

Rees, Gail

From: Douglas Wardle <douglas@powerconsultingmidlands.com>
Sent: 30 July 2018 18:21
To: Howell, Morgan P
Subject: RE: Barry Renewable Energy Project;

Follow Up Flag: Follow up
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Categories: Red Category

Morgan thanks for this and for your views which are as always appreciated.

Generally, for the present we are happy not to disturb the status quo since we seem to be close to finalising the various open matters (my colleagues are working away on the most recent requests). Of course Application 2017_01080_FUL remains subject to the EIS issue with the Welsh Government as to which I have heard nothing further.

I believe Application 2017_01080_FUL started life as a Section 73 application since it was made prior to the fire water tank being erected. With the passing of time of course the fire water tank was constructed and at that point it would presumably have transitioned to being considered as a Section 73A application. I think this is the point you are making.

In terms of the combining the satisfaction of the conditions for the 2015 condition with Application 2017_01080_FUL, since the submissions are as relevant to the 2017_01080_FUL Application I would agree that it makes sense to continue to deal with them all together.

Should Application 2017_01080_FUL be refused (and not appealed) or alternatively withdrawn, I would assume this re-opens the door to enforcement in respect of the fire-water tank. This would presumably be resolved by dismantling the fire-water tank and placing the car park in its stead as originally contemplated.

This is a contingency we are currently investigating since I understand that provision of fire water via the fire hydrant system may now be considered as viable whilst also meeting NRW's requirements. It is interesting to note that if this did happen then presumably the EIS issue would fall away, as presumably would the noise considerations from your colleague.

Were this to be the case, as I understand it the various planning condition discharge applications currently submitted would fall to be considered within the context of the 2015 permission. I think we can defer discussing whether these would require fresh applications or the original applications would be resurrected since this is really a detail which for now at least is quite contingent.

Perhaps you could let me know if we are in agreement based on the above.

Kind regards

Douglas

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From: Howell, Morgan P <MPHowell@valeofglamorgan.gov.uk>
Sent: 26 July 2018 17:29
To: Douglas Wardle <douglas@powerconsultingmidlands.com>
Subject: RE: Barry Renewable Energy Project;

Douglas,

Thank you for your e-mail and I note the comments you have made. I understand your clients' concerns with regard to the current planning position and their wish to have approval of the outstanding matters at the site. The pursuit of the discharge of conditions on the 2015/00031/OUT and 2016/00187/RES planning permissions is not, however, a satisfactory resolution in this case.

You are correct in that the 2015/00031/OUT and 2016/00187/RES planning permissions are still extant. However, the development on site does not accord with these permissions. Accordingly, if you were to discharge the conditions of these planning permissions, which you are entitled to do, this would not regularise the development on site.

In this regard, whilst it may well be the case that the Council are satisfied with the development as built, the development would not be subject to the numerous performance conditions of the 2015/00031/OUT and 2016/00187/RES planning permissions – i.e. the development would exist and be operational in an uncontrolled manner (in terms of planning control). In such a case, it is likely that the Council would have to pursue formal enforcement action as it would be expedient to bring the development under planning control. As conditions cannot be imposed on an enforcement notice, in my view the only remedy to such a breach of planning control would be to require the removal of the development in its entirety or, at the very least, the cessation of all operations on site. I would, therefore, strongly advise you to continue with the current application.

As for the matters being considered in the current application, I have advised you that the application is being considered under section 73A and not Section 73 of the Town and Country Planning Act 1990 (as amended). In the determination of such application the Council are entitled to consider all aspects of the development as proposed for retention. I note your comments with regard to the noise issues raised and also appreciate that the Council cannot duplicate the controls imposed under the NRW Permit. I would, however, point out that the Council must consider the impact of the development in terms of how it effects residential amenity, amongst other issues. Such considerations are relevant to the planning merits of this case and are not considered to duplicate the controls imposed under the Permit.

The Condition discharge applications were withdrawn on the basis of our e-mail correspondence I have attached. I took from this e-mail that the CD application was to be withdrawn and consolidated under the current application. The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 Part 8 (d), outlines that you can resubmit Reserved matters/CD applications within 12 months of the received date of the withdrawn application and it would incur no fee. As such, we could potentially reopen the CD applications, however, as indicated above, I do not see how this would resolve the unauthorised development. Furthermore, you would need to ensure that the CD information relates to the approved development and does not include information that relates to the current unauthorised layout on site. For clarity, the CD applications were submitted last year on 3rd November and 16th October (**2015/00031/4/CD** – Submitted on 3rd November, **2015/00031/3/CD** : Submitted on 16th October, **2015/00031/2/CD** : Submitted on 16th October.) and any resubmission would have to be carried out prior to these dates this year.

