ITEMS RECEIVED AFTER THE PRODUCTION OF THE REPORT FOR THE PLANNING COMMITTEE TO BE HELD ON 21 MARCH. 2024

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MATTERS ARISING FOR COMMITTEE

COMMITTEE DATE : 21 MARCH, 2024

Application No.:2020/01170/OUT	**Case Officer:** Mr. Robert Lankshear
Location: Land at Upper Cosmeston Farm, Lavernock Road, Penarth	
Proposal: Outline application for residential development, a primary school, community space and public open space with all matters reserved other than access	

From: Mr Michael Garland, 3 Plover Way

Summary of Comments:

- Lack of suitable infrastructure to serve the development, including transport and health services
- Historic surface water flooding issues
- Removal of green wedge status
- Land Contamination within the site
- Active travel and net zero carbon development aspirations cannot be achieved
- Impact upon future barrage scheme

Officer Response:

The matters above are referred to and addressed in the officer report, including those relating to surface water flooding, land contamination and green wedge designation.

Noting that the proposals form part of the adopted development plan, that has been found sound through examination by an appointed Inspector, it is not necessary to revisit the need, location relative to services, alternative uses for the site or housing projections. Furthermore, within the proposals are community facility spaces that could potentially be used to provide space for healthcare of other facilities in line with the needs of the wider community. In terms of public transport the proposals include enhanced active travel and public transport facilities and would make a significant financial contribution towards sustainable transport services (circa £1.3M). This could be utilised to assist with active travel measures and public transport in the area.

In terms of any potential tidal barrage, officers are not aware of any formal proposals for such a development at this time, whilst at the time of writing this report, Welsh Government remain owners of the land in question. The residential development of the site does not strictly preclude any further development of proposals for a tidal barrage, and in the absence of formalised proposals, it is considered that it does not represent a reason to withhold planning permission, particularly noting the sites allocation within the extant development plan and its retention as a site for housing within calculations for housing numbers within the evolving replacement LDP.

The submitted design and access statement provides proposed details of how the development would seek to secure net zero carbon development status, whilst it is also listed as a mandatory requirement of development within the design code (included as one of the proposed approved documents). The application under consideration by members is in outline only and further consideration of the net zero carbon credentials would be assessed at reserved matters stage when detailed designs of any buildings are provided.

Action required: None

From: Williams, Eddie (Cllr)
To: Michael Garland
Cc: Planning
Subject: RE: Planning Application: 2020/01170/OUT Land at Upper Cosmeston Farm, Cosmeston
Date: 19 March 2024 21:54:01
Attachments: image001.png

Dear Michael,

Thank you for your email.

I note your comments and will ensure that these are considered as part of the planning application.

Regards
Eddie

Edward Williams
Councillor/Cynghorydd
Cabinet Member for Social Care and Health
Aelod Cabinet dros Ofal Cymdeithasol ac Iechyd
Vale of Glamorgan Council / Cyngor Bro Morgannwg
[redacted]

From: Michael Garland [redacted]>
Sent: Tuesday, March 19, 2024 5:45 PM
To: Williams, Eddie (Cllr) [redacted]
Subject: Planning Application: 2020/01170/OUT Land at Upper Cosmeston Farm, Cosmeston

Chair: Michael Philip Garland [redacted].

Date: 19h March 2024

Planning Application: No 2020/01170/OUT
Land at Upper Cosmeston Farm,

Lavernock Road, Cosmeston.

Dear Councillor Eddie Williams,

I wish to raise the following concerns in regard to the above-mentioned planning application, on behalf of the residents of Cosmeston, Penarth, Sully, Barry and surrounding areas together with the 5,272 residents and members of the public who signed a Welsh Assembly Petition - P-05-1069 "*Save the farmland and green fields at Cosmeston*".

THE AREA IS DEVOID OF ANY NECESSARY INFRASTRUCTURE required to support such a major development of nearly 600 houses, a school plus the adjoining Ysgol Y Deri School Annex.

Public transport services have been cut and fares of those services, still running, have been increased dramatically. An electric bike stand has recently been removed as unviable, while a possible light transport system appears to have been replaced by a cycle priority pathway.

Health services are already over-subscribed, and residents are having to travel further afield to find doctors, dentists and medical treatment and other essential services.

There are no nearby essential 'grocery' shopping facilities which are currently based on the northern edges of Penarth and in Cardiff or to the west of Barry.

Highways in the local and surrounding areas are already congested and this can only worsen with the large amount of vehicular traffic generated from this and adjoining developments.

The need to travel to these service facilities ,will also increase harmful traffic emissions in the locality and surrounding areas.

HISTORIC FLOODING has been experienced continually in the locality for many centuries. The main public sewer is already overloaded and together with insufficient and mis-managed drainage that feeds into the Sully Brook Flood Zone below the silt level, together with the excessive Surface Water Run-off from the development site will only exacerbate issues despite the somewhat unclear mitigation measures.

REMOVAL OF PREVIOUSLY PROPOSED 'GREEN WEDGE' STATUS in order to site the development in this location will lead to the joining up of the urban sprawl of Penarth with Sully and Barry, and that much needed agricultural land, habitats of wildlife including protected species, archaeology, the Grade II listed farm buildings and the Wales Coastal Path that make up this valuable rural coastal landscape will be lost forever to our future generations and may appear contrary to the Future Generations Act. 'Ad hoc' mitigation measures will be dependent on the developers and Welsh

Government funded organisations managing these issues.

HAZARDOUS CONTAMINATION attributed to a 1970's Council managed landfill site has been indicated as too dangerous to remove. Redistribution of 'soil across the site in order to create the necessary levels for the development will disturb and spread the contamination across the site. Suggested mitigation measures in the plans do not offer any protection to nearby residents from air blown vapour droplets and the effects of this hazardous contamination from various materials including Carcinogenic (cancer causing) hydrocarbon compounds, asbestos fibres, arsenic, etc.

ACTIVE TRAVEL AND NET ZERO CARBON DEVELOPMENT ASPIRATIONS CANNOT BE ACHIEVED was indicated by a Design Commission for Wales Report, (21 January 2021) who were unable to support the submitted proposal as they felt that their concerns have not been addresses appropriately.

It is also a concern that the development will affect a future 'green energy' barrage scheme on adjoining land to the development site.

Keep Cosmeston Green would appreciate that these comments be noted and that the planning application be refused.

Yours Faithfully
Michael Garland
Chair – Keep Cosmeston Green

MATTERS ARISING FOR COMMITTEE

COMMITTEE DATE : 21 MARCH, 2024

Application No.:2020/01170/OUT	**Case Officer:** Mr. Robert Lankshear
Location: Land at Upper Cosmeston Farm, Lavernock Road, Penarth	
Proposal: Outline application for residential development, a primary school, community space and public open space with all matters reserved other than access	

From: Ms Tracey Alexander

Summary of Comments:

Upper Coastal Fields should be left for show and grow agriculture

Presence of skylark within site

Number of units could not be changed later and concern that outline application not appropriate as detailed position and design, fundamental in consideration of the proposals. Concern that high densities could not be achieved

Land use should not be limited to just housing

Insufficient consideration given to Coastal Erosion by Shoreline Management Reports

Officer Response:

In terms of retention of the land for agriculture, it is noted within the officer report that the site does not constitute the best and most versatile agricultural land, whilst it has been allocated for residential development (inclusive of school and community services provision) within the adopted Local Development Plan. The proposed land use has also been established through the examination process undertaken in the adoption of the plan.

