

From: [appeals](#)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Barry Biomass | ENF2020/0230/M | Notice of Enforcement Appeal

Dear [REDACTED],

Further to your email below. I confirm that the Council has received a payment of £36,800 in respect of the Ground A appeal.

I note from the appeal forms, the agent has stated that PEDW has extended the deadline for submitting a full statement of case until the 19 November 2021. Please could you clarify the position regarding this?

Many thanks,

[REDACTED]
[REDACTED]
Regeneration and Planning / Adfywio a Chynllunio
Vale of Glamorgan Council / Cyngor Bro Morgannwg

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Ystyriwch yr amgylchedd. Peidiwch ag argraffu'r neges hon oni bai fod gwir angen.*

Visit our Website at www.valeofglamorgan.gov.uk
Ewch i'n gwefan yn www.bromorgannwg.gov.uk
[Find us on Facebook / Cewch ddod o hyd i ni ar Facebook](#)
[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

From: [REDACTED]
Sent: 15 October 2021 15:21
To: [appeals <appeals@valeofglamorgan.gov.uk>](mailto:appeals@valeofglamorgan.gov.uk)
Subject: Barry Biomass | ENF2020/0230/M | Notice of Enforcement Appeal

Good afternoon,

Planning and Environment Decisions Wales has received an appeal in relation to the above Enforcement notice (ENF2020/0230/M) issued by Vale of Glamorgan Local Planning Authority (PEDW reference CAS-01341-N2Q5B8). In submitting the appeal, the appellant states that they have now paid the required fee for the consideration of their Grounds (a) appeal against the above Enforcement notice. Therefore, could you please confirm to PEDW whether the required fee has been received by the LPA in relation to the appeal against the above Enforcement notice issued.

Many thanks,

[REDACTED]
[REDACTED]
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government



<https://llyw.cymru/penderfyndiadau-cynllunio-ac-amgylchedd-cymru> |

<https://gov.wales/planning-and-environment-decisions-wales>

Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From: [Sparey, Robert \(ESNR - PEDW\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Cc: [REDACTED]
Bcc: [Sweet, Chris \(ESNR-PEDW\)](#); [REDACTED]
Subject: RE: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation
Date: 07 April 2022 16:36:09
Attachments: [image002.jpg](#)

Dear [REDACTED],

Thank you for your e-mail.

It is not for me to comment on the Vale of Glamorgan Council's handling of applications within their purview, and PEDW's determination of the requirement for an Environmental Statement (ES) in relation to the enforcement appeal in no way implies that the previous application was not valid.

While the Ground(a) enforcement appeal would constitute a deemed planning application, this does not mean that the validation requirements for planning applications would apply to the enforcement appeal. PEDW's position is that there is no requirement for the appellant to undertake pre-application consultation in relation to this enforcement appeal. The ES will be subject to the publicity requirements specified in Regulation 52 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) [the EIA Regulations], carried out by the Local Planning Authority. If the appeal is accepted as valid and formally started, interested parties will have the opportunity to submit representations on the appeal directly to PEDW at that time.

The appellant's agents asked PEDW if it would be possible to apply for a Scoping Direction to inform the scope of the ES for the enforcement appeal. PEDW responded to confirm that, whilst there was no formal provision for Scoping in Part 10 of the EIA Regulations, we considered that it would be in the interests of the effective operation of the planning system to undertake Scoping, and that if we did so, we would follow the process set out by Regulation 33 of the EIA Regulations, consulting the parties specified in Schedule 5 of the Developments of National Significance (Procedure) (Wales) Order 2016 (as amended) prior to confirming the Scope of the ES.

The appellants were invited to submit a Scoping Report on that basis. However, subsequently the appellant's agent confirmed that the appellant would not submit a Scoping Report, and would instead proceed to prepare the ES.

The appellants have asked us to extend the period within which the ES must be submitted, in order for them to finalise matters relating to the Voluntary Environmental Statement. We have therefore agreed to extend the date by three months, i.e. the ES must be submitted by Wednesday 13 July 2022.

Yours sincerely,

Robert Sparey

Robert Sparey

(fe | he / him)

Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 0300 025 3379

E-bost | E-mail: Robert.sparey@gov.wales

Logo small



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |

<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED]

Sent: 03 April 2022 18:50

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Mr Robert Sparey, PEDW

Planning and Environment Manager

Barry Biomass appeal against VoG Enforcement ENF/2020/0230/M

We note that your letter of 13 January notified the company you have determined that the development is EIA development such that under EIA Regulation 49 their appeal must be accompanied by an Environmental Statement (ES).

This marks the first time the development has been considered a major (Schedule 1) project under the EIA Regs. Your determination implies previous applications though accepted by the VoG Council were not validly lodged.

Once Barry Biomass lodge their ES with PEDW it would become a fresh planning application. However, under the *Planning (Wales) Act 2015* [citations below], it's compulsory for developers to consult with local communities before applying for larger or 'major developments'. In the Barry Biomass case, despite the lengthy history, the developers have repeatedly failed to consult the community on their plans, via public meetings or otherwise.

Barry Biomass will also have to include a statement with their application that they have carried out such pre-app consultation.

Let us emphasise that pre-application consultation is the route whereby the public get a say on issues that the ES needs to address. Barry Biomass did ask PEDW for discussions with you on the scope, outside the Regs. You appear to have no case-file yet available, so could you confirm that such discussions did not take place?

Would you finally confirm that PEDW will be unable to accept the application as valid, until Barry Biomass have complied with the 2015 Act's requirement for pre-application consultation under the 2021 good practice guidance (ref. below)?

[REDACTED]
Friends of the Earth Barry&Vale

[REDACTED]
<https://gov.wales/planning-permission-pre-application-discussions>

<https://gov.wales/planning-major-developments-guidance-pre-application-consultation>

1.2 Introducing statutory pre-application consultation into the planning process

... The public is an essential stakeholder in the planning process. It is important that public views are seen as integral to the process.

When done well engagement frontloads the planning process, increases community buy-in, improves the quality of the built environment and creates efficiency and certainty of the planning process for all. To ensure this frontloading and involvement takes place, the Act introduced the need for developers to carry out pre-application consultation on major developments.

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Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From: [Sparey, Robert \(ESNR - PEDW\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Subject: RE: Appeal ref: CAS-01341-N2Q5B8 BIOMASS UK No 2 Ltd
Date: 20 April 2022 09:41:03
Attachments: [2022-04-20 - Letter to \[REDACTED\].pdf](#)
[image001.jpg](#)

Hello,

I apologise for omitting the attachment in my first e-mail.

Regards

Robert Sparey

From: Sparey, Robert (ESNR - PEDW) **On Behalf Of** PEDW – Gwaith Achos / Casework
Sent: 20 April 2022 09:33
To: [REDACTED]
Subject: RE: Appeal ref: CAS-01341-N2Q5B8 BIOMASS UK No 2 Ltd

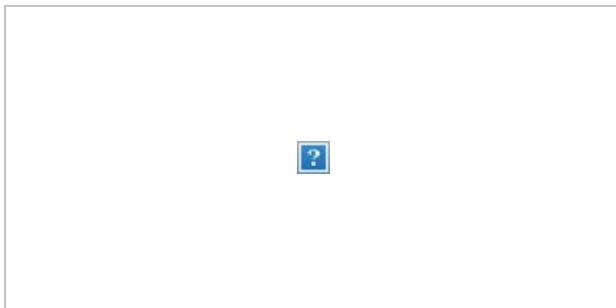
Dear [REDACTED],

Thank you for your e-mail. I attach a response from the Deputy Chief Planning Inspector.

Yours sincerely

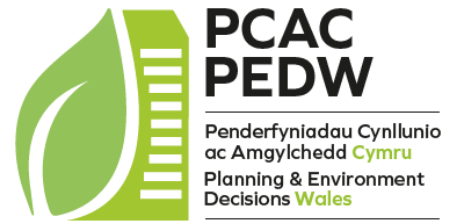
Robert Sparey

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
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<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |

Adeilad y Goron,
Parc Cathays, Caerdydd,
CF10 3NQ



Crown Buildings,
Cathays Park,
Cardiff, CF10 3NQ

Eich Cyf / Your Ref:
Ein Cyf / Our Ref: CAS-01341-N2Q5B8

Ffôn / tel: 03000 252245
Ebost / email: PEDW.Casework@gov.wales

Dyddiad / Date: 20 April 2022

Dear [REDACTED]

Town and Country Planning Act 1990
Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017

Appeal by: Biomass UK No.2 Limited

Site Address: Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE

Alleged Unauthorised Development: Without planning permission, the carrying out of operational development comprising the construction of a wood fired renewable energy plant together with associated structures on that part of the Land edged green on the Plan;
and

Without planning permission, the material change of use of that part of the Land edged blue on the Plan from unused land having a nil use to the storage of containers and as a vehicle turning space in association with the use of the wood fired renewable energy plant on that part of the Land edged green on the Plan.

I write further to your e mail of 17 April. The Environmental Statement (ES) for the enforcement appeal is a legislative requirement of Part 10 of Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017. On 13 January 2022, we issued a Screening Direction and Regulation 49 Notice in respect of the Enforcement Appeal. At that time, we set a deadline of 13 April 2022 for the submission of the ES. On 1 April the agent acting on behalf of Biomass UK No.2 Limited requested an extension of time to submit the ES in relation to the appeal. This is the only request for an extension to the period set for the submission of the ES under Regulation 49 we have received on this appeal.

One of the reasons for seeking the extension was to enable the ES to be informed by any consultation responses to the Voluntary Environmental Statement (VES) prepared for Welsh Ministers as part of the duty of sincere co-operation process. The publication of the report assessing the VES has been delayed and the appellant's consultants have, therefore, been unable to consider the implications of its findings or consultation responses on the ES.

The appeal proceedings and duty of sincere co-operation process are separate. However, the background data forming the basis of the two Environmental Impact Assessments will have much in common. It is essential that the Inspector appointed to report to Welsh Ministers on the appeal is fully informed and able to properly assess the impact of the development for which planning permission is sought under the ground (a) appeal. In order to allow an opportunity for the ES to be updated, if necessary, in light of the findings of the VES report, on 7 April I agreed an extension of time to submit the ES to Wednesday 13 July 2022.

As the deadline was extended before the period set in under Regulation 49 expired, the ground (a) enforcement appeal has not lapsed. Even if the ground (a) appeal were to lapse, the appellant has also pled other grounds that would still need to be determined.

Yours sincerely

A Thickett

Tony Thickett

Dirprwy Brif Arolygydd Cynllunio

Deputy Chief Planning Inspector

<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED] >
Sent: 17 April 2022 21:40
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Subject: Appeal ref: CAS-01341-N2Q5B8 BIOMASS UK No 2 Ltd

FOR THE KIND ATTENTION OF Mr Robert Sparey MPlan, Planning and Environment Manager, PEDW

Dear Mr Sparey,

Appeal ref: CAS-01341-N2Q5B8
APPLICATION BY APPELLANT FOR A FURTHER EXTENSION TO THE DEADLINE FOR SUBMITTING AN ENVIRONMENTAL STATEMENT

I understand that the April 13 2022 deadline given in your January 13 2022 letter to the Appellant passed without the Appellant submitting an Environmental Statement.

I further understand that the Appellant has, instead, requested a three month extension to that deadline effective from the date the consultation commissioned by the Welsh Government is published.

I urge you to refuse this extension application by the Appellant because:

- The Appellant has had already sought and been allowed two extensions already in respect of delivery of the ES,
- The consultation commissioned by the Welsh Government was announced in October 2021 and closed January 17 2022, giving as you pointed out in your January 13 2022 letter to the Appellant's advisers, adequate time for the consultation's conclusions to be reviewed before the April 13 2022 deadline. However, the Minister for Climate Change made the following announcement on February 7 2022:

WRITTEN QUESTION
FOR ANSWER BY THE MINISTER FOR CLIMATE CHANGE
ON 07 FEBRUARY 2022

Andrew R.T. Davies (South Wales Central): Will the Welsh Government continue with the retrospective voluntary process, following Barry Biomass's announcement that it will submit a proper planning application with environmental impact assessment to Planning and Environment Decisions Wales? (WQ84370)

Julie James: Consultation on the developer's voluntary environmental statement has been undertaken to inform the Welsh Ministers' consideration of its duty of

sincere co-operation in relation to the breach of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (“the EIA Regulations”) in relation to planning application 2015/00031/OUT.

Planning and Environment Decisions Wales (PEDW) is dealing with an appeal from Biomass UK No.2 Limited against an enforcement notice served by Vale of Glamorgan Council. PEDW will appoint an independent inspector to advise the Welsh Ministers on whether to allow or dismiss the appeal. There are environmental impact assessment (EIA) procedures that must be followed as part of the appeal process, set out in the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, which include the production of an environmental statement.

The enforcement appeal and duty of sincere co-operation are separate decisions and therefore the recent consultation on the voluntary environmental statement is not a substitute for the EIA procedures that enforcement appeals must follow. The representations received through the consultation currently being collated by Wardell Armstrong will inform the Welsh Ministers’ consideration of its duty of sincere co-operation.

Since the Minister for Climate Change has clearly stated on February 7 2022 that the sole focus of the Welsh Ministers on the conclusions in the Wardell Armstrong consultation will be, and will only be, the issue of sincere cooperation (which the Minister has clearly stated has nothing whatsoever to do with the Environmental Statement required from the Appellant) it follows that there can be no valid grounds to support the Appellant’s stated need to review the consultation document for a period of three months after the consultation is published.

Furthermore, if you refuse the Appellant’s latest extension request:

1. How will PEDW proceed given that the Appellant has failed to submit the core element of their defence to the Enforcement Notice within the timeframe agreed by the Appellant ?
2. Indeed, would the Appeal lapse, and under such circumstances, I would be grateful if you would confirm that it would become incumbent on Vale of Glamorgan Council to proceed with a criminal prosecution of the Appellant given the Appellant’s failure to respond by April 13 2022 to the Enforcement Notice approved by that Council on September 1 2021 ?
3. In the alternative, if PEDW is minded to accept the Appellant’s latest extension request, will you please let me have the reasoning behind such a decision ?

I would be grateful for your response as soon as possible.

Yours sincerely,



From: [Nethell, Isabel \(ESNR - PEDW\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [PEDW – Gweithdrefnau / Procedure](#)
Subject: FW: CAS-01341-N2Q5B8 Biomass UK No.2
Date: 17 June 2022 11:51:10

From: BarryVale FOE [REDACTED] >
Sent: 17 June 2022 11:46
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,

Planning and Environment Manager

We see there is still no file at this reference on your website. We have a copy of your letter to the appellant dated 13/01/2022 to: Biomass UK No. 2 Ltd., c/o Ashurst LLP

Could you confirm that they have not yet submitted a formal ES in accordance with your letter, for which you allowed an extra 2 months after 13th April 2022 ?

If you have had other correspondence with BiomassUK reps on this case, could you please forward copies to this e-mailbox.

with thanks,

[REDACTED]

Friends of the Earth Barry&Vale

[REDACTED]

From: [Sweet, Chris \(ESNR-PEDW\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Subject: RE: CAS-01341-N2Q5B8 Biomass UK No.2
Date: 22 June 2022 08:30:00
Attachments: [image001.jpg](#)
[Barry Biomass Letter to PEDW dated 15 June 2022 \(CAS-01341-N2Q5B8\) Redacted.pdf](#)

Dear [REDACTED]

Apologies. Further to my previous email, I have just been made aware that we have received a request from the Appellants for a further extension of time to submit the ES. I attach a copy for your information.

That request is being considered, but we have not yet responded so no further correspondence has taken place.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and
Interim Casework Manager
Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 253382



From: Sweet, Chris (ESNR-PEDW) **On Behalf Of** PEDW – Gwaith Achos / Casework
Sent: 22 June 2022 08:06
To: [REDACTED]
Subject: RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear [REDACTED]

Thank you for your email. I apologise for the delay in responding to you.

Our ref: CKR\30010765.1000-062-625
Your ref: CAS-01341-N2Q5B8
Direct line: [REDACTED]
Email: [REDACTED]

Ashurst LLP
London Fruit & Wool Exchange
1 Duval Square
London E1 6PW

15 June 2022

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www.ashurst.com

Planning & Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff CF10 3NQ

c/o: Robert Sparey
Planning and Environment Manager

email: PEDW.casework@gov.wales



Dear Mr Sparey

**Town and Country Planning Act 1990 (the "1990 Act")
Town and Country Planning (Environmental Impact Assessment)(Wales) Regulations 2017
(the "EIA Regulations")**

Enforcement Notice: ENF/2020/0230/M issued by Vale of Glamorgan Council

Appellant: Biomass UK No.2 Limited

Appeal Site: Land at Barry Biomass, Woodham Road, Vale of Glamorgan CF63 4JE

Alleged Unauthorised Development:

- (a) without planning permission, the carrying out of operational development comprising the construction of a wood fired renewable energy plant together with associated structures on the part of the Appeal Site edged green on the Enforcement Notice plan; and
- (b) without planning permission, the material change of use of that part of the Appeal Site edged blue on the Enforcement Notice plan from unused land having a nil use to the storage of containers and as a vehicle turning space in association with the use of the wood fired renewable energy plant at (a) above.

I refer to PEDW's Regulation 49 Notice dated 13 January 2022 and our subsequent correspondence concerning the preparation and submission of an Environmental Statement (Appeal ES). In particular, I refer to your email dated 7 April 2022 which extended the deadline for submission of the Appeal ES to Wednesday 13 July 2022. Your email noted that extensions beyond that date would be possible if there is a compelling reason, so long as you receive a request before Wednesday 29 June 2022.

On behalf of the Appellant, I hereby request a second extension to the submission deadline. Through no fault of the Appellant, the Welsh Government has still not published the consultation responses

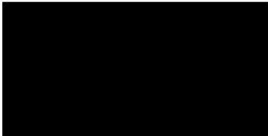
to and its findings on the Voluntary Retrospective EIA (VES) dated April 2021. The situation today therefore remains exactly as explained in my letter dated 1 April 2022 and all of the compelling reasons set out therein and previously accepted by PEDW for justifying an extension apply equally to this second extension request.

The previous extension was for three months. However, I suggest that the deadline is now extended by five months (i.e. to Wednesday 14 December 2022) in order to take account of the summer period when the resources needed to incorporate the Welsh Government's findings into the Appeal ES may be more limited (if, indeed, the findings are published before the holiday season at all). I note that the Welsh Ministers have discretion to allow a longer period for submission of the Appeal ES by virtue of regulation 49(2)(c) of the EIA Regulations.


I would be grateful if you could please consider this letter and confirm as soon as possible whether the Appellant's requests to extend the Appeal ES submission deadline from Wednesday 13 July 2022 to the Wednesday 14 December 2022 has been agreed by Welsh Ministers.

If you have any questions or wish to discuss this request in more detail then please do not hesitate to contact me.

Yours sincerely,



Copy to:  - Vale of Glamorgan Council

 - Vale of Glamorgan Council

We are not currently publishing documents for these cases, but will do so as soon as we are able and once the appeal timetable has commenced. That will not be the case until after the ES is submitted and found to be complete.

An extension of time for submission of the ES was granted to the Appellants on 7 April 2022, which extended the deadline by 3 months to **13 July 2022**. As such, we have not received the ES at this point.

I can see from your email that you are aware of the extension being granted, although you refer to two months rather than three. I have looked at our file and we have not had any further correspondence with the Appellants since our extension of the deadline.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: BarryVale FOE [REDACTED] >

Sent: 17 June 2022 11:46

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,
Planning and Environment Manager

We see there is still no file at this reference on your website. We have a copy of your letter to the appellant dated 13/01/2022 to: Biomass UK No. 2 Ltd., c/o Ashurst LLP
Could you confirm that they have not yet submitted a formal ES in accordance with your letter,

for which you allowed an extra 2 months after 13th April 2022 ?

If you have had other correspondence with BiomassUK reps on this case, could you please forward copies to this e-mailbox.

with thanks,

-- [REDACTED]

Friends of the Earth Barry&Vale

[REDACTED]

From: [Robinson, Victoria \(COOG - Planning & Environment Decisions Wales\)](#)
To: [Thickett, Tony \(COOG - Planning & Environment Decisions Wales\)](#); [PEDW – Gwaith Achos / Casework](#); [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#)
Cc: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2
Date: 04 July 2022 14:28:21
Attachments: [image001.png](#)
[image002.jpg](#)
[image003.jpg](#)

Yep sounds ok to me. Ta

Victoria Robinson
Prif Arolygydd Cynllunio/ Chief Planning Inspector
Penderfyniadau Cynllunio ac Amgylchedd Cymru/ Planning and Environment Decisions Wales.
Llywodraeth Cymru / Welsh Government
Ffôn / Tel: 03000 251 293
E-bost / E-mail: PEDW.CPI@llyw.cymru/PEDW.CPI@gov.wales



From: Thickett, Tony (COOG - Planning & Environment Decisions Wales) <[REDACTED]>

Sent: 04 July 2022 14:21

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>; Robinson, Victoria (COOG - Planning & Environment Decisions Wales) <[REDACTED]>; Nethell, Isabel (COOG - Planning & Environment Decisions Wales) <Isabel.Nethell@gov.wales>

Cc: Sweet, Chris (COOG - Planning & Environment Decisions Wales) <Chris.Sweet001@gov.wales>

Subject: RE: Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2

Pnawn da Rob,

Suggest we reply on these lines.

