

THE VALE OF GLAMORGAN COUNCIL

CABINET: 18TH DECEMBER, 2017

REFERENCE FROM ENVIRONMENT AND REGENERATION SCRUTINY
COMMITTEE: 30TH NOVEMBER, 2017

“ UPDATE ON BIOMASS DEVELOPMENT AT WOODHAM / DAVID DAVIES
ROAD, BARRY DOCKS (MD) –

Prior to the commencement of consideration of the report, the Chairman welcomed the public speakers to the Committee also acknowledging the significant number of members of the public who were present to hear the debate, as well as thanking Mr. John Wheadon from Natural Resources Wales (NRW) for his attendance and to answer Members' questions. The Chairman in outlining the procedure to be followed during the debate also advised that the report had been prepared following queries around the environmental impact of the site as any matters in relation to the planning process would be a matter for the Planning Committee. Should any further applications be submitted to the Planning Committee, he reminded members of the public that there would be opportunities at that stage to register to speak at a meeting of the Planning Committee.

The Head of Regeneration and Planning, by way of background, advised the Committee that in 2008 the Council received an application for planning permission for the development which the Council had refused, but an appeal to the Welsh Ministers had been allowed and planning permission granted. In 2015, a revised outline application for an alternative energy from wood waste development was submitted to the Council for the site. The application was approved, subject to 31 conditions and the decision notice was attached at Appendix A to the report. A reserved matter submission was received in 2016 and was approved subject to two additional conditions.

Prior to the commencement of development (reference 2015/00031/OUT and 2016/00187/RES), the Developer submitted to the Council a number of details in discharge of Conditions 6, 7, 8, 10 and 28 relating to waste management, finish materials, contamination, means of enclosures and construction environmental management plans (reference 2015/00031/1/CD). The Council considered these submissions and approved details in respect of each following any necessary consultation with statutory bodies.

The Developer had submitted a further two batches of condition discharge details, 2015/00031/2/CD for the discharge of condition 13 regarding sustainable drainage and 2015/00031/3/CD for conditions 11 (dust management), 12 (external lighting specification), 20 (cycle parking) and 29 (green travel plan). Both of these

submissions were registered on 16th October, 2017 and were currently being considered and would be determined in due course following any necessary consultations with statutory consultees.

In addition to the above, the Developer had also submitted an application to vary condition 5 of planning permission 2015/00031/OUT to include a fire tank and building as well as relocation of parking (reference 2017/01080/FUL). That application would be reported to the Council's Planning Committee for a decision in due course.

Insofar as complaints relating to the implementation of the development were concerned, officers from both Planning and the Shared Regulatory Services (SRS) had investigated the matter. In light of these investigations, the SRS issued a statutory notice under the Control of Pollution Act 1974 to control the hours of noisy construction works on site. The Council's Planning section had written to the Developer to outline the breach of the Construction Environmental Management Plan (CEMP) concerning hours however in light of the action pursued by SRS, at this juncture no formal action had been pursued under the planning regime.

Further to the above it was noted that the SRS had been contacted by several local residents alleging noisy works were being undertaken at night at the site. There had also been complaints alleging that light arising from the site was causing a statutory nuisance.

The initial complaint was received on 21st September. SRS officers discussed the complaints with residents and liaised with the contractors and a Section 60 notice under the Control of Pollution Act 1974 was served on the contractors on 27th September, 2017. The notice limited the times of noisy works being undertaken on site to day time only; the notice did not restrict inaudible works at night. It was noted that the contractors had been co-operative in complying with the notice and had restricted any vehicles from reversing on site at night along with managing the activities to ensure that there was no likely breach of the notice.

It was unfortunate that from 10pm on 7th October until 6am 13th October, Network Rail were undertaking works on the main railway line which created noise at night. These were essential works being carried out at night as possession of the line was required to undertake the works safely. SRS were unable to take enforcement action against statutory undertakers such as Network Rail where essential works were being undertaken.

SRS Officers had subsequently visited residents' properties on Dock View Road to witness the alleged noise and light affecting the local residents. There was no evidence of the breach of the Section 60 notice relating to noise and there was no evidence of a statutory light nuisance as defined under the Environmental Protection Act 1990. That said, officers were able to see the light from the construction site but were satisfied that the light did not cause a material interference with the residents' use and enjoyment of their property.

The report also highlighted that NRW had issued a “Minded to Issue Environmental Permit” on 14th November, 2017 which it was understood that this decision would be followed by a further consultation. It was also noted that if an Environmental Permit was issued for the Biomass Boiler, the regulatory body for enforcing such a permit would be NRW.

Dr. M. Wallis, the first public speaker, then presented his representations to the Committee as below:-.