Matters relating to coastal erosion have been detailed within the officer report, inclusive of extensive consultation with the Council's Highway and Engineering section, and it is considered that subject to the conditions requiring ongoing topographic surveys in support of reserved matters submissions; long term monitoring and impacts upon critical infrastructure, the proposals comply with the legislative requirements in this regard. Furthermore as detailed within the officer report a financial contribution would be secured to allow for ongoing monitoring of coastal erosion.

With regard to the presence of skylark on the site, it is noted that one breeding record of skylark is noted within the submissions. Following consultation, with the Council's Ecologist they are satisfied that any requirement for mitigation for skylark, could potentially be accommodated on land belonging to the applicant to the south. Any such requirement for mitigation would be identified through any further survey work required to support each reserved matters application (condition 24 refers) and suitably managed

within the landscape ecological management plan (condition 22). As such any presence of skylark at the site could be suitably mitigated and does not represent a reason to delay the grant of outline planning permission.

The allocation within the LDP and submitted details are for a maximum of 576 dwellings at the site (as would be controlled by proposed condition 7). Should detailed design identify issues or constraints that would require the delivery of a lower level of accommodation at a future date this would not be precluded and would need to be considered on its merits. Ultimately, however officers are satisfied that based upon the details submitted to date that the development could be achieved at an appropriate density.

Action required: None

From: Tracey Alexander
To: Lankshear, Robert
Subject: Fwd: Upper Cosmeston Farm
Date: 18 March 2024 16:47:29

Sent from Outlook for Android

Hi Rob

The Upper Coastal fields should be left to 'Show and Grow' and their purpose merged with the surrounding Welsh Government land stretching down to Sully.

Social farming has a greater impact for both the Development and the surrounding area than allotment space. This should be located in the top fields and in turn give protection and ideal conditions for the Sky larks to nest. This has in turn, a relevance to where houses are placed.

The current mode of release of the site by Welsh Government is subject to Outline Planning yet the process is in conflict when in line with Consultation as there is an expectation that housing and function will be placed in the visual plans. Tender packs were not open to Public scrutiny.

Outline Planning should not be granted as the number of units could not be changed yet there is insufficient evidence of how the functions and numbers would relate to the later detail. This is evidenced by the mode and method of Delivery of release of land adopted since those in the tender process will be submitting different detail and ideas yet these cannot be considered accurately at Outline Planning or by either Public or Committee since they have not been shown or demonstrated yet. Numbers should relate to function and detail therefore positional detail should be presented first not later.

The use of extremely valuable land (by value but more so by location) should not have a solitary purpose I e. Housing - It should show Transition, Vision and Change. There is only one chance to do this realistically in the Vale since the site is a Connector (by location) to so many areas (Development of Future Transport with links to both the City and Airport, Food grow linking into density of population, development of a future Natural Economy etc etc).

For now, the Vale Council has the power to refuse this Outline Application for the above and following reasons:

By the proposed positioning of Housing giving insufficient attention and consideration to Eco systems and species present (Sky Larks on Red List) in line with the Nature Emergency

By insufficient detail to evidence how high density can work - Detailed Planning needs submitting initially to support the number of houses on site

by insufficient detail to support the Consultation process. Public only have a number with insufficient information/evidence on what and how the number will support and benefit.

By insufficient consideration given to Coastal Erosion demonstrated by Shoreline Management reports. (Louise Pennington, Senior Specialist in Strategic Planning and Investment for Coastal Matters to report by Wednesday)

My hope is that this site will be a Show of future Policy and will not have a 'beginning and end' but will show Research and Development by a Physical and internally controlled Delivery in line with future not present Policy to support Transition and Change.

Change needs time to evolve and this site needs to show it.

Let me know your thoughts and please discuss with Marcus before Thursday's committee

Best

Tracey

I

MATTERS ARISING FOR COMMITTEE

COMMITTEE DATE : 21 MARCH, 2024

Application No.:2020/01170/OUT	**Case Officer:** Mr. Robert Lankshear
Location: Land at Upper Cosmeston Farm, Lavernock Road, Penarth	
Proposal: Outline application for residential development, a primary school, community space and public open space with all matters reserved other than access	

From: Barry Friends of the Earth

Summary of Comments:

Failure to preserve the Wales Coastal Path

Not biodiversity net gain

Future developers to bypass provision of 50% affordable housing owing to viability issues

Conflict with Future Wales – VoG not in growth area; wider coastal buffer for biodiversity should be provided

Lack of Green Infrastructure Statement

Insufficient replacement tree planting

Drainage system unfeasible and would contribute to offsite flooding; attenuation basins would not be sufficient; infiltration into contaminated land cannot be assumed and issues with discharge into Sully Brook and sea owing to designations

Inadequate sewerage capacity to serve the development (noting discharges of sewerage detailed by Welsh Water)

Officer Response:

The matters above are broadly referred to and addressed in the officer report however, further responses are provided below.

The existing Welsh Coastal Path runs along a relatively narrow strip running to the east of the site and is in places in close proximity to the cliff edge. The proposed indicative masterplan allows for future realignment of the coastal path within the indicated buffer zone and public open space area within the development and is considered to sufficiently safeguard the future of the coastal path, potentially in a similar manner to that found to the east of Whitcliffe Drive to the north of the site.

The application is supported by a Green Infrastructure parameter plan indicating retained structural and proposed planting within the confines of the site. As noted, the masterplan indicates the provision of significant areas of replacement hedgerow, tree planting and wetland habitats and swales. These coupled with the suite of conditions, including proposed condition 32, requiring 3:1 replacement tree and hedgerow planting) and landscape ecological management plans to support the outline and reserved matters consents (22 and 23), are considered to provide a robust mechanism by which biodiversity mitigation, compensation and enhancement can be secured through the

development of the site. This approach has been agreed through consultation with relevant consultees, including the Council's Ecologist and Natural Resources Wales.

As detailed within the report, the requirements of the adopted LDP Policy MG4 require provision of 40% affordable housing within development in this area and the applicant has proposed that they would intend to deliver 50%. This level is detailed as a mandatory requirement of the Design Code submitted with the application, listed as one of the proposed approved documents. Whilst this increased provision would not be secured through a legal agreement, the policy compliant 40% provision would be. The applicant has agreed to meet the planning obligations requirements, as detailed within the LDP and accompanying SPG in full, and at this point no viability case has been presented. Should such a case be presented, this would require a reassessment of the merits of the proposals that would be put before members for their consideration. In the absence of such however, the application proposals must be treated on their merits.

In terms of drainage matters, this is covered within the officer report. However, as detailed the Council's Drainage Section have advised that they are satisfied that surface water drainage matters can be dealt with through the SAB approval process (including any potential off-site impacts), which an outline scheme has already undergone the SAB pre-application process. In terms of sewerage capacity, Dwr Cymru Welsh Water, reiterated their comments of November 2020 that there was capacity in the system, in a letter dated September 2022 and there is no reason to believe this has changed. Requirements for details of a foul water drainage scheme are also proposed to be subject of a condition requiring details prior to the commencement of development (condition 17 refers).