Mr Thickett declined the request to extend the deadline for the submission of the ES until December. The appellant's have been given until the end of the month to submit the ES.

The Chief Planning Inspector confirmed on appointment that she would have no involvement in casework in the Vale of Glamorgan, as per the published protocol: <https://gov.wales/planning-and-environment-decisions-wales/protocol>

Mrs Robinson has been briefed on progress but has recused herself from any involvement in line with the protocol. Mr Thickett's involvement in the current case has been purely procedural in his position as Deputy Chief Planning Inspector. Mr Thickett will have no involvement with assessing the ES or with the processing of the appeal if, once assessed, the ES is considered to be complete and the appeal is started.

I've looked at the Conflict Policy and Role of Inspector, none of the scenarios apply.

I wouldn't answer his question on who to take this to. If he presses, as it's been recovered he should go to Neil.

Tony

Dirprwy Brif Arolygydd Cynllunio/Deputy Chief Planning Inspector
Penderfyniadau Cynllunio ac Amgylchedd Cymru/ Planning and Environment Decisions Wales.
Llywodraeth Cymru / Welsh Government
Ffôn / Tel: 03000250247
E-bost / E-mail: PEDW.CPI@llyw.cymru/PEDW.CPI@gov.wales



From: Sparey, Robert (COOG - Planning & Environment Decisions Wales) <Robert.Sparey@gov.wales> **On Behalf Of**

PEDW – Gwaith Achos / Casework

Sent: 04 July 2022 13:22

To: Thickett, Tony (COOG - Planning & Environment Decisions Wales) <[REDACTED]>; Robinson, Victoria (COOG - Planning & Environment Decisions Wales) <[REDACTED]>; Nethell, Isabel (COOG - Planning & Environment Decisions Wales) <Isabel.Nethell@gov.wales>

Cc: Sweet, Chris (COOG - Planning & Environment Decisions Wales) <Chris.Sweet001@gov.wales>

Subject: FW: Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2

Hi,

See below from Barry FoE; how would you like to proceed?

Happy for me to confirm that the Chief Planning Inspector has already confirmed that she will have no

involvement in casework in the Vale of Glamorgan, as per the published protocol:

<https://gov.wales/planning-and-environment-decisions-wales/protocol>

Not sure who we could say would be in a position to review Mr Thickett's involvement? I could confirm that the matter was discussed and agreed with the Head of Operations when the appeals came in, and that that we do not consider that Mr Thickett's involvement in the previous appeal to constitute a conflict of interest.

I was thinking of providing guidance around what we do consider to be a conflict of interest, and I see that the ITM refers to the PEDW Conflict of Interest Policy, but I can only see the PINS one on iShare.

Thanks

Rob

From: BarryVale FOE [REDACTED] >

Sent: 04 July 2022 13:03

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED] > [REDACTED]
[REDACTED]
[REDACTED]

Alun.Cairns.mp@parliament.uk; [REDACTED]
[REDACTED]

Subject: Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,
Planning and Environment Manager

Dear Mr Sparey,

VoG Council Enforcement Notice: ENF/2020/0230/M: Land at Barry Biomass, CF63 4JE

Appellant: Biomass UK No.2 Limited.

Objection to involvement of Mr Thickett: conflicting interest

Thankyou for this acknowledgement saying you passed our letter to Mr Thickett.

Surely Mr Thickett will remember that he acted as Inspector at the 2010 Inquiry, where he allowed the Appeal for this plant against our (and the VoG) opposition.

He explicitly refused to accept our objection that it was and is Schedule 1 EIA development. Alun Cairns MP also spoke strongly in opposition,

Mr Thickett disclosed at the Inquiry that he had just been briefed by the Welsh Government on the supposed importance of waste-wood burning for their waste and energy policies..

He dismissed the rejection and objections (led by the Vale of Glamorgan Council) and imposed high costs on them.

The loss of that case frightened the Vale Council from requiring EIA at the 2015 application for the current plant on the site.

In allowing the Appeal (by Sunrise Renewables), Mr Thickett ignored the EIA Reg. 3, which we quoted, that forbids the granting of planning consent without complying with EIA processes. This led to the continuing troubles for the Council and the community that are culminating in the present Appeal.

We would submit that conflict of interest requires Mr Thickett to have no part in PEDW's handling of the present Appeal.

Of course, Victoria Robinson has more recent conflicting interest.

Please assure us that both will be excluded; if they do not recuse themselves, please say where we could appeal on grounds of conflicting interest if they approve this exceptional request by the Appellant ?

--

Friends of the Earth Barry&Vale

[REDACTED]
[REDACTED]

On Fri, 1 Jul 2022 at 09:13, <PEDW.Casework@gov.wales> wrote:

Hello [REDACTED],

I am sorry that I have not acknowledged your e-mail until now, but I confirm that it was passed to Mr Thickett on 27 June for his consideration.

Yours sincerely

Robert Sparey

Robert Sparey

(fe | he / him)

Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 0300 025 3379

E-bost | E-mail: Robert.sparey@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> | <https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED] >

Sent: 27 June 2022 13:01

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED] Davies, Andrew RT(Aelod o'r Senedd | Member of the Senedd) <AndrewRT.Davies@senedd.wales>; [REDACTED]

Subject: Re: CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,
Planning and Environment Manager
Dear Mr Spurey,

VoG Council Enforcement Notice: ENF/2020/0230/M: Land at Barry Biomass, CF63 4JE
Appellant: Biomass UK No.2 Limited.

Our thanks to your casework Manager, Chris Sweet, for supplying the Applicant's request for further time to meet the requirement agreed with PEDW to supply an Environmental Statement by 13 July.

We have seen the letter to you from DIAG of 26 June, and strongly support their representations.

FoE Barry&Vale argued against the "Voluntary Environmental Statement" process from the time it was conceived in June 2018, but our representations went unheeded. The Minister's answer in the Senedd of 7th February did, however, accept our argument that the voluntary process is separate from the EIA process laid down in the EIA (Wales) Regs. 2017.

The Appellant's reason for further time cannot be "compelling", in relying on results of the voluntary process being available to them. Those results are of limited relevance to an ES based on and in the EIA Regs.

The full answer from the Minister has been supplied to you with the DIAG letter (WQ84370: answer to Andrew RT Davies MS on 7 Feb2022. This section merits quotation

There are environmental impact assessment (EIA) procedures that must be followed as part of the appeal process, set out in the EIA Regulations, which include the production of an environmental statement. The ... recent consultation on the voluntary environmental statement is not a substitute for the EIA procedures that enforcement appeals must follow.

Though it took several years, the Vale of Glamorgan Council eventually accepted that their 2015 planning decision was defective because EIA is mandatory for Schedule 1 projects. That the Appellant built a plant that does not conform to the 2015 consented plan gave the Council full reason to issue the Enforcement Notice after giving the Appellant opportunity to submit a retrospective EIA application.

The Applicant was surely aware that their Appeal last Sept. would come under the EIA Reg.49, so should have set in train the EIA procedures without waiting for the PEDW Notice in January. The delay is of their making and we urge PEDW to hold to the 13 July deadline.

— [REDACTED]
Friends of the Earth Barry&Vale
[REDACTED]

On Wed, 22 Jun 2022 at 08:30, <PEDW.Casework@gov.wales> wrote:

Dear [REDACTED]
Apologies. Further to my previous email, I have just been made aware that we have received a request from the Appellants for a further extension of time to submit the ES. I attach a copy for your information.
That request is being considered, but we have not yet responded so no further correspondence has taken place.
Kind regards
Chris Sweet

Chris Sweet

[fe | he / him]
Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager



From: Sweet, Chris (ESNR-PEDW) **On Behalf Of** PEDW – Gwaith Achos / Casework

Sent: 22 June 2022 08:06

To: [REDACTED]

Subject: RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear [REDACTED]

Thank you for your email. I apologise for the delay in responding to you.

We are not currently publishing documents for these cases, but will do so as soon as we are able and once the appeal timetable has commenced. That will not be the case until after the ES is submitted and found to be complete.

An extension of time for submission of the ES was granted to the Appellants on 7 April 2022, which extended the deadline by 3 months to **13 July 2022**. As such, we have not received the ES at this point.

I can see from your email that you are aware of the extension being granted, although you refer to two months rather than three. I have looked at our file and we have not had any further correspondence with the Appellants since our extension of the deadline.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales
Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: BarryVale FOE [REDACTED] >

Sent: 17 June 2022 11:46

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,

Planning and Environment Manager

We see there is still no file at this reference on your website. We have a copy of your letter to the appellant dated 13/01/2022 to: Biomass UK No. 2 Ltd., c/o Ashurst LLP

Could you confirm that they have not yet submitted a formal ES in accordance with your letter, for which you allowed an extra 2 months after 13th April 2022 ?

If you have had other correspondence with BiomassUK reps on this case, could you please forward copies to this e-mailbox.

with thanks,

-- [REDACTED]

Friends of the Earth Barry&Vale



From: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [BarryVale FOE](#)
Bcc: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2
Date: 12 July 2022 15:26:21
Attachments: [image001.jpg](#)
[image002.jpg](#)

Hello [REDACTED]

Mr Sweet has asked me to respond to your query. On receipt of an Environmental Statement (ES), Planning and Environment Decisions Wales (PEDW) will appoint an Inspector to assess whether the ES is complete for the purposes of the Regulations, i.e. whether it addresses the requirements of Regulation 17 and Schedule 4 of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) [‘the EIA Regulations’].

At this stage the Inspector may or may not be the Inspector that will determine the case in question. It is our working practice to ensure it is the same Inspector wherever possible but Inspector availability is the determining factor.

This process is not open to consultation, and is a matter of the professional judgement of the Inspector. The Inspector’s findings will be captured in a Report which will be added to the relevant file and published if the case is found to be valid and formally started.

If an ES is found to be complete for the purposes of the EIA Regulations this does not mean that they consider it to be adequate to the point to enable planning permission to be granted, only that it covers the matters prescribed by the EIA Regulations.

As the appeal you are enquiring about is an enforcement appeal, the ES will be subject to publicity in accordance with Regulation 52 of the EIA Regulations, and the representations that people wish to make about the contents of the ES can be submitted to PEDW once the Local Planning Authority has instigated those publicity measures.

Whether or not the Inspector finds the ES to be complete it does not preclude the Inspector from requesting ‘further information’ under Regulations 51 and 24.

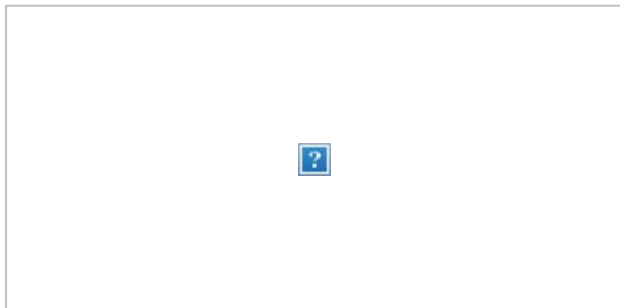
I hope this is helpful.

Yours sincerely

Robert Sparey

Robert Sparey
(fe | he / him)

Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 0300 025 3379
E-bost | E-mail: Robert.sparey@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE <[REDACTED]>
Sent: 08 July 2022 14:35
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: Davies, Andrew RT(Aelod o'r Senedd | Member of the Senedd)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear Chris Sweet,

Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

We are informed that PEDW has allowed Barry Biomass further time to submit the ES, till 29 July, and would ask what procedures PEDW will adopt to determine if the Environmental Statement when it arrives is *complete*.

The Minister's written Answer of 7th Feb explained

There are environmental impact assessment (EIA) procedures that must be followed as part of the appeal process, set out in the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, which include the production of an environmental statement.

We read this as saying you will adopt the EIA processes as far as possible once the company's document is received, so might need to return it as incomplete.
Let's draw your attention to Reg.17 (4)

(4) An environmental statement must—

(d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment;

You can appreciate this requires a degree of knowledge of the local environment, including eg. the local meteorological conditions of the Barry basin that are unusual as evidenced during the limited performance of the plant.

We understand that Barry Biomass declined to ask PEDW for a scoping assessment. We are aware that the Welsh Govt's scoping advice was too limited, in particular that they and NRW assessed the flood-risk from NRW's Wales Flood-map, which is not to be used for detailed planning purposes. There's also an issue of using up-to-date environmental standards and Welsh planning policies. We would argue it's not complete without a community-based Health Impact Assessment, Flood Risk and Flood Consequences Assessments and a CBA (Cost-Benefit Analysis) of options for using the waste heat.

We are further concerned that the company uses old geographic data, ignoring buildings constructed in recent years and receptors like schools and social facilities that have changed. Background noise data have to be more recent than those measured for the 2017 Environmental permit.

Another issue that faced the VoG Council is that the EIA has to cover the full installation, including the site for wood-chip preparation and storage, plus reception of fire-damaged wood-chip and incinerator ash which was to be on the dock-site called Berth 31. Maybe they now think to instead use the northern extension to the main site where "storage" is indicated. The ES would not be "complete" without defining and describing the location of these essential adjuncts.

In the context of these complexities, would you explain the process by which PEDW will determine if the ES is "complete"; also if you will ensure this process is open and subject to some feedback from the Barry community. While we are in support of the Vale Council's enforcement order, we are critical of several aspects of their view on EIA, so would not be seen as represented through your using them as consultee.

We attach a pdf of the Welsh Minister's 7th Feb. Senedd answer and look forward to your reply.

-- [REDACTED]
[REDACTED]
Friends of the Earth Barry&Vale

[REDACTED]

From: Sweet, Chris (ESNR-PEDW) **On Behalf Of** PEDW – Gwaith Achos / Casework

Sent: 22 June 2022 08:06

To: [REDACTED]

Subject: RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear [REDACTED]

Thank you for your email. I apologise for the delay in responding to you.

We are not currently publishing documents for these cases, but will do so as soon as we are able and once the appeal timetable has commenced. That will not be the case until after the ES is submitted and found to be complete.

An extension of time for submission of the ES was granted to the Appellants on 7 April 2022, which extended the deadline by 3 months to **13 July 2022**. As such, we have not received the ES at this point.

I can see from your email that you are aware of the extension being granted, although you refer to two months rather than three. I have looked at our file and we have not had any further correspondence with the Appellants since our extension of the deadline.

Kind regards

Chris Sweet

Planning Officer and Interim Casework Manager
Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 253382



Adeilad y Goron,
Parc Cathays, Caerdydd,
CF10 3NQ



Crown Buildings,
Cathays Park,
Cardiff, CF10 3NQ

Eich Cyf/Your Ref:
Ein Cyf/Our Ref: CAS-01341-N2Q5B8

Ffôn/tel: 03000 252245
Ebost/email: Isabel.nethell@gov.wales

Dyddiad/Date: 15 July 2022

██████████
{by e-mail}

Dear ██████████

Subject: The procedural involvement of Mr Thickett in CAS-01341-N2Q5B8

Thank you for your e-mail of 08 July 2022. I am sorry to hear that you are concerned about the involvement of the Deputy Chief Planning Inspector, Mr Thickett, in this appeal. You consider that Mr Thickett has a conflict of interest in that he was the appointed Inspector in relation to a previous inquiry relating to the development subject of this appeal.

Mr Thickett will not be appointed as the Inspector on these cases, nor will he be the Inspector who checks the Environmental Statement for completeness. Neither of these roles would be appropriate given his involvement in the previous case, combined with the need to refer any complaints about the Inspector's handling of matters to a senior officer. The Chief Planning Inspector is precluded from dealing with this case in accordance with our published protocol: <https://gov.wales/planning-and-environment-decisions-wales/protocol>

I am satisfied that Mr Thickett's role as the appointed Inspector in the 2010 case does not constitute a conflict of interest in his being involved in procedural decisions related to the current appeals (one enforcement appeal and a planning appeal). I do not accept that Mr Thickett's determinations regarding the previous appeal influenced his consideration of the amount of time that should be allowed for submission of the ES.

I have reviewed Mr Thickett's handling of the procedural matters raised with him by the team in PEDW.

In the interests of transparency, I confirm that Mr Thickett was consulted when Mr Sparey was setting the original timescale for submission of the ES when the notice (dated 13 January 2022) under Regulation 49 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) ['the EIA Regulations'] was drafted. Mr Thickett's professional experience means that he is well placed to advise on such matters. The original period set was one of three months.

The request for an extension of time from the applicants submitted on 01 April 2022, was passed to Mr Thickett for consideration, as he had set the original timescale for submission.

The issue of whether to allow an extension of time for the submission of an ES under Regulation 49 is a procedural one. It has no relation to the merits of the appeals. When considering a request for further time on such a case, it is important to consider what time is reasonably required to produce a complete ES, so as to not disadvantage the appellant, and also to consider the public interest in maintaining a timely enforcement system.

While Planning and Environment Decisions Wales (PEDW) is clear on the fact that the Voluntary Environmental Statement (VES) is a separate matter to the formal ES required for the enforcement appeal, there is logic to the position that, any public comments resulting from the VES consultation, could be addressed in the preparation of the formal ES. This would also seem to accord with the principle of public engagement in the environmental decision-making process. However, that is not to suggest that it would be any substitute for the legislatively required publicity undertaken when an ES is submitted under Regulation 50 of the EIA Regulations.

Mr Thickett carefully considered these factors when dealing with the original request for an extension. The request was for an extension to three months after the date on which the VES process was to be finally concluded. As there was no fixed date for the end of that process, this was in effect a request for an open-ended extension. Mr Thickett did not consider that to be appropriate. Instead, he gave a fixed extension of three months in the hopes that the stated aim of incorporating public comments from the VES process could be achieved.

There is no legislative test or bar when considering such requests for extensions. Regulation 49(2)(c) states that:

- the appellant must, within the period specified in the notice or **such longer period as the Welsh Ministers may allow**, submit to the Welsh Ministers two copies of an environmental statement relating to the unauthorised EIA development in question;

Mr Sparey's advice that any further requests for an extension should be accompanied by 'compelling' reasons was meant to impress upon the appellant that the public interest in a timely enforcement system would be factored in when considering such a request.

The most recent request for an extension of time for the submission of the ES was submitted on 15 June 2022. Due to other work commitments Mr Thickett did not have chance to fully consider this request until 30 June 2022. He did not consider that their reasons were sufficient to justify a five-month suspension period. To avoid any prejudice to the appellants due to the length of time it took PEDW to respond, Mr Thickett considered a short extension to 29 July was reasonable.

I am satisfied that the procedural input from Mr Thickett has been impartial and based on his professional experience and judgement. I can find no reason to preclude him dealing with future procedural queries on the appeals in his capacity as the Deputy Chief Planning Inspector.

I am sorry my reply cannot be more helpful. If you are not happy with it, you may complain to the Public Services Ombudsman for Wales. The Ombudsman can be contacted at the following address:

Public Services Ombudsman for Wales,
1 Ffordd yr Hen Gae,
Pencoed
CF35 5LJ.

Telephone: 0300 790 0203

E-mail: ask@ombudsman.wales

Website at <https://www.ombudsman.wales/>

Yours sincerely

Isabel Nethell

ISABEL NETHELL

Pennaeth Gweithrediadau
Head of Operations

From: [Nethell Isabel \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Cwynion / Complaints](#)
To: [BarryVale FOE](#)
Cc: [REDACTED]
Subject: RE: Complaint over Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2
Date: 15 July 2022 16:02:00
Attachments: [Reply to \[REDACTED\].pdf](#)
[image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)

Please find attached a response to your complaint below.

Isabel Nethell

Isabel Nethell
(hi | she / her)
Pennaeth Gweithrediadau | Head of Operations
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 0300 0252245
E-bost | E-mail Isabel.nethell@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> | <https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED] >
Sent: 08 July 2022 11:34
To: PEDW – Cwynion / Complaints <PEDW.Complaints@gov.wales>
Cc: [REDACTED]
Subject: Complaint over Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2

PEDW Complaints Officer.

Complaint about Mr Thickett's conflicting interest in CAS-01341-N2Q5B8 Biomass UK No.2

We were recently advised that Anthony Thickett was the decision-maker in giving more time to the company to submit further information

in this appeal, despite being compromised due to his position as Appeal Inspector in the related 2010 Inquiry. The decision handed down by Mr Thickett then was against the Vale of Glamorgan Council. We saw that decision as wrong, as is now shown in PEDW's decision in January 2022 that the development is EIA Schedule 1.

In the latest decision of 30 June 2022, Mr Thickett did not confine himself to a procedural role, but made a judgement in relation to the Appellant's request for an extension of time. Mr Thickett granted a 16-day extension (not the 5 months sought), despite the failure of the company to give the required "compelling" reason. We do not agree that any extension was warranted.

