

By email to:
policy.wales@planninginspectorate.gov.uk

12/03/2021

Annwyl Syr/Madam / Dear Sir/Madam,

**TOWN AND COUNTRY PLANNING ACT 1990
THE DEVELOPMENTS OF NATIONAL SIGNIFICANCE (WALES) REGULATIONS 2016
THE DEVELOPMENTS OF NATIONAL SIGNIFICANCE (PROCEDURE) (WALES)
ORDER 2016.**

**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.

Thank you for consulting Cyfoeth Naturiol Cymru / Natural Resources Wales (NRW) on the further information submitted for the above application, which we received on 4 February 2021.

This letter responds directly to the further information submitted by the applicant, but where relevant we refer to advice within our Hearing session statements.

On review of the further information we continue to have concerns with the proposal and have identified these below. We will be happy to expand on these points during the upcoming Hearing sessions.

Our remaining concerns are either addressed by the new information or, where appropriate, we recommend planning conditions are attached the permission, if granted. A full list of NRW suggested conditions can be found in our Hearing session 4 statement.

Please note that our advice as statutory planning consultee is reflected in our formal consultation letters to the Planning Inspectorate and the applicant. We have provided comments and advice in our Hearing session statements on wider matters the appointed Inspector wishes to discuss, where NRW has specific knowledge and experience.

Statutory Designated Sites

Impacts of Aerial Emissions

Our previous response (CAS-124390-L9C7) raised concerns regarding the applicant's assessment of air quality and the predicted impacts on sensitive ecological habitats. Our advice explained various matters had not been satisfactorily addressed. This included the application of a lower nutrient Nitrogen Critical Load for the Gwent Levels receptors; an 'in-combination' assessment of other projects; and clarifications over ecological receptors.

We note the further information and assessment submitted in the detailed Air Quality Assessment, dated January 2021 and prepared by Environmental Visage (DOC 35 Version 2).

On review of the submitted air quality information to date, we still have some points of clarification. However, we consider there is sufficient assessment to understand the predicted aerial emission impacts from the proposal.

Results from Detailed Modelling of Nitrogen Deposition

The revised detailed Air Quality Assessment (AQA) (DOC 35) has provided the results of detailed modelling using a lower Critical Load of 10kgN/ha/yr as requested. This can be found in Table 30.

We note the applicant's comments and views regarding our request to provide results based on the lower range from an ecological perspective. Our detailed advice and further comment on this specific matter is set out in our Hearing session 3 statement under Question 2(i).

The application considers the predicted effects on the Gwent Levels from Nitrogen deposition from the proposal to be insignificant. This is based on the exceeding/high background concentration as a result of other activities, in comparison to the proposals emissions. Our detailed advice to the planning authority on this assessment is provided in our Hearing session 3 statement under Question 2(ii).

In summary, given the national importance of the habitats and the protection afforded to them, it is our view that the Nitrogen deposition cannot be dismissed as insignificant. We advise that the small increase from the proposal is considered in the overall balance when determining the planning application.

Habitats Regulations Assessment (HRA) and Air Quality

The revised AQA (DOC 35) provides sufficient assessment to demonstrate the likely significant effects on international sites (Special Areas of Conservation, Special Protection Areas and Ramsar) from the Project **alone**.

The first stage of an HRA is to screen substances in the Test of Likely Significant Effect (TLSE). The first step in this stage is to screen whether the Process Contribution (PC) is less than 1% (long-term). If so, this can be screened out as not having a significant effect.

If the PC is more than 1%, then the Predicted Environmental Concentration (PEC) must be considered (PEC = PC and background concentration). This is the second step in the TLSE. If the PEC is less than 70% (long-term) it can screen out as not having a significant effect. After these steps, if likely significant effects cannot be screened out the HRA must move to the Appropriate Assessment stage.