I hope this is clear

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From: Douglas Wardle [<mailto:douglas@powerconsultingmidlands.com>]
Sent: 25 July 2018 09:50
To: Howell, Morgan P
Subject: RE: Barry Renewable Energy Project

Hi Morgan, can I check when you expect to be in a position to respond on the matters in my email below?

Kind regards

Douglas

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From: Douglas Wardle
Sent: 15 July 2018 14:38
To: 'Howell, Morgan P' <MPHowell@valeofglamorgan.gov.uk>
Subject: RE: Barry Renewable Energy Project

Thanks Morgan

I have forwarded Clive Moon's comments to my colleagues and they are addressing the residual matters. They are also reviewing the noise comments; however, see also below.

In respect of the "process" I think the email you sent me was in the context of both the Section 73 application and the Condition Discharge applications being heard at the same Planning Committee meeting in March. Obviously this did not happen.

However, I have to emphasise that we did not agree to withdraw the Condition Discharge application, not least because it remains a possibility that either the Planning Committee reject the Section 73 application or we withdraw it. I recognise this could potentially reactivate enforcement discussions but that is a separate matter from the discharge of unrelated conditions in the original consent.

In this regard I note government guidance (<https://www.gov.uk/guidance/use-of-planning-conditions#discharging-and-modifying-conditions>) which indicates: "It should be noted that the original planning permission will continue to

exist whatever the outcome of the application under section 73.". I do not therefore agree with your comment that "As such, It is not really possible to revert back to your 2015 permission".

As to the environmental issue raised in respect of noise I note government guidance (<https://www.gov.uk/guidance/use-of-planning-conditions#discharging-and-modifying-conditions>) also indicates:

"Some or all of the conditions could be removed or changed by making an application to the local planning authority under section 73 of the Town and Country Planning Act 1990. In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – **it is not a complete re-consideration of the application**"

It is therefore my view that in so far as there are noise issues arising in relation to the Firewater Tank or the related generator, these can properly be considered. But the Section 73 application does not provide an opportunity for the Planning Committee to consider such issues more widely. This said, we would be willing to consider conforming the planning conditions with respect to noise with the more detailed regulated position set out in the Environmental Permit.

In respect of the Highways response, I was not aware this was still an issue.

Kind regards

Douglas

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From: Howell, Morgan P <MPHowell@valeofglamorgan.gov.uk>
Sent: 13 July 2018 16:30
To: Douglas Wardle <douglas@powerconsultingmidlands.com>
Subject: RE: Barry Renewable Energy Project

Good Afternoon Douglas,

I refer to you email below.

This is a Section 73A application as you have started the works and the development does not accord with the 2015 permission. As such, It is not really possible to revert back to your 2015 permission and in my view it would be pointless to reinstate the condition discharge applications as they would be discharging conditions attached to a permission that you do not want or cannot implement. For your reference, I attach the email where I considered that you had agreed to conditions and originally documents to be considered under the one application. I do not think that they applications could be reinstated but I will look to see if it is possible if you want?

With respect to drainage I have received this response from Clive Moon who is happy to accept the principle of design life for the project but he outlines that you would still have to provide the information he has requested in the attached email.

With respect to noise, I am of the view that planning applications can consider issues of noise from development and their impact upon amenity despite there being an environmental permit. I do think that it would be possible to

amend the conditions in this manner unless there was updated noise information that the council officer considered satisfactory and the Council could amend the noise conditions to comply with the updated noise information.

I am waiting on highway responses but this is due to a lack of resources within that department at the moment.

