

# POWER CONSULTING MIDLANDS

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Councillor Neil Moore

Vale of Glamorgan Council

Your ref: NM/JCC/SF/47976

6 December 2019

Dear Councillor Moore

**Re. Barry Port Biomass Plant, David Davies Road, Barry**

Thank you for your letter dated 19 November 2019.

In your letter you referred to a notification received by the Council from Natural Resources Wales (NRW) advising you that the above development would be entering the next phase of commissioning in late November 2019. We can confirm that the plant is now in its final phase of testing and that commercial operations are intended to begin in January 2020. In doing so, the operating company, Biomass UK No.2 Ltd, is working closely with NRW in compliance with the requirements of the Environmental Permit granted for the project in February 2018. The programme should come as no surprise to the Council, which has been aware of the project's timetable for considerable time.

In your letter you described the project as "currently unauthorised development" for which "there is no relevant Planning Permission in place for the plant (in its current form)". You suggest that there will be a potential breach of planning control should power generation commence and have requested a meeting in order "avoid the need for formal legal action under Planning Legislation".

As you may be aware, we are in regular contact with the Council's planning officers. However, we would take this opportunity to clarify 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 prior to lawful implementation in 2016. The planning permission subsists and development has been carried out in accordance with it; the only items which fall outside the planning permission are a fire water tank with related fire water pump house and the consequential relocation of staff car parking spaces for which a planning application has been pending determination by the Council since 10 October 2017 (ref. 2017/01080/FUL). It is therefore an exaggeration of the facts to suggest that the plant is not authorised. In all material respects, it is.

It is accepted that a number of planning conditions on planning permission 15/00031/OUT which require the approval of details remain outstanding. However, the Council has been in receipt of the information submitted to discharge these conditions since October/November 2017.

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In January 2018, we agreed (at the Council's request) for the relevant discharge applications to be consolidated with planning application 2017/01080/FUL. This occurred prior to the Welsh Government notifying the Council that it was minded to issue an EIA Screening Direction (by letter dated 14 February 2018). Notwithstanding its own decision to screen application 2017/01080/FUL out of EIA, the Council has subsequently indicated that it is reluctant to determine the application unless and until the informal EIA process being conducted by the Welsh Government has concluded.

Respectfully, that process, which is considering the EIA work undertaken in 2015 and is without any formal legal basis, is wholly distinct from the planning application before the Council. There is no reason why the Council cannot lawfully proceed to determine the planning application prior to the latest determination deadline agreed with officers (20 December 2019). Minor material amendments such as those proposed would normally be capable of being determined within the eight week statutory determination period; we have been waiting for a decision for over two years.

If the Council refuses or fails to determine the planning application, then it would be feasible for the plant to be operated without the outstanding items (fire water tank, fire water pumphouse and relocated car parking spaces) coming into beneficial use by using off-site car parking for staff and the existing fire hydrants within the port. In these circumstances, the plant would in all material respects be in accordance with planning permission 2015/00031/OUT. The outstanding items listed above in relation to application 2017/01080/FUL would only come into use if that pending application is granted.

In terms of the outstanding planning conditions, the development has been carried out (and is intended to be operated) in accordance with the details submitted in 2017 and further clarified in 2018 in response to statutory consultees. Those details have already been the subject of extensive discussion with officers and are understood to be satisfactory in principle. That the discharge applications have been consolidated with application 2017/01080/FUL is irrelevant; the fact remains that the Council is in receipt of information to consider the discharge of the relevant planning conditions and there is nothing which prevents it from lawfully considering that information.

Having taken legal advice, we would suggest that an appropriate next step would be for the Council to (a) proceed with the determination of application 17/01080/FUL, and (b) consider the information it has received in respect of the outstanding planning conditions on planning permission 2015/00031/OUT and to confirm whether or not it is satisfactory. If the Council were to subsequently refuse the planning application or the discharge of the outstanding conditions, the operating company would then be in a position to appeal against such refusal(s) or submit amended applications.

We would suggest that unless and until these avenues have been exhausted, suggestions of formal enforcement action are premature. It would certainly not be expedient or proportionate for the Council to take enforcement action against alleged breaches of planning control when it is in receipt of and has failed to consider information that would remedy the alleged breach.

Furthermore, there is a need for the project and, as previously identified to the Council and reported by officers to members, the benefits flowing from the project include:

- Renewable electricity: utilising established biomass energy technology in order to contribute to national targets for renewable energy provision. The facility will supply electricity via the electricity grid which is equivalent to the annual energy usage of approximately 23,600 households based on an average UK household consumption of 3,300kWh.
- Climate change: delivering clean growth and the decarbonisation of energy, as well as being crucial in building resilience to the impacts of climate change. The transition to a low carbon economy not only brings opportunities for clean growth and quality jobs, but also has wider benefits of enhanced places to live and work, with clean air and water and improved health outcomes. (Planning Policy Wales Edition 10, Para 5.7.1).

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- Reduced landfilling: reducing the need to dispose of wood to landfill, thereby conserving finite landfill capacity and facilitating a more sustainable end use for waste wood as a renewable energy resource in accordance with the waste hierarchy. There remains an over-supply of waste wood in the UK and consequently, large volumes of wood continue to be directed to landfill or other less sustainable uses.
- Assisting wood recycling: providing an additional outlet for recycled wood to enhance the commercial viability of wood recycling, both locally and nationally.
- Traffic: achieving a reduction in the number of vehicle movements carrying waste wood to local and national landfill sites.
- Economy/employment: utilising a vacant industrial plot in order to provide skilled employment opportunities and investment in local goods and services. Up to 12 full-time equivalent jobs based at the site plus 2 office staff will be provided. In addition, employment created for those engaged in delivery of feedstock, consumables used by the plant, disposal of by-products together with periodic strategic maintenance of the facility, would be “at-risk” in the case of any shut-down.

It follows that failure to determine the pending planning application or seeking to take enforcement action with the objective of preventing operation of the plant would be result in a failure to secure these benefits.

While both ourselves and the plant's owners would be willing to meet with you to discuss the project, within the context of the foregoing, we see no reason for the Council not to seek to regularise the planning status of the site as set out above prior to the agreed determination deadline of 20 December 2019.

Yours faithfully



Richard Frearson  
Managing Director  
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