



Llywodraeth Cymru
Welsh Government

MA/JJ/0905/21

From: Ceri Litherland
Planning Decisions
0300 025 3489
Cleared by: Neil Hemington
Date: 16 March 2021

MINISTERIAL ADVICE

For decision by: Julie James AM, Minister for Housing and Local Government

Copied to: First Minister

Deputy Minister for Housing and Local Government

Subject	Call-in request – Full application for the erection of silos and de-dusting building, extension to rail unloading facility, new above ground conveyors and ancillary development at Uskmouth Power Station, Nash, Newport.
100 word summary	The Minister is being asked to decide whether to call in the planning application for determination by the Welsh Ministers
Timing	A decision is requested by 24 March.
Recommendation	To call in the application
Decision report	This decision requires a decision report

ADVICE

1. The application is for full planning permission for the erection of silos and de-dusting building, extension to rail unloading facility, new above ground conveyors and ancillary development at Uskmouth Power Station, Nash, Newport
2. The application was referred to Newport City Council's Planning Committee meeting of 3 February, but was deferred due to an Article 18 Holding Direction being issued by Welsh Government on 2 February.
3. The Uskmouth Power Station originally produced thermal energy from the combustion of coal, generating electricity before it was closed. It ceased operating in 2017. This application proposes to convert the plant to generate electricity from waste derived pellets imported to the site.
4. Requests to call in this application for determination by the Welsh Ministers have been received from the Campaign for the Protection for Rural Wales, Friends of the Gwent Levels and Friends of the Earth Cymru. These bodies also consider the application should be determined by the Welsh Ministers in accordance with the Developments of National Significance procedure, rather than via the planning procedure.
5. The issues raised by the requestors on this application are summarised as:
 - Potentially toxic waste (air pollution) would have a damaging impact upon the Gwent Levels;
 - The development would have a damaging impact from associated development on the landscape of the Levels;
 - The project should be categorised as DNS and determined by Ministers;
 - The proposal conflicts with Welsh Government targets, policies and recommendations, specifically those set out in PPW;
 - The proposal conflicts with the Well-being of Future Generations (Wales) Act; and
 - The site is at risk of flooding

A Direction under Article 18 (1) of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 was issued on 2 February. This prevents the Council from issuing a planning decision until the call-in process is concluded. The Direction remains in force until it is withdrawn by the Welsh Ministers.

Consideration

6. The main issue to consider in assessing whether an application should be called in by the Welsh Ministers is whether the application raises issues of more than local importance. The Welsh Government's policy on calling in planning applications is set out in Planning Policy Wales (PPW). It sets out six examples of situations which may persuade the Welsh Ministers it is appropriate to call in an application. These include when applications:

- are in conflict with national planning policies;
- could give rise to substantial controversy beyond the immediate locality;
- are likely significantly to affect sites of scientific, nature conservation or historic interest, or areas of landscape importance;
- raise issues of national security;
- may have wide effects beyond their immediate locality; or
- raise novel planning issues.

7. Consideration of the specific issues raised in the call-in request are listed below.

- **Potentially toxic waste (air pollution) would have a damaging impact upon the Gwent Levels**

The officer's report states the Environmental Permitting regime, implemented by Natural Resources Wales (NRW), is the effective mechanism for regulating air quality associated with operational emissions and any impact of such emissions upon both health and environmental receptors. The LPA can consider any regulatory gaps arising from potential effects of the conversion process and to this extent officers are satisfied that operational traffic related matters are for the LPA to control.

NRW was also consulted by Newport City Council. The officer's report notes that NRW Permitting Service is content with the evidence provided with the application and that the development is unlikely to have an adverse effect on the integrity of statutory designated sites. NRW did not object to the development, but recommended a number of conditions be attached to any planning permission. All of the conditions proposed by NRW have been incorporated into recommended conditions in the officer's report.

- **The development would have a damaging impact from associated development on the landscape of the Levels.**

The officer's report notes that there are several very high quality vistas close by and potentially affected by the development. These include the Caldicot and Wentlooge Levels, the Nash Reserve, the Saltmarsh and mudflats looking out over the Severn Estuary.

The officer's report notes that the site is within the Caldicot Levels Special Landscape Area but the proposed development would result in the redevelopment of a previously developed industrial site within an extensive industrial context, and would have no direct effects on the important features, elements and characteristics of the landscape designation. The LPA Landscape Officer raised a number of initial queries regarding the proposal that have been answered, but is

satisfied overall with the information provided and has raised no objections.