Action Required: None

FoE Barry&Vale late reps in objection

Land at Upper Cosmeston Farm, Lavernock Road, Penarth 2020/01170/OUT

Development should not normally be proposed in coastal locations unless it needs to be on the coast. In particular, undeveloped coastal areas will rarely be the most appropriate location for development. Planning Policy Wales.

As it's Welsh Govt land; you'd expect them to ask TfW if they are interested for their proposed rail service including a Cosmeston station, ask the Economic Development Minister if they're interested for tidal power generation, ask their Countryside section re. the Wales Coastal Path. But they haven't. You as planning authority can ask the Welsh Govt to consider the best use of this land-holding, rather than confine it to housing with loss of nature.

Failure to preserve the Wales Coastal Path - a key asset (NRW) and Jewel-in-the-crown (FM Wales). It is planned to lose its hedgerows when cliff erosion forces it's re-routing into the redeveloped 'green space'. This fails the requirement under Policy 9 of Future Wales for resilience of this 'green infrastructure' asset.

Building housing on this coastal strip rich in biodiversity prevents achievement of net biodiversity gain from the development. The Officer report says not to expect biodiversity gain from such greenfield housing, yet this is the Vale's section 6 duty (Environment Act Wales). The LDP's high number of dwellings pre-dates the Act – as the officer finds the Section 6 duty and Future Wales Policy 9 cannot be met, the dwellings number and developed land-area have to be significantly reduced.

Sale of the land for private development. The intention of the WGovt to sell the land to private developers means the S106 'obligation' for social housing and 50% total "affordable"housing can be – and will be – bypassed on the "viability" test, as on other developments in the Vale. Their agent Asbri arguing the "need" for such housing has little force without the WGovt retaining ownership and forgoing commercial profitability. Remote from Penarth services, bus-dependent social housing residents and elderly people are poorly served; it is no 'age-friendly ' development as the Vale policy.

Not 'growth region' in *Future Wales*. The VoG is no longer part of the SE Wales growth area (ie. Cardiff, the Valleys and Newport). The Nature Emergency requires us to prioritise 'nature recovery' and biodiversity gain. The officer's report (Chapter 5 – The Regions, p.219) obscures that 'nature recovery', not 'growth' complies with regional policies. High density green-field housing remote from Penarth's facilities moreover fails the sustainable growth test (Policy1).

Net biodiversity benefit requires a much wider coastal buffer separated from the housing area by wide biodiverse hedgerows, as on sections of the current rural Coastal Path. The planning Committee should tell the Welsh Government this is a positive use of the public land which fits well with their policies.

Fails Section 6 Biodiversity requirement. The officer report talks old-style of minimising and mitigating biodiversity loss despite the Vale's duty on biodiversity gain for all developments. The excuse that strengthened policy came out only recently in PPW 12 doesn't stand up. PPW11 gave strong planning advice in 2021 on the Section 6 biodiversity duty, as has the Council's Ecology Officer. PPW11 advised the Council to include *Green Infrastructure Assessment … to develop a robust approach to enhancing biodiversity, increasing ecological resilience and improving well-being*

outcomes. Asbri for the applicant surely know it well and have misled the Council in failing to aim for biodiversity gain.

The plan fails badly on trees. It fails even to meet the old 2 for 1 tree replanting. If the Vale's Tree Officer (6 months in post) had been consulted, he'd have pointed to the Vale's new Tree Strategy which sets 'tree canopy' as the proper criterion and gives priority to saving mature and semi-mature trees (not writing them off under the old grading system used by the applicant).

A drainage system that does not add to the flooding on Lavernock Rd has not been shown feasible. The S19 Report (23 Dec 2020 flood) found run-off streaming down the roadway of the adjacent housing development (Cosmeston Drive) contributed to the Lavernock Rd flooding – and that rainstorm was only 1:20, not the 1:100 that new development has to accommodate. This development would replicate that fault. Attenuation basins holding back storm run-off for perhaps 30 minutes (SuDS standards p.95) don't hack it, but the Council's Drainage section cannot admit their years-old error. Infiltration into the contaminated ground cannot be assumed here, as the hydrogeological survey was inconclusive, so the contamination risks to ground water and the Sully Brook from buried hazardous waste are unknown. Discharge to the sea is excluded (NRW say) because of its protective designations. Drainage into woodland off-site is outside this plan.

Sewerage capacity is inadequate. Welsh Water stated a few years ago they have capacity but we now know from frequent discharges of untreated sewage that this is untrue in law. Recently, Welsh Water admitted a lack of sewerage capacity locally, in response to the Model Farm application and in deciding to divert Plasdwr sewage from Cog Moors to their East Moors plant. The Cog Moors works data show untreated sewage discharged from Lavernock Point over frequently (~70 times p.a.), which may well cause the failures of bathing Water standards at Barry beaches. Officers need to interrogate Welsh Water's assurances and require them to be based on plans for complying with the law on sewage treatment (all times apart from 'exceptional' weather conditions).

The close-by Brockhill Rise CSO is licensed to discharge only storm-water to the sea; the linked large storage tanks are supposed to store sewage (main sewer) to send to Cog Moors when capacity is available. Yet WW records show they discharge from it to sea some 60 times p.a. The Cosmeston development in taking up capacity in the same sewer would lead to extra unlawful discharges from the Brockhill Rise CSO. Until Welsh Water show they will tackle this compliance issue, their pre-application assurance they have capacity for Cosmeston foul sewage cannot be accepted.

MATTERS ARISING FOR COMMITTEE

COMMITTEE DATE : 21 MARCH, 2024

Application No.:2020/01170/OUT	**Case Officer:** Mr. Robert Lankshear
Location: Land at Upper Cosmeston Farm, Lavernock Road, Penarth	
Proposal: Outline application for residential development, a primary school, community space and public open space with all matters reserved other than access	

From: Councillor Rhys Thomas, Plymouth Ward

Summary of Comments:

Lack of facilities including those for healthcare

Traffic problems

Increased flooding risk on Lavernock Road and on-site

Loss of agricultural land and green space

Officer Response:

The matters raised within this letter are covered in depth within the officer report.

Noting that the proposals form part of the adopted development plan, that has been found sound through examination by an appointed Inspector, it is not necessary to revisit the need, location relative to services, alternative uses for the site or housing projections. Furthermore, within the proposals are community facility spaces that could potentially be used to provide space for healthcare or other facilities. In terms of public transport the proposals include enhanced active travel and public transport facilities and would make a significant financial contribution towards sustainable transport services (circa £1.3M). This could be utilised to assist with active travel measures and public transport in the area.

Action required: None

To Members of the Vale of Glamorgan Planning Committee,

I write to the Committee regarding 2020/01170/OUT - Land at Upper Cosmeston Farm, Lavernock Road, Penarth. The proposed development will have a significant impact on my ward, and the town of Penarth as a whole.