“Harm from abnormal operations – we call “accidents”

The NRW did issue Fire prevention and Mitigation Plan guidance 2016. NRW told the company to comply; Capita consultants said the same for Barry Town Council. Now the NRW have decided not to require it. In any case, the NRW has to be confident the plant will be operated safely without harm to health and the environment. “The technology is novel, the operator is not competent one-man company backed by Aviva money. No info on comparison plants abroad and their failures - NRW first said needed, then dropped it. No worst-case accident scenarios In Scotland SEPA say buffer zone is “probably needed because of unknown fire and explosion risks”

NRW say this is primarily a planning concern and not within our remit. However, the impact assessments for air quality, human health, habitats and noise have used a distance based screening criteria to assess the impact. This is not a chemical plant and SEPA are a different organisation and as such have different policies and procedures which we cannot comment on.

NRW ‘impact assessments’ only apply for normal operations. DIA quotes Specialist reviews much like a chemical plant with pressurised explosive gases. Require an emergency venting system for release of pressure and avoidance of furnace explosion. There is none.

The new Fire Prevention Plan (FPP) = GHD Livigunn is not adequate – refers to obsolete CIRIA 164. DIAG expert advice - containment system of the correct capacity is a key issue, but still not sorted. Firewater supply and run-off containment still require changes and planning permit.

Adjacent to the chemicals - vulnerable to an incinerator fire/ explosion include:

1. Shipping deliveries of hazardous chemicals to Dow Corning - Bomar Quest
2. Delivery by of Methyl Chloride train passing within metres of the plant
3. Stored materials in the S & K yard next to the plant with unknown and variable chemicals.

NRW didn’t assess, they could and should have assessed the possible consequences.

Over-ride the NRW excuse “outside our remit” as the Industrial Emissions Directive covers it. Second Issue the RSK Sea Flooding assessment from June 2008 is completely inadequate, wrong base tide level.

The 2015 review was by “Power Consulting (Midlands)” by Richard Frearson, “Director” of a one-man outfit. With no expertise in flooding and climate change.

Ove Arup study for Waterfront development.

- set a proper base tide level, nearly 1 metre higher by 2093
- include nearby East Quay and show a flood coming over the harbour entrance. Ove Arup recommended :-

a) ground level raise – level of 9.1m agreed by NRW

b) raise access roads so they flood by under 0.6m in the extreme event

David Davies Way past the incinerator site is 7.6m, a little higher inside the site

The NRW Permitting team now say: “The impact of flooding has been assessed and a flood plan is not required due to the location”. In fact, the location in the sea-flood zone is exactly the reason for requiring flood planning. The Permitting team just looked at a surface flooding map.”

Dr. Wallis concluded by asking the Committee to request that a proper flood study with Flood Consequences Assessment together with a full accident assessment including off-site consequences be undertaken.

Mr. Kevin Irish was then afforded the opportunity of making his representations to the Committee.

Mr. Irish stated that the Vale Council had gone to considerable expense by putting in new sewer pipes in Cardiff Road. The Biomass site had however changed the landscape and altered the situation and as a result had increased the potential for further flooding. Welsh Water had admitted that the sewers could not cope with the excess and this had to be released into the environment. The Biomass plant would produce and release over 526 effluences into the sewer per hour, which equated to 100 litres per day, this did not take into account any new housing on the doorstep. In essence, it would be 36 million litres per year and Mr. Irish’s question was who would foot the bill when the sewers prematurely collapsed? Who will compensate the public for the disruption caused and for environmental clean-ups? It seems the test is “let’s dump it in the docks”. The sewers, Mr. Irish stated, were not designed to take the excess load that was anticipated and the cost to the Council would be significant.

Councillor Ms. Collins, not a Member of the Committee but with permission to speak, asked how NRW could reassure local residents and herself that robust monitoring on the site would be done. She needed to be reassured that monitoring would be in place by the Vale Council and NRW.

Mr. Wheadon from NRW, in response, advised that the licence would regulate activities on the site, which was the principal purpose. A regular forum of dialogue had also been put in place with DIAG, but some of the matters raised were not within NRW remit. With regard to monitoring of the site, as part of the current consultation, the operator would need to ensure they were compliant with the permit and undertake regular monitoring. Monitoring results would need to be submitted to NRW for assessment by technical experts. There was currently a full set of

conditions in place with the proposed permit and if any site was non-compliant, then NRW would address them when necessary.

The Chairman stated that there was wide concern that the consultation was inadequate. For the public the issue was transparency and self-reporting, and he queried whether this was usual practice. Mr. Wheadon advised that it was usual practice for operators across Wales, but that NRW would need to be satisfied that the monitoring in place was appropriate and what emissions would be coming from the plant.

A Committee Member raised concern in relation to condition 31 which advised that “within nine months of the energy plant hereby approved being fully operational, the applicant shall carry out a further Air Quality Assessment through monitoring”. The Member’s concern was in relation to the poacher / gamekeeper scenario and suggested that it would be far more beneficial if the whole process was carried out by an independent monitoring agency either appointed by the Vale or NRW but paid for by the applicant. Mr. Wheadon advised that it was usual practice for the operator to undertake their own monitoring regime as approved by NRW and referred members to the ongoing consultation urging people to comment on them.

