



Mr Ian Robinson
Vale of Glamorgan Council

By email: IRobinson@valeofglamorgan.gov.uk

27 July / Gorffennaf 2021

Dear Mr Robinson

1. I write in response to your email dated 22 July in respect of a planning application to retain a fire water tank at Barry Biomass Facility, David Davies Road, Barry. Your correspondence seeks confirmation whether the application, or subsequent applications for individual components, are a Development of National Significance (“DNS”).
2. The Welsh Government cannot offer a determination as to whether an application is a DNS, however, it can offer a view as to whether it would be likely to consider and accept an application for a prospective DNS, were an application put before it. It is for individual applicants to satisfy themselves whether they are seeking consent through the correct route, and ultimately any determination on the relevant process is a matter for the courts. Enforcement of any unauthorised development is a matter for the Local Planning Authority (“LPA”).

Relevant legislation

3. Section 62D(1) of the Town and Country Planning Act 1990 (“TCPA”) requires planning applications for DNS to be made to the Welsh Ministers instead of the Local Planning Authority.
4. Section 62D(3) of the TCPA states development is DNS if it meets criteria specified in regulations made by the Welsh Ministers for that purpose. The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (“the Regulations”) specify development ascribed DNS status.
5. Regulation 4(1) of the Regulations specifies the construction of a generating station is a DNS where it has an installed generating capacity of between 10MW and 350MW.
6. Regulation 4(2) of the Regulations specifies the alteration or extension of a generating station is a DNS where the effect of the extension or alteration is expected to increase the installed generating capacity by at least 10MW, but not so that the installed generating capacity exceeds 350MW.
7. Regulation 4(3) of the Regulations defines a generating station as a station, plant or buildings that generate electricity. Installed generating capacity is defined as the maximum

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

capacity of electricity generation (in megawatts) at which the generating station could be operated for a sustained period without damage being caused to it.

Proposal

8. The proposal before the LPA consists of a retrospective planning application to retain a fire water tank at Barry Biomass Facility, David Davies Road, Barry. The planning application comprises a single component to a wider Biomass generating facility, which in its entirety, is a generating station with an installed generating capacity of in excess of 10MW.

Issue

9. Your correspondence seeks to understand two main queries, which I have interpreted as follows:

- (a) Whether the proposal before the LPA would be accepted by the Welsh Ministers as a DNS; and
- (b) Whether any subsequent application for a component, or components, relating to the generating station either individually, or taken together, would be accepted as a DNS by the Welsh Ministers.

10. I note your correspondence sets out a number of alleged discrepancies which may not benefit from an extant planning permission.

View

11. In respect of query (a), the Welsh Ministers may only consider the planning application for development which is before them. In this instance, it is solely a planning application to retain a fire water tank. This individual component does not appear to fall within the definition of generating station, as set out in regulation 4(3) of the Regulations, and thus the Welsh Ministers are unlikely to accept such an application as DNS under s.62D(1) of the TCPA as the proposed development does not have the effect described in either regulations 4(1) or 4(2) of the Regulations.

12. In respect of query (b), the principle that the Welsh Ministers may only consider the application for development which is before them equally applies. Should further subsequent planning application(s) be made for additional component(s) within the site be presented to the Welsh Ministers, whether or not the Welsh Ministers accept the application as DNS under s.62D(1) of the TCPA depends on whether the development within the planning application comprises of a generating station as defined by regulation 4(3) of the Regulations, and that generating station has the effect described in either regulations 4(1) or 4(2) of the Regulations.

13. Were an application for a generating station on the site, as defined by regulation 4(3), to be made to the Welsh Ministers (which either falls within s.73A of the TCPA or otherwise), in accepting the application as a DNS, the Welsh Ministers would be required to consider whether it has the effect described in regulation 4(1) or regulation 4(2). The Welsh Ministers take the view an alteration under regulation 4(2) must relate to a generating station which is existing and authorised.

14. Your correspondence mentions much of the work on the site may be unauthorised and any subsequent planning application for those unauthorised elements may fall within s.73A of the TCPA. In the absence of a planning permission, the LPA may consider it expedient

to undertake enforcement action and issue such a notice under s.172 of the TCPA. I note, in the event of such action, an appeal under s.174(2)(a) of the TCPA could be brought on the basis that planning permission ought to be granted in respect of the matters stated in the enforcement notice. In the event of such an appeal, and that deemed planning application being successful on appeal, consent under s.62D(1) of the TCPA would not be required.

15. In reaching this view, I once again draw your attention to paragraph 2 of this letter in that any determination of the relevant process is ultimately a matter for the courts. Both the LPA and applicant are advised to seek their own legal advice to ensure they are acting in accordance with the relevant legislation.

Yours sincerely,

A large black rectangular redaction box covering the signature area of the letter.

Lewis Thomas
Pennaeth Penderfyniadau Cynllunio / Head of Planning Decisions
Y Gyfarwyddiaeth Cynllunio / Planning Directorate