We note the AQA discussion regarding NO_x on Pages 30 and 31 which considers the Severn Estuary Receptor 1 screens out at step 2 of the TLSE with the PEC approximately 56 % of the Critical Level. On the next page, the report considers the effects on the Gwent Levels by applying the maximum identified existing background of 21.51 µg/m³ at Receptor No. 5. It would be useful for the applicant to clarify whether this is the human health receptor 5 from table 5?

In summary, the AQA confirms that all substances screen out either at step 1 or step 2 of the TLSE stage. On this basis, we accept that it can be concluded that there will be no likely significant effect from the project alone on the features of international sites.

We still seek clarity from the applicant over how they have demonstrated no likely significant effects on international sites from the Project **in-combination**. We query their assessment for an in-combination effect for NO_x. We note table 35 (page 40) which includes a cumulative concentration of 2.25µg/m³. However, we are uncertain how this has been calculated and its relationship with other Projects set out in Table 34.

The report (page 43) states that tables 38 to 40 present the cumulative contributions of nutrient Nitrogen and acid deposition at each of the sensitive ecological receptor. However no similar assessment or discussion is included for NO_x. Why is that?

For the benefit of the competent authority, we take some assurance from our own rough calculations using the data in the report. If the maximum concentration of 21.51 µg/m³ (from Receptor No. 5) and add the predicted cumulative NO_x of 2.25 µg/m³, the PEC is 79% and detailed modelling has shown it below the Environmental Standard/Critical Level of 30µg/m³.

However, we advise that further clarity is sought on the above points to ensure a robust and clear assessment can be made in the competent authority's HRA record.

The Applicant's Habitats Regulation Assessment Screening

We note the revised HRA Screening (DOC 76 Version 2) has been submitted. We do not agree with their position that *as no likely significant effects have been identified for the project alone, it cannot act in-combination with other plans or projects when considering likely significant effects.*

We note the Inspector's additional questions added to Hearing 3 agenda regarding the HRA. It is possible for a Project to act in-combination with other Plans and Projects to have an adverse effect on site integrity, even if at screening it is found that the Project would have no likely significant effect alone.

We have previously advised that the in-combination impacts are considered, even if the PC for the proposal alone are below 1%. We refer to the caselaw known as Wealden from 2017.

It is only when an assessment alone has ascertained that the Project will have no effect on an international site at all, that an adverse effect in-combination is ruled out and no further assessment required. This is not the case here, as there are pollutants which are measurable (albeit not significant alone) and can be calculated, so much so they can be added together to assess in-combination effects.

The HRA Screening (DOC 76 version 2) statement on the first page: *the revised air quality assessment includes an in-combination assessment of other plans and projects to confirm the absence of likely significant effects on the Severn Estuary SAC/SPA/Ramsar* may be premature when our advice above on clarification issues is taken into account.

We will be happy to discuss these points further at Hearing session 3.

Water Quality and Watercourse Management

Impact on SSSI: Buffer Zone and Management

Our previous response (CAS-124390-L9C7) raised concerns over the relationship between the proposed development and the SSSI field ditch corridor. Further information has been submitted in the Draft Landscape and Ecological Management Plan (DOC 87 Version 2).

We initially advised the applicant during pre-application to revise their layout to allow for a 'development free' buffer zone of 7 metres. We considered a condition to ensure the buffer zone is maintained and remains free from use would be appropriate if this was demonstrated. There may have been some misunderstanding with this request. As such we reiterated this in our previous response (CAS-124390-L9C7). Recognising the layout did not allow for a development free buffer, we advised an alternative sized buffer zone may be acceptable. This would need to be free of infrastructure which precludes access to and management of the ditch, subject to assurances that the management of the ditch could be carried out physically (i.e. there is enough space for the machinery required)

Our primary objective from a SSSI conservation perspective is the long-term management of the ditch through casting and desilting as well as reducing shading where practical.

We have liaised with our Internal Drainage team who have experience of ditch management on the Gwent Levels. Based on this and the information submitted to date, we are satisfied that there is sufficient distance between the ditch and any infrastructure or trees to carry out the management described in the draft LEMP.