Kind regards

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

From: Douglas Wardle [<mailto:douglas@powerconsultingmidlands.com>]
Sent: 04 July 2018 08:37
To: Howell, Morgan P
Subject: RE: Barry Renewable Energy Project

Morgan, thanks for the full response as to which I have the following comments:

1. **Open Issues:** As far as I understand it, the only 'open issues' are the drainage and the noise matters discussed below?
2. **Discharge Applications:** I appreciate the rationale for combining the applications. However, given the unpredictable timetable for resolution of the Environmental Statement matter, it did seem to me that the Conditions which are the subject of the present discharge applications could proceed, especially given that it is a realistic scenario that the Section 73 application may not be determined. I'm not aware of any that are affected by the Section 73 application. Incidentally, I am not aware that we have agreed to withdraw the Condition Discharge applications 2015/00031/3/CD or 2015/00031/3/CD or 2015/00031/4/CD although the Portal shows their status as "Application Withdrawn". Could I ask that this be corrected.
3. **Drainage:** In terms of the specific points, the point about the design life of the Project is back with Clive Moon for consideration as to how this would impact the views he has set out in his penultimate paragraph.
4. **Noise:** In respect of the potential noise issues, I agree re para 4: it looks to me like this report was originally prepared back in September and this paragraph has since been overtaken by events. As to the content, it cannot be right that separate regulatory processes are being followed on the matter of noise, one being the official one conducted by Natural Resources Wales, the other being an informal one via the Planning Process. As you are aware, planning authorities are not permitted to duplicate matters that are separately regulated and so these comments should be disregarded. I note that the Vale of Glamorgan was consulted on such matters by Natural Resources Wales as part of what was a very thorough consultation process. I therefore suggest that the Planning Conditions be adjusted so that they do not conflict with the equivalent provisions regulated by Natural Resources Wales. The normal approach to such matters in our experience would be to remove references to noise from the planning conditions and impose a condition requiring the operator to file a copy of the environmental permit with the planning authority.

I look forward to hearing from you.

Kind regards

Douglas

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From: Howell, Morgan P <MPHowell@valeofglamorgan.gov.uk>

Sent: 02 July 2018 12:14

To: Douglas Wardle <douglas@powerconsultingmidlands.com>

Subject: RE: Barry Renewable Energy Project

Hi Douglas,

With respect to Annex 3 drawing, if it does not add anything more than the other two annex drawings then we can supersede the drawing and not replace.

With respect to the Noise and drainage, there is some confusion in respect the application. While this application is a Section 73 application to the original 2015 application, it will be a stand-alone consent (if agreed) and therefore everything (whether different or not) must be reassessed. In most Section 73 cases the only issues that would be reconsidered would be the changes but in reality the whole application is reconsidered as a new application.

As such, if the 2017 application was approved it would supersede the 2015 permission and all of the conditions attached to the original consent would be attached to the new 2017 application. This is why I requested that all the drainage, highways information etc from the CD applications that had not yet been agreed be moved to the Section 73 application. This was to ensure that these matters would be considered and hopefully agreed under the current application rather than a condition discharge application that could become outdated when the new application is determined. As such, Drainage and Environmental Health must consider the information under the new application, which includes all of the original 2015 information, the amendments to the scheme and the Condition discharge information. As a consequence, Clive is commenting on the drainage information (submitted as part of the CD) but would be agreed as part of the 2017 application. For example, rather than reapplying the 2015 drainage condition, the condition would be reworded to a compliance condition that ensures the scheme submitted and agreed as part of the application was maintained on site.

The noise report attached to the original consent would also be included with the Section 73 application and while it has not be altered, the Environmental Health section are within their rights to reconsider the noise report and the potential noise issues.

I will make the drainage engineers aware of the lifetime of the development point you highlighted and find out whether this would alter his observations on the sustainable drainage scheme.

With respect to Point 4, notwithstanding the trigger point, I agree that a condition would not be appropriate in this instance. This is why I requested that any scheme of works to reduce noise is submitted for consideration prior to the determination of the application. I would not be happy for this condition to be attached to any application going to planning committee.

I hope this is clear,

Kind regards

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From: Douglas Wardle [<mailto:douglas@powerconsultingmidlands.com>]
Sent: 02 July 2018 09:34
To: Howell, Morgan P
Subject: Barry Renewable Energy Project

Morgan,

Separately from the correspondence concerning the feedback from your colleagues on Noise and Drainage, I am not sure whether the question in my attached email remains open or not?

Aside from the above, I am not aware of any other open questions, either in relation to the various applications to discharge planning conditions in respect of Consent 2015/00031/OUT or in respect of the current application 2017/01080/FUL but perhaps you could confirm?

Kind regards

Douglas

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