The Head of Service took the opportunity to advise all present that the planning decision had already been made and flooding issues had been assessed as part of the planning process but that at that time no objections had been raised.

A Member queried whether Welsh Water had been part of the initial consultation process and whether any of the monitoring equipment systems would be capable of shutting the plant down and whether there was a compliance for monitoring if they exceeded the limit, whether there was a shutdown period and was it capable of doing so. Mr. Wheadon advised that he did not know what type of monitoring equipment was being used specifically, but he suspected that it would be unlikely to be extended to stop the operation. Following a further question as to whether there was a requirement for the licence that they would have to shut down if there was an issue, Mr. Wheadon stated that if the monitoring identified breaches, NRW would need to address the issues with the operator, but ultimately it would depend on the circumstances.

Another Member of the Committee stated that in his view, what he could see was that NRW was minded to support the licence and therefore he thought the consultation was going to be tokenistic. The fact that no EIA had been requested did not give Members a lot of confidence in the process, and further queried whether NRW had the ability to monitor the plant on all levels as. In his view, he stated that “it was blatantly obvious that NRW was under-resourced in respect of monitoring capacity”. Having had a discussion at the previous meeting on the Hinkley Point project, he stated that he was not confident that self-monitoring was appropriate and asked whether the plant was safe and whether the Vale Council was going to respond to the NRW consultation on the permit. The Head of Service advised that comments had already been made by the Shared Regulatory Service, but it had been agreed that they be reviewed to assess if any further comments needed to be

made. Mr. Wheadon stated that he was more than satisfied that NRW had the technical expertise to commission the application.

Following a query as to why drainage tanks had been missed when the application had originally been submitted, the Head of Planning advised that an application in respect of drainage was currently being considered. Consultations were with colleagues in NRW, in a different part of the organisation to Mr Wheadon's section. The applicant, he advised, had planned for drainage as they were part of the original conditions, although the fire tanks were separate and subject to a variation of the condition.

Mr. Wheadon confirmed that NRW had looked at the human health impacts and through the assessments and air quality expert evidence, the advice was that it was not a risk to human health.

Following a further question as to why the need for an EIA was not pursued, Mr. Wheadon confirmed that these were matters that were not in the particular scope of the scheme. The Head of Planning advised that it was a process through every planning application to assess if an EIA was required and that at the time of the application being presented it had been identified that no EIA was required at that time. That view was also challenged with Welsh Government being asked to call the matter in, following which the view was substantiated that an EIA was not required.

Another Member, referring to a visit to the plant, advised that she and a fellow Councillor had been informed by the Director that a SENS system would be put in place and she sought assurance from the NRW officer that the system had been installed. Mr. Wheadon stated that although he couldn't confirm if the system had been installed through NRW's compliance work, they would ensure that operations were on site before the permit was granted.

The Chairman referred to the impact on regeneration and asked whether the Council had at any time, since the submission of the application, undertaken an assessment on the impact on regeneration. The Head of Planning advised that this would be largely irrelevant as consent had been granted. He could also confirm that residents locally had not raised any concerns at the time. The Chairman's view however, was that an assessment would not be irrelevant as the Committee's responsibility was to consider ways to improve regeneration in the Vale and an assessment would identify potential problems as they arose.

Following a further question as to how the proposal fitted in with the Well-being of Future Generations Act, the Head of Planning stated that the Act had not been in force when the application came before the Council (it took effect from April 2016), but if any further applications were to be presented the Act would have to be considered, however it was important to note that the principles of the Act had been part of the planning process (i.e. sustainability) for many years.

The Chairman thanked all present for their attendance, in particular the public speakers who had registered to speak and the officer from NRW. He however,

stated that by issuing a “Minded to” Notice prior to consultation, it was about the message that was being given to the wider public with it not being seen as a useful consultation process as a result.

Following consideration of the report and the evidence provided at the meeting, it was subsequently unanimously

RECOMMENDED –

(1) T H A T the Chairman on behalf of the Committee writes to Natural Resources Wales, a copy to the Minister, requesting that independent monitoring be established, to ensure confidence in the process and that a full accident review and flood study of the site be undertaken.

(2) T H A T Cabinet be requested to consider recommending to NRW that an independent expert be appointed to carry out the monitoring on the site and that a full accident review and flood study be undertaken.

(3) T H A T the comments made at the meeting be referred to Cabinet for its consideration and that Cabinet also be requested to consider providing a formal response to the consultation, in particular having regard to the request that an independent expert be appointed to carry out the monitoring of the site.

Reasons for recommendations

(1&2) To inform Members and the public and in order that an appropriate and full review can be undertaken, and that in the interests of transparency and in view of public concern that an independent monitoring process is established to alleviate concerns and have confidence in the process.

(3) For Cabinet’s consideration in order that a formal response may be forwarded to Natural Resources Wales on behalf of the Council and in view of public concern in relation to the current monitoring process.”

[Attached as Appendix – Report to Environment and Regeneration Scrutiny Committee: 30th November, 2017](#)