It may be that Mr Thickett was involved in the earlier decision (7 April) for a time extension of 3 months beyond 13 April. The reasons for PEDW granting that extension could not be "compelling"; as the Applicant claimed, as PEDW might now accept. We have supplied

PEDW with the Welsh Govt Minister's 7th February 2022 written Senedd answer to Andrew RT Davies MS. That answer clarified that the Welsh Govt "voluntary" process is quite separate from PEDW's formal process:

There are environmental impact assessment (EIA) procedures that must be followed as part of the appeal process,

set out in the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, which include the production of an environmental statement..... the recent consultation on the voluntary environmental statement is not a substitute for the EIA procedures that enforcement appeals must follow.

In the light of the Minister's answer, the Applicant's claim that they needed to see the Welsh Govt report and public responses could in no way be "compelling". The requirement to produce an Environmental Statement under the EIA Regulations is entirely separate.

The Applicant accepted the 3 month timescale until 13th April, only applying for an extension in late March. They must have known since Aviva took over in 2015 that the project always required EIA.

The Appellants had control of their timescale. They chose to raise the new request in late June and surely knew that PEDW would need a bit of time to give it proper consideration. The giving of a further 16 days to the Appellant where they failed to set out a reasonable ground for an extension is potentially seen by members of the public as favouring the Appellant when no favouring could be expected or given.

Our e-mail of 4th July (written on hearing from Mr Sparey that the case had gone to Mr Thickett) reported not only that Mr Thickett acted as Inspector in 2010, but also that his stance then was faulty, in equating a so-called voluntary ES, produced on the eve of the Inquiry without regard to the EIA Regulations, to one produced through formal EIA. These very points come up in the current appeal.

The local community has suffered from his 2010 fateful decision, for many years up to the present enforcement action. At least in retrospect the decision against the Vale Council with a large costs order is seen as a significant miscarriage of justice.

The conflict faced by Mr Thickett is perhaps more nuanced than we set out above.

There is the fear some will have that Mr Thickett needs to be consistent with his earlier wrong decision and tend to give the Appellant as much leeway as possible. There is the other view that Mr Thickett will want to correct a bad decision and lean in favour of the Vale of Glamorgan Council.

Either view is to be avoided as it will encourage litigation where the public is looking for finality.

We acknowledge Mr Sparey's assurance yesterday that Mr Thickett will play no further part in the current Appeal. However, we are making a formal complaint that he did not declare his conflict of interest at the outset and failed to recognise his compromised position until our direct information to Mr Sparey on 4th July.

PEDW can appreciate the undermining of public trust from Mr Thickett's participation so far. We suggest the disciplinary action you take should be made public.

-- [REDACTED]
Friends of the Earth Barry&Vale

----- Forwarded message -----

From: **BarryVale FOE** [REDACTED]
Date: Mon, 4 Jul 2022 at 13:02
Subject: Involvement of Mr Thickett in CAS-01341-N2Q5B8 Biomass UK No.2
To: <PEDW.Casework@gov.wales>
Cc: [REDACTED]

Mr Robert Sparey,
Planning and Environment Manager

Dear Mr Sparey,
VoG Council Enforcement Notice: ENF/2020/0230/M: Land at Barry Biomass, CF63 4JE
Appellant: Biomass UK No.2 Limited.

Objection to involvement of Mr Thickett: conflicting interest

Thankyou for this acknowledgement saying you passed our letter to Mr Thickett.

Surely Mr Thickett will remember that he acted as Inspector at the 2010 Inquiry, where he allowed the Appeal for this plant against our (and the VoG) opposition.

He explicitly refused to accept our objection that it was and is Schedule 1 EIA development. Alun Cairns MP also spoke strongly in opposition,

Mr Thickett disclosed at the Inquiry that he had just been briefed by the Welsh Government on the supposed importance

of waste-wood burning for their waste and energy policies..

He dismissed the rejection and objections (led by the Vale of Glamorgan Council) and imposed high costs on them. The loss of that case frightened the Vale Council from requiring EIA at the 2015 application for the current plant on the site.

In allowing the Appeal (by Sunrise Renewables), Mr Thickett ignored the EIA Reg. 3, which we quoted, that forbids the granting of planning consent without complying with EIA processes. This led to the continuing troubles for the Council and the community that are culminating in the present Appeal.

We would submit that conflict of interest requires Mr Thickett to have no part in PEDW's handling of the present Appeal. Of course, Victoria Robinson has more recent conflicting interest.

Please assure us that both will be excluded; if they do not recuse themselves, please say where we could appeal on grounds of conflicting interest if they approve this exceptional request by the Appellant ?

--

Friends of the Earth Barry&Vale

[REDACTED]

On Fri, 1 Jul 2022 at 09:13, <PEDW.Casework@gov.wales> wrote:

Hello [REDACTED],

I am sorry that I have not acknowledged your e-mail until now, but I confirm that it was passed to Mr Thickett on 27 June for his consideration.

Yours sincerely

Robert Sparey

Robert Sparey

(fe | he / him)

Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

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<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> | <https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED] >

Sent: 27 June 2022 13:01

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: Re: CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,

Planning and Environment Manager

Dear Mr Spurey,

VoG Council Enforcement Notice: ENF/2020/0230/M: Land at Barry Biomass, CF63 4JE
Appellant: Biomass UK No.2 Limited.

Our thanks to your casework Manager, Chris Sweet, for supplying the Applicant's request for further time to meet the requirement agreed with PEDW to supply an Environmental Statement by 13 July.

We have seen the letter to you from DIAG of 26 June, and strongly support their representations.

FoE Barry&Vale argued against the "Voluntary Environmental Statement" process from the time it was conceived in June 2018, but our representations went unheeded. The Minister's answer in the Senedd of 7th February did, however, accept our argument that the voluntary process is separate from the EIA process laid down in the EIA (Wales) Regs. 2017.

The Appellant's reason for further time cannot be "compelling", in relying on results of the voluntary process being available to them. Those results are of limited relevance to an ES based on and in the EIA Regs.

The full answer from the Minister has been supplied to you with the DIAG letter (WQ84370: answer to Andrew RT Davies MS on 7 Feb2022. This section merits quotation

There are environmental impact assessment (EIA) procedures that must be followed as part of the appeal process, set out in the EIA Regulations, which include the production of an environmental statement. The ... recent consultation on the voluntary environmental statement is not a substitute for the EIA procedures that enforcement appeals must follow.

Though it took several years, the Vale of Glamorgan Council eventually accepted that their 2015 planning decision was defective because EIA is mandatory for Schedule 1 projects. That the Appellant built a plant that does not conform to the 2015 consented plan gave the Council full reason to issue the Enforcement Notice after giving the Appellant opportunity to submit a retrospective EIA application.

The Applicant was surely aware that their Appeal last Sept. would come under the EIA Reg.49, so should have set in train the EIA procedures without waiting for the PEDW Notice in January. The delay is of their making and we urge PEDW to hold to the 13 July deadline.

-- [REDACTED]

Friends of the Earth Barry&Vale

On Wed, 22 Jun 2022 at 08:30, <PEDW.Casework@gov.wales> wrote:

Dear [REDACTED]

Apologies. Further to my previous email, I have just been made aware that we have received a request from the Appellants for a further extension of time to submit the ES. I attach a copy for your information.

That request is being considered, but we have not yet responded so no further correspondence has taken place.

Kind regards

Chris Sweet

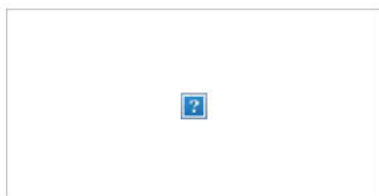
Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales
Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: Sweet, Chris (ESNR-PEDW) **On Behalf Of** PEDW – Gwaith Achos / Casework
Sent: 22 June 2022 08:06
To: [REDACTED]
Subject: RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear [REDACTED]

Thank you for your email. I apologise for the delay in responding to you.

We are not currently publishing documents for these cases, but will do so as soon as we are able and once the appeal timetable has commenced. That will not be the case until after the ES is submitted and found to be complete.

An extension of time for submission of the ES was granted to the Appellants on 7 April 2022, which extended the deadline by 3 months to **13 July 2022**. As such, we have not received the ES at this point.

I can see from your email that you are aware of the extension being granted, although you refer to two months rather than three. I have looked at our file and we have not had any further correspondence with the Appellants since our extension of the deadline.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales Llywodraeth Cymru | Welsh Government

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From: BarryVale FOE <[REDACTED]>
Sent: 17 June 2022 11:46
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: CAS-01341-N2Q5B8 Biomass UK No.2

Mr Robert Sparey,
Planning and Environment Manager

We see there is still no file at this reference on your website. We have a copy of your letter to the appellant dated 13/01/2022 to: Biomass UK No. 2 Ltd., c/o Ashurst LLP

Could you confirm that they have not yet submitted a formal ES in accordance with your letter, for which you allowed an extra 2 months after 13th April 2022 ?

If you have had other correspondence with BiomassUK reps on this case, could you please forward copies to this e-

mailbox.

with thanks,

--

Friends of the Earth Barry&Vale

[Redacted signature block]

From: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Cc: appeals@valeofglamorgan.gov.uk
Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry - FAO Phil Thompson [ASH-EUS.FID301351888]
Date: 21 July 2022 15:48:00
Attachments: [image002.jpg](#)
[image004.png](#)
[image005.jpg](#)

Good Afternoon, [REDACTED]

Hopefully, you are now in receipt of the Objective Connect Link for this case, BBA – Environmental Statement. I can make different links for different stages in the process, if need be, so it doesn't get all jumbled in together. Additionally, I can add additional email addresses to the workspace if required.

28th July to receive the hard copy of the ES is great, I will ensure someone is in the office so we can get it sent of to the Inspector ASAP. This will enable the Inspector to begin the read for completeness early next week.

In terms of the Start Date of the appeal, once the ES is read and confirmed as complete, the appeals will be formally validated and start date letters will be issued. Obviously, any requests for further information made by the inspector will add to this time frame.

Kind Regards,

Phil Thompson
Arweinydd Gwaith Achos | Casework Lead

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Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 252129

E-bost | E-mail: Phil.Thompson@gov.wales



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<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]
Sent: 20 July 2022 11:32
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]; appeals@valeofglamorgan.gov.uk; Sparey, Robert (COOG - Planning & Environment Decisions Wales) <Robert.Sparey@gov.wales>
Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry - FAO Phil Thompson [ASH-

EUS.FID301351888]

Phil,

Further to my voicemail, please can you share the link you referred to below with us so that we can be ready for the upload process.

I will confirm if the position changes, but we expect to have the hard copy ES arriving at the Welsh Government offices on 28 July (and a second hard copy arriving with the LPA on the same day as agreed below). I would be grateful if you could confirm receipt when it arrives.

Please can you confirm when the start date for the appeal will be issued? For example, will this be triggered by receipt of the ES or at a later date e.g. after the consultation period or after any further information has been requested and provided (if any) under regulation 51?

Kind regards,

[REDACTED]

[REDACTED]

Ashurst

[REDACTED]

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From: Phil.Thompson@gov.wales <Phil.Thompson@gov.wales> **On Behalf Of**

PEDW.Casework@gov.wales

Sent: 12 July 2022 11:49

To: [REDACTED]

Cc: [REDACTED] appeals@valeofglamorgan.gov.uk;

Robert.Sparey@gov.wales

Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry - FAO Phil Thompson [ASH-EUS.FID301351888]

Good Morning [REDACTED]

Further to my previous email, discussions are taking place as to which inspector will conduct the completeness read of the ES once it is submitted. This is not confirmed yet, however, it is requested that a physical copy of the ES is supplied.

Please send one to: -

FAO Phil Thompson
Planning & Environment Decisions Wales,

Welsh Government Offices,
Cathays Park,
Cardiff,
CF10 3NQ

It is requested that this is received by 29th July as well. This will enable us to get it to the Inspector early the following week so that the read can commence promptly.

Furthermore, Welsh Gov facilities requires that we have staff in the building to receive packages, they won't receive and hold anything for us. Accordingly, can you let me know when we can expect the parcel to arrive, so that I can ensure I am present to receive it.

Kind Regards,

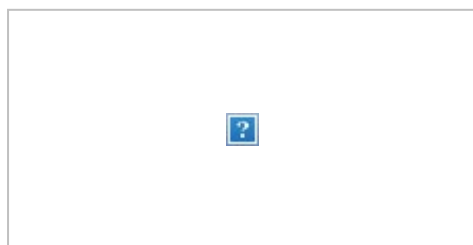
Phil Thompson
Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 252129

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<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]
Sent: 11 July 2022 15:28
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED] <appeals@valeofglamorgan.gov.uk>; Sparey, Robert (COOG - Planning & Environment Decisions Wales) <Robert.Sparey@gov.wales>
Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry - FAO Phil Thompson [ASH-EUS.FID301351888]

Phil,

Many thanks for your email.

Copying Robert Sparey who we have been liaising with on EIA so that we are all joined up.

I look forward to receiving the link.

Kind regards,

[REDACTED]

[REDACTED]

Ashurst

[REDACTED]

Ashurst LLP, London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW

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From: Phil.Thompson@gov.wales <Phil.Thompson@gov.wales> **On Behalf Of**

PEDW.Casework@gov.wales

Sent: 11 July 2022 13:34

To: [REDACTED]

Cc: [REDACTED] appeals@valeofglamorgan.gov.uk

Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry [ASH-EUS.FID301351888]

Good afternoon, [REDACTED],

Firstly, I should say that i have been assigned as the case manager for this appeal.

So going forward I will be the first port of call for any queries or issues you may have. I would still ask that email should come into the PEDW.casework@gov.wales mail box, just in case its anything urgent and I'm on leave or some such, but if you could mark emails for my attention they will get through to me swiftly.

Secondly, regarding file sharing for the ES, we are unfortunately unable to access external file sharing platforms. However, I will send you a link to our in-house platform, Objective Connect. I will just need to set this up, but I should be able to get a link to you shortly. A link will be provided to the LPA as well should they find it useful.

Lastly regarding the physical copies of the ES, please send one to the LPA directly using the following address: -

FAO [REDACTED],
Doc O
Subway Road,
Barry,
CF63 4RT

This Physical copy for the LPA should follow the timetable laid out previously.

Kind Regards,

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 252129

E-bost | E-mail: Phil.Thompson@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED] >
Sent: 08 July 2022 17:13
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry [ASH-EUS.FID301351888]

Thank you, Isabel.

Are you able to access a secure Ashurst sharefile link? This will enable us to set the ES out in a user friendly way rather than splitting it up across multiple emails.

Please can you also confirm whether the hard copy needs to arrive by the deadline agreed with PEDW or if this can follow the electronic submission.

Kind regards,

[REDACTED]

[REDACTED]

Ashurst

[REDACTED]

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From: Isabel.Nethell@gov.wales <Isabel.Nethell@gov.wales> **On Behalf Of**
PEDW.Casework@gov.wales
Sent: 08 July 2022 16:10
To: [REDACTED]; PEDW.Casework@gov.wales
Cc: [REDACTED]
Subject: RE: Submitting EIA to Welsh Ministers on Appeal - enquiry [ASH-EUS.FID301351888]

Good afternoon, thank you for your e-mail.

1. An electronic copy of the Environmental Statement (ES) is acceptable however one hard copy is required for the LPA for publicity purposes. An electronic version can be sent to pedw.casework@gov.wales. The hard copy should be forwarded to;

Planning and Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff
CF10 3NQ

You should note that although only one copy of the ES is required for submission, the Inspector may require a further hard copy to be submitted when appointed.

2. No, you do not need to supply the LPA with a copy. We will forward the hard copy to them in accordance with Reg 50.

Hope my reply is helpful.

Isabel Nethell

Isabel Nethell
(hi | she / her)
Pennaeth Gweithrediadau | Head of Operations
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 0300 0252245
E-bost | E-mail Isabel.nethell@gov.wales



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<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]
Sent: 08 July 2022 15:13
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: Submitting EIA to Welsh Ministers on Appeal - enquiry [ASH-EUS.FID301351888]

Dear PEDW team,

I am emailing in relation to a current enforcement notice appeal in respect of which my client has been asked to submit an environmental statement.

We note that under regulation 49(c) of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 the appellant must (within the period specified in the notice or such longer period as the Welsh Ministers may allow) submit to the Welsh Ministers two copies of an environmental statement.

Please can you confirm:

1. Whether electronic format is sufficient or if two paper copies of the statement are required (and if so where these should be sent and for whose attention), and
2. That the applicant does not need to provide the planning authority with a copy of the statement (we presume not as the Welsh Ministers are required to send a copy of the statement to the relevant planning authority under regulation 50).

Should any further information be requested, is the position the same?

Kind regards,

[REDACTED]

[REDACTED]

Ashurst

[REDACTED]

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Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you

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From: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Cc: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#); [Chichester, Lisa M](#)
Subject: RE: Crunch Week for Enforcement against Barry Incinerator
Date: 26 July 2022 08:36:56
Attachments: [image001.jpg](#)

Hello [REDACTED],

My view is given without prejudice and in good faith, and is not a legal opinion. It is ultimately a matter for your Authority how best to comply with the legislative publicity requirements.

That being said, I can see nothing in the Regulations that implies that you should wait for the appeal process to start before undertaking the ES publicity. With the way the EIA Regulations and the appeal Regulations are written, on any given case the appeal timetable and the ES publicity period may or may not overlap as far as I can tell.

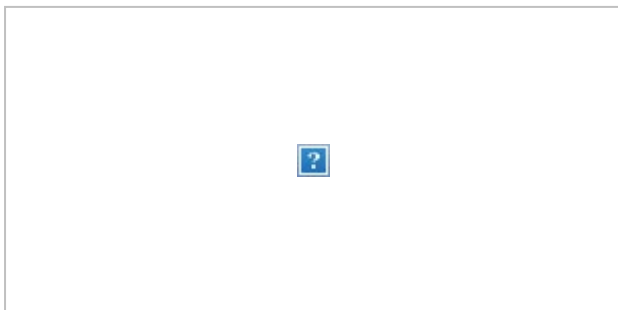
I understand that it may be confusing to have two different timetables in effect, but in this case it may be the best way to proceed.

Please let me know if you wish to discuss anything.

Best wishes

Robert

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
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<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]
Sent: 25 July 2022 17:22
To: Sparey, Robert (COOG - Planning & Environment Decisions Wales)
<Robert.Sparey@gov.wales>
Cc: Thompson, Phil (COOG - Planning & Environment Decisions Wales)
<Phil.Thompson@gov.wales>; [REDACTED]
Subject: FW: Crunch Week for Enforcement against Barry Incinerator

Dear Robert,

I refer to the email below from Barry Vale FOE following your response on 12th July 2022 and would like to seek some clarification from you regarding the appeal process going forward.

As you have confirmed, following the receipt of the Environmental Statement (ES), the deadline for which is this Friday 29th July 2022, an Inspector will be appointed to determine whether the ES is complete for the purposes of the Regulations. Your published guidance on called-in applications also confirms that only after the EIA Screening/ES checks have taken place will the Inspectorate write to the applicant and Local Authority to advise them that the timetable for the submission of evidence has begun and the appeal is started.

I am aware of the publicity requirements for the ES under Regulation 52 of the EIA Regulations however in the email from [REDACTED] below, he states that: *'PEDW have promised that the Vale Council can post up the ES as soon as it reaches PEDW'*. I therefore wanted to confirm whether you consider that the publicity process for the ES should be commenced before the ES checks have taken place and the appeal is started?

Kind regards,

[REDACTED]
Regeneration and Planning
Vale of Glamorgan Council / Cyngor Bro Morgannwg
[REDACTED]

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[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn

Saesneg.

From: BarryVale FOE <[REDACTED]>

Sent: 25 July 2022 12:44

To: [REDACTED]
[REDACTED]
[REDACTED]

Cc: [REDACTED]
[REDACTED]

Subject: Crunch Week for Enforcement against Barry Incinerator

NEWS RELEASE immediate release 25July 2022

Crunch Week for Enforcement against Barry waste-wood Incinerator

After two postponements, the company have to submit a “complete” Environmental Statement by this Friday, or PEDW (Planning Enforcement and Decisions Wales) has to dismiss their appeal (outstanding from Sept 2021).

This would mean the Vale Council's legal *enforcement notice* of last July succeeds. It requires the incinerator to be dismantled, being built substantially different from the 2015 Planning approval. Moreover, because there was no EIA, the 2015 approval was contrary to law.

[REDACTED] of FoE Barry&Vale says

“We expect the company's Environmental Statement (ES) will not meet the 'completeness' requirement.” (see ANNEX)

They have to include major accidents, eg. from explosion of the pressurised highly flammable gas from a large furnace leak. The company just deny it could happen and won't give the necessary evidence.

Welsh policy requires a community Health Impact Assessment; to include as part of the ES. We know the company have not commissioned one; they ignore the stricter modern assessment of harm from air pollution (WHO guidance 2021).