The Officer's report states that the scheme is contrary to policy SP8 of the adopted Local Development Plan as it does not contribute positively to the landscape qualities of the Levels Special Landscape Area. The officer's report states that the proposal will have an adverse effect upon local visual receptors, notably recreational viewpoints close by at the national nature reserve managed by RSPB and Wales Coastal Path. From some viewpoints these effects are at least moderate and could potentially be regarded as significant. The effects cannot be mitigated. The report continues to state that from the majority of sensitive visual receptors, the development will be visible, distant and amongst a foreground or backdrop of other high level industrial buildings or plant that will enclose or lessen effects.

The test set out in the adopted LDP policy in respect of the Levels Special Landscape Area is that the existing or potential qualities of the site will be improved or complemented. The report considers the merits of the scheme weigh significantly in favour of it and any adverse effects deemed to arise from impact on landscape and impact upon amenity must be balanced against such merits.

No objections were raised by either Cadw or Glamorgan-Gwent Archaeological Trust in relation to the historical value of the landscape. The report considers the proposal does not have any adverse impact upon Scheduled Ancient Monuments, Listed Buildings and their settings.

Overall, the officer's report correctly identifies that the application fails to accord with policy SP8, and comes to a reasoned view on the matter, informed by consultation responses.

- **The project should be categorised as DNS and determined by Ministers.**

Consideration has been given by the Welsh Government as to whether the proposal is a Development of National Significance ("DNS") and should instead be subject to an application directly to the Welsh Ministers under Section 62D of the Town and Country Planning Act 1990.

The criteria for whether a project is a DNS is set out in the DNS (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (as amended). Regulation 4(1) specifies the construction of a generating station is DNS only if it's expected installed generating capacity is between 10 megawatts and 350 megawatts. Furthermore, Regulation 4(2) specifies the extension or alteration of a

generating station is DNS only if the extension or alteration is expected to increase the installed generating capacity by at least 10 megawatts, but not so that the installed generating capacity exceeds 350 megawatts.

The application does not seek permission for works which amount to the construction of a new generating station nor does it seek an alteration of existing generating facilities which amount to an increase in the installed generating capacity by at least 10 megawatts.

Accordingly, the planning application does not fall within the definition of DNS under Regulations 4(1)-(2) of the DNS (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 (as amended).

- **The proposal conflicts with Welsh Government targets, policies and recommendations, specifically those set out in PPW**

The officer's report sets out how it considers the relevant policies, including PPW, have been taken into account.

The full extent of issues and implications have not been examined and as a result there could be potential conflicts with national policy, particularly in relation to waste planning, but potentially also in regard to decarbonisation and energy. The proposal is novel, in that whilst the prime purpose is power generation, the plant could by default become part of the integrated and adequate network for waste management. As such, the potential implications of such a large facility for waste management and waste planning policies should not pass without sufficient consideration. The proposal is likely to generate controversy and to create impacts wider than the immediate surroundings.

- **The proposal conflicts with the Well-being of Future Generations (Wales) Act (the WFG Act).**

The officer's report states that the WFG Act has been considered during the preparation of Newport's Well-Being Plan 2018-23. It claims the duty imposed by the Act together with the goals and objectives of Newport's Well-Being Plan 2018-23 have been considered in the evaluation of this application. The report states there would be no significant or unacceptable impact upon the achievement of wellbeing objectives as a result of the proposed decision.

The officer's report has due regard for the Council's obligations under the WFG Act in reaching its recommendation.

- **The site is at risk of flooding**

The officer's report notes that a Flood Consequences Assessment (FCA) was submitted with the application which identifies that the Uskmouth Conversion Project is located within Flood Zone C1 and is at varying degrees of risk of tidal flooding. The power station, and the proposed development, are defined as 'highly vulnerable' in Technical Advice Note 15 "Development and Flood Risk", although development can be permitted subject to the application of a justification test. A justification test has been undertaken and the conclusion is reached there are no other reasonably available sites suitable for a development of this type.

The report considers that the FCA demonstrates appropriate mitigation measures would reduce the adverse impacts caused by the Uskmouth Conversion Project and an appropriate drainage strategy would be incorporated into the design to attenuate any increase in surface water run-off, therefore, increase in flood risk. It also considers the FCA and Outline Drainage Strategy demonstrate that the project meets the requirements of PPW10 and TAN15.