There are a number of issues around this development, which the Committee should consider. Firstly, the impact on public services in the area, which are already overstretched. The Chief Executive of the Cardiff and Vale University Health Board has made it clear that there aren't enough GPs in the area. GP surgeries have been closed down with a proposed "Wellbeing Hub" for the Eastern Vale years away from fruition, if indeed it does ever happen. Adding several hundred residents into the equation will make access to health services more difficult. There is no sign from the Welsh Government that there will be adequate funding given to address this any time soon.

This development will exacerbate problems with traffic, particularly on Lavernock Road. Public transport provision in Penarth is far from ideal, and residents have little alternative to using their cars. As a result, the presence of hundreds more people will increase congestion, particularly at peak rush hour times. Increased congestion in this area will be bad for the environment and will increase journey times for residents trying to get to and from work. This comes amidst warnings from the Confederation of Passenger Transport (CPT), who say there is a likelihood of more cuts to bus funding by the Welsh Government in the next financial year, damaging services and making it even less likely that Penarth will get the public transport fitting of a town its size.

Paragraph 8.7.1 of Planning Policy Wales Edition 9, which is included in the Vale of Glamorgan Council's Supplementary Planning Guidance under the Local Development Plan for 2011-2026, states: “When determining a planning application for development that has transport implications, local planning authorities should take into account: the impacts of the proposed development on travel demand; the level and nature of public transport provision; accessibility by a range of different transport modes" and also "the environmental impact of both transport infrastructure and the traffic generated". It is clear that on each of these metrics, the implications are consistently negative.

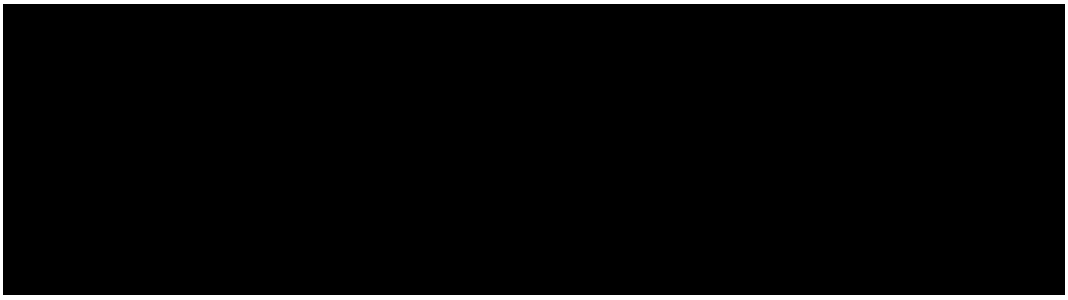
Additionally, there is the potential for increased flooding risks on various parts of the site and Lavernock Road. As a safety issue, this should be front and centre of a decision by the Committee. To quote the report from the Head of Sustainable Development, "NRW maps also indicate that there is a high risk of surface water flooding in specific areas of the site". Furthermore, the Council’s Operational

Manager Highways and Engineering (Drainage) wrote that "there are parts of the site that are at high risk of surface water flooding". There is clearly a flood risk on this site, and the safety of residents should not be compromised for any reason.

Then there is also the loss of agricultural land and much-valued green spaces in the area to consider. The Wales Coastal Path is also highly-valued by local residents, and moves to change it could damage a jewel in the crown of the Vale of Glamorgan, which is enjoyed by locals and people from outside the area alike.

The Welsh Government set a target to “build 20,000 new low carbon social homes for rent”. In the first two years of this Senedd term, just 5,775 homes were built. The usefulness of arbitrary targets aside, it is clear the Welsh Government are not on course to meet that 20,000 target. That is down to a lack of preparation and understanding of the issues at hand. The land at Upper Cosmeston Farm and Penarth should not be used by the Welsh Government to play catch-up on its targets. The people of the area should be put first.

Councillor Rhys Thomas



MATTERS ARISING FOR COMMITTEE

COMMITTEE DATE : 21 MARCH 2024

Application No.:2023/00032/FUL	**Case Officer:** Mr. Ceiri Rowlands
Location: Barry Biomass Renewable Energy Facility, David Davies Road, Barry	
Proposal: Retrospective full planning permission for development comprising a wood fired renewable energy plant and associated structures without complying with Condition 5 (Drawings) attached to planning permission 2015/00031/OUT	

From: Docks Incinerator Action Group

Summary of Comments:

Three letters have been received from DIAG and these are appended to this note for Members' information. The main points are summarised as follows:

- Lack of sufficient expertise in the planning department/ Planning Committee do not have access to sufficient expertise to examine the EIA. The Officer's report presents to committee inaccurately reasoned conclusions.

- The ES is insufficient and no proper scoping exercise or assessment of its completeness have been carried out. Failure to address these though Regulation 24 request(s) for further information.

- The expertise of consultees has not been properly established.

- The public have not been allowed a proper role in the EIA process. The three minute time allowance to speak is insufficient.

- Officer lack of interest in evidence. Dismissal of photographs and videos. Lack of knowledge about a representation by SRS (contained in Appendix 10 of DIAG representations dated 20.5.23) and convincing SRS to change their mind.

- The planning permission granted in 2015 was unlawful and should not be relied upon as a starting point for the planning assessment.

- Refusal to deal with the possible implications of Article 10a of the EU Directive relating to penalties for the infringement of national (EIA) provisions.

- The ES does airbrushes out consideration of the impact on and vulnerability to climate change. Net-zero/ Project Zero requirements not met.

- Welsh Government Moratorium not taken into account.

- There is no explanation of why NRW permitting limits are relied upon opposed to

WHO limits.

- Public consultation responses may not have been analysed and no feedback has been provided them.

- The VoGC Public Participation Policy (relating to Planning Committee procedures and public participation and speaking at the meeting) is possibly unlawful.

Officer Response:

There are some comments that relate to points raised in previous representations, and these points are discussed in the officer's report and response to matters arising to Planning Committee on 22nd February 2024. There are other points relating to procedural matters in relation to the meeting process. In relation to this, it is noteworthy that the planning application has undergone extensive public consultation that has exceeded statutory requirements and is similar to other Local Authorities in Wales.

Notwithstanding that, in summary the following points are added/re-iterated for Members' benefit:

- Matters relating to the background, scope and completeness of the ES are discussed on p.108 of the report and the previous Officer response to matters arising. Officers' consider it meets the criteria in Regulation 17 of the EIA Regulations, which sets out the information requirements for an ES.

- Officers' have given regard to all representations, including those referenced in the letters. It should be noted that the SRS response referred to was in relation to the environmental permit application and a previous noise report (the ES contains updated noise modelling that and has addressed their concerns regarding its methodology). The allegation that Officers influenced their response (in favour of the applicant) is entirely false. Officers have corresponded with DIAG previously on these points.

- The points relating to the scope of the assessment, the 2015 permission, and planning history are covered in the officer's report (p.107-108).

- The relevance of the Moratorium to this application is covered in the Officer's report (p.116). The quoted reference is from the consultation responses section and summarises a consultee response.

- The assessment of air quality is covered in the Officer's report (p.112-114). The Air Quality Assessment Level (AQAL) used in the ES is based on regulatory and/ or target air quality levels for those pollutants (sources contained in Appendix 9.1 of the ES). The WHO has published guideline levels that are different from, and below, some regulatory air quality targets in the UK (inc. Wales). The use of regulatory targets rather than WHO guidelines is considered appropriate in relation to the ES assessment.