We expect the ES when it arrives this week to be incomplete for several other reasons, which FoE and DIAG will detail for putting to PEDW. PEDW have promised that the Vale Council can post up the ES as soon as it reaches PEDW.

Contacts: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ANNEX Need for PEDW to assess if ES is “complete”

FoE e-mail to PEDW with reply

From: <PEDW.Casework@gov.wales>

Date: Tue, 12 Jul 2022 at 15:26

Subject: RE: Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

To: [REDACTED] >

Hello [REDACTED],

Mr Sweet has asked me to respond to your query. On receipt of an Environmental Statement (ES), Planning and Environment Decisions Wales (PEDW) will appoint an Inspector to assess whether the ES is complete for the purposes of the Regulations, i.e. whether it addresses the requirements of Regulation 17 and Schedule 4 of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) ['the EIA Regulations'].

At this stage the Inspector may or may not be the Inspector that will determine the case in question. It is our working practice to ensure it is the same Inspector wherever possible but Inspector availability is the determining factor.

This process is not open to consultation, and is a matter of the professional judgement of the Inspector. The Inspector's findings will be captured in a Report which will be added to the relevant file and published if the case is found to be valid and formally started.

If an ES is found to be complete for the purposes of the EIA Regulations this does not mean that they consider it to be adequate to the point to enable planning permission to be granted, only that it covers the matters prescribed by the EIA Regulations.

As the appeal you are enquiring about is an enforcement appeal, the ES will be subject to publicity in accordance with Regulation 52 of the EIA Regulations, and the representations that people wish to make about the contents of the ES can be submitted to PEDW once the Local Planning Authority has instigated those publicity measures.

Whether or not the Inspector finds the ES to be complete it does not preclude the Inspector from requesting 'further information' under Regulations 51 and 24.

I hope this is helpful.

Yours sincerely

Robert Sparey

Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 0300 025 3379

E-bost | E-mail: Robert.sparey@gov.wales

From: BarryVale FOE [REDACTED]
Sent: 08 July 2022 14:35
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Dear Chris Sweet,

Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

We are informed that PEDW has allowed Barry Biomass further time to submit the ES, till 29 July, and would ask what procedures PEDW will adopt to determine if the Environmental Statement when it arrives is **complete**.

The Minister's written Answer of 7th Feb explained

There are environmental impact assessment (EIA) procedures that must be followed as part of the appeal process, set out in the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017, which include the production of an environmental statement.

We read this as saying you will adopt the EIA processes as far as possible once the company's document is received, so might need to return it as incomplete.

Let's draw your attention to Reg.17 (4)

(4) An environmental statement must—

(d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment;

You can appreciate this requires a degree of knowledge of the local environment, including eg. the local meteorological conditions of the Barry basin that are unusual as evidenced during the limited performance of the plant.

We understand that Barry Biomass declined to ask PEDW for a scoping assessment. We are aware that the Welsh Govt's scoping advice was too limited, in particular that they and NRW assessed the flood-risk from NRW's Wales Flood-map, which is not to be used for detailed planning purposes. There's also an issue of using up-to-date environmental standards and Welsh planning policies. We would argue it's not complete without a community-based Health Impact Assessment, Flood Risk and Flood Consequences Assessments and a CBA (Cost-Benefit Analysis) of options for using the waste heat.

We are further concerned that the company uses old geographic data, ignoring buildings constructed in recent years and receptors like schools and social facilities that have changed. Background noise data have to be more recent than those measured for the 2017 Environmental permit.

Another issue that faced the VoG Council is that the EIA has to cover the full installation, including the site for wood-chip preparation and storage, plus reception of fire-damaged wood-chip and incinerator ash which was to be on the dock-site called Berth 31. Maybe they now think to instead use the northern extension to the main site where "storage" is indicated. The ES would not be "complete" without defining and

describing the location of these essential adjuncts.

In the context of these complexities, would you explain the process by which PEDW will determine if the ES is "complete"; also if you will ensure this process is open and subject to some feedback from the Barry community. While we are in support of the Vale Council's enforcement order, we are critical of several aspects of their view on EIA, so would not be seen as represented through your using them as consultee.

We attach a pdf of the Welsh Minister's 7th Feb. Senedd answer and look forward to your reply.

-- [REDACTED] [REDACTED] --

Friends of the Earth Barry&Vale

[REDACTED]



Zil Lawr Gorllewin
Adeilad y Goron,
Parc Cathays,
Caerdydd,
CF10 3NQ

Ffôn/tel: 03000 252129
Ebost/email:
PEDW.Caseworkl@gov.wales

2nd Floor West
Crown Buildings,
Cathays Park,
Cardiff, CF10 3NQ

[Planning and Environment Decisions Wales | GOV.WALES](http://www.gov.wales)

Eich Cyf/Your Ref: ENF/2020/0230/M
Ein Cyf/Our Ref: CAS-01341-N2Q5B8

28/07/2022

Dear [REDACTED],

Town and Country Planning Act 1990

Appeal by: Biomass UK No.2 Limited

Appeal site: Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE

I write in relation to the above appeal and PEDW's previous notice under Regulation 49 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (the EIA Regulations).

We have now received the Environmental Statement (ES) from the Appellants and will soon begin checking it for completeness.

I understand that your Authority has received a copy of the ES directly from the Appellants and as such, we will not forward a further copy under regulation 50(a) of the EIA Regulations at this time. Please let us know as soon as possible if that is not the case.

I hereby confirm for the purposes of Regulation 50 that, subject to the ES being found to be 'complete' for the purposes of the EIA Regulations and without prejudice to the possibility of requests for 'further information', the ES will be taken into account in the Inspector's consideration of the ground (a) appeal.

Your Authority will be able to submit representations on the ES during the appeal timetable.

In light of the above, your Authority must now fulfil the requirements of regulation 52, which are as follows:

(1) Where an authority receive a copy of a statement by virtue of regulation 50(a) or any further information or other information, they must publish by local advertisement a notice stating—

- a) the name of the appellant and that the enforcement notice has been appealed to the Welsh Ministers;
- b) the address or location of the land to which the notice relates and the nature of the development;
- c) sufficient information to enable any planning permission for the development to be identified;
- d) that a copy of the statement, further information or any other information and of any planning permission may be inspected by members of the public at all reasonable hours;
- e) an address in the locality in which the land is situated at which the statement or further information or any other information may be inspected, and the latest date on which it will be available for inspection (being a date not less than 30 days later than the date on which the notice is published);
- f) details of a website maintained by or on behalf of the relevant planning authority on which the environmental statement and other documents may be inspected, and the latest date on which they will be available for access (being a date not less than 30 days later than the date on which the notice is published);
- g) that any person wishing to make representations about any matter dealt with in the statement or further information or any other information should make them, before the latest date stated in accordance with sub-paragraph (e) or (f), to the Welsh Ministers; and
- h) the address to which any such representations should be sent.

(2) The authority must, as soon as practicable after publication of a notice in accordance with paragraph (1), send to the Welsh Ministers a copy of the notice certified by or on behalf of the authority as having been published by local advertisement on a date specified in the certificate.

(3) The relevant planning authority must make the environmental statement available for inspection on a website maintained by or on its behalf.

Please also state that there will be an opportunity for interested parties to comment on the merits of the case once the appeal timetable has started.

For the purposes of regulation 52(1)(g), the address to which representations should be sent is:

Email: PEDW.Casework@gov.wales

Post:
Planning and Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff
Cf10 3NQ

I hope this is clear. Please contact us if you have any questions regarding this letter.

I am copying this letter to the Appellants, for their information

Yours sincerely

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions
Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 252129

From: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [BarryVale FOE](#)
Cc: [REDACTED]
Bcc: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: FW: Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2
Date: 28 July 2022 14:44:51
Attachments: [image001.jpg](#)
[image002.jpg](#)

Hello [REDACTED],

Thank you for your e-mail, which I will add to the file.

As previously mentioned, the Inspector's assessment for completeness of the ES will be a matter for the Inspector's professional judgement, based on the contents of the ES against the requirements of the relevant EIA Regulations.

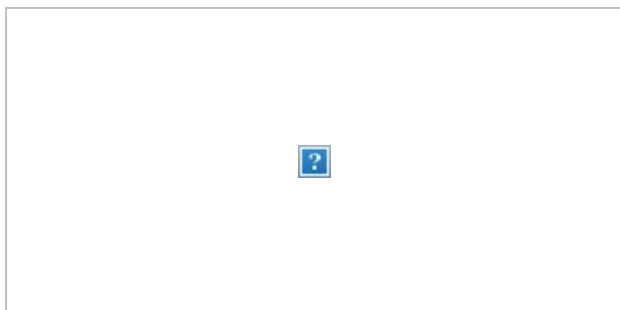
Once the Local Planning Authority have started the publicity period you can write to us with any concerns you have. Any such representation that is not considered at the ES completeness checking stage would be considered once the appeal process is started.

Any queries about the LPA's approach to the statutory publicity should be directed to the LPA.

Kind regards

Robert Sparey

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
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<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE <[REDACTED]>
Sent: 26 July 2022 17:39
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: Re: Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear Mr Sparey,

Thankyou for explaining how PEDW approaches the issue of determining if the ES is "complete" under Reg. 17, as the professional judgement of the Inspector. We're pleased you will satisfy transparency by capturing the Inspector's findings in a Report added to the file.

How the Inspector is to reach an informed opinion is not specified, while the EIA Regulations are consultative throughout. Involvement of statutory consultees is hardly appropriate, given that the WG and VoG Council may be conflicted.

When it comes to assessing sufficient expertise to ensure the completeness and quality, is PEDW aware that WGovt engaged WSP to assess 'adequacy' of the voluntary ES, whose report found significant deficiencies? (WSP Project No.:70065212 Environmental Statement Adequacy Report to Welsh Govt Nov.2019).

We read "expertise" as meaning "professional expertise" and have knowledge of the key "persons" long involved. [REDACTED] of *Sol Environment* Ltd. and [REDACTED] of PCM (*Power Consulting (Midlands) Ltd.*,) were first involved as *Sunrise Renewables*. [REDACTED] intervened in the first WG decision in 2008 over the project being EIA Sch.1(10). Even if different people write parts of the new ES, these key people are likely to oversee it.

We don't expect full public consultation, but the Inspector would surely be open to information from representatives of the local community long engaged with the "persons" and their written reports.

The EIA Annex 4 is so widely written that much knowledge of incinerator specifics is needed to judge whether all significant aspects are covered. Just as the specialists WSP, PEDW's internal experts will likely miss issues.

We have anticipated some basic omissions, including community-based Health Impact Assessment, the functionally-linked stocking yard and recently constructed close-by housing. Data from 2015 and 2017 assessments may not be updated. Risks of relevant major accidents and/or disasters as specified in Sch 4, have to cover both flooding and fire/explosion. We shall be ready to advise whether such omissions are repeated in the new ES, to inform the judging of completeness under Reg 17(4).

We understand the new ES will be available this week promptly after receipt, via the Vale of Glamorgan Council.

-- [REDACTED]
Friends of the Earth Barry&Vale

[REDACTED]

On Tue, 12 Jul 2022 at 15:26, <PEDW.Casework@gov.wales> wrote:

Hello [REDACTED],

Mr Sweet has asked me to respond to your query. On receipt of an Environmental Statement (ES), Planning and Environment Decisions Wales (PEDW) will appoint an Inspector to assess whether the ES is complete for the purposes of the Regulations, i.e. whether it addresses the requirements of Regulation 17 and Schedule 4 of The Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) ['the EIA Regulations'].

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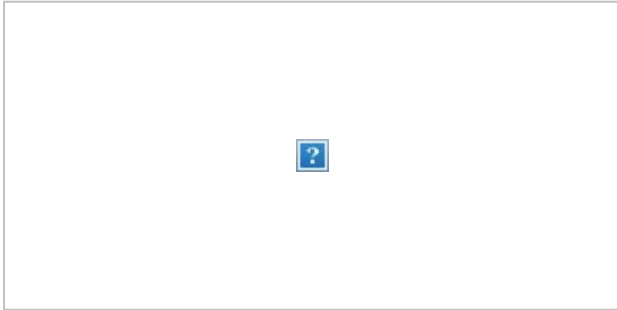
I hope this is helpful.

Yours sincerely

Robert Sparey

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment

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<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED] >
Sent: 08 July 2022 14:35
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: Davies, Andrew RT(Aelod o'r Senedd | Member of the Senedd)
<[REDACTED]>
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Subject: Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear Chris Sweet,

Procedure over EIA for RE: CAS-01341-N2Q5B8 Biomass UK No.2

We are informed that PEDW has allowed Barry Biomass further time to submit the ES, till 29 July, and would ask what procedures PEDW will adopt to determine if the Environmental Statement when it arrives is *complete*.

The Minister's written Answer of 7th Feb explained

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We attach a pdf of the Welsh Minister's 7th Feb. Senedd answer and look forward to your reply.

-- [REDACTED]
Friends of the Earth Barry&Vale

From: Sweet, Chris (ESNR-PEDW) **On Behalf Of** PEDW – Gwaith Achos / Casework

Sent: 22 June 2022 08:06

To [REDACTED]

Subject: RE: CAS-01341-N2Q5B8 Biomass UK No.2

Dear [REDACTED]

Thank you for your email. I apologise for the delay in responding to you.

We are not currently publishing documents for these cases, but will do so as

soon as we are able and once the appeal timetable has commenced. That will not be the case until after the ES is submitted and found to be complete.

An extension of time for submission of the ES was granted to the Appellants on 7 April 2022, which extended the deadline by 3 months to **13 July 2022**. As such, we have not received the ES at this point.

I can see from your email that you are aware of the extension being granted, although you refer to two months rather than three. I have looked at our file and we have not had any further correspondence with the Appellants since our extension of the deadline.

Kind regards

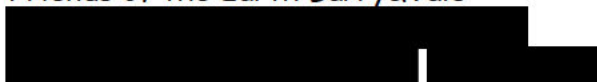
Chris Sweet

Planning Officer and Interim Casework Manager
Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 253382



Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein hysbysiad preifatrwydd yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

--
Friends of the Earth Barry&Vale



Adeilad y Goron,
Parc Cathays, Caerdydd,
CF10 3NQ



Crown Buildings,
Cathays Park,
Cardiff, CF10 3NQ

Eich Cyf/Your Ref: JH/CW/I13
Ein Cyf/Our Ref: CAS-01341-N2Q5B8
& CAS-01476-M1N1C0

Ffôn/tel: 03000 252245
Ebost/email: Isabel.nethell@gov.wales

Dyddiad/Date: 4 August 2022

Jane Hutt MS
{by e-mail}

Dear Ms Hutt

Thank you for your letter of 28 July addressed to Minister for Climate Change, Julie James. As your letter relates to a matter currently before Planning and Environment Wales (PEDW), it has been passed to me and I have been asked to reply. You have asked for an update on the situation with the Barry Biomass Incinerator and clarification of timings.

The Environmental Statement (ES) was submitted to both the Local Planning Authority (LPA) and Planning and Environment Decisions Wales (PEDW) on Thursday 28 July 2022. The statutory publicity for the ES will be undertaken by the LPA, in accordance with the requirements of Regulation 52 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended).

The regulations state that the public must be given at least 30 days to comment on the contents of the ES from the date that the LPA publish the relevant notice confirming that the ES is available to view. The regulations do not state how quickly, from the date or receipt of the ES, the LPA must comply with the requirement of regulation 52.

An Inspector is currently assessing the adequacy of the ES.

The Planning and Enforcement appeals currently before PEDW have not yet been started. When they are, a timetable for the submission of representations on the appeals will be set.

I hope my reply is helpful.

Yours sincerely

Isabel Nethell

ISABEL NETHELL

Pennaeth Gweithrediadau
Head of Operations

Adeilad y Goron,
Parc Cathays, Caerdydd,
CF10 3NQ



Crown Buildings,
Cathays Park,
Cardiff, CF10 3NQ

Eich Cyf/Your Ref:
Ein Cyf/Our Ref: CAS-01341-N2Q5B8

Ffôn/tel: 03000 252245
Ebost/email: Isabel.nethell@gov.wales

Dyddiad/Date: 5 August 2022

██████████
Barry Friends of the Earth
{by e-mail}

Dear ██████████

Thank you for your e-mail of 21 July.

It is my view there has been no conflict of interest in this case, neither do I consider Mr Thickett's position to be compromised. My letter of 15 July clearly sets this out. I am sorry you feel the title of my reply misrepresents your complaint about *Mr Thickett's conflicting interest in CAS-01341-N2Q5B8* but I cannot agree.

You state that 'PEDW could have just notified the applicant that their Appeal in Sept 2021 was not valid without an ES'. However, that would clearly not have been in accordance with Regulation 49 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended):

<https://www.legislation.gov.uk/wsi/2017/567/regulation/49/made>

You ask what legal power Mr Thickett used when deciding to grant three extensions of time. Officials of Welsh Government work under the Carltona Principle. Regulation 49(2)(c) does say the decision for allowing an extension of time is for Welsh Ministers. Working under the Carltona Principle, Mr Thickett was acting synonymously with the actions of Welsh Ministers when he made the decisions.

I appreciate your view the decisions to grant extensions of time were not simply 'procedure'. I do not agree with your view. PEDW has considerable experience in appeal procedures. Decisions, such as a decision to grant an extension of time, are made by officials using their experience and judgement. You may not agree with the decision made, but this does not mean it was made in anything other than a fair and impartial way. Every decision is only made after careful consideration of the issues in a specific case; each case will be different.

The only protocol or 'rules' for PEDW officials when making procedural decisions is that they are reasonable, impartial, fair and in line with legislative requirements.

Please find attached the Regulation 49 extension e-mails of 7 April and 30 June.

Yours sincerely

Isabel Nethell

ISABEL NETHELL

Pennaeth Gweithrediadau
Head of Operations

From: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [BarryVale FOE](#)
Cc: [REDACTED]
Bcc: [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#); [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2
Date: 08 August 2022 14:13:46
Attachments: [Barry Biomass ES - List of Submitted Documents with Page Count.docx](#)
[image001.jpg](#)

Dear [REDACTED],

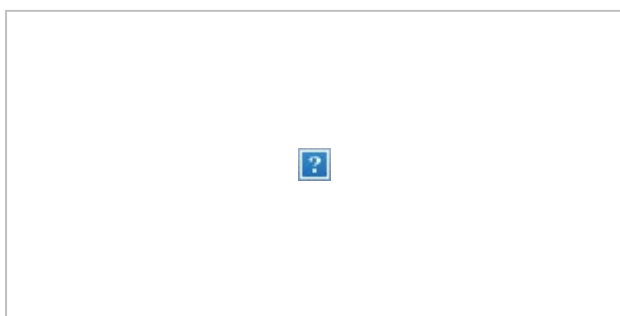
Thank you for your e-mail. It will be placed on file, but it will not be drawn to the Inspector's attention at this stage.

If it is of any use to you, I recently prepared the attached document which lists the titles of the documents submitted as part of the ES.

Kind regards

Robert Sparey

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
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E-bost | E-mail: Robert.sparey@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED]
Sent: 08 August 2022 12:08
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]

Subject: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2

Dear Inspector

I'm sending you as attachment our group's initial check of issues the Environmental Statement should include, though unable to see a copy to date. We are aware the ES is a large document, appreciably changed from previous versions, so would wish to amend or supplement our check once the ES is available.

We would appreciate your confirmation you have received this e-mail?

In our view, the EIA process has begun with your start on examining the submitted ES, so there should be no reason for delaying its release to the public.

Yours sincerely

[Redacted signature]

Friends of the Earth Barry&Vale

[Redacted contact information]

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From: [BarryVale_FOE](#)
To: [PEDW – Gwaith Achos / Casework](#)
Cc: [REDACTED]
Subject: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2
Date: 08 August 2022 12:08:53
Attachments: [Issues4ES - FoE list@08Aug"22.pdf](#)

Dear Inspector

I'm sending you as attachment our group's initial check of issues the Environmental Statement should include, though unable to see a copy to date. We are aware the ES is a large document, appreciably changed from previous versions, so would wish to amend or supplement our check once the ES is available.

We would appreciate your confirmation you have received this e-mail?

In our view, the EIA process has begun with your start on examining the submitted ES, so there should be no reason for delaying its release to the public.

Yours sincerely

-- [REDACTED]

Friends of the Earth Barry&Vale

[REDACTED]

Check on issues for the incinerator E.S. to cover

Definition of installation for EIA/ES as different from the Enforcement site

The ES has to detail the functional links of the incinerator to a stockyard for woodchip supplies, storing bottom ash, processing over-sized wastewood and for a quarantine for fire-damaged (and smouldering) fuel. That stockyard could be at “Berth 31” as first intended or some other nearby site. Environmental effects of this stockyard and transfer from and to it, need to be covered by them ES. Dust from the stockyard and woodchip handling are significant.