The Draft LEMP and the measures set out regarding management should be secured through condition if permission is granted. The applicant has also proposed an Ecological Monitoring and Contingency Plan, to be agreed by condition.

We propose that, given the likelihood of a final LEMP needing to be submitted and approved through a pre-commencement condition, details such as the programme of monitoring are included in the LEMP. This would reduce the number of documents and keeps the relevant plans, programmes and commitments in one 'living' document post permission. Please see our comments on proposed conditions in Hearing sessions statement 4.

In terms of vegetation and tree clearance, we are satisfied a balance has been struck between the different biodiversity interests. We refer you to our advice under Protected Species.

Surface Water Discharge

We reiterate our previous advice (CAS-124390-L9C7 – points 1 & 2, page 7) regarding the elements of the proposed drainage strategy that require controlling through planning condition. We consider the location and type/construction of headwalls remains a planning issue.

Only clean surface water should be discharged to the adjacent SSSI ditch. We note the draft SAB application (DOC 105). Although we defer to the SuDS Approving Body on the efficacy of the surface water proposals, the water quality measures proposed appear acceptable.

We note the proposals to install a hand operated penstock valve in the event of a spill/incident. Any future permit application will consider risks to the environment in the event of an onsite incident which discharges contaminated (i.e. non-clean) water to the environment.

Surface water disposal during the construction stage should be managed and controlled through the measures included in the Construction Environmental Management Plan (CEMP).

Impacts on Protected Species

Bats

We have reviewed the further information submitted. In our previous advice (CAS-124390-L9C7), we flagged the potential risks to bats from tree and/or vegetation clearance. As there was some uncertainty over the extent of tree loss as part of the buffer zone clearance, we stated any tree loss must be subject to climbed surveys, which should inform works going forward.

The arboricultural survey has considered the standard trees that need to be removed to (i) accommodate the development and (ii) for general site management purposes because of their poor condition. The arboricultural report indicates removal of the following trees:

- T7 and T9 (both oaks) – to be removed to implement the internal footpath and access road;
- T4 (birch), T5 (willow), T11, T12 (both birch) and part of a G1 (a group of mixed species) – to be removed to implement the building, internal footpath and access road; and
- T2 (willow), T6 (oak), T8 (oak), T10 (willow) and T13 (willow) – to be removed because of their poor condition.

The location of these trees is indicated on the Tree Constraints Plan (DOC 95), and the Tree Removal and Retention Plan (DOC 94). The latter also indicates the trees that will be retained as part of the proposals.

We note there is potential conflict between SSSI objectives (removing vegetation and trees from the watercourse corridor) and the Protected species objectives (retaining trees). We advise that it is likely a suitable habitat corridor will remain for bats along the line of the SSSI ditch after removal of the trees outlined above.

However, with regards to the trees proposed to be removed, information has not been submitted confirming whether these have been assessed for their potential to support roosting bats.

Normally detailed inspections to consider the potential to support roosting bats of trees to be felled/pruned should be completed prior to the determination. If this has not been completed, then in this instance, based on the evidence and setting of the application site, surveys could be carried post determination. A planning 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, should be secured if permission is granted.

We advise that assessments of trees to support roosting bats are best done before trees come into leaf (therefore could be done at this time of the year).

Dormice

We note that no further information has been submitted in relation to dormice, however there are several agenda items proposed to discuss dormice. Please see our Hearing session statement for our views on this matter.

Lighting Plan

We note the applicant's response in ES Addendum 2 (4.2.9) stating they are agreeable to a lighting plan condition. Please see our Hearing session statement 4 for further details.

Other Matters

Our advice as a statutory planning consultee is based on our checklist, *Development Planning Advisory Service: Consultation Topics* (September 2018), which is published on our [website](#).

We will be attending the four Hearing sessions and will be happy to expand on points, where appropriate to do so.

Yn gywir / Yours faithfully

James Davies

Uwch Gynghorydd - Cynllunio Datblygu / Senior Advisor - Development Planning
Cyfoeth Naturiol Cymru / Natural Resources Wales