Action required: Members' to note.

DIAG

DOCKS INCINERATOR ACTION GROUP

14 March 2024

Mr Ceiri Rowlands,
Principal Planner,
Civic Offices,
Holton Rd,
Barry
CF63 4RU

Sent by email: [redacted]

Dear Mr Rowlands

Re: Town and Country Planning Act, 1990 (as amended) Application No. 2023/00032/FUL etc

The failure of the technology on the 22 February has unusually allowed us to consider the advice you proposed to give to the Committee. The number of issues is further evidence that the Vale does not have the necessary expertise to deal with the EIA process without instructing outside experts.

We are disappointed with your lack of expertise but more so with your refusal to accept this is the case bearing in mind the failure to include any qualifications to support relevant expertise.

You give no reasons whatsoever to support your assessment that officers are capable of considering advice and presenting to members. The claim that consultees have responded and you can rely on their responses is merely evidence that you do not understand what is required as none of the consultees were asked to give responses about whether the EIA Regulations were addressed or even whether the consultees feel they are qualified to give an expert report on whether an ES is sufficient for the Regulations.

Failure to allow the public a proper role in the EIA process

The usual process for planning meetings would have meant that the public had no opportunity to comment on what is considered to be poor advice and/or a misstatement of points raised by the public.

What has not been thought about in the present case is that there are two stages to this application.

[redacted]

The way in which you have chosen to reduce the public to a 3 minute involvement to deal with the ES as well as the planning is a significant error. The public is meant to have a full involvement in the EIA process but you choose to limit it to a level where it is bordering on meaningless.

The way in which the public has been restricted from meaningful involvement should be considered by the Committee. You should have advised the Committee that there is no policy for meetings involving the EIA process and that consideration should be given to ensuring better acceptance of input from the public.

This letter is necessary to correct what we believe is the poor advice already given and is a good illustration of the reasons why the public should not be as excluded as you have chosen.

I will deal separately below with the additional failure of the planning department in failing to acknowledge the public consultation by refusing to deal with the issues raised and explaining how you decided nothing raised was relevant.

Lack of interest in real evidence

You were supplied with photographs the level of dust emitted and contemporaneous videos of noise. Your response is:

> *The photographs are useful for context but do not alter the assessments of findings.*

We asked you if you had bothered to check the complaints that had been made by residents at the time of issues arising especially when the outside conveyor was run. You confirmed you had not bothered with this simple investigation that may have made a big difference to the understanding for significant noise from the one area ignored by the applicant (surely for their benefit). I understand you have still failed to carry out this simple check for evidence held by or on behalf of the LPA and/or NRW.

The implication has to be that you are concerned that such an investigation will mean the ES is lacking in important detail and you do not know how to cope with this.

On the question of noise we pointed out to you that the LPA was credited with submitting representations at the enforcement appeal, a report prepared for you be SRS. You knew nothing about it although it was included by DIAG in representation in this case. You have still failed to include it notwithstanding its importance as matters raised by the LPA.

What you did achieve was a secret meeting with QUOD (no member of the public was aware of it and no agenda was posted) that resulted in your convincing SRS to change its views and adopt your view that difficult matters did not need to be sorted for the ES but could be the subject of planning conditions.

You seem to be incapable of understanding the relevance of the EIA process. The task for the LPA is to satisfy itself that the ES is full and accurate and as a result decide whether it is in the right place. If its impact on the locality is unacceptable that is an end to it. Leaving the decision making to planning officers at some later date because the LPA does not have the necessary material before it is a failure of the EIA process and a failure for the LPA to carry out its obligations.

Net Zero

Your officer response produced for the Planning Meeting on the 27 February 2024 includes an assertion that:

> *In terms of net zero- this is not considered to be a requirement for this proposal, which is to consider impacts arising from the amendments to a previous proposal.*

This appears to be a continuation of the Planning Department's determination to deny the need for an Environmental Impact Assessment.

You have failed to draw to the Committee's attention that the grant of planning permission in 2015 was unlawful due to the advice from Planning Officers that no EIA was required (now clarified by the Climate Change Minister).

You seem to be assuming that planning permission was granted lawfully rather than in breach of Regulation 3 of the EIA Regulations. Why is it that you then assume that the previous grant is the starting point for present considerations?

Any decisions taking in 2015 were on the basis that the Committee could not consider any of the issues that now fall to be considered for the EIA, including all types of emission.

You completely fail to explain why net-zero is not considered to be a requirement. You do not say who these people are who do not consider it a requirement.

Clearly Welsh Government believes it is a requirement as it proclaimed a climate emergency. You should be aware that the Vale of Glamorgan Council proclaimed similar.

Schedule 4of the EIA Regulations states "Information for inclusion in environmental statements":

> *5. A description of the likely significant effects of the development on the environment resulting from, inter alia-*
>
> *…..*
>
> *(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;*

The Environmental Statement (ES) air-brushes out any consideration of this important requirement of an ES. That is no reason for the Committee to be given no help when it needs to consider this aspect of *impact*. It is a clear requirement of the EIA process. To deal with it means looking at the actual emissions not some creative accounting ie Greenwashing.

Natural Resources Wales has agreed that the burning of the wood alone will produce at least 130,000 tonnes of CO_2 per annum. If you disagree please let me know. If you agree, please tell the Committee.

The Regulations are clear that the Committee should be addressing the actual emissions not some ridiculous suggestion that emissions of 130,000+ tonnes of CO_2 per annum is benefiting the climate without explaining why.

Comparison with the now redundant Aberthaw coal burning energy producer suggests that the Biomass project under discussion produces at least 2.5 times the CO_2 emissions per unit of energy produced. Any claim that the project in Barry is less polluting than other energy producers seems spurious - at best.

The refusal on the part of QUOD to deal properly, if at all, with the CO_2 emissions seems to me to be no reason why the committee does similar when the EIA Regulations demand

otherwise. The use of other forms of reporting cannot disguise the facts that the emissions are huge, they will continue for the life of the project, they not only conflict with the world view of what is needed in terms of addressing climate change but conflict with the proclaimed climate emergency on the part of the full Vale Council.

I can see how easy it is to simply accept the nonsense that QUOD comes out with on this issue but you should explain why you say that the 130,000+ tonnes of CO_2 per annum is beneficial for fighting climate change. I am confident that councillors will see the problem.

Project Zero

Looking at the Vale's own Project Zero Policy I first of all note that whatever savings the Vale makes in respect of its own emissions are completely overwhelmed by the emissions that Aviva wants to take ownership of by running this incinerator. I note the following parts of the Vale's Project Zero:

> *In July 2019, we joined Welsh Government and other Local Authorities across the UK in declaring a Climate Emergency*
>
> *Our key target is to reduce the Council's carbon emissions to net zero by 2030 but we also want to influence and encourage others to reduce their emissions and to be part of Project Zero.*
>
> *Climate change is affecting lives in the Vale and it is important that individuals, business and the public sector all play a part in reducing our emissions and changing behaviour*

Welsh Government has policies in place that are relevant to this matter such as:

> *We aim to virtually eliminate greenhouse gas emissions from power stations by 2035*
>
> and
>
> *In this high renewables system, any additional supply will be met from decarbonised power plant from 2035 at the latest.*

Moratorium

On the 24 March 2021 the Welsh Government announced:

> *Last year, Wales achieved its highest ever recycling rate, at over 65% - and has set out ambitions to become the world leader. As a result the need to burn waste, or send it to landfill, will reduce and the Welsh Government is putting in place an immediate moratorium on new large scale energy from waste plants. The new moratorium will cover new energy from waste plants with capacity of 10MW or more, and will come into effect immediately.*

That moratorium remains in place. The present application is for a new large scale energy from waste plant as defined. The application before Committee is for a new plant, one that has not been operating previously and certainly not for the purposes of the assessment of need leading to the moratorium.