Direct and Indirect effects of the whole development

Irrespective of the definition of 'installation', Schedule 4 1(b) requires a description of the “whole development” and characteristics of the operational phase. The ES has to cover the *direct effects and any indirect, secondary, cumulative... effects of the development*. From the few initial runs (without planning permission), the community is well aware that handling of waste woodchips on Berth 31 had significant environmental effects. An ES (like previous ones) is absurdly incomplete if it ignores the dust from woodchip handling in the open air, unshielded from winds, while talking only of dust from incinerator operations; likewise ignoring the wind-blown wood fragments and dust polluting the Dock waters.

Flooding

Long known the site is at risk of flooding from tidal storm-surges. Arup's 2008 study found the main risk is a surge over-topping the lock gates and specified land-raising for the Waterfront development to over 9m AOD, a metre higher than the incinerator site. The applicant relied on a very poor RSK appraisal of 2008 and the Development Advice Map, which gives a “preliminary representation” (PPW 6.6.26), not to be used for sites planning. NRW's 2021 Floodmap (suspended) shows flooding on the Stockyard (“Berth 31”) and the road past the bottom of the main site (7.6m AOD).

This mapping is so far below Arup's assessment as to require the developer/applicant to make a new site-specific Flood Risk assessment. Land-raising has been implemented for the close-by East Quay housing site; without similar raising of the incinerator site, the ES requires a Flood Consequences Assessment.

The current PPW (11: 6.6.22) says *Planning authorities should adopt a precautionary approach of positive avoidance of development in areas of flooding from the sea*. With an incinerator classed as flood-vulnerable development, the ES has to justify using this location. If the applicant proposes to erect flood defences to the site, the ES has to assess the practicality and effectiveness of this, including access by Emergency Services through metre-deep flooding

Impacts on the Dock waters (a controlled surface water) must be assessed.

Sensitive 'receptors' need describing: the Dock is used (or could be used) for immersion water-sports, fish farming and wildlife, being liable to suffer from accidental or storm pollution, industrial effluent in the CSO-discharge, blown dust from the stockyard and wastewood fragments.

Rainstorm allowance and Drainage

The Welsh SuDS statutory guidance requires area modelling for pluvial storm-flooding events; previously total rainfall was underestimated, using a) less than Welsh Govt 25% climate uplift and b) ignoring run-off into the main site from the northern extension.

Insufficient environmental data, particularly re. Climate Change

EIA Schedule 3 requires data on the *direct emissions* of greenhouse gases, not given before. Also the carbon-intensity of the energy produced compared to the UK average, the predicted UK average through the 2030s and the *Committee on Climate Change* maximum of 100g CO₂/kWh
data on fossil-based fraction (plastics, glue etc) in the waste-wood (claimed previously to 100% wood)

data on *Cost-benefit analysis of using the waste heat – required for Industrial Emissions Directive* [IED]14(5 – including survey of potential local users

Harm to Health from Air Pollutants

Ignored previously, as the applicant failed to use modern standards; the harm should be calculated according to the WHO guide levels of 2021, for both PM_{2.5} and NO₂.

Include information on ultrafine PMs (PM_{0.1}) not covered by the guidance but being the most damaging, in line with the Senedd report on incineration

Issue of the wrong sized stack (43m X 2.75m)

The stack as-built is too short for Barry's hills and too wide for efflux speed, meaning that the plume can be trapped and circulate in the Barry basin; NRW and consultants don't or can't model this. The ES has to say if they will use special modelling techniques or change to a properly-sized stack (1.6m diameter as modelled – not 2.75m – and 55-70m high).

Community Health Impact Assessment (<https://phwwhocc.co.uk/whiasu/>)

Welsh policy (cf. Public Health Wales Act) on major projects and particularly on incineration projects raising high public concern, is for a community-centred Health Impact Assessment . That in the ES would be a technical HIA. .Results of the former need to be covered in the ES,

Children as a sub-population are especially vulnerable; Welsh Govt requires they are consulted and harm assessed relative to their vulnerability. The technical HIA does not do this, the community HIA would implement Welsh policy.

From: [BarryVale_FoE](#)
To: [PEDW – Cwynion / Complaints](#)
Cc: [REDACTED]
Subject: Re: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2
Date: 09 August 2022 16:22:08
Attachments: [image001.jpg](#)
[Issues4ES - FoE list@08Aug"22.pdf](#)

Isabel Nethell,
PEDW Operations and Complaints Manager

Dear Ms Nethell,

Mr Sparey has refused to pass to the Inspector our document that covers the present stage of work re, EIA Reg.17.

We do not accept this refusal.

The EIA process clearly commenced with examining the ES for purposes of Reg. 17.

The Protocol specifies that Inspectors work independently, without improper constraint.

Our MS, Jane Hutt is taking up the issue on our behalf through cabinet channels.

Would you please inform the Inspector of this dispute?

Regards,

[REDACTED]

Friends of the Earth Barry&Vale

[REDACTED]

On Mon, 8 Aug 2022 at 14:13, <PEDW.Casework@gov.wales> wrote:

Dear Mr Wallis,

Thank you for your e-mail. It will be placed on file, but it will not be drawn to the Inspector's attention at this stage.

If it is of any use to you, I recently prepared the attached document which lists the titles of the documents submitted as part of the ES.

Kind regards

Robert Sparey

Robert Sparey

(fe | he / him)

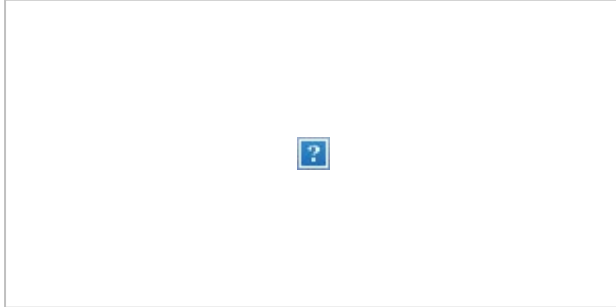
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 0300 025 3379

E-bost | E-mail: Robert.sparey@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED]
Sent: 08 August 2022 12:08
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2

Dear Inspector

I'm sending you as attachment our group's initial check of issues the Environmental Statement should include, though unable to see a copy to date. We are aware the ES is a large document, appreciably changed from previous versions, so would wish to amend or supplement our check once the ES is available.

We would appreciate your confirmation you have received this e-mail?

In our view, the EIA process has begun with your start on examining the submitted ES, so there should be no reason for delaying its release to the public.

Yours sincerely

-- [REDACTED]

Friends of the Earth Barry&Vale

[REDACTED]

[REDACTED]

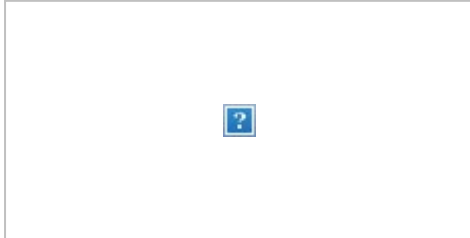
From: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Cc: [REDACTED]
Bcc: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#); [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#); [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: CAS-01341-N2Q5B8 - Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE
Date: 09 August 2022 09:03:00
Attachments: [image001.jpg](#)

Good morning, [REDACTED],

It is good to hear that progress is being made to get the ES published and the consultation started. PEDW has no objection to a 90-day consultation period, however, please be advised that we will not delay starting the appeal. Accordingly, to avoid confusion, can your notice and other correspondence please advise that parties should indicate on their representation, clearly, that it applies to the ES consultation.

Kind Regards,

Phil Thompson
Arweinydd Gwaith Achos | Casework Lead
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 252129
E-bost | E-mail: Phil.Thompson@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]
Sent: 08 August 2022 16:52
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>; Thompson, Phil (COOG - Planning & Environment Decisions Wales) <Phil.Thompson@gov.wales>
Cc: [REDACTED]
Subject: RE: CAS-01341-N2Q5B8 - Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE

Hi Phil

In response to your email, having undertaken the GDPR and EIA checks we are intending to publish the ES on our website as soon as possible, as we too are receiving numerous queries and do not wish to prolong its publication any longer than necessary.

We are also in the process of preparing the relevant publicity notices and given the level of public interest and scrutiny in this matter, are considering extending the latest date for representations from 30 days to 90 days, which is the same period of time that the Welsh Government provided for consultation on the Voluntary Environmental Statement. I would appreciate however if you could confirm whether this would cause any issues for you?

Kind regards,

[REDACTED]
[REDACTED]
Regeneration and Planning
Vale of Glamorgan Council / Cyngor Bro Morgannwg
[REDACTED]
[REDACTED]

*Consider the environment. Please don't print this e-mail unless you really need to.
Ystyriwch yr amgylchedd. Peidiwch ag argraffu'r neges hon oni bai fod gwir angen.*

Visit our Website at www.valeofglamorgan.gov.uk
Ewch i'n gwefan yn www.bromorgannwg.gov.uk

[Find us on Facebook / Cewch ddod o hyd i ni ar Facebook](#)
[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

From: Phil.Thompson@gov.wales <Phil.Thompson@gov.wales> **On Behalf Of**
PEDW.Casework@gov.wales

Sent: 05 August 2022 08:38

To: appeals <appeals@valeofglamorgan.gov.uk>

Subject: CAS-01341-N2Q5B8 - Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE

Good Morning,

I understand that GDPR and EIA regs checks are being carried out on the ES before publishing to your website and issuing notices, as per reg 52. We are getting significant interest and questions regarding this process and timescales. I was wondering if you could give me a indication of when the notices and consultation under reg 52 would be issued and when the ES would be published? Not looking to rush you, but rather manage the publics expectations.

Any information would be appreciated.

Kind Regards,

Phil Thompson
Arweinydd Gwaith Achos | Casework Lead
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales

Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 252129
E-bost | E-mail: Phil.Thompson@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Bcc: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: Barry Incinerator ES CAS-01341-N2Q5B8
Date: 17 August 2022 10:22:00
Attachments: [image001.jpg](#)

Dear [REDACTED]

Thank you for your email.

The Inspector appointed to consider the completeness of the Environmental Statement (ES) for these appeals is Mr A L McCooley BA MSc MRTPI.

It is our intention that Mr McCooley will also be appointed to report to the Welsh Ministers on the appeals as a whole, but that will not take place until the appeal timetable is started.

PEDW does not give out the direct contact details of Planning Inspectors. As I'm sure you will appreciate, it is vital that Inspectors maintain their impartiality and direct contact between any party and the Inspector outside the formal evidence process and without the full knowledge and input of other parties would undermine that position. The formal evidence process ensures that all parties are given an appropriate opportunity to put their case to the Inspector on an equal footing and that no party has any greater access to or influence with the Inspector. All correspondence about the ES and the appeals should be sent to the above email address.

I am aware of your interest in the ES and though you will receive separate responses to the FOI / EIR requests you have made, I thought it would be helpful to confirm that PEDW has completed the necessary checks etc and the ES is now available to view on our web portal:

<https://planningcasework.service.gov.wales/searchresults?q=01341>

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager
Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 253382



From: BarryVale FOE [REDACTED]
Sent: 16 August 2022 15:06
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: Re: Barry Incinerator ES CAS-01341-N2Q5B8

Sorry I omitted the Case reference Barry Incinerator ES CAS-01341-N2Q5B8

On Tue, 16 Aug 2022 at 15:02, BarryVale FOE [REDACTED] wrote:

Chris Sweet
Planning Officer and Interim Casework Manager

Dear Mr Sweet,

The Welsh Government referred us to you as able to disclose the name and contact details for the independent Inspector the Ministers have appointed in this case. The protocol prescribes no 'improper constraint' on the Inspector's work, so would you please supply those contact details?

Regards

--

[REDACTED]
Friends of the Earth Barry&Vale
[REDACTED]

--

Friends of the Earth Barry&Vale
[REDACTED]

From: [McCooey, Aidan \(COOG - Planning & Environment Decisions Wales\)](#)
To: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: 01341 Barry Biomass Errors and Omissions in the ES
Date: 17 August 2022 10:44:24

Bore da,

I forgot to mention that I found some errors of substance in the ES that I think are worth drawing to the appellant's attention. I am not mentioning typos, etc. Can you send the following to the appellant please?

The Inspector has found the following errors/inconsistencies in the ES, which whilst not affecting completeness, the appellant may wish to consider addressing.

GHG Assessment. The statement at paragraph 7.3.1 is factually incorrect – see Letter from PEDW to the appellant dated 28.01.22 (at ES Appendix 3.4) where PEDW suggested scoping and consultation should be undertaken.

The Noise chapter decommissioning assessment – at paragraph 7.3 – is the last BP on p.82 incorrect as it refers to new build receptors that didn't exist during the construction phase?

Vol II LVIA paragraph 1.88 refers to 4 additional design elements but it is unclear what they are from the following paragraphs (Only 3 items are listed). Can this be clarified?

There are several incorrect references to the figure and appendix numbers.

Examples include:

- paragraph 2.2.2 site location plan is Figure 1.2 not Figure 1.1
- the title of figure 5.8 should refer to Table 5.4 not 5.5
- Appendix 10.1 at paragraph 7.7 refers to Appendix 9.7, which should be 9.8

Diolch, Aidan

From: [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Cwynion / Complaints](#)
To: [BarryVale FOE](#)
Cc: [REDACTED]
Subject: RE: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2
Date: 18 August 2022 17:21:00
Attachments: [image001.jpg](#)

Good afternoon [REDACTED], thank you for your e-mail below and your e-mail to Mr Thompson of 17 August.

The decision not to forward your documents on to the Inspector is not one made by any one individual. As an organisation, we have decided to follow our normal working practices. The Inspector has been made aware that you have submitted information and that it is held on the file for his consideration at a future date. The Inspector agrees with that action and has confirmed that he does not wish your document to be passed to him at this stage.

There is no value in continuing to repeat our stance in regard to this administrative point. Therefore, we will not reply to any further correspondence on it. It is open to you to complain to the Public Services Ombudsman for Wales who can be contacted at

Public Services Ombudsman for Wales,
1 Ffordd yr Hen Gae,
Pencoed
CF35 5LJ.

Telephone: 0300 790 0203
E-mail: ask@ombudsman.wales
Website at <https://www.ombudsman.wales/>

or seek to judicially review our decision.

From: BarryVale FOE [REDACTED]
Sent: 09 August 2022 16:21
To: PEDW – Cwynion / Complaints <PEDW.Complaints@gov.wales>
Cc: [REDACTED]
Subject: Re: For the Inspector of the Barry Incinerator ES CAS-01341-N2Q5B8 Biomass UK No.2

Isabel Nethell,
PEDW Operations and Complaints Manager

Dear Ms Nethell,
Mr Sparey has refused to pass to the Inspector our document that covers the present stage of work re, EIA Reg.17.

We do not accept this refusal.

The EIA process clearly commenced with examining the ES for purposes of Reg. 17.

The Protocol specifies that Inspectors work independently, without improper constraint.

Our MS, Jane Hutt is taking up the issue on our behalf through cabinet channels.

Would you please inform the Inspector of this dispute?

Regards,

-- [REDACTED]
Friends of the Earth Barry&Vale

On Mon, 8 Aug 2022 at 14:13, <PEDW.Casework@gov.wales> wrote:

Dear [REDACTED],

Thank you for your e-mail. It will be placed on file, but it will not be drawn to the Inspector's attention at this stage.

If it is of any use to you, I recently prepared the attached document which lists the titles of the documents submitted as part of the ES.

Kind regards

Robert Sparey

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 0300 025 3379
E-bost | E-mail: Robert.sparey@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED]

From: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [BarryVale FOE](#)
Bcc: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#); [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: Barry Incinerator ES CAS-01341-N2Q5B8
Date: 23 August 2022 16:30:00
Attachments: [image001.jpg](#)

Dear [REDACTED]

Thank you for your email.

The ES appears on our Portal when I bring up the case, so hopefully you are also able to view it now. It will appear in a list of published documents at the bottom of the case page.

We have completed the process of checking for any necessary redactions before publishing the ES, as mentioned previously. With regard to publishing further documents, the rest of the appeal documents relating to these cases will be published when the appeal timetable is started. Those will be the documents submitted in relation to these appeals and subsequently during the appeal timetable.

Enforcement Appeals are processed in line with the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 and the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017.

Our guidance on Enforcement Appeals can be found here:

[enforcement-listed-building-enforcement-and-lawful-development-certificate-appeals.pdf \(gov.wales\)](#)

I apologise that the cover page etc has not yet been updated to reflect the transfer of functions from the former Planning Inspectorate for Wales to PEDW.

I hope this is helpful.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager
Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales
Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: BarryVale FOE [REDACTED]
Sent: 19 August 2022 12:06
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: Re: Barry Incinerator ES CAS-01341-N2Q5B8

Chris Sweet
Planning Officer and Interim Casework Manager

Dear Mr Sweet,

Thank you for this reply notifying us of the Inspector's name and that the ES is now posted on a public file. It does not yet come up on a search under CAS-01341-N2Q5B8, but I'll wait a bit.

As you say, PEDW has completed its processes. We hope that means that all past documents are to be visible.

I've failed to find documentation giving these processes and PEDW's role in the ongoing Appeal, further than arranging the timetable as mentioned. Is there a working manual that we could see?

With regards,

[REDACTED]
Friends of the Earth Barry&Vale
[REDACTED]

On Wed, 17 Aug 2022 at 10:22, <PEDW.Casework@gov.wales> wrote:

Dear Mr Wallis

Thank you for your email.

The Inspector appointed to consider the completeness of the Environmental Statement (ES) for these appeals is Mr A L McCooey BA MSc MRTPI.

It is our intention that Mr McCooey will also be appointed to report to the Welsh Ministers on the appeals as a whole, but that will not take place until the appeal timetable is started.

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From: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Bcc: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: Barry Incinerator
Date: 23 August 2022 07:33:00
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.jpg](#)

Dear [REDACTED]

Thank you for your email.

Barry and the Vale Friends of the Earth (FoE) has approached PEDW and multiple other parties about this issue, which relates to the submission of an Environmental Statement (ES) that is required in relation to the Planning Enforcement Appeal (our reference CAS-01341-N2Q5B8) which is currently before us. FoE's view, as expressed to PEDW and in my understanding, is that PEDW is misunderstanding the Environmental Impact Assessment (EIA) process.

However, I am satisfied that we have processed the appeal and the associated EIA in compliance with the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) ['the EIA Regulations']. FoE is aggrieved that PEDW has not passed its representations to the Inspector to inform the Inspector's assessment of the completeness of the ES. The checking of completeness is not a formal step in the EIA Regulations. It is an internal working practice of PEDW to check that the ES does contain the matters specified in the EIA Regulations before an appeal is started. This is meant to ensure that we do not start an appeal where the ES is not complete and avoid abortive work and unnecessary delays. The checking of completeness is a matter of professional judgement for the Inspector in question and is based solely on the contents of the ES and the EIA Regulations. The Inspector undertaking the assessment of completeness has the relevant qualifications and professional background to undertake this work.

The Inspector's findings regarding completeness are not a 'decision' in terms of the EIA process. Even if an Inspector finds an ES to be complete initially, this in no way indicates that the contents of the ES are adequate to allow planning permission to be granted. A finding of completeness at the point of submission of an ES in no way prevents the appointed Inspector from requesting 'further information' under the EIA Regulations if they later decide that is necessary.

All representations regarding the completeness of the ES are being placed on file and will be considered by the Inspector once the appeal has been started. The fact that we have received such representation has been raised with the Inspector and the Inspector has confirmed that the representation will not be viewed while the completeness check is being undertaken, in accordance with PEDW's established working practice.

PEDW takes the matter of public engagement in the decision-making process seriously. The EIA Regulations specify that an ES must be subject to a period of consultation lasting not less than 30 days. In a case such as this the publicity requirements fall to the Local Planning Authority, who must confirm to PEDW once they have undertaken the steps specified in the regulations, and the date they have set for interested persons to submit their comments regarding the ES to PEDW. That step has not yet happened, so the legislative consultation period is not yet underway. However, as confirmed to FoE, any representation we receive about the ES will be placed on file for the consideration of the appointed Inspector in due course, even if it was received before the consultation opens. All representations submitted before the relevant deadline (yet to be confirmed) will be considered by the Inspector before their recommendation is submitted to the Welsh Ministers, ensuring that the public has the opportunity to contribute to the decision-making process.

I hope this helps clarify the situation.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: [REDACTED] (Staff Cymorth yr Aelod | Member Support Staff)

Sent: 19 August 2022 10:49

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Subject: Barry Incinerator

Good morning,

Constituents who are involved with Friends of the Earth have contacted us with worries that their concerns haven't been passed on to the inspector. Could we please have a guarantee that this will/has been done for them?

Many thanks,



fe/ei | he/him



Rhys ab Owen AS/MS

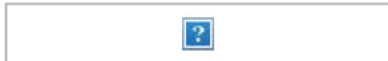
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Rhanbarth **Canol De Cymru**

South Wales Central Region

rhys.abowen@senedd.cymru

0300 200 7220



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From: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Cc: [REDACTED]; [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#);
Bcc: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#); [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: CAS-01341-N2Q5B8 - Barry Biomass Enforcement Appeal [ASH-EUS.FID301351888]
Date: 26 August 2022 14:47:20
Attachments: [image003.jpg](#)
[image004.png](#)
[image005.jpg](#)

Dear [REDACTED],

Apologies for the delay in responding, things have been very busy for us in recent weeks.

