

**ITEMS RECEIVED AFTER THE PRODUCTION OF THE REPORT
FOR THE PLANNING COMMITTEE
TO BE HELD ON 1 SEPTEMBER, 2021**

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ENFORCEMENT				
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PLANNING APPLICATIONS				
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MATTERS ARISING FOR COMMITTEE

1.

COMMITTEE DATE : 1 SEPTEMBER, 2021

Enf case: 2020/0230/M	Case Officer: Mrs S. Feist
Location: David Davies Road, Woodham Road, Barry.	

From: The agent of the developer.

Summary of Comments: A letter has been submitted which sets out a proposed way forward to regularise the discrepancies between what has been built and what has planning permission. The letter also states that the proposed enforcement action is disproportionate to the breach of planning control and would amount to over enforcement. It is stated that the developer believes an appeal against an enforcement notice would likely be allowed, with costs awarded.

Officer Response: While the proposed way forward is noted, the applicant was made aware of the on-site discrepancies in October 2020 and since that time, no application has been submitted to attempt to regularise them, other than in respect of the fire water tank. Officers have previously provided advice to the developer regarding the potential mechanisms to seek to regularise the development, and these mechanisms are referred to in the report.

The proportionality of the enforcement action to which authorisation is sought is also discussed in the report, which states that *in the absence a fully consented scheme against which enforcement action could be pursued in respect of breaches of necessary and important conditions, it is the Council's view that it would be expedient to take action at this stage to prevent the possibly unauthorised development from becoming fully operational and potentially lawful.*

The unauthorised additional items/pieces of plant are integral to the working of the plant as a whole and it is considered that it would not be appropriate to seek to enforce against only those parts of the development. The report notes that the purpose of the action is also to protect the Council's position against future claims of immunity from enforcement action. Enforcing against only certain parts of the development would potentially leave the remainder to become immune if the relevant time periods expired. It is therefore considered that the action to be authorised should relate to the plant as a whole.

Action required: Members to note.

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BY EMAIL ONLY

Our ref: SOL2108_BB01

27 August 2021

Dear Members of the Planning Committee

Planning Committee Meeting: Wednesday, 1st September 2021 at 4.00 p.m.
Agenda item 9 Enforcement Action: Land and Buildings at Barry Biomass, Woodham Road, Barry.

We write further to the planning committee report for the meeting on 1 September 2021 which considers on pages 65 to 108 whether enforcement action is appropriate and expedient in relation to the Barry Biomass facility.

We have read the Officer's report and have considered it carefully. You will be aware of the position that my client, Biomass No. 2 UK Ltd, has adopted with respect to the discrepancies listed in the report through previous correspondence. Biomass No. 2 UK Ltd maintains that, to the extent that any planning breaches are material, it would not be expedient for enforcement action to be brought because the alleged breaches can be addressed by other means.

The purpose of this letter is to offer a way forward that seeks to address the concerns raised in the Officer's report and provides a workable solution to avoid any perceived need for enforcement action. This letter is aimed at setting a framework/strategy for resolution. It therefore does not consider points of detail (some of which are disputed) and we reserve the right to provide more detailed comments in due course but hopefully this could be as part of the process of working with the Council to find an acceptable solution.

My client would like to continue to cooperate with the Council and therefore, without prejudice to its position, I am instructed that it would be prepared to submit applications as suggested in paragraphs 15 to 37 of the Officer's report. We have discussed with the other advisors that would be involved in preparing the submissions and we anticipate that the first submission could be made a week after the committee meeting with further applications to follow in the subsequent two weeks.

The applications that we would prepare are as follows:

	Discrepancy	Type of application	Anticipated submission date
1	Discrepancy between the approved elevation and site layout plans	Section 96A as per paragraph 16 of the report.	15 September 2021
2	Lean to FRB	Application not required as the structure was substantially completed by 1 April 2017 as set out in paragraph 19.	N/A