The only references to the moratorium are the two times when the officer seems to repeat the point:

> *Moratorium – there is one in place announced by Welsh Government against new incinerator projects but LPA have not taken this into account.*

No explanation is given for the omission.

This is bizarre when you consider the planning officers sought guidance from the Welsh Government on this very point. I recall the use of the word 'imperative' when the officers wrote for clarification. It is unlikely the point would have been forgotten.

Either that guidance is still awaited in which case the report to Committee needs to confirm you do not know what the effect of the Moratorium is, or the advice could be included.

The officer 'blaming' the LPA for ignoring the moratorium is another sign of the planning department avoiding its own failures. The LPA has not decided to disregard the Welsh Government's moratorium. As the planning department has taken the view that it is imperative to understand the relevance of the moratorium and have not been able to resolve this for themselves how do you propose the Committee resolves this without the assistance of the Welsh Government.

The need for expertise

The Environmental Impact Assessment Regulations for Wales include:

> *Reg. 4(4) The relevant planning authority or the Welsh Ministers, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.*

The Committee will need assistance on this issue.

As you know the Vale's planning department (often I refer to the planning department but the legal department is usually complicit) advised that the original application in 2008 was not EIA development. The same line was wrongly adhered to at the appeal which resulted in the Inspector being persuaded to follow that lead.

The Inspector was encouraged by the planning department to make a decision that was unlawful which encouraged an order that the Vale pay costs.

We now know that the Inspector was lead astray (see advice from Climate Change Minister) and the costs order should never have been made against the Council.

In 2015 the Vale's planning department advised the Planning Committee that no EIA was needed for the development. This caused another unlawful grant of planning permission. The officers failed to advise the Vale Council that it should have judicially reviewed its own decision to have the unlawful grant of permission overturned.

Eventually the Planning Department's advice to the Council resulted in another costs order against the Council.

The planning department was complicit in obtaining an advice from a barrister to declare it had never made an error in connection with this development notwithstanding that the Climate Change Minister had by then confirmed the errors relating to EIA.

The department has maintained its position of *no errors* to date.

I note that Mr Max Wallis on behalf of Barry and the Vale Friends of the Earth has set out a more detailed account of errors by the Planning Department and I adopt what he says

for this point. I have previously set out a large number of obvious errors made by the planning department when dealing with this development. None of the points were ever addressed.

At no time in the reports to committee has the Planning Department advised in any helpful way that the Committee has to be satisfied that it has access to the necessary expertise. It is understandable that the Planning Department has not dealt with this adequately.

The nearest you come to the planning department dealing with this situation is, when you included a paragraph in answer to the point being raised by DIAG, in the Matters Arising for 22 February 2024 meeting. You advised the Committee:

> *The officer's report does contain reasoned conclusions and the ES (and all parts of the application) have been considered by technical consultees, who are considered appropriate to give technical responses on the information contained within and it is considered that officers are capable of considering this advice and presenting it to Members. Regulation 25 report – there is no requirement in the EIA Regulations to produce a separate report for the EIA. These matters are covered in the Officer's report to Planning Committee.*

It is fortunate that we have the opportunity to address your 'matters arising', something that normally would not be permitted.

The issues I want to address on this one paragraph are:

> The officer's report does not contain reasoned conclusions. It contains conclusions but they are not accurately reasoned. Let me know where you disagree with that observation.
>
> You claim that all parts of the ES and planning application have been considered by technical consultees but you fail to give any sort of qualifications for these people. In any event a consultee is not an expert instructed by the Council to advise and should not be raised up to that level unilaterally by you in order to try to fill a void. I invite you to include in correspondence to me and in matters arising the knowledge you have to demonstrate that the consultees are experts in EIA.
>
> On what basis do you consider that planning officers are capable of considering 'this advice' when the officers believe they have never made errors, do not want to admit the importance of the EIA process, avoid any admission of incineration, and wrongly believe that consultees are experts in EIA processes. This assumption by you is undermining of the whole process which I will assume, for now, is an expression of your not knowing what you do not know.
>
> Your assertion that there is no requirement in the EIA Regulations for a separate report either demonstrates a failure to read the regulations (in particular Reg 28) or perhaps it demonstrates a belief that the planning committee must follow your report notwithstanding that the application is called-in and the committee has the obligation to reach its own considered conclusions including all those matters that will need to be addressed (listed in Reg 28) at the planning meeting.
>
> It is to assist the Committee to reach considered conclusions that it needs to have the necessary expertise and the planning department should face up to the obvious.

The Planning Committee must be satisfied that it has access to sufficient expertise to examine the environmental statement. What we have seen demonstrates significant failures of expertise on the part of the Planning Department (together with the Legal Officers who have been involved).

This is a deficit in the advice from you and is of importance as the requirement to comply with Reg 4(4) is important. It might not be easy to admit to a lack of necessary expertise but the professional approach would have required dealing with the point. At the least you should explain why you believe the department has not been in error at any time on this development when everybody else knows that is not true or do the right thing and advise the committee that it needs to instruct experts in the EIA process for advice. It is about time the department moved away from its fear of having to admit to error and moved towards carrying out its purpose.

If you are placing reliance upon the claimed expertise in the reports in the ES this is specifically excluded by Regulation 4(4) as that requires the Committee to "have access as necessary to, sufficient expertise to examine the environmental statement". The expertise is needed to check what is included in the ES rather than assuming the ES has the necessary expertise and must therefore be reliable.

You appear to be in error on this simple point when you have advised the Committee to accept the ES as drawn.

Please see more on this subject when I deal with your refusal or inability to deal with the issues raised by the public.

Sufficiency of Environment Statement

This is technical but you chose to make the false assertions that can only be intended to mislead the Committee.

There are a number of ways in which it is demonstrated that your assessment of the ES is misleading and demonstrates the lack of expertise.

> You mention that the ES is considered to be complete. However, you do not say who considers it to be complete. Your wording suggests you are relying on some unnamed third party.
>
> You claim that the scope is considered justified. You fail to acknowledge that the applicant never asked for a scoping decision by the Vale and should therefore deal with the full requirements of the EIA Regulations. The applicant had been invited by PEDW to apply for scoping but refused to. You do not explain how you arrived at your decision without the relevant expertise and without the applicant producing the technical material to allow the decision to be considered. You do not explain why it was your decision rather than Committee on a called-in application.
>
> You wrongly relied upon a process undertaken with the Welsh Government for a Voluntary Environmental Statement when there is no such animal known to the EIA Regulations. The Welsh Government, as you are well aware, was not in a position to dictate what was in and what was out of the VES as that would mean it was no longer a **Voluntary** ES. You failed to mention that the Climate Change Minister clarified the purpose of that consultation which was to assist the Welsh Government to understand its obligation of Sincere Cooperation. Yet again a different animal from the process your Committee is dealing with. (this does raise

the issue of any obligation on the part of the Vale for Sincere Cooperation. You have not dealt with this. Perhaps you should?)

