The Natural Resources Body for Wales Statement for Hearing Session 4: Conditions, Planning Obligations, Regulatory Mechanisms

Friday 26 March 2021 10.00am

Bwriad / Proposal: Proposed construction and operation of an energy recovery facility, including the formation of a new access on to Newlands Road and ancillary infrastructure.

Lleoliad / Location: Land off Newlands Road, Cardiff, CF3 2EU.

Eich cyf/Your ref: DNS/3236340

1. Existence and scope of other Regulatory Controls

i. What specific matters does NRW consider would be dealt under the Environmental Permit, if issued, and so should not be duplicated by planning controls?

Background

Where a proposal requires both a planning permission and an environmental permit to operate, we recommend twin tracking the applications. This normally avoids any potential conflict or duplication between the respective regimes. For the avoidance of doubt, NRW have not received an environmental permit application for this proposal.

If the planning application is submitted first, there can be uncertainty over which part of the proposed activity may be of concern, that it requires specific conditions within the permit. This risks the imposition of planning conditions to address aspects of site operations which would be better controlled through permitting conditions.

Without the benefit of an environmental permit application for this proposal, it is difficult to confirm the specific matters to be dealt with under the permit. However, we can provide details of how an environmental permit will be assessed and what type of issues are often considered for a waste facility such as this. We also refer you to our Public Participation Statement, which briefly explains the difference between the two regimes, including what is within the Environmental Permitting remit and what is not.

Summary of Environmental Permitting

Planning and permitting decisions are separate but closely linked. Planning permission determines if the development is an acceptable use of the land. Permitting determines if an operation can be managed on an ongoing basis without posing an unacceptable risk to human health and the environment.

Both decisions:

- Take account of environmental risks, impacts and measures that will be in place to mitigate these risks.
- Are needed before a developer can operate the proposed development.
- May be granted or refused according to their respective legal requirements.

A range of environmental issues are considered when planning applications and environmental permits are determined. However, the range is generally wider for planning than it is for permitting. For example, the planning decision may need to consider visual impact and off-site traffic implications. Whereas the permitting decision considers the design and operation of the processes, to prevent pollution and minimise impacts on the

environment and human health. In that respect, through the permitting regime, NRW can only assess the impact of the operations being proposed within the installation boundary. Emission from these processes may, of course, disperse outside the site boundary (e.g. air emissions, releases to water / sewer)

The scope of an environmental permit is defined by the activities set out in the Environmental Permitting Regulations (EPR). The permitted activities may form a part of, but not all, of the development requiring planning permission. Demonstrating that planning permission is in place is no longer a requirement under the EPR, however, it is an operator's responsibility to ensure that they have the relevant planning permission in place before they start carrying out the activity.

When we assess an application for a permit, we will take a closer look at the impacts the proposed activity will have on the receiving environment, and local community.
NRW will assess the permit application forms and supporting documents to decide whether or not to grant a permit and to help us set the conditions in the permit. The documents we assess include (but not limited to) the following:

- An Environmental risk assessment including source, pathway and receptor analysis
- summary of the operator's management system;
- site condition report
- relevant management plans such as fire prevention and mitigation plan, odour/noise management plan
- information on the applicant's technical competence, any relevant convictions and financial ability;
- other supporting technical documents, for example; air quality modelling, water quality modelling, energy efficiency.
- BAT assessment to demonstrate if the technology they are using and their operating (control) techniques are in line with Best Available Techniques for the sector.

An Environmental risk assessment helps applicants identify the key risks from their proposed activities. Once identified the applicant must consider and address these risks in appropriate management plans and submit these with their application. As part of the determination we assess these management plans in accordance with the relevant guidance to ensure that the measures are suitable in protecting the environment.

This initial screening risk assessment can also be used to determine whether the emissions from the proposed facility to air, water and land are a risk to the environment and human health and whether the applicant needs to do a more detailed assessment of them. Assessing the impact of emissions which are not screened out and are a potential risk to the environment and human health is known as 'detailed modelling'.

The applicant's detailed modelling would need to show if they can meet stringent emission limits for this type of plant that are prescribed in the Industrial Emissions Directive, from

which we have the Environmental Permitting Regulations (in Wales and England) and also sector specific guidance.

Assessment of Environmental Impact of the Application

The application must identify the Environmental Risks associated with the proposal. It must also provide information on how the applicant intends to minimise and control emissions.

Most conditions are objective-based, NRW defines what the objective is but it's up to the applicant how they meet an objective. For example, an objective at a composting site could be to use measures to make sure odour does not cause pollution outside the site's boundary.

Conditions will be prescriptive and will tell the operator exactly what they need to do, for example by:

- stating the equipment they must use
- defining a specific emission limit they must comply with
- telling them to implement a plan which NRW has approved

Emissions that do not have set limits

There are some types of emission that may cause pollution but do not have set limits in permit conditions. In permits these are called 'emissions not controlled by emissions limits' or 'fugitive emissions'. For waste facilities these include:

- dust
- fumes
- flies
- vermin
- mud
- litter

The operator must control these emissions and make sure they do not cause pollution. If the risk assessment identifies a risk of these types of emissions there may be a requirement to provide an emissions management plan when a permit application is made to demonstrate how they will be controlled.

Emissions which Have Set Limits – Point Source Emissions

Point source emissions will come from an identifiable part of the treatment process and will be discharged to the environment through a single point, such as a chimney stack or a water discharge pipe.

Where potential releases are considered significant, but not enough to refuse the permit, we may apply limits to ensure that emissions from the process do not cause pollution.

Emission limits will be set to:

- Comply with Emission Limit Values identified in statutory guidance
- To ensure that releases from the site do not cause pollution.

It may be necessary to apply a numerical limit on point source emissions, to ensure that the environment and communities are protected.