3	Lean-to Compressor House with Plant Above	Section 73A as per paragraph 22 of the report.	17 September 2021
4	Urea silo	Section 96A. The report does not comment on the appropriate application to regularise the urea silo, however we note from previous correspondence with the Council that an NMA may be appropriate.	15 September 2021
5	Discharge 'incline' conveyor	Application for certificate of lawful development. The conveyor feeds into the main process building as indicated on the plans with a screening tower (structure 5) sandwiched in between the conveyor and main process building.	8 September 2021
6	Screening Tower and Dust Extraction	Application not required as the structure was substantially completed by 30 July 2017 as set out in paragraph 27.	N/A
7	Emergency Diesel Generator and Diesel Tank	Section 96A as per paragraph 30 of the report.	15 September 2021
8	Fire kiosk	Section 96A as per paragraph 32 of the report.	15 September 2021
9	Fire pump house ¹	Section 96A. We note the reference to a section 73A application in paragraph 34 of the report, however, understand from previous discussions with the Council that the fire water tank is considered by the Council to be the material element of the two structures and that an NMA may be appropriate for the fire pump house.	15 September 2021
10	WPD Reactor and transformer unit	Application not required as set out in paragraph 36 of the report.	N/A
11	Extension of site to the North	Full application for planning permission to be submitted.	22 September 2021

¹ A section 73A application for the fire water tank was validated on 6 August 2021. On the same date, the applicant was invited to submit an environmental statement or request a screening direction from the Welsh Ministers in respect of the s73A application. The applicant requested a screening direction from the Welsh Ministers and informed the Council of the same on 23 August 2021.

As indicated above, it is very much hoped that the commitments offered within this letter will obviate any perceived need for immediate enforcement action and will enable the committee to either defer consideration of the report or to delay coming to a decision on whether to follow the Officer's recommendation.

We also think that it should be drawn to your attention that my client does not accept that the recommendation contained within the Officer's report is appropriate. A requirement to :

- (i) Permanently cease the operation of the renewable energy plant, including the carrying out of any performance testing; and
- (ii) Permanently remove the renewable energy plant including all buildings, plant and associated equipment from the land

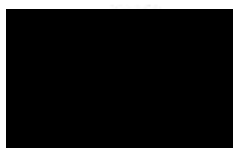
is totally disproportionate to the alleged breach of planning control. If members were minded to accept the Officer's recommendation and authorise the issuing of an enforcement notice containing these requirements, my client would have no option other than to appeal. The initial legal advice received is that the enforcement action currently proposed in the Officer's report would amount to "over-enforcement" and that an appeal is likely to be successful.

A successful appeal would be accompanied by an application for an award of costs against the Council which is also likely to be successful - especially in circumstances where the enforcement action is disproportionate to the alleged breach and where the appellant has offered to work with the Council to take steps to regularise the planning position and avoid any perceived need for enforcement action to be taken.

Biomass No.2 UK Ltd are willing and available to meet with Officers and members in the hope that we can find a way forward and agree an acceptable timetable addressing the Council's concerns and avoid any perceived need for enforcement action.

Should you have any further questions in relation to the above please do not hesitate to contact me.

Yours sincerely,



Steve Butler

MATTERS ARISING FOR COMMITTEE

2.

COMMITTEE DATE : 1 SEPTEMBER, 2021

Application No.: 2021/00550/FUL	Case Officer: Mr. S. D. Butler
Location: University Hospital Llandough, Penlan Road, Llandough	
Proposal: Proposed external works to the Energy Centre, including the development of a free standing 37m tall single core chimney, duct work for CHP plant, external blowdown vessel, dry air coolers and external alterations to the building including new and replacement louvres.	

From: Mr Roberts, 25 Spencer Drive, Llandough, Penarth.

Summary of Comments:

Additional concerns raised in that not only is the chimney dangerously close to residential properties, the hospital have a cluster of trees on the border of our boundary and tower dangerously close over the residential properties, severely effecting our property (25) & 26 Spencer Drive Llandough and other residents.

In summary, it is stated that should a chimney fire occur, which is difficult to control, there is a realistic prospect of any flames or sparks emitted from the chimney could, easily ignite this row of trees and it would be very difficult to contain the fire due to their height causing further danger and serious risk to life.

Officer Response:

The proximity of the trees to the proposed chimney is noted. The trees are a protected (TPO) group comprising of sycamore, ash and horse chestnut.

Whilst no consultees that have responded have raised any concerns in respect of the proximity of the chimney to the trees in respect of fire risk, it is likely that the fire risk of the chimney, as part of the Energy Centre would form part UHLs own wider risk assessment for the operation of their site and / or any fire management plans. In addition, fire prevention and mitigation plans would also form part of the Environmental Permit that would be granted by Natural Resources Wales

Action required:

None