You immediately undermine your own argument when confirming that an area scoped out of the VES by the applicant was necessarily reintroduced to the present process but without explaining the change or demonstrating how it undermined the claim immediately preceding it.

You do not mention what report for waste you referred to. I did look on the Register for a Waste Planning Assessment as required by TAN 21 but without success. I am unable to assess your comment about such report having been considered reasonable and acceptable although I do note that you do not explain who the expert was who considered this. The terms you use suggest it is not accurate, just 'acceptable' whatever that means.

You refer to the 'scope of the application' as if this limits these EIA process instead of requiring it. You wrongly acceded to a reduced the scope of the ES and now you appear to be relying on the application (for planning) as meaning the ES may be reduced. Please explain. I am unable to attribute sense to the sentence.

You have relied upon the wrongly reported decision of the Inspector who will not have claimed to be an EIA expert. In any event you have chosen to ignore the explanation given by PEDW to ensure that the wording used for the Inspector's decision was not misunderstood (as you insist on doing). Please explain to the Committee the difference between what you have claimed and what PEDW explained. If you were sufficiently expert in EIA matters you would have realized the error made by the Inspector and those advising him. Dependence on the Inspector suggests you are happy with his decisions which implies you agree the criticism made by him as to the conduct of the Vale Council that followed your advice.

Consideration of Health Impacts

It is extremely worrying to see you report to the Committee:

> *In respect of the ES' assessment of emissions, the ES has been considered by a range of technical consultees, including NRW who are responsible for permitting the development. While the objectors' concerns in this regard are noted, the ES is considered to provide a robust assessment of the impacts.*

The first thing I say about this is that it was part of the excuses your department gave to the Committee in 2015 to explain why they should not consider these matters on that occasion. You were wrong then, you are still wrong. Lessons are never learned by planning officers.

As usual you fail to identify the range of technical consultees and their claimed EIA expertise. Your conclusion is not based on anything reliable. It is mere hope on your part but a gamble for the residents of this town.

Your reference to the NRW role is significant as NRW made it clear when granting the permit to operate that they were not concerned with any need for an EIA. That is explained by the fact that NRW is concerned with the IED emission limits which set limits beyond which the impact on health is considered so bad that action must be taken.

NRW is concerned to ensure that the polluter is using best techniques to run at the best level of emissions. The EIA process is concerned with Public Health.

Whether or not the incinerator is running at best technique, the decision for the Committee is to decide whether this is the correct site bearing in mind all those matters required by the Regulations.

You need to explain to your Committee why you are advising something different for them from Welsh Government policy. When it comes to considering the emissions from waste incineration the policy is *no harm to human health*. Welsh Government has a policy of considering the limits advised by the World Heath Organisation. The limits for human health are very much lower than the limits NRW works to. By mixing the two you demonstrate such a lack of knowledge of the purpose of the EIA process that there can be no doubt that the Committee does not have access to sufficient expertise.

For confirmation of the importance of WHO limits to the Welsh Government you need look no further than the The Environment (Air Quality and Soundscapes) (Wales) Act as the WHO limits are referenced 3 times within the first 8 sections.

Failure to take account of issues raised by the public

There is a view that the points raised by the public during the course of the consultation have not been considered either at all or sufficiently such that the public involvement is reduced to a meaningless level.

It seems that you have merely caused a list to be made of the issues raised by the public. We do not know if that list is full.

My research includes the Government adoption of a Code of Practice on consultations. The relevant paragraph is:

> ***Responsiveness of consultation exercises****: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

We see no evidence of analysis and certainly no suggestion that any feedback is provided or intended to be provided to those who have given up significant time to submit responses. What we do see is unexplained rejection of the responses by the public.

As you may have left the Committee to consider the various issues raised by the public, you ought to have made it clear to the Committee that the task is one for them. You will have needed to add some helpful analysis for Committee on each of the issues so as to help the Committee to carry out this task efficiently and effectively. I am of the belief you do not have the expertise to achieve this.

A possible way forward would have been for the Committee in the absence of expert assistance to decide where points were raised that need more investigation, with relevant members of the public invited to attend to help the Committee to come to an informed decision on any point. But I accept that even then the Committee will need to make sure it has expert assistance.

The project under discussion was described by NRW as one of high public interest. Yet there is no obvious process being followed to consider the proper level of involvement of the public within this, for your department, unusual EIA process.

Planning Conditions

It is easy to see how you merge the EIA process and usual planning processes so as to find a simple way forward that avoids the complexities of EIA Regulations.

You avoid the need to properly consider the ES prior to deciding whether planning permission could be granted. The way in which you advise that EIA decisions can be left to planning conditions is yet another indication of the lack of expertise relevant to EIA.

The EIA process would require the committee to decide whether the project is suitable for the site it proposes to operate from. The Committee should be satisfied that the project is capable of operation in an acceptable way. If the evidence is insufficient or if the evidence supports the view that the incinerator is incapable of satisfying the process then planning permission is refused.

To suggest that compliance with reasonable requirements of EIA can be delegated to officers within the planning process may be a wrongful derogation of the committee's duties in this regard. The committee has to make decisions on the basis of the evidence submitted by the applicant (with expert assistance) and if the evidence is lacking or unacceptable that should be an end to it.

You have failed to ask a single Regulation 24 question of the applicant which is seen as a tendency to continue to accept all the applicant claims even though your department's history of following the applicant's lead has resulted in large costs orders and this current debacle. When a question is asked of the applicant you are careful to avoid doing so in accordance with the Regulations so as to avoid any possibility that the applicant will be inconvenienced.

Your actions on the face of it do not seem to be the actions of somebody with expertise in this area.

I look forward to your reply.

Sincerely,

[redacted]
Paul Robertson
(Chair DIAG)

DIAG

DOCKS INCINERATOR ACTION GROUP

15 March 2024

Mr Ceiri Rowlands,
Principal Planner,
Civic Offices,
Holton Rd,
Barry
CF63 4RU

Sent by email: [redacted]

Dear Mr Rowlands

Re: Town and Country Planning Act, 1990 (as amended) Application No. 2023/00032/FUL etc

After some careful consideration on the part of DIAG I have been asked to write to you about some issues missing from your advice to Committee. Please add this to the papers for Committee.

For the sake of completeness we need to explain that we are not dealing with all issues that arise on your material. It should not be assumed that just because something is not included below means we agree with what you have said.

1 You will recall some discussion about the case of Fiske reported last year that set out how the Section 73 (and by necessary implication a section 73A(2)(c)) application is limited to a narrow use. The case demonstrated how an application like this might be an abuse of the section 73 process if the scheme 'on the ground' is different from what was permitted. You will be well aware that you and the committee know that the impact is such as to significantly alter the scheme visually as well as to include important additions that the Committee (and the planning department) complained about.