The application will need to include details of the expected releases from the proposed activity. These releases will be assessed, to determine whether they have the potential to cause pollution.

In all cases, if we apply a numerical limit on an emission point, then we will ensure that that the emission point is subject to an appropriate level of monitoring, and conditions requiring the operator to report the monitoring results to the regulator are also included within the permit.

We will only allow a permit to be granted if we are satisfied that the proposed facility will not harm the health of local residents or damage the environment. However, we are legally obliged to grant a permit if a business can show that the proposed site meets all the legal, environmental, technological and health requirements of UK and European law. We carry out an in-depth assessment as part of the permit determination process to decide if this will be the case.

2. Recommended conditions

i. What additional conditions, or amendments to those suggested conditions already submitted, would be necessary in the event of a Ministerial decision that planning permission should be granted?

Referring to our previous response (CAS-124390-L9C7) we recommended 13 conditions in total. However, in light of the further information and sight of the suggested condition in the Local Impact Report, amendments and additions are likely needed.

For ease of reference and clarity, we confirm our suggested conditions below retaining our numbering where possible. We will be happy to expand and discuss these during the Hearing.

(NRW Condition 1)
No development shall commence until full details of the site drainage has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme shall be carried out in accordance with the approved details.

Necessary: However, this can be amended to control only the location, design and construction of any headwall as well as the location of the penstock value.

(NRW Condition 2)
No development shall commence until a water quality monitoring plan for the protection of water quality in the watercourses relating to both the construction and operational phases of development has been submitted to and approved in writing by the Local Planning Authority. The water quality monitoring plan should include:

- • Details of the monitoring methods
- • Timescales for construction
- • Timescales for submission of monitoring and interpretative reports to the LPA during construction and operation
- • Details of triggers for specific action and any necessary contingency actions, for example the need to stop work, introduction of drip trays, make use of spill kits and shut-off valves

The water quality monitoring plan shall be carried out in accordance with the approved details during the site preparation, construction and operational phases of the development.

Necessary

(NRW Condition 3)
No development shall commence until an Ecological Monitoring and Contingency Plan for the management, maintenance and monitoring of the reen throughout the lifetime of the development has been submitted to and approved by the Local Planning Authority.

Not necessary: We consider this could be included in an approved and final LEMP as below.

(NRW Condition 4)
No development shall commence until a Landscape Ecological Management Plan (LEMP) for the provision, management and maintenance of the landscape and ecological features at the site has been submitted to and approved by the Local Planning Authority.
The LEMP shall be carried out in accordance with the approved details.

Necessary: We note the LPA's suggested condition 31. In principle we have no issue with combining a LEMP. This can be discussed further at the Hearing.

(NRW Condition 5)
No development shall commence until a site wide final Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority.

Necessary: We consider that planning control is required and have no issue combining with the LPA suggested condition 5.

(NRW condition 6)
No development shall commence until a Biosecurity Risk Assessment has been submitted to and approved in writing by the Local Planning Authority. The Biosecurity Risk Assessment shall be implemented as approved.

Necessary

(NRW Condition 7)
A 2m high acoustic fence to be provided during construction (location to be agreed as per the advice above regarding a buffer zone).

Not necessary: We consider this could be included in a final CEMP condition.

(NRW Condition 8)
Prior to its installation, full details of lighting shall be submitted to and agreed in writing by the Local Planning Authority. The Lighting Plan should include:
• Details of lighting to be used both during construction and operation
• Details of the siting and type of external lighting to be used
• Drawings setting out light spillage in key sensitive areas (along the ditch)

• The type of light spill reduction measures to be deployed and to which lights these will apply, to confirm that the reen network and wider green infrastructure will be kept unlit/dark.
• An Environmental Lighting Impact Assessment against conservation requirements for protected species

The lighting shall be installed and retained as approved during construction and operation.

Necessary: We note the LPA suggested condition 15. Although our condition is specific to ecology, in principle we have no issues combining these conditions.

(NRW Conditions 9, 10, 11)
These are land contamination conditions (not repeated here)

Necessary: these are similar to the LPA suggested conditions 20 – 23. No issues in principle with combining these, subject to the final wording. (LPA remit is human health, NRW remit is controlled water).

(NRW condition 12)
No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Not necessary: new information confirms no discharge to ground; and subject to SuDS Approval.

(NRW Condition 13)
No development shall commence until details of piling or any other foundation designs using penetrative methods sufficient to demonstrate that there is no unacceptable risk to groundwater have been submitted to and approved in writing by the Local Planning Authority. The piling/foundation designs shall be implemented in accordance with the approved details.

Necessary

<u>Additional Conditions subject to Hearing session discussions</u>

Bats: A condition securing tree surveying is carried out prior to felling or pruning, which contains contingency and/or mitigation measures if roost potential/presence is found.

Dormice: Conservation Plan

GCN: Method Statement (or Conservation Plan)

5. Planning Obligations

Is a planning obligation needed, to cover matters such as heavy goods vehicle routeing, protocols for sourcing of feedstock and productive use of bottom ash residues?

Matters relating to vehicle movements outside the installation boundary should be considered a planning matter. Similarly, a permit determination cannot influence where feedstock is sourced from. Storage and handling of bottom ash is included in the scope of the permit and NRW can use a permit condition prohibiting the mixing of bottom ash (normally non-hazardous) with air pollution control residues (hazardous fly ash) to enable recovery of bottom ash to be maximised by ensuring it stays non-hazardous.

We expect applicants to consider options for recovery of bottom ash as part of the permit application. However, the permit does not specify what they must do with the ash, unless they have committed to using a particular recovery method, in which case, we could enforce this through the permit operating techniques table. The permit would contain a condition requiring the operator to apply the waste hierarchy to all waste generated on site.