

Date/Dyddiad: 10 January 2020  
Ask for/Gofynwch am: Mr. M. Goldsworthy

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My Ref/Cyf: P/DC/IR/2017/01080/FUL

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Mr. R. Frearson.  
Power Consulting (Midlands) Ltd  
14, Prime Park Way,  
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Derby.  
DE1 3QB

Dear Sir,

**Town and Country Planning Act, 1990 (as amended)**  
**Planning Application Reference: 2017/01080/FUL**  
**Location: Barry Port Biomass Plant, David Davies Road, Barry**  
**Proposal: Variation to condition 5 of planning permission**  
**2015/00031/OUT to include fire tank and building as well as relocation**  
**of parking**

I refer to the above site and ongoing assessment of application 2017/01080/FUL.

In recent weeks the Council has been considering whether the proposal would be a Development of National Significance (DNS), as defined in The Developments of National Significance (Wales) Regulations 2016 and The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016.

Firstly, the station as applied for is of a size/capacity that qualifies as a DNS (10MW). It is then necessary to consider, in particular, parts 6 and 7 of Section 62D of the Town and Country Planning Act 1990 (as amended), which reads as follows:

*(6) An application within subsection (7) is not to be treated as being a nationally significant development application, unless it is an application of a description prescribed in regulations made by the Welsh Ministers.*

*(7) An application is within this subsection if it is an application for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.*

This makes provision that a Section 73 application (as described in part 7 above), should not be treated as a DNS. However, application 2017/01080/FUL is a retrospective application made in respect of development carried out without permission and consequently it is a Section 73A application. A Section 73A application is not covered by part 7 of

Section 62D of the Act and, therefore, such proposals are not excluded from being DNS. Please note I have discussed this matter with officials at Welsh Government who concur that a Section 73A application is not covered by part 7. Please note this is a Section 73A application because the development has proceeded not in accordance with the plans and, therefore, what has been constructed does not benefit from the previous planning permission.

On that basis, the application made to the Council would not have been validly made since a DNS application should be made to the Welsh Ministers, as set out in Section 62D(1) of the 1990 Act (as amended), which reads as follows:

*A nationally significant development application is to be made to the Welsh Ministers instead of to the local planning authority*

I am therefore minded at this stage that the application is invalid and no further action should be taken on it. You would then need to make an application to the Welsh Ministers if you wish to pursue permission for the development as constructed. I have included below a link to the Welsh Government's guidance pages on DNS:

<https://gov.wales/developments-national-significance-dns-guidance>

We can of course discuss this matter when we are scheduled to meet next Thursday (16<sup>th</sup> January) at 3.30pm.

Yours faithfully

Mr. M. Goldsworthy  
**Head of Planning and regeneration**