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## PRIVATE & CONFIDENTIAL

Sarah Feist  
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Dock Office  
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Barry CF63 4RT

**BY EMAIL ONLY:** [sifeist@valeofglamorgan.gov.uk](mailto:sifeist@valeofglamorgan.gov.uk)

15<sup>th</sup> January 2021

Dear Sarah

**Town and Country Planning Act 1990 (as amended) (the "Act")  
Planning Permission 15/00031/OUT**

**Location: Barry Biomass Energy Facility, Barry Docks, Barry CF63 4JE**

I write further to your letter dated 12 January 2021.

We are carefully considering the contents of your letter. You suggested that we may wish to take legal advice on this matter and I am writing to confirm that we are doing so from Leading Counsel. However, it is not possible to obtain advice and respond substantively to the issues raised in your letter by your proposed deadline of 22 January. We remain committed to pragmatically resolving the issues faced by the project and will seek advice and revert as soon as we can.

In the meantime, there are a few points in your letter that we feel it would be worth addressing now.

The subject line of your letter is "Re. unauthorised development – biomass facility". The body of the letter then suggests that "the facility, as currently constructed, constitutes unauthorised development" and that there is an "absence of a valid planning permission". Such references go hand-in-hand with the Council's suggested course of action - an application under section 73A of the Act "to regularise the entire development". Your letter concludes by suggesting that if we choose not to proceed with this recommended

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course of action then "enforcement action is likely to be taken to require that all development ceases and all structures are removed from the land".

It is not correct to say that the project does not benefit from a valid planning permission. You will be aware that the project benefits from planning permission 15/00031/OUT and reserved matters approval 2016/00187/RES. Pre-commencement conditions imposed on this planning permission were discharged by the Council prior to lawful implementation in 2016. The planning permission subsists and development has been carried out in accordance with it. The plant is not yet operating and there is a pending condition discharge application (ref. 2015/00031/5/CD) that was validated by the Council in February 2020 in respect of the few planning conditions for which approval of details is still required. It is a clear overstatement of the position to suggest that the project is not authorised. In all material respects, it is.

It is also not correct to say that the Council "effectively has no control over the development or its operation". The fact that there is a pending application to discharge planning conditions is evidence of the Council's ability to regulate the carrying out and operation of the development in the usual way. The fact that the plant has not been operated commercially while discussions to resolve current difficulties have been ongoing is also evidence of the collaborative relationship between us as we seek to resolve matters.

Your letter refers to "a number of discrepancies" without describing them or setting out in any detail what analysis has been undertaken or the Council's formal position is in relation to each. This is surprising given the threat of enforcement action. Our understanding of these discrepancies is that they comprise:

1. nine small ancillary structures that have been erected on the site and which it is suggested do not appear on the approved plans listed on the planning permission or reserved matters approval; and
2. an error on one of the approved plans listed on the planning permission such that the birds-eye view layout does not accord with the profile elevations.

In respect of the first issue, this arose following the July 2020 site inspection your letter refers to. However, planning officers were not available to attend a formal meeting to discuss the matter in detail until October. We subsequently raised a number of questions with officers to clarify the situation and awaited responses for a number of weeks. Consequently, the earliest we could prepare a plan identifying the agreed list of structures under review was early December. The email from Ian Robinson to which your letter refers (dated 8 January 2021 and responding to the submitted plan) indicates that the Council considers some of the structures could be considered non-material within the context of the wider project. We are of the view that there is further work to be done in analysing these structures and their planning status. We are also of the view that any planning irregularities could be capable of being remedied (if necessary) at the local level

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without need for a scheme-wide section 73A application. We also reserve our position in respect of your section 73A suggestion while we obtain legal advice.

In respect of the second issue, our understanding from discussions with officers is that it is agreed this is a human error on the drawing concerned. The silhouette of the elevations remains correct and the inconsistency only relates to smaller buildings in the foreground of the elevations. The error is limited to a single drawing, does not permeate the planning permission more widely and does not change the nature or impact of the facility. Officers are understood to be satisfied that the development has been built in accordance with the approved layout and there is no ongoing concern.

Given the existence of the planning permission, the nature of the discrepancies identified and the genuine and ongoing efforts to resolve them, it does not appear to us to be expedient, reasonable or proportionate for the Council to suggest that it may take enforcement action with the objective of seeing "all structures" (which we read as meaning the whole development) removed from the land. This new position is also surprising and at odds with what we regarded as our constructive ongoing dialogue with planning officers. The fact that the project has remained mothballed for over a year while efforts have been taken to resolve matters, at considerable cost, demonstrates the genuine and ongoing will to resolve matters on our part.

We will write to you again when we have obtained legal advice.

Yours sincerely,



Richard Frearson  
Managing Director  
Power Consulting (Midlands) Ltd