2 We note the refusal on the part of the Planning Department to deal with the possible implications of the requirement in the EU Directives (on which the Welsh Regulations depend) at Article 10a where it made clear that:

> ***Article 10a***
>
> *Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive.*

[redacted]

The penalties thus provided for shall be effective, proportionate and dissuasive.'

We previously sent you more information on this explaining how the Directive seemed to require criminal sanctions. It is very likely that the ultimate owners/developer (Aviva) was well aware of the failures that led to the grant of PP in 2015. There seems to be no discussion on the possible implications in your advice.

3 We cannot see any advice given to Committee to deal with the obligation on the committee to comply with EIA Regulation 4(4):

(4) The relevant planning authority or the Welsh Ministers, as the case may be, must ensure that they have, or have access as necessary to, sufficient expertise to examine the environmental statement.

We are concerned that there is a reluctance in the Planning Department to accept that errors were made by it. You have not confirmed that any decision on the part of the Committee accepting they do not have the necessary *access* is not a criticism of officers that would lead to you complaining.

4 Bearing in mind the comment at 3 above we invite you to accept that mere assertions by the Planning Department are not sufficient in any document that is meant to advise. The Committee should be given better assistance with notes of any conflicting views that might stand up to examination.

We look forward to your kind reply in case further debate is likely to assist the Committee.

Sincerely,

[redacted]

Dennis Clarke
(Vice Chair DIAG)

DIAG

DOCKS INCINERATOR ACTION GROUP

15 March 2024

Mr Ceiri Rowlands,
Principal Planner,
Civic Offices,
Holton Rd,
Barry
CF63 4RU

Sent by email: [redacted]

Dear Mr Rowlands

Re: Town and Country Planning Act, 1990 (as amended) Application No. 2023/00032/FUL etc

I have been asked to write to you concerning the Vale's Public Participation Policy (VPPP) and the way in which you have interpreted this, or failed to consider it, with possible unlawful interference with that Policy. Could you kindly consider the below representations that are in addition to those already referred to Gareth Davies.

The VPPP is based upon the requirements of the Local Government and Elections (Wales) Act 2021 (the Act), Part 3.

In order to assist you to better understand the requirements of the Act the Welsh Government has issued Statutory and non-statutory guidance on democracy within principal councils - Part 3: public participation; strategies and petitions.

This guidance seeks to explain what county and county borough (principal) councils must do to meet relevant law in Wales.

The Planning Department has produced its own version of the PPP (plPPP) which we believe is far from compliant with the Act and also fails to comply with the VPPP. We invite you to consider whether the current plPPP is lawful.

We have included links to the documents so as to facilitate ease of access for you as well as excusing our failure to include all the relevant information in this letter.

The first point we would like to make is that the plPPP fails to take account of the situation (as we have here) where an Environmental Statement is to be considered where the issues and the documentation are well beyond what could have been considered when your policy was prepared.

[redacted]

A claim that limiting any speaker to 3 minutes in a hearing dealing with thousands of pages of technical arguments is compliant with the Act is ridiculous. A 3 minute slot is hardly enough to allow a single technical point to be developed never mind set out the breadth of disputes that arise. This takes no sufficient notice of the requirement for Public Participation as described in the first three documents we reference above but also makes a mockery of the accepted importance of the public involvement within the Environmental Impact Assessment process.

A further example of the failure of your department to properly consider public participation is the way you have, in effect, dismissed the issues raised by the public. There was an attempt to produce a list of the issues raised (we do not believe it is complete) but the way in which this has been done appears to dismiss all such issues without any explanation.

It is no way to treat those members of the public who have spent days, weeks, months, trawling through material that is outside their previous experience, who submit the fruits of their hard work but who then find their work is ignored. There is certainly no attempt to explain why you summarily dismiss all that work. A determination to accept all that is included in the ES is no excuse.

This alone, we suggest, is a failure to comply with the VPPP requiring that the necessary work of explanation/analysis is carried out before the Committee can proceed.

This failure might also be something the committee will need to take into account when having to consider whether the failure is deliberate or an indicator of a failure of necessary expertise. It does not matter which. Either reason requires the Committee to be concerned about its obligation to ensure it is properly and expertly assisted.

We note that your plPPP includes the advice:

> ***Matters Considered Relevant***
>
> *Planning decisions should be made based on material planning considerations and should not be based on immaterial considerations.*

This advice is considered relevant to a submission that there is in fact no plPPP that covers a hearing to deal with an Environmental Statement for an application that is Schedule 1 paragraph 10 EIA Regulations. This part of the meeting does not necessarily include material planning considerations as they arise only if the Environmental Statement is considered sufficient.

An alternative reading might be that your plPPP excludes representations relating to the ES.

Bearing in mind the VPPP it would be at least arguable that the public should be involved in the debate much more fully. The assertion that any “representations will be heard by the Committee **but not debated upon**” (our emphasis) in your plPPP is another indication that your plPPP is designed to avoid public participation rather than encourage it.

You will recall that the attempt to deal with this application on the earlier occasion had to be abandoned without it being reached. The Committee received further papers on that day including advice by you on issues. You then appear to have decided to avoid any member of the public looking at this additional material and deciding they would after all

like to address the Committee. Another example, we say, of behaviour that is not only against the VPPP but also inconsistent with Welsh Law and Guidance.

The Welsh Government Guidance makes reference to the possibility of public meetings (rather than meetings in public) which is something that we have requested to help residents understand the issues that arise in this matter and to encourage them to ask questions where their experiences do not help them to understand the technicalities involved.

On at least one occasion DIAG indicated it would cover the cost.

This has never taken place notwithstanding the high public interest, the importance (including for the Wellbeing Act), the difficulty in sufficient clarity for ordinary people. No reasons have been forthcoming to explain the lack of a public meeting. We have always suggested that any public meeting should allow for full participation on the part of the developer.

We note that it seems the Planning Department has been keen to allow meetings with the developer when the developer makes a request and that those meetings proceed outside the EIA process, in private, with no regard to the process set out in Regulation 24 of the EIA Wales Regs.

The way in which your department has treated the public is contrary to Welsh law as explained by the Welsh Government. Similar comment attaches to the way you have treated Committee by purporting to list issues raised by the public but adding no or insufficient analysis beyond the implied one that the ES says something different.

Our representations against the lawfulness of your department's plPPP is supported by the date of the document. The plPPP was prepared/published on 24-03-06. This is 15 years before the Act was in force and 16 years before the Vale prepared its own PPP. This suggests that the planning department works in its own bubble without regard to the wider requirements.

Your document is obviously a part of the VPPP although not referenced in its VPPP. This suggests your plPPP was never part of the necessary public consultation and therefore its lawfulness needs to be considered. At present we suggest there is no lawful basis for the document and therefore no such policy for planning meetings. To exist alongside the VPPP we suggest you will need to have a public consultation to discuss it. This cannot be organised on the hoof at the next meeting.

The defects in the process followed by the Planning Department, and possibly the Planning Committee, is sufficiently serious to warrant a delay in the current process while a proper review is made of the Planning Department and Planning Committee's processes as set out in its plPPP.

We look forward to your kind reply in case further debate is likely to assist the Committee.

Sincerely,

[redacted]

Dennis Clarke
(Vice Chair DIAG)