The officer's report notes that NRW has requested that the finished floor level of the primary silos is elevated above flood levels. Suggested condition 01 states that the development shall be implemented in accordance with a number of plans, including one which shows a 3m 'gap' between the silos and the existing floor level. The LPA have indicated a separate specific condition requiring this "gap" could be applied if necessary.

The officer's report has due regard for the issues raised and the advice of consultees, and comes to a reasoned view.

Consultation

8. Welsh Government's Planning Policy Branch was consulted and the advice of Policy Branch colleagues is summarised as follows:

"On the basis of the information contained in the officer's report, this application is for operational development to facilitate a change of fuel source. I am concerned that the full implications may not have been considered. This in turn could inadvertently undermine the waste management plan for Wales. The case is less clear cut in relation to decarbonisation but the choice to ignore any examination of the period of closure relative to the fall back and the proposed fuel choice may raise the potential to undermine the decarbonisation agenda.

Therefore, in conclusion, I do not think the full extent of issues and implications have been examined and as a result there could be potential conflicts with national policy, particularly in relation to waste

planning, but potentially also in regard to decarbonisation and energy. Further, the proposal is novel, in that whilst the prime purpose is power generation, the plant could by default become part of the integrated and adequate network for waste management and as such the potential implications of such a large facility for waste management and waste planning policies should not pass without sufficient consideration. Further, and stemming from these reasons, the proposal is likely to generate controversy and would be likely to have impacts wider than the immediate surroundings.

*Taken together, these reasons suggest that issues of more than local importance are raised and Welsh Government may be better placed to consider this proposal and **intervention is therefore recommended**".*

Conclusion

9. The issue at heart in any request for call-in is whether or not the application raises any of the issues listed in paragraph 6 above, or any others which may be considered of more than local importance in nature. In terms of conflict with national planning policies, the main consideration is whether the Local Planning Authority has given due regard to the relevant national and local policies, and correctly interpreted them. This is ordinarily evidenced in the officer's report.
10. In this case, advice from policy colleagues is clear, the officer's report does not demonstrate consideration of the impact on the integrated and adequate network for waste management. Our consideration of the officer's report endorses that assessment and view, that the implications of this impact are of more than local importance. There could be potential conflicts with national policy, particularly in relation to waste planning, but potentially also in regard to decarbonisation and energy, which have not been fully explored by the LPA. It is also noted that the proposal is considered to be novel because of the interaction between the two policy objectives of energy generation and waste management and that is likely to generate controversy.

Recommendation

11. We have assessed the request in the light of all the above information and, on balance, **we recommend the application should be called in for determination by the Welsh Ministers.**

Annex 1: ASSURANCE AND COPY RECIPIENTS

CLEARANCE TRACKING

Aspect	Tracking	Yes	No	N/A	Clearance no.
Finance	Financial implications over £50,000?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Group Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Strategic Budgeting?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Local Government Finance?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Legal	Legal issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by relevant lawyers?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Governance	Novel and contentious issues?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	Cleared by Corporate Governance Unit?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	

DEPUTY DIRECTOR, STATEMENT OF ASSURANCE

In clearing this MA, I confirm that I, **Neil Hemington**, have quality assured this advice, ensuring it is provided on the basis of evidence, accurately presents the options and facts and I am accountable for the recommendations made

I am satisfied that the recommended decision or action, if agreed, would be lawful, affordable and comply with all relevant statutory obligations. Welsh Government policy priorities and cross portfolio implications have been fully considered in line with delivery of the government objectives.

I have fully considered the statement of assurance contained in the MA guidance to ensure all relevant considerations have been taken into account and that the actions and decisions take account of regularity, propriety and value for money.

COPY LIST

This submission advises on a planning decision; all copies are for information only and not for comment.

All mandatory copy recipients (as indicated in the guidance). Additional copy recipients specifically interested in this advice:

- PS First Minister
- PS Deputy Minister for Housing and Local Government
- Paul Griffiths, Special Adviser
- Jane Runeckles, Special Adviser
- Sara Faye, Special Advisor
- John Howells
- Andrew Slade
- Dean Medcraft
- Neil Hemington
- Planning HoB
- Heledd Owen
- Martyn Williams
- LS Planning mailbox
- Environment and Rural Affairs Finance mailbox
- EPRA Government Business Unit
- Information Rights Unit