The Inspector's ES completeness Report will be issued and published when the appeals are started. I do not have a firm timescale for this, but hopefully it will be within the next three weeks.

I was the 'lead official' dealing with the recent EIR requests for the ES on the enforcement appeal. I liaised with the Information Rights Unit within the Welsh Government in dealing with the requests.

I cannot comment on your previous experience of dealing with public authorities, but as you and I have discussed previously, there is no requirement for PEDW to consult the person who has submitted environmental information to us when we are considering a request under the Environmental Information Regulations 2004 (EIR) or under the Freedom of Information Act 2000 (Fol). I advised that if there were a particularly sensitive piece of correspondence you wished to send us where you would have a particular desire for us to liaise with you before it were to be released that you are welcome to flag that up in the correspondence in question, but that I could not guarantee that PEDW would be able to do so.

Evidence in relation to a planning or enforcement appeal is treated as publicly available. While there is no requirement for PEDW to publish appeal documents, that is our preferred way of working wherever it is practicable, as it enhances transparency in the planning system and allows interested parties more opportunity to engage with the system. PEDW does not notify appellants exactly when their documents are published. As I explained, we would not normally publish the ES on a case such as this until the appeal process has started, but this was the most practicable way to respond to requests under EIR.

Under our standard working practices, the other appeal documents will be published when the appeal is started. Normally other appeal evidence received subsequently to the start date will be published after the relevant deadline has passed. However, if PEDW finds that there is a reason to take a different approach on a particular case, it is open to us to do so, so long as there is no prejudice to any party.

PEDW's publishing policy is available here: <https://gov.wales/planning-and->

[environment-decisions-wales-publishing-policy-html](#)

PEDW's privacy notice is available here: <https://gov.wales/planning-casework-privacy-notice>

Thank you for the updated Chapter 3. However, when we discussed this I advised that in the interests of transparency PEDW's preference would be for an addendum document, or something that clearly shows what changes have been made and when. Unfortunately the version you have submitted does not show what the changes are and is still dated July 2022. Can you please provide a new version?

Yours sincerely

Robert

Robert Sparey

(fe | he / him)

Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager

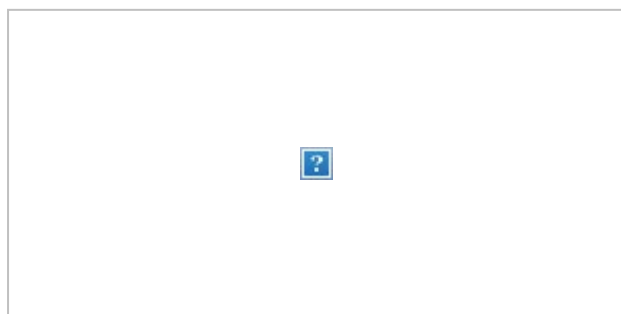
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Ffôn | Tel: 0300 025 3379

E-bost | E-mail: Robert.sparey@gov.wales



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<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]

Sent: 19 August 2022 10:31

To: Sparey, Robert (COOG - Planning & Environment Decisions Wales)

<Robert.Sparey@gov.wales>

Cc: [REDACTED]; Thompson, Phil (COOG - Planning & Environment Decisions Wales)

<Phil.Thompson@gov.wales>; PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>;

Subject: RE: CAS-01341-N2Q5B8 - Barry Biomass Enforcement Appeal [ASH-EUS.FID301351888]

Dear Robert

I am following up on our conversation on Wednesday morning. You were going to catch-up with Phil and report back on progress/timeframes for the Inspector's ES review and when the Inspector's report will be published (i.e. on issue of start date or before). Is there any update on this please?

I also mentioned that the Appellant's team had some minor corrections to Chapter 3. The updated chapter is attached. We would be happy to upload to the online platform previously used but I think our upload rights have expired. Similarly, we would be happy to send hard copies to both PEDW and the Council (but it might be quicker for PEDW/VoG to print in Wales) and can arrange this on Monday if required. Can you or Phil please confirm how you would like us to proceed. I've not copied the Council to this email but can send a separate email later or on Monday when you have confirmed approach.

Finally, we also discussed the fact that the ES has been published on the PEDW casework portal pursuant to a number of information requests received by PEDW and considered under EIR. We were not notified of this at all and discovered it for ourselves. The casework portal suggests that the ES has been online since 1 August but when we checked last week we were still unable to access the portal so it's not clear exactly when it became publicly available. Previously, I have received several confirmations from PEDW that the casework portal only went "live" on the issue of the start date, which has not been issued yet for this appeal. I am sensitive to the duties PEDW has under the freedom of information regime but per our previous conversation when our administrative correspondence was released, it does not seem unreasonable for the appellant to be kept informed of when its information is being put into the public domain, especially where that release relates to information that would not ordinarily be made public as part of the appeal process or in fact changes the appeal process that PEDW has previously advised. I have to say that I am surprised that the appellant is not even being notified of what is going on and I would usually expect the information provider to be consulted before information is released (from my experience acting for public authorities on freedom of information matters).

Please can you provide the contact details of the person handling the information requests so that we can have a discussion about this. I did ask for this previously (conversation with Max Thomas) but there was no follow-up.

Kind regards

[Redacted]

[Redacted]

Counsel

[Redacted]

Ashurst

[Redacted]

Ashurst LLP, London Fruit & Wool Exchange, 1 Duval Square, London, E1 6PW

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From: Phil.Thompson@gov.wales <Phil.Thompson@gov.wales> **On Behalf Of**
PEDW.Casework@gov.wales

Sent: 04 August 2022 10:01

To: [REDACTED]

Cc: [REDACTED]; PEDW.Casework@gov.wales;
Robert.Sparey@gov.wales; [REDACTED]

Subject: RE: CAS-01341-N2Q5B8 - Barry Biomass Enforcement Appeal [ASH-EUS.FID301351888]

Good Morning,

I can confirm that PEDW now have a electronic copy of the NTS, we had received a physical one with the other documents previously.

Many thanks,

Kind Regards,

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 252129

E-bost | E-mail: Phil.Thompson@gov.wales



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<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]

Sent: 04 August 2022 09:59

To: [REDACTED]

Cc: [REDACTED]; PEDW – Gwaith Achos / Casework
<PEDW.Casework@gov.wales>; Thompson, Phil (COOG - Planning & Environment Decisions
Wales) <Phil.Thompson@gov.wales>; Sparey, Robert (COOG - Planning & Environment Decisions
Wales) <Robert.Sparey@gov.wales>; [REDACTED]

[REDACTED]

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Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

From: [REDACTED]
Sent: 29 July 2022 09:43
To: [REDACTED]
Cc: [REDACTED]; [REDACTED]
Subject: RE: CAS-01341-N2Q5B8 - Barry Biomass Enforcement Appeal [ASH-EUS.FID301351888]

Hi [REDACTED],

Yes, I have been advised by Saul that a delivery was made yesterday. I am not however in the office until Monday, so have not had the opportunity to check its contents.

Kind regards,

[REDACTED]
Regeneration and Planning
Vale of Glamorgan Council / Cyngor Bro Morgannwg

[REDACTED]

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[Follow us on Twitter / Dilynwch ni ar Twitter](#)

Correspondence is welcomed in Welsh or English / Croesewir Gohebiaeth yn y Gymraeg neu yn Saesneg.

From: [REDACTED]
Sent: 29 July 2022 09:37
To: [REDACTED]
Cc: [REDACTED]

Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#)
To: [REDACTED]
Cc: [REDACTED]; [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#); [PEDW – Gwaith Achos / Casework](#)
Bcc: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#); [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: CAS-01341-N2Q5B8 - Barry Biomass Enforcement Appeal [ASH-EUS.FID301351888]
Date: 31 August 2022 08:40:07
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.jpg](#)

Hello [REDACTED],

Thank you for the updated version of Chapter 3, we do not require a hard copy at this time. The track changes seem easy enough to follow, so I don't think we need an erratum sheet as well.

The updated version will be processed and published to the PEDW casework portal as soon as is practicable. Please send a copy to the LPA directly – they may require a hard copy as they need to ensure the full ES is available in the locality.

PEDW has now received the confirmation of the LPA's publicity and we will publish it in due course.

In terms of keeping the appellant informed, it is best to assume that all evidence will be published by PEDW, and as previously discussed, all other correspondence is also subject to the possibility of release under Fol / EIR bearing in mind our obligations under GDPR.

Kind regards

Rob

Robert Sparey
(fe | he / him)
Rheolwr Cynllunio a'r Amgylchedd | Planning & Environment Manager
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
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<https://gov.wales/planning-and-environment-decisions-wales>

From: [REDACTED]
Sent: 30 August 2022 17:14
To: Sparey, Robert (COOG - Planning & Environment Decisions Wales)
<[REDACTED]>
Cc: [REDACTED] Thompson, Phil (COOG - Planning & Environment Decisions Wales)
<Phil.Thompson@gov.wales>; [REDACTED];
[REDACTED]m; PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Subject: RE: CAS-01341-N2Q5B8 - Barry Biomass Enforcement Appeal [ASH-EUS.FID301351888]

Dear Robert

Many thanks for your email and for the update on progress with the ES completeness report.

Please find attached the updated Chapter 3 with the edits shown in tracked changes and dated "August 2022". If you need an erratum sheet or hard copies then please let me know.

I assume the attachment to this email will be uploaded to the PEDW casework portal and that PEDW will share it with the Council so that the Council can upload it to its online Enforcement Register? Please confirm or if you would like us to share the attachment with the Council direct.

I understand that the Council affixed a notice at the site on 25th August under EIA reg 52(1). Can you please confirm if PEDW has now received the certificate required from the Council by reg 52(2) and will this be published on the casework portal too?

On disclosure, the short point I was trying to make is that where process deviates from normal practice and previous advice then keeping the appellant informed is not inconsistent with PEDW's transparency objectives and publishing policy (which aim to secure confidence in the appeals service for all stakeholders in keeping with the stated values of fairness and openness).

Kind regards

[REDACTED]

From: Robert.Sparey@gov.wales <Robert.Sparey@gov.wales> **On Behalf Of**
PEDW.Casework@gov.wales

From: [PEDW – Gwaith Achos / Casework](#)
To: [BarryVale FOE](#)
Subject: CAS-01341-N2Q5B8 - Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE
Date: 19 December 2022 14:10:00
Attachments: [image001.jpg](#)

Good afternoon, [REDACTED],

Thankyou for your email. The points you raise are noted.

Please be aware that the Inspector will consider all submissions on the ES, along with any further information they request, when writing their report to minister. The ES is the product of the EIA process.

Lastly you have asked to participate in the Inquiry as a 'Rule 6' party. However, as this case will be following the 2017 Procedural Rules, and that 'Rule 6' is not a provision of these rules, I cannot grant you that status. However, you are of course invited to participate in the Inquiry, further information regarding the Inquiry will be issued in due course.

Kind Regards,

Phil Thompson
Arweinydd Gwaith Achos | Casework Lead
Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment
Decisions Wales
Llywodraeth Cymru | Welsh Government
Ffôn | Tel: 03000 252129
E-bost | E-mail: Phil.Thompson@gov.wales



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From: BarryVale FOE [REDACTED]
Sent: 12 December 2022 16:35
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject:

1. We have seen your e-mail below and are concerned we did not receive a copy directly, though you record our representation of 23 Nov. We see too that you have not posted our representation on QUOD's Environmental Statement, nor that of others.
2. We see your post of our Planning representation contains redactions of significant information, in particular internet-links vital to our points.
3. Seeing our submission of 23 Nov. to be somewhat disordered, we have reordered it with a few

text corrections and a list of Appendixes, with the texts combined in a single pdf (which covers also those submitted to the VoG Council on 22 Nov). You posted separately huge numbers of QUOD's Appendixes (which we found unwieldy) so to assist we made them into the attached pdf. Could you confirm you will post up this pdf, to correct your omission of ours?

4. We see the VoG's Statement of Case lacks necessary supporting documents, particularly e-mails, memo etc from their officers and NRW. Most are environmental information which they might post in their own file (which appears to cover the EIA but has not been undated). Insofar as they relate to the planning statement of case, in particular on their claims that most 2015 Conditions can be discharged, we of course need access to them in order to respond to the VoG document.

In view of the points above, with deficits in necessary documents/information, our group would press that the 21 December date for responses be extended. You set it for the 'main parties', but that is no reason to apply it to the rest of us.

As reasoned conclusions on all the environmental information submitted in the EIA process have to precede any planning decision, consideration of submissions on the ES and any responses from the parties would logically precede full planning considerations. The VoG have reserved their position, so would we likewise. In this respect, could you explain how PEDW and/or the Inspector conceive of taking the EIA to completion?

Your 1st Dec email (that we did not receive) asked if we wish to participate in the Inquiry; our answer is yes and using English language. We ask for normal rights as a Rule 6 party. Please post up our reordered submissions attached, to replace the incomplete ones in the compilation or more easily to supplement them.

Regards

--

Friends of the Earth Barry&Vale

From: PEDW – Gwaith Achos / Casework

Sent: 01 December 2022 08:30

Subject: CAS-01341-N2Q5B8 - Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE
Good morning,

Thank you for your representations relating to the above appeal.

The Local Planning Authority and third-party representations can be found online at [Reference: CAS-01341-N2Q5B8 Planning Casework \(gov.wales\)](#)

If you have any comments on the points raised, please send them to me by no later than **21/12/2022**. You should comment solely on the representations submitted at the consultation stage and cannot introduce new material or put forward arguments that should have been included in your earlier representations. If you do, your comments will not be accepted and will be returned to you. Comments submitted after the above deadline will not be seen by the Inspector unless there are extraordinary circumstances for the late submission.

The event will be held as an in-person Inquiry. If you are interested in observing or attending, you should register your interest by e-mail to wales@planninginspectorate.gov.uk before **21/12/2022** and tell us if you wish to participate in or observe the event. If you wish to participate, please also state whether you wish to observe or participate in Welsh or English.

Please note that discussion at the inquiry will be limited to the matters the Inspector considers require further investigation. If the Inspector considers that the written submissions provide sufficient information to reach a conclusion on a matter it will not be discussed at the inquiry.

Kind Regards,

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales

From: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gwaith Achos / Casework](#)
To: [REDACTED]
Bcc: [Sparey, Robert \(COOG - Planning & Environment Decisions Wales\)](#); [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#); [Nethell, Isabel \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: RE: Attn Chris Sweet Barry Incinerator ES CAS-01341-N2Q5B8
Date: 30 August 2022 15:44:00
Attachments: [image001.jpg](#)

Dear [REDACTED]

Regulation 3 of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017 provides that electronic communications can be used by parties to fulfil the requirements of those regulations, i.e. putting electronic communication on a par with hard copy submissions, subject to the requirements specified.

PEDW's responsibilities under GDPR are a separate issue. As has been explained previously, for the purposes of publication on our web portal, we must ensure that those responsibilities are carried out correctly. The other documents that make up the appeal submissions, which are in addition to the ES, also have to be processed and made ready for publication. Moreover, preparing the necessary correspondence and ensuring that everything is in order before the appeal timetable is started is considered extremely important in all cases, but particularly so where there is a high level of public interest and many people will need to use the documents and be accurately informed of the various aspects of the appeal process.

PEDW is currently in a period of considerable resource pressure and as such, it has not yet been practicable to carry out the necessary work required before starting the appeal timetable. We are carrying out that work to the best of our ability and as quickly as possible with the resources we have given current workload pressures. As I'm sure you will appreciate, PEDW is responsible for hundreds of appeal cases in addition to these. I imagine that Barry and Vale Friends of the Earth would be dismayed to see PEDW cause confusion over the appeal process for those who wish to take part in it by failing to ensure that things are done correctly. I therefore do not agree that it would have been practicable to have issued a start date for the appeals on 28 July or 12 August as you suggest.

No time pressure is being applied to Mr McCooey's work on the ES completeness check. It has been taking place alongside our other preparatory work as set out above. As explained previously, we allow for the ES completeness check to take place prior to starting the appeal timetable to avoid unnecessary delays to the process should further information be required for the ES. This is to ensure a smooth and efficient process for all parties involved.

However, I can assure you that this does not impact the appeal timetable once it is started and all of the necessary time periods for the submission of evidence and representations by interested parties will be provided. No party is prejudiced by a delay to issuing a start date. We aim to complete the necessary work and issue a start date within the next week if possible.

I appreciate your level of interest in these cases and your concerns regarding

public participation in both the appeals and in the EIA process. However, I must point out that PEDW is taking all possible steps to undertake the necessary work in as timely a fashion as possible and that time spent by PEDW officials responding to repeated requests to move things along more quickly takes us away from completing the work that would allow us to do so.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales

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From: BarryVale FOE [REDACTED] >

Sent: 25 August 2022 15:44

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED] >

Subject: Attn Chris Sweet Barry Incinerator ES CAS-01341-N2Q5B8

Chris Sweet
Planning Officer and Interim Casework Manager

Dear Mr Sweet,

Referred Applications and Appeals Procedure (Wales) Regulations 2017

Thank you for your reply with helpful references to the Regulations.

We see that Reg.3 of the *Enforcement Notices and Appeals (Wales) Regulations 2017* permits e-circulation of submitted documents, not of redacted versions, but we see that as no problem as all parts of the ES appear un-redacted.

We see that Reg 15(2) of the Appeals Procedure (Wales) Regs requires you to notify a starting date of the Appeal as soon as practicable after the requirements of 15(1) are met, mainly that

(a) the Welsh Ministers have received all the documents they require to enable them to consider an appeal.

Would you not agree this requirement was met on 28th July and at latest by 12th August when the last parts of the ES are recorded as received in your online file?

In our view, the Regs do not support your awaiting the Inspector's report on "completeness" and "expertise" under EIA Reg.17, or even on PEDW's own procedural decision under EIA Reg.17.

Would you therefore

- a) notify Inspector McCooey of our view that there is no time pressure on him to complete his work on Reg.17, rather the opposite, and
- b) notify a "starting date", which would logically be no later than the date when the Inspector started work on the documents ?

With regards,

— [REDACTED]
Friends of the Earth Barry&Vale

[REDACTED]

On Tue, 23 Aug 2022 at 16:30, <PEDW.Casework@gov.wales> wrote:

Dear [REDACTED]

Thank you for your email.

The ES appears on our Portal when I bring up the case, so hopefully you are also able to view it now. It will appear in a list of published documents at the bottom of the case page.

We have completed the process of checking for any necessary redactions before publishing the ES, as mentioned previously. With regard to publishing further documents, the rest of the appeal documents relating to these cases will be published when the appeal timetable is started. Those will be the documents submitted in relation to these appeals and subsequently during the appeal timetable.

Enforcement Appeals are processed in line with the Town and Country Planning (Referred Applications and Appeals Procedure) (Wales) Regulations 2017 and the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2017.

Our guidance on Enforcement Appeals can be found here:

[enforcement-listed-building-enforcement-and-lawful-development-certificate-appeals.pdf \(gov.wales\)](#)

I apologise that the cover page etc has not yet been updated to reflect the transfer of functions from the former Planning Inspectorate for Wales to PEDW.

I hope this is helpful.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: BarryVale FOE [REDACTED] >

Sent: 19 August 2022 12:06

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: Re: Barry Incinerator ES CAS-01341-N2Q5B8

Chris Sweet
Planning Officer and Interim Casework Manager

Dear Mr Sweet,

Thank you for this reply notifying us of the Inspector's name and that the ES is now posted on a public file. It does not yet come up on a search under CAS-01341-N2Q5B8, but I'll wait a bit.

As you say, PEDW has completed its processes. We hope that means that all past documents are to be visible.

I've failed to find documentation giving these processes and PEDW's role in the ongoing Appeal, further than arranging the timetable as mentioned. Is there a working manual that

we could see?

With regards,

-- [REDACTED]
Friends of the Earth Barry&Vale

On Wed, 17 Aug 2022 at 10:22, <PEDW.Casework@gov.wales> wrote:

Dear [REDACTED]

Thank you for your email.

The Inspector appointed to consider the completeness of the Environmental Statement (ES) for these appeals is Mr A L McCooey BA MSc MRTPI.

It is our intention that Mr McCooey will also be appointed to report to the Welsh Ministers on the appeals as a whole, but that will not take place until the appeal timetable is started.

PEDW does not give out the direct contact details of Planning Inspectors.

As I'm sure you will appreciate, it is vital that Inspectors maintain their impartiality and direct contact between any party and the Inspector outside the formal evidence process and without the full knowledge and input of other parties would undermine that position. The formal evidence process ensures that all parties are given an appropriate opportunity to put their case to the Inspector on an equal footing and that no party has any greater access to or influence with the Inspector. All correspondence about the ES and the appeals should be sent to the above email address.

