

Rees, Gail

From: Robinson, Victoria L
Sent: 30 April 2018 17:13
To: Rowlands, Leighton O (Cllr)
Cc: Thomas, Rob
Subject: FW: Biomass (Round Two of Questions)

Dear Cllr Rowlands,

I write on behalf of Rob Thomas in response to the issues raised in the email below, which are responded to in turn.

1. legal advice with regard to the stage at which the development would be beneficially used or occupied, it is considered that this would not occur until the site is in use as a wood fired renewable energy plant to generate electricity to the grid.

Putting together "beneficial use" and "occupation" looks like trickery when they are clearly different in normal usage.

Can the Council Please supply the definition of occupation that the Council uses for the purpose of levying rates on a) residential property and b) commercial and industrial property (separated by class if relevant) And could the Council please supply references in planning law to the definition of occupation that the Council uses.

Qn. 1 response: The triggers of "occupation", "beneficial use", etc. are used within the context of planning conditions in this case. Accordingly, the Council have considered the definition of these triggers in a planning context. You ask for the definition of occupation for the purpose of levying rates. Such a definition has not been considered in this case as I'm sure "occupation" would be defined differently for the purposes of rates. There is no statutory definition of "occupation" in planning legislation. The Council have taken the view that beneficial occupation has not taken place unless the property is complete and there are no legal or statutory reasons to prevent the property being capable of yielding a profit for the purpose for which Planning Permission was granted. In this case, the planning permission was specifically for a "wood fired renewable energy plant"; neither the current owner nor any other owner could commercially produce electricity without completing the commissioning process. Therefore, the Council does not consider the triggers 'occupied' or 'beneficial use' have been reached to date.

2. if planning enforcement action were to be pursued, the Council must be able to demonstrate that it is expedient to pursue such action; i.e. that the development without formal approval is causing harm.

Does the Council not normally consider that a clear "risk of harm" is sufficient to take enforcement action? Have the Council been collecting information on the actual harm caused to individuals in terms of rest/sleep, stress and collective due to the diesel smoke and toxic gases ? Driving past and looking at light is not how to measure risk of harm. The fact that Biomass 2 Ltd were informed of every visit by SRS and they themselves made reporting difficult. Maybe a visit to the businesses adjacent would of been beneficial to their enquiries.

Qn. 2 Response: The emissions you refer to are matters controlled by NRW and the Permit. If you have concerns with regard to these emissions, these must be directed to NRW. If planning enforcement action were to be pursued the Council must be able to demonstrate that it is expedient to pursue such action; i.e. that the development without formal approval is causing harm. Harm in this context should not include matters that are controlled under other legislation, particularly as I understand that the regulator of that legislation (i.e. NRW) are at present satisfied with the site and any current activity. The Council are unable to pursue planning enforcement action on the basis of the public's concerns and anxiety regarding the preparation and commissioning of a site that has the appropriate NRW Permit and is in the process of trying to obtain the necessary Planning Permission. This position will, however, be reviewed if the site becomes operational (i.e. starts to commercially produce electricity) without the Council

being satisfied that it has acceptable details of the matters that are controlled under the planning permission and those details have been implemented on site.

3. The Planning Officers have consulted their colleagues in SRS, Engineering and Highways on the information submitted and DIAG understand that the details are close to being agreed. No fundamental issues have been identified with the information that has been submitted.

Have the Planning officers recognised that the lack of EIA is a 'fundamental issue' as set out by the Minister's February letter, whichever way this is decided?

Have the Planning officers recognised that flooding of the site is a 'fundamental issue' that requires revision of the RSK assessment of 2009 whose sea-flooding calculations disregarded climate change?

Have the Planning officers recognised that the extension of site area is 'fundamental' in requiring changes to information on site levels, flooding etc.?

Can the Council please supply messages with SRS, Engineering/Highways and other officers on the sea-flooding issue and on the "details" that the Planning Officers believe to be close to being agreed.

Can the Council please supply correspondence with statutory consultees including Welsh Water on the 2017 application.

Qn. 3 Response: The Council considered the need for an Environmental Impact Assessment (EIA) at the start of processing the current planning application and concluded that an EIA was not needed. The Council is aware of the correspondence between Welsh Government and the Applicant, but have not received any Direction from Welsh Government with regard to the requirement for an EIA to date. Notwithstanding this, the Council can continue to consider the current application, particularly as the vast majority of information that would be included in an EIA has already been provided with the current application.

With regard to the matters of flooding and drainage, the Council are considering the risk of flooding, having regard to the Technical Advice Note (TAN) 15 and have consulted with NRW. It has been determined that a Flood Consequence Assessment is not required, particularly as only a small area of the application site (allocated for parking) is identified as a C2 Flood Zone (See TAN 15). Accordingly, no amendments were required to the information submitted on flooding and no change has been required to the site levels. All correspondence with internal officers in the Council and Welsh Water are available on the Council's website on the Planning Register, which is continually updated throughout the lifetime of an on-going application.

4. The Amended planning application will then be reported to the Planning Committee for determination.

Is it correct to consider the 2017 application as an 'Amended planning application', rather than a new application for a different site area?

Will the planning officers require similar information on contamination, flood-risk etc. to the 2015 application but for the extended site area?

Qn. 4 Response: The application will be considered as a new application and treated as such, therefore requiring all the necessary information for an application to be considered and determined. The application will be assessed and determined in accordance with planning law i.e. in accordance with the Development Plan (the Vale of Glamorgan Adopted Local Development Plan) unless material considerations indicate otherwise. In this case, the planning history of the site is a significant material consideration, alongside national policy etc. All of these considerations will be set out in due course in the officer's report to Planning Committee.

Please let me know if I can be of any further assistance at this stage?

Regards,

Victoria Robinson
Operational Manager for Planning and Building Control / Rheolydd Gweithredol - Rheoli Datblygu
Regeneration and Planning / Adfywio a Chynllunio
Vale of Glamorgan Council / Cyngor Bro Morgannwg
tel / ffôn: 01446 704661
mob / sym: 07860526606
e-mail / e-bost: VLRobinson@valeofglamorgan.gov.uk

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

From: Thomas, Rob
Sent: 24 April 2018 14:36
To: Rowlands, Leighton O (Cllr)
Subject: RE: Biomass (Round Two of Questions)

Thanks Leighton,

I'll seek replies and return to you

Rob Thomas
Managing Director / Rheolwr Gyfarwyddwr
Managing Director and Resources / Rheolwr Cyfarwyddwr ac Adnoddau
Vale of Glamorgan Council / Cyngor Bro Morgannwg
tel / ffôn: 01446 709202
mob / sym: 07976112338
e-mail / e-bost: DRThomas@valeofglamorgan.gov.uk

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

Hapus i gyfathrebu yn Gymraeg.

From: Rowlands, Leighton O (Cllr)
Sent: 20 April 2018 17:13
To: Thomas, Rob
Subject: Biomass (Round Two of Questions)

Good Evening Rob,

DIAG have asked the following

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