large addition. There are other items (e.g. at locations 4, 5 and 8- water tank, conveyor, racking etc) which it would, in our view, be difficult to conclude are NMA development. They are highly visible from outside the site and are of a scale which is unlikely to be considered 'non-material'. That is not to say that they have an unacceptable visual impact, but that is not the test for whether something is NMA development- the test is whether the impact (mainly visual impact in this case)- is immaterial to the appearance of the development and in effect, so trivial that you wouldn't notice the difference between the approved and as built developments. It is your prerogative to submit an NMA application if you wish, but I have to raise significant doubts as to a) whether officers could recommend this for approval as an NMA and b) as above, whether even in the context of such a recommendation, that would be approved at the Council's Planning Committee.

Where discrepancies cannot be regularised by NMA applications, you would need to apply for planning permission under Section 73A of the Act to seek to regularise the issues. Given the nature of the elements in question and their integral functional role in the development, the legal advice we have received is that you would not be entitled to apply for them as stand-alone pieces of development- rather the S73A application would need to be for the development as a whole. As you will be aware from previous discussions, that would exceed the relevant threshold in the Developments of National Significance legislation and consequently the application would have to be made to the Welsh Ministers. Not only is this this correct procedural route in the view of the advice we have received, but it would also appear to be the most sensible and logical way for your client to seek to regularise all of the on-site issues in one go (as opposed to trying to regularise certain things by NMA, and then others by S73A).

Obviously you may wish to take advice from a planning consultant on these matters, or from your legal representative Mr Reid. The Council's Planning Lawyer James Docherty has offered to discuss these matters directly with Mr Reid if that would assist.

In the first instance I appreciate you will need to discuss this with your client, but please let me know if you require further clarification.

Kind Regards,

Ian

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