I am aware of your interest in the ES and though you will receive separate responses to the FOI / EIR requests you have made, I thought it would be helpful to confirm that PEDW has completed the necessary checks etc and the ES is now available to view on our web portal:

<https://planningcasework.service.gov.wales/searchresults?q=01341>

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer
and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and
Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Ffôn | Tel: 03000 253382



From: BarryVale FOE <[REDACTED]>

Sent: 16 August 2022 15:06

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: Re: Barry Incinerator ES CAS-01341-N2Q5B8

Sorry I omitted the Case reference Barry Incinerator ES CAS-01341-N2Q5B8

On Tue, 16 Aug 2022 at 15:02, BarryVale FOE [REDACTED] > wrote:

Chris Sweet

Planning Officer and Interim Casework Manager

Dear Mr Sweet,

The Welsh Government referred us to you as able to disclose the name and contact details for the independent Inspector the Ministers have appointed in this case. The protocol prescribes no 'improper constraint' on the Inspector's work, so would you please supply those contact details?

Regards

--

Friends of the Earth Barry&Vale



From: [PEDW – Amserlennu Arolygwyr / Inspector Scheduling](#)
To: [McCooey, Aidan \(COOG – Planning & Environment Decisions Wales\)](#); [PEDW – Gweithdrefnau / Procedure](#)
Cc: [REDACTED] [Thompson, Phil \(COOG – Planning & Environment Decisions Wales\)](#)
Subject: CHART - 01341 Barry Biomass, key dates.
Date: 15 February 2023 10:45:11
Attachments: [image001.jpg](#)

Hi all

Letters fixing the date for the above INQ have been sent to the APP and LPA this morning, along with copies of the site notices.

Aidan:

Topics for the INQ need to be sent out to the parties by **04 April** at the very latest, although I understand the plan is to get them out as soon as possible so they have time to work on their WSOE.

If you need a PIM organising, just let us know the date so we can write out and organise a test event to make sure the APP/LPA and whoever you want to invite along can use the technology. If it's a PIM note then please send it over and we'll distribute it to those on your list.

Procedure:

WSOE are to be submitted by no later than **18 April** (4wks before), can you please put a BF in the diary.

Thanks

[REDACTED]

[REDACTED]

[Penderfyniadau Cynllunio a'r Amgylchedd / Planning & Environment Decisions Wales](#)

[Llywodraeth Cymru / Welsh Government](#)

[CP2, Parc Cathays, Caerdydd, CF10 3NQ / CP2, Cathays Park, Cardiff, CF10 3NQ](#)

[REDACTED]



[Penderfyniadau Cynllunio ac Amgylchedd Cymru | LLYW.CYMRU / Planning and Environment Decisions Wales | GOV.WALES](#)

From: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#) on behalf of [PEDW – Gweithdrefnau / Procedure](#)
To: ["BarryVale FOE"](#)
Bcc: [BarryVale FOE](#)
Subject: RE: CAS-01341-N2Q5B8 Suspension of the Inquiry
Date: 21 April 2023 11:25:00
Attachments: [image001.jpg](#)
[2023-02-22 - FROM APP - regarding SoCG and new Planning Applications.pdf](#)

Good morning, [REDACTED]

Thank you for your email. As requested, please find attached the appellants letter of 22nd February 2023. Please be aware that it is not standard practice for PEDW to make available all correspondence relating to a case. Can you please clarify what you mean by all communications relating to the Inquiry? The vast majority of these will be purely administrative, to do with setting of dates, and venues etc.

Regarding the Issue you have raised with the LPA answer to Q18 of the Questionnaire. The inspector has determined that this is a matter to be considered at the Inquiry when all parties can express their views on the issues in submissions.

Kind Regards,

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Llinell Uniongyrchol | Direct Line: 03000 252129

PCAC Ymholiadau Cyffredinol Ffôn / PEDW General Enquiries Tel: 0300 123 1590

E-bost | E-mail: Phil.Thompson@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |
<https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED] >
Sent: 20 April 2023 23:40
To: PEDW – Gweithdrefnau / Procedure <PEDW.Procedure@gov.wales>
Subject: Re: CAS-01341-N2Q5B8 Suspension of the Inquiry

Hi Phil,

Thanks for replying with PEDW's 28 February letter.

However, it refers to a letter from the Appellant of 22 Feb. that's not provided or posted on the web-file as we asked.

We see the 28 Feb letter was posted today 20 April, yet the publication date is given as 28 Feb. The VoG say they replied on 31 March. We infer that the appellant's 15-day time for response ended early this week.

I'm sorry we have to ask again:

- please post up all communications relating to the Inquiry
- Why should you not treat our Flood Consequences Assessment technical query on a par with the appellant's?

Regards,

Friends of the Earth Barry&Vale

On Thu, 20 Apr 2023 at 15:28, <PEDW.Procedure@gov.wales> wrote:

Good afternoon,

Please see the attached letter sent to the LPA in February. The LPA are yet to respond and have sought extra time.

Kind Regards,

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

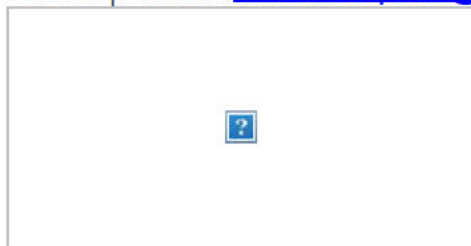
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Llinell Uniongyrchol | Direct Line: 03000 252129

PCAC Ymholiadau Cyffredinol Ffôn / PEDW General Enquiries Tel: 0300 123 1590

E-bost | E-mail: Phil.Thompson@gov.wales



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> | <https://gov.wales/planning-and-environment-decisions-wales>

From: BarryVale FOE [REDACTED] >

Sent: 20 April 2023 10:05

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: Re: CAS-01341-N2Q5B8 Suspension of the Inquiry

Phil

PEDW casework officer

Hi Phil,

We've heard via the VoG that the Inquiry has been deferred. but find no notification by PEDW

Could you please post up all communications relating to the Inquiry to ensure transparency?
Our challenge of 23 Dec.: *False answer on Flooding Q18 in the ENF* questionnaire. needed response pre-inquiry. We have no indication that you have asked the VoG to respond to their important factual error. The second part of the ENF question indicates the need for a Flood Consequences Assessment - without which the planning application is incomplete and has to be rejected.

Why should you not treat this technical objection on a par with the new one of the appellant?
We look forward to a prompt response.

Regards,

[REDACTED]
Friends of the Earth Barry&Vale
[REDACTED]

Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein hysbysiad preifatrwydd yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

--
Friends of the Earth Barry&Vale
[REDACTED]

From: [PEDW – Amserlennu Arolygwyr / Inspector Scheduling](#)
To: appeals@valeofglamorgan.gov.uk
Subject: PEDW: CAS-01341-N2Q5B8 / CAS-01476-M1N1C0 - Land at Barry Biomass, Woodham Road, Vale of Glamorgan, CF63 4JE
Date: 21 April 2023 07:54:06
Attachments: [2023-02-28 - To LPA \(Copy to App\) - Re EN Issues and Inquiry.pdf](#)
[image001.jpg](#)

LPA references: ENF/2020/0230/M / 2015/00031/5/CD

Good morning,

I refer to the above appeals and my colleagues letter issued on 28 February 2023.

As you are aware, the Inquiry for these appeals originally set for May has been postponed. Due to the ongoing exchanges of information in relation to the appeals, PEDW are not currently in a position to set a new day for the public Inquiry. As soon as we are able to set a new date for the Inquiry, we will confirm this with yourselves.

In light of this, please would it be possible to write to those owners and occupiers of property near the site and others you consider to be affected to confirm the Inquiry originally set for 19 May 2023 has been postponed and that as soon as a new date has been set for the Inquiry this will be confirmed to the parties.

If you have any queries, please do not hesitate in contacting me.

Kind regards,

[Redacted signature]

Penderfyniadau Cynllunio ac Amgylchedd Cymru / Planning and Environment
Decisions Wales
Llywodraeth Cymru / Welsh Government
Ffôn / Tel: [Redacted]
E-bost / E-mail: [Redacted]



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru/>
<https://gov.wales/planning-and-environment-decisions-wales>

Date/Dyddiad: 28th April 2023

Ask for/Gofynwch am: [REDACTED]

Telephone/Rhif ffon: [REDACTED]

Your Ref/Eich Cyf:

My Ref/Cyf:

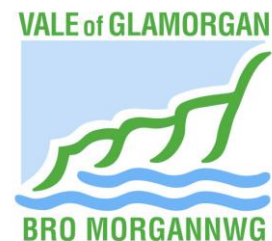
e-mail/e-bost: [REDACTED]

CAS-01341-N2Q5B8

The Vale of Glamorgan Council
Civic Offices, Holton Road, Barry. CF634RU
Tel: (01446) 700111

Cyngor Bro Morgannwg
Swyddfeydd Dinesig, Heol Holton, Y Barri. CF634RU
Ffôn: (01446) 700111

www.valeofglamorgan.gov.uk



Sent by email: pedw.casework@gov.wales

Dear Mr Thompson,

Town and Country Planning Act 1990
Appeals by: Biomass UK No.2 Limited
Appeal site: Land at Barry Biomass, Woodham Road, Barry, CF63 4JE

I refer to your letter dated 28th February 2023 regarding the above appeal and the LPA's confirmation on 31st March 2023, that it was proposing to report the matter back to the next available meeting of its Planning Committee.

I would confirm that on 27th April 2023, the Planning Committee of the Council agreed the following recommendation:

- (1) *That PEDW be advised that the Council would agree to variations of the existing EN issued under Section 172 of the Town and Country Planning Act 1990 (as amended) as follows:*
 - (i) *The breach of planning control alleged in the Enforcement Notice to refer to the carrying out of operational development comprising the construction of a wood fired renewable energy plant together with associated structures not in accordance with the details and plans approved under planning application 2015/00031/OUT (i.e. a breach of condition(s) of that permission).*
 - (ii) *The requirements of the Enforcement Notice to include the carrying out of the development in accordance with the details and plans approved under planning application 2015/00031/OUT.*

As explained in my previous letter of 31st March 2023, the reason why enforcement action was taken against the development as a whole, was due to the fact that the appellant had not confirmed what, if any, elements had been constructed in accordance with the 2015 application which would have constituted the implementation of that permission. It is considered however that the information since provided by the appellant regarding the implementation of the 2015 permission is material and that the breach of planning control and the steps that are required to be undertaken to remedy the breach should include reference to that consent. The EN should therefore be varied to give the developer the option of amending the

scheme to revert back to the 2015 consent and it is not considered that such a variation would give rise to injustice to any party.

A copy of the committee report, setting out the recommendation that was agreed by the Planning Committee, is also attached for information.

Yours sincerely,

[Redacted signature]

[Redacted name]

[Redacted contact information]

THE VALE OF GLAMORGAN COUNCIL

PLANNING COMMITTEE : **27 APRIL, 2023**

REPORT OF THE HEAD OF REGENERATION AND PLANNING

7. ENFORCEMENT ACTION

LAND AND BUILDINGS AT BARRY BIOMASS, WOODHAM ROAD, BARRY

Executive Summary

This report seeks authorisation for appropriate variations to the Enforcement Notice (EN) issued under section 172 of the Town and Country Planning Act 1990 (as amended) to be agreed following the appeal lodged and recent correspondence received from Planning and Environmental Decisions Wales (PEDW) in respect of the development undertaken at the Barry Biomass site, in Woodham Road, Barry.

The report recommends that, in light of the information which has now been made available to the Council since enforcement action was taken, regarding the implementation of the development approved under applications 2015/00031/OUT and 2016/00187/RES, agreement is provided to Planning and Environmental Decisions Wales (PEDW) that appropriate variations may be carried out to the EN in the following respects: 1) to more accurately reflect the breach of planning control that has been undertaken and 2) to include an additional/alternative option to secure a remedy to the breach of planning control. The purpose of agreeing a variation of the EN is to enable the appeal to focus on the matters which are in dispute and thereby reduce the time and resources which might otherwise be spent on producing evidence that is not relevant to the determination of the appeal.

Background

1. This report seeks authorisation for appropriate variations to the EN previously issued by the Council under Section 172 of the Town and Country Planning Act 1990 (as amended) to be agreed in respect of the development which has been undertaken at the Barry Biomass site, in Woodham Road, Barry. The site is located to the north-east of the industrial units along Woodham Road with access off David Davies Road and has undergone extensive re-development to provide the biomass facility.
2. Following the Council's investigation of a number of complaints regarding the development, a report was previously considered at the Planning Committee on 1st September 2021, where the discrepancies between the consented scheme and built development were outlined including, differences between the approved layout and elevation plans, the provision of additional structures, plant and equipment and the extension of the site to the north.
3. As identified in that committee report, extensive correspondence had been undertaken with the developer which had suggested that the project had been 'developed substantially in accordance with planning permission

15/00031/OUT and reserved matters approval 2016/00197/RES'. However, in the absence of any specific information from the developer identifying which elements of the development had been undertaken in accordance with the approved scheme and the submission of appropriate planning applications to regularise the remaining discrepancies, this resulted in the development as a whole being considered unauthorised.

4. Authorisation was therefore sought for an EN to be issued which sought the cessation of the operation of the renewable energy plant, including the carrying out of any performance testing, the removal of the renewable energy plant and associated equipment from the land, the cessation of the use of the land to the north and the removal of containers and vehicles and the restoration of the land to its former condition prior to the commencement of development.
5. The EN was subsequently issued by the Council on 17th September 2021 and contained the following requirements:
 - (i) Permanently cease the operation of the renewable energy plant, including the carrying out of any performance testing.
 - (ii) Permanently remove the renewable energy plant including all buildings, plant and associated equipment from the Land.
 - (iii) Permanently cease the use of that part of the Land edged blue on the Plan for the storage of containers and the parking and manoeuvring of vehicles in association with the renewable energy plant.
 - (iv) Permanently remove the containers and vehicles from that part of the Land edged blue on the Plan resulting from the cessation of the use identified in step (iii) above.
 - (v) Following the taking of steps (ii) and (iv) above, restore the Land to its former condition prior to the commencement of development.
6. The compliance periods specified in the notice were one day for step (i), six months for steps (ii), (iii) and (iv) and nine months for step (v) and these periods were to begin with the day on which the notice was due to take effect.

Update on Matters Since Issuing of Enforcement Notice

7. As Members will be aware, an appeal was lodged against the EN with Planning and Environment Decisions Wales (PEDW) on 15th October 2021, together with an appeal against the Council's non-determination of an application which sought to discharge all outstanding planning conditions relating to the renewable energy facility (2015/00031/5/CD). As a result of the appeal, the effect of the EN was suspended until the outcome of the appeal is known.
8. The Statement of Case provided on behalf of Biomass UK No.2 Limited confirms that the basis of their appeal is that:

- (a) *in respect of the Renewable Energy Facility*
 - (i) *the as-built development is lawful in all material respects;*
 - (ii) *it was not expedient or necessary for the Council to take enforcement action and that the measures proposed in the Notice are unreasonable and excessive and the Notice should not be upheld;*
 - (iii) *to the extent that there are any genuine concerns regarding control over the as-built development then these could be addressed through the offer of a unilateral undertaking pursuant to section 106 of the 1990 Act; and*
 - (b) *in respect of the Northern Land, while no express planning permission has been granted for the use in question there is no reason for planning permission not to be granted. Furthermore, if the Council's concern as stated in the Notice concerns the use in question, then the measures proposed in the Notice are unreasonable and excessive and the Notice should not be upheld.*
9. The appeal made by Biomass UK No. 2 Limited also includes an application for costs against the Council, which their Statement of Case confirms has been made *'in respect of the unreasonable behaviour of the Council in respect of the renewable energy facility and the northern land'*.
10. Since the lodging of the appeal against the EN, there have been a number of further developments of which Members should be aware. On 15th December 2021, the Welsh Government confirmed that the appeals lodged had been 'called-in' by Welsh Ministers and therefore following the holding of a public inquiry, the report and recommendation of the Planning Inspector appointed by PEDW would need to be considered by them before a final decision was reached.
11. On 13th January 2022, PEDW confirmed that the Welsh Ministers had issued a screening direction and directed that the development that was the subject of the appeal, was EIA development and advised the developer that the appeal must be accompanied by an ES to be submitted by 13th April 2022. Following an initial request made by the developer to extend the date of submission for the ES, PEDW agreed that this could be extended until 13th July 2022, however a further extension was not agreed by PEDW and a new deadline of 29th July 2022 was provided.
12. On 1st April 2022, the developer submitted correspondence to the Council which suggested that rather than seeking to remedy the Council's concerns relating to the identified discrepancies and additional structures and its ability to be able to regulate the operation of the plant in the future, the EN had sought the complete removal of the plant which was extreme and unreasonable. It was confirmed that the developer had sought Counsel's opinion, which had suggested that the EN was unlawful and should therefore be withdrawn. It was also suggested that as an alternative to taking enforcement action, a further option was to control the development by way of a unilateral undertaking under S106 of the Act, as an alternative to requiring

compliance with planning conditions attached to the 2015 consent. That opinion was based on the assertion that the 2015 permission had been lawfully commenced, primarily as a result of the piling works that were carried out in May 2016, at which point, the Council had already discharged the five pre-commencement conditions.

13. Following the receipt of this correspondence, it was identified by officers that the five conditions requiring details to be approved prior to the commencement of development had been formally discharged and there was no evidence in the Council's records to suggest that the piling operations had not been undertaken in accordance with the approved plans. Concerns remained however over the implications of withdrawing the EN as it was considered that it would not be appropriate to rely on other controls that were either already in place (such as the NRW permit) or were intended to be put in place via the proposed legal agreement in order to properly control the constructed development, particularly as the EIA process had not yet been concluded. If the EN was to be withdrawn and re-issued to include the requirement to modify the development to that which was approved under the 2015 consent, it was acknowledged that the submission of further planning applications would still be required to regularise elements falling outside of that consent.
14. Furthermore, it was considered that through the EN appeal, there was already an available option for amending the EN if the Planning Inspector considered that the wording of the notice could be amended to better reflect the breach, or whether the steps required to comply with the requirements of the notice were considered excessive and lesser steps would overcome the objections to the development. The developer had already included such a proposal as part of their appeal against the EN under ground (f) and it was therefore considered that such a variation could be incorporated by the Planning Inspector if it were considered appropriate, without causing any injustice to the developer.
15. The ES was received on 28th July 2022 and was published with a 90 day public consultation period expiring on 23rd November 2023. PEDW also formally started the EN appeal and linked Discharge of Condition appeal on 5th September 2022, requiring representations on either appeal to be submitted to them by 23rd November 2022.
16. Following the Members' briefing session on the Biomass appeals held on 11th November 2023, the Council submitted its Statement of Case to PEDW in respect of both appeals on 23rd November 2022 which set out its reasons for taking enforcement action and why it was considered necessary to regularise the development. The Statement of Case advised that the Council had agreed to a Preliminary Statement of Common Ground (SOCG) with the appellant on 17th November 2022, which confirmed that the principle of a wood fired renewable energy plant on the appeal site was established by the 2010 and 2015 permissions and that there was no dispute between the parties about the *principle* of a wood fired renewable energy plant on the appeal site. The SOCG followed the position set out in the Planning Committee report on 1st September 2021 and discussed at the Members' briefing session, that the purpose of taking enforcement action was to secure the regularisation of the existing development.

17. On 10th January 2023, the developer submitted three applications with the aim of regularising the unauthorised development. The first of these applications (2015/00031/1/NMA) is a non-material amendment application relating to the addition of 1) the Lean-to structure adjacent to the Fuel Reception Building, 2) the Emergency Diesel Generator and Tank and 3) the Fire Kiosk. The second application (2023/00032/FUL) is a retrospective full planning permission for the development comprising a wood fired renewable energy plant and associated structures without complying with Condition 5 (Drawings) attached to planning permission 2015/00031/OUT and the third application (2023/00033/FUL) relating to the land to the north, is a retrospective application for external storage, vehicle turning and vehicle layover, and perimeter fencing for use in association with the adjacent renewable energy plant. As two of the applications (2023/00032/FUL and 2023/00033/FUL) are accompanied by an environmental statement (ES), the applications have been advertised with a 90 day consultation period, expiring on 24th May 2023.
18. The Council's Final Comments on Representations was submitted to PEDW on 31st January 2023. These comments noted that the response received from NRW had not identified any issues relevant to their interests, which could make the retention of the as built facility inappropriate. Following further consultation undertaken on the responses received from DIAG (Docks Incinerator Action Group) and FoE (Barry & Vale Friends of the Earth), which were considered to be representative of the majority of representations received, Public Health Environment Wales confirmed that they had no additional comments to make and no further comments were received from either NRW or SRS.

Further Matters Raised in Recent Correspondence from PEDW

19. On 28th February 2023, correspondence was received from PEDW seeking further comments from the Council and developer on the contents of the EN and specifically, the description of the breach of planning control and requirements of the notice. The letter from PEDW notes that the main parties have provided their position in their statements of case and signed a Statement of Common Ground (SOCG). Reference is also made to the fact that the developer has stated that the 2015 planning permission remains extant (implemented and capable of being completed) and the principle of the development (a wood-fired energy plant) on the appeal site is agreed.
20. It should be clarified that officers are not aware of any statement made to date which has provided any agreement to the 2015 planning permission remaining extant, however having considered the information provided by the developer and having taken further legal advice on the matter, it is considered by officers that the 2015 consent is extant and that it was implemented.
21. The letter from PEDW refers to recent correspondence received from the developer providing information on the three planning applications recently submitted to the Council which, according to the developer, are in line with the suggestions contained in the 1 September 2021 committee report recommending enforcement action. It is suggested by PEDW that such a position does not appear to align with the breach of planning control set out in the EN and its requirement to permanently remove the renewable energy plant

from the land. It is stated that it is important that the allegation accurately describes the breach of planning control, given that it defines the basis of the deemed planning application that can be considered as part of the appeal under ground (a) and the requirements of the EN and appeal under ground (f).

22. The Planning Inspector has therefore invited the Council's comments on the implications of its stated position on the nature of the breach of planning control as set out in the EN. It is requested that the Council considers whether the allegation is a sufficiently precise description and if not, how it might be corrected and the consequential effect on the requirements of the notice. It is also confirmed that the Public Inquiry scheduled to take place in May 2023 will need to be postponed, with a new deadline set for the submission of Written Statements of Evidence, once a new date has been confirmed.
23. In its response, officers have confirmed that further consideration is being given to the nature of the breach set out in the EN. In the initial response to PEDW, officers have also highlighted that the developer's statements regarding the determination of these applications is entirely based on their opinion and not on any discussions with the LPA. There has not been any indication that a favourable approach may be taken and the LPA has advised that there is no guarantee that any retrospective application will be successful in securing the regularisation of the unauthorised development.
24. Officers have confirmed that at the time authorisation was previously given by the Planning Committee in September 2021 for an EN to be issued, it had not been confirmed by the developer what, if any, elements had been constructed in accordance with the 2015 application which would have constituted the implementation of that permission. As a result, the LPA considered that it had no alternative at that time but to take enforcement action against the development as a whole. Whilst the developer has subsequently provided further information to clarify how the 2015 consent was implemented, given the specific nature of the enforcement action that was previously authorised by Planning Committee, it is considered that any proposed variation to that matter would need to be reported back to the Planning Committee before further comments on any potential variation of the notice could be provided to PEDW. It has therefore been confirmed to PEDW that a further response confirming the LPA's position would be provided shortly after the Planning Committee on 27th April 2023 and PEDW has subsequently agreed an extension of time for comments until the end of April 2023.

Details of the Breach

25. The previous Committee report, which was considered at the Planning Committee on 1st September 2021, set out the breaches of planning control that had been identified at the site which included:
 - (i) A discrepancy between the approved elevation and site layout plans - the approved elevations are a 'mirror image' of what was shown on the approved layout plan and the development is therefore shown the wrong way round on the elevation plan to what is shown on the approved layout and what has been constructed on site.

(ii) Additional plant and equipment - there are a number of additional structures that had been constructed at the site which were considered to be at variance with the approved scheme including plant and equipment including the following items: 01 - Lean to FRB, 02 - Lean-to Compressor House with Plant Above, 03 - Urea Silo, 04 - Discharge 'Incline' Conveyor, 05 - Screening Tower and Dust Extraction, 06 - Emergency Diesel Generator and Diesel Tank, 07 - Fire Kiosk, 08 - Fire Water Tank and Pump House, and 09 - WPD Reactor and Transformer Unit.

(iii) An extension of the site to the north - the land which is located immediately north of the site has been used throughout the construction phase and continues to be used for storage containers and a vehicle turning space.

26. As confirmed above, the developer has recently submitted three separate applications which seek to regularise the various inconsistencies with the 2015 application. It should be noted it has been made clear to the developer, as with the submission of any retrospective planning application, that all applications are dealt with on their planning merit and there is no guarantee that any application will be approved. If the existing development is not regularised through the approval of these applications then the developer would however be able to revert back to carrying out the development in accordance with the 2015 consent (in the event that it has been implemented, which is the view of officers as stated above).

Planning History

27. The site benefits from the following planning history:

2023/00033/FUL : Land to the North of Barry Biomass Renewable Energy Facility, David Davies Road, Barry - Retrospective planning permission for external storage, vehicle turning and vehicle layover, and perimeter fencing for use in association with the adjacent renewable energy plant – Undetermined

2023/00032/FUL : Barry Biomass Renewable Energy Facility, David Davies Road, Barry - 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 – Undetermined

2015/00031/1/NMA : Barry Biomass Renewable Energy Facility, David Davies Road, Barry - Non-Material Amendment - addition of 1) Lean-to structure adjacent to the Fuel Reception Building, 2) Emergency Diesel Generator and Tank and 3) Fire Kiosk. Planning approval 2015/00031/OUT for a wood fired renewable energy plant - Undetermined

2021/00695/FUL : Barry Biomass Facility, David Davies Road, Barry - A retrospective (S73A) planning permission for the erection and use of a cylindrical fire water tank at its biomass fired renewable energy generation facility at the Barry Docks - Undetermined

2017/01080/FUL : Barry Port Biomass Plant, David Davies Road, Barry - Variation to condition 5 of planning permission 2015/00031/OUT to include fire tank and building as well as relocation of parking - Withdrawn

2017/00262/FUL : Barry port Biomass Plant, David Davies Road, Barry - Erection of the following site services, plant and machinery: (1) Reception Building Conveyor Cover; (2) Reception Building Power Packs; (3) Reception Building Conveyor Cover; (4) Reception Building Conveyor Screening Tower Structure; (5) Fire System Control Kiosks x 6; (6) Fire Water Tank; (7) Fire Water Pump House; (8) ACC Ancillary Equipment Structure; (9) Emergency Generator; (10) Diesel Tank and (11) Process Building Plant Room With Ancillary Air Blast Coolers – Withdrawn

2016/00187/RES : Biomass UI No.2 Limited, David Davies Road, Barry - Approval of the landscaping of the development condition 1 of the outline 2015/00031/OUT – Approved 29/04/2016

2015/00031/5/CD : Barry Port Biomass Plant, David Davies Road, Barry - Conditions 5, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 25 & 29 of Planning Application 2015/00031/OUT – Undetermined (subject of current appeal)

2015/00031/4/CD : Barry Port Biomass Plant, David Davies Road, Barry - Outline application for a wood fired renewable energy plant. - Withdrawn

2015/00031/3/CD : Barry Port Biomass Plant, David Davies Road, Barry - Discharge of Conditions 11, 12, 20 and 29. - Withdrawn

2015/00031/2/CD : Barry Port Biomass Plant, David Davies Road, Barry - Discharge of Condition 13-Sustainable Drainage - Withdrawn

2015/00655/FUL : Land off Woodham Road, Barry - Erection of a new industrial building and the installation of a 9mw wood fuelled renewable energy plant - Undetermined

2015/00031/OUT : David Davies Road, Woodham Road, Barry - Outline application for a wood fired renewable energy plant - Approved 31/07/2015

2014/01065/NMA : Land at Woodham Road, Barry - Modification to Sunrise Renewables planning permission 2008/01203/FUL - Withdrawn 30/10/2014

2010/00240/FUL : Land off Woodham Road, Barry - Erection of new industrial building and installation of 9MW wood fuelled renewable energy plant - Withdrawn 20/04/2010

2008/01203/FUL : Land at Woodham Road, Barry - Erection of new industrial building and installation of 9MW fuelled renewable energy plant - Refused 31/07/2009

2008/00828/SC1 : Land at Woodham Road, Barry Docks - Proposed industrial building and installation of 9MW Biomass Gasification Plant to generate electricity from reclaimed timber - Environmental Impact Assessment (Screening) - Not Required 14/08/2008

1987/00821/FUL : Woodham Way, Barry Docks - Construction of plant store - Approved 17/11/1987

1985/00574/FUL : Woodham Road, North Side, No. 2 Dock, Barry - The land will be enclosed by a security fence and used for the storage of car trailers, such as touring caravans, boats etc. – Approved 23 July 1985.

1984/00348/FUL : Woodham Road, No. 2 Dock, Barry Docks, Barry – Proposed fenced off compound for the purpose of storage and distribution of solid fuel -Approved 17 May 1984.

1984/00214/FUL : Woodham Road, No. 2 Dock, Barry - Erection of a security fence around the plot of land which will be used for the storage of caravans. Approved 1 May 1984.

Planning Legislation

28. Section 173 of the Town and Country Planning Act 1990 states that in relation to the contents and effect of an enforcement notice:
- (3) An enforcement notice shall specify the steps which the authority require to be taken, or the activities which the authority require to cease, in order to achieve, wholly or partly, any of the following purposes.
 - (4) Those purposes are -
 - (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - (b) remedying any injury to amenity which has been caused by the breach.
 - (5) An enforcement notice may, for example, require -
 - (a) the alteration or removal of any buildings or works;
 - (b) the carrying out of any building or other operations;

Policy and Guidance

29. Welsh Government advice on the enforcement of the planning control is found in the Development Management Manual (Revision 2, May 2017). It states that, *'When considering enforcement action, the decisive issue for the LPA should be whether the unauthorised development would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest.'*

Local Development Plan:

30. The Development Plan for the area comprises the Vale of Glamorgan Adopted Local Development Plan 2011-2026, which was formally adopted by the Council on 28 June 2017, and within which the following policies are of relevance:

Strategic Policies:

POLICY SP1 – DELIVERING THE STRATEGY
POLICY SP8 – SUSTAINABLE WASTE MANAGEMENT
POLICY SP9 – MINERALS

Managing Development Policies:

POLICY MD1 - LOCATION OF NEW DEVELOPMENT
POLICY MD2 - DESIGN OF NEW DEVELOPMENT
POLICY MD7 - ENVIRONMENTAL PROTECTION
POLICY MD16 – PROTECTION OF EXISTING EMPLOYMENT SITES AND PREMISES
POLICY MD19 - LOW CARBON AND RENEWABLE ENERGY GENERATION
POLICY MD20 - ASSESSMENT OF WASTE MANAGEMENT PROPOSALS

31. In addition to the Adopted LDP the following policy, guidance and documentation supports the relevant LDP policies.

Future Wales: The National Plan 2040:

32. Future Wales – the National Plan 2040 is the national development plan and is of relevance to the determination of this planning application. Future Wales provides a strategic direction for all scales of planning and sets out policies and key issues to be considered in the planning decision making process.

Planning Policy Wales:

33. National planning policy in the form of Planning Policy Wales (Edition 11, 2021) (PPW) is of relevance to the matters considered in this report.
34. The primary objective of PPW is to ensure that the planning system contributes towards the delivery of sustainable development and improves the social, economic, environmental and cultural well-being of Wales.
35. The following chapters and sections are of particular relevance in the assessment of this planning application:

Chapter 3 - Strategic and Spatial Choices

- Good Design Making Better Places
- Promoting Healthier Places
- Sustainable Management of Natural Resources
- Placemaking in Rural Areas
- Accessibility
- Previously Developed Land

- The Best and Most Versatile Agricultural Land
- Development in the Countryside (including new housing)
- Supporting Infrastructure
- Managing Settlement Form –Green Wedges

Chapter 5 - Productive and Enterprising Places

- Economic Infrastructure (electronic communications, transportation Infrastructure, economic development, tourism and the Rural Economy)
- Energy (reduce energy demand and use of energy efficiency, renewable and low carbon energy, energy minerals)
- Making Best Use of Material Resources and Promoting the Circular Economy (design choices to prevent waste, sustainable Waste Management Facilities and Minerals)

Technical Advice Notes:

36. The Welsh Government has provided additional guidance in the form of Technical Advice Notes. The following are of relevance:
- Technical Advice Note 11 – Noise (1997)
 - Technical Advice Note 18 – Transport (2007)
 - Technical Advice Note 21 – Waste (2017)
 - Technical Advice Note 23 – Economic Development (2014)

Supplementary Planning Guidance:

37. In addition to the adopted Local Development Plan, the Council has approved Supplementary Planning Guidance (SPG). The following SPG are of relevance:
- Renewable Energy (March 2019)
 - Sustainable Development (2006)

Welsh National Marine Plan:

38. National marine planning policy in the form of the Welsh National Marine Plan (2019) (WNMP) is of relevance to the determination of this authorisation. The primary objective of WNMP is to ensure that the planning system contributes towards the delivery of sustainable development and contributes to the Wales well-being goals within the Marine Plan Area for Wales. The following chapters and sections are of particular relevance in the assessment of this authorisation:
- Living within environmental limits
 - Maintain and enhance the resilience of marine ecosystems and the benefits they provide in order to meet the needs of present and future generations.
 - Promoting Good Governance
 - Support proportionate, consistent and integrated decision making through implementing forward-looking policies as part of a plan-led,

precautionary, risk-based and adaptive approach to managing Welsh seas.

- Using Sound Science Responsibly
 - Develop a shared, accessible marine evidence base to support use of sound evidence and provide a mechanism for the unique characteristics and opportunities of the Welsh Marine Area to be better understood.

Other relevant evidence or policy guidance:

- Welsh Government Circular 016/2014: The Use of Planning Conditions for Development Management
- Welsh Office Circular 11/99 – Environmental Impact Assessment
- Welsh Office Circular 24/97 - Enforcing Planning Control
- Welsh Government Development Management Manual – Section 14 Annex “Enforcement Tools”
- Section 58 (1) of the Marine and Coastal Access Act places a requirement on the Council to take decisions in accordance with the appropriate marine policy documents, unless relevant consideration indicates otherwise.

Well Being of Future Generations (Wales) Act 2015:

39. The Well-being of Future Generations Act (Wales) 2015 places a duty on the Council to take reasonable steps in exercising its functions to meet its sustainable development (or wellbeing) objectives. This report has been prepared in consideration of the Council’s duty and the “sustainable development principle”, as set out in the 2015 Act. In reaching the recommendation set out below, the Council has sought to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Recommendations for Variations to the Enforcement Notice

40. At the time the EN was issued in September 2021 and whilst claiming to have implemented the 2015 consent, the developer had not submitted any evidence to prove that this was the case. Due to the uncertainty which existed, it was therefore considered that there was no alternative but to word the EN in such a way to cover the entire development and to seek its removal. It was also considered unlikely, if not impossible, that the developer would amend the scheme to comply with the 2015 planning permission, particularly given the discrepancies identified with the approved plans.
41. It is considered however that the information provided by the developer regarding the implementation of the 2015 consent is material to that position. The recent correspondence from PEDW invites comments on the implications of the Council’s stated position on the breach of planning control on the description of the allegation in the EN. For the reasons given above, the existing wording of the notice does not include reference to the extant consent. However, having regard to the information which is now apparent regarding implementation, it is considered that the breach should reasonably reflect that. Taking account the purpose of issuing an EN as set out in Section 173(4) of the Town and Country

Planning Act 1990 ('the Act') and following the receipt of further legal advice regarding the contents of the EN, it is considered that the breach of planning control (and steps that are required to be undertaken to remedy the breach) should include reference to the 2015 consent. As a result, instead of only requiring the permanent removal of the renewable energy plant including all buildings, plant and associated equipment and the restoration of the land to its former condition prior to the commencement of development, the EN should reasonably give the developer the option to amend the scheme to revert back to the approved 2015 consent. It is not considered that such a variation would give rise to injustice to any party as this would require the developer to continue to implement the consent for which they originally had approval and have commenced. Similarly, it is considered that it would be appropriate for the breach of planning control to be described as a breach of condition of the 2015 permission, as opposed to simply an unauthorised development in its entirety.

42. It is acknowledged that the development of the site continues to attract a significant amount of public interest and scrutiny and there has also been a high level of response to the current appeal against the EN. Having obtained further legal advice on this matter, it is considered however that if the Council were to fail to acknowledge the extant nature of the 2015 consent and agree an appropriate variation of the EN to accommodate this in accordance with Section 173(4) of the Act, such action could constitute unreasonable behaviour and may have a bearing on the matter of costs being sought in connection with the current appeal (as referred to above).

RECOMMENDATION

- (1) That PEDW be advised that the Council would agree to variations of the existing EN issued under Section 172 of the Town and Country Planning Act 1990 (as amended) as follows:
- (i) The breach of planning control alleged in the Enforcement Notice to refer to the carrying out of operational development comprising the construction of a wood fired renewable energy plant together with associated structures not in accordance with the details and plans approved under planning application 2015/00031/OUT (i.e. a breach of condition(s) of that permission).
 - (ii) The requirements of the Enforcement Notice to include the carrying out of the development in accordance with the details and plans approved under planning application 2015/00031/OUT.

Background Papers

Enforcement File Ref: ENF/2020/0230/M

Contact Officer - [REDACTED]

Officers Consulted:

All relevant Chief Officers have been consulted on the contents of this report.

Our ref: CKR\30010765.1000-062-625
Your ref: CAS-01341-N2Q5B8; CAS-01476-M1N1C0
Direct line: [REDACTED]
Email: [REDACTED]

Ashurst LLP
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1 Duval Square
London E1 6PW

26 May 2023

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BY EMAIL

Planning & Environment Decisions Wales
Crown Buildings
Cathays Park
Cardiff CF10 3NQ

c/o: Phil Thompson
Casework Lead

email: PEDW.casework@gov.wales

The logo for Ashurst, consisting of the word "ashurst" in a lowercase, bold, sans-serif font.

Dear Mr Thompson

Town and Country Planning Act 1990 (the "1990 Act")
Appeals by Biomass UK No.2 Limited (Refs CAS-01341-N2Q5B8 & CAS-01476-M1N1C0)
Site: Land at Barry Biomass, Woodham Road, Vale of Glamorgan CF63 4JE

INTRODUCTION

I write on behalf of the Appellant in connection with your letter to the Vale of Glamorgan Council (the "**Council**") dated 28 February 2023 and the Council's recent response dated 28 April 2023.

PEDW provided the Council's response to the Appellant on 5 May and subsequently confirmed a revised deadline of 26 May by which the Appellant should provide comments. The Appellant's comments are set out below.

THE PLANNING COMMITTEE'S RESOLUTION

The Council's letter enclosed an officer report to the Council's Planning Committee (the "**2023 OR**"). The 2023 OR was considered at the committee's meeting held on 27 April 2023. For completeness, I enclose the minutes of the meeting, which have now been made publicly available on the Council's website.

The 2023 OR gives the reasoning behind a recommendation to agree to variations to the enforcement notice ("**EN**"), with which committee members resolved in favour. The Appellant would draw the Inspector's attention to the following statements within the 2023 OR:

1. "it was identified by officers that the five conditions requiring details to be approved prior to commencement of development had been formally discharged and there was no evidence in the Council's records to suggest that the piling operations had not been undertaken in accordance with the approved plans" (§ 13);
2. "if the EN was to be withdrawn and re-issued to include the requirement to modify the development to that which was approved under the 2015 consent, it was acknowledged that the submission of further planning applications would still be required to regularise elements falling outside the consent" (§ 13);
3. "it was considered that through the EN appeal, there was already an available option for amending the EN if the Planning Inspector considered that the wording of the notice could be amended to better reflect the breach" (§ 14);

4. "having taken further legal advice on this matter, it is considered by officers that the 2015 consent is extant and that it was implemented" (§ 20);
5. "the existing wording of the EN does not include reference to the extant consent. However, having regard to the information which is now apparent regarding implementation, it is considered that the breach should reasonably reflect that. Taking account [of] the purpose of issuing an EN as set out in Section 173(4) of the Town and Country Planning Act 1990 (the 'Act') and following the receipt of further legal advice regarding the contents of the EN, it is considered that the breach of planning control (and the steps that are required to be undertaken to remedy the breach) should include reference to the 2015 consent. As a result, instead of only requiring the permanent removal of the renewable energy plant including all buildings plant and associated equipment and the restoration of the land to its former condition prior to commencement of development, the EN should reasonably give the developer the requirement to amend the scheme to revert back to the approved 2015 consent" (§ 41);
6. "it is not considered that such a variation would give rise to injustice to any party as this would require the developer to continue to implement the consent for which they originally had approval and have commenced" (§ 41);
7. "similarly, it is considered that it would be appropriate for the breach of planning control to be described as a breach of condition of the 2015 permission, as opposed to simply an unauthorised development in its entirety" (§ 41); and
8. "having obtained further legal advice on this matter, it is considered however that if the Council were to fail to acknowledge the extant nature of the 2015 consent and agree an appropriate variation of the EN to accommodate this in accordance with Section 173(4) of the Act, such action could constitute unreasonable behaviour and may have a bearing on the matter of costs being sought in connection with the current appeal" (§ 42).

(emphasis added)

It was in light of the above reasoning that Planning Committee's members resolved in favour of the recommendation to vary the EN.

THE ENFORCEMENT NOTICE IS NOT FIT FOR PURPOSE

Irrespective of the Appellant's view as to whether there has been a breach of planning control against which it could be considered expedient to take enforce action, the OR 2023 makes it plain that the current EN is not fit for purpose.

The breach of planning control alleged in respect of the main facility, and the requirements to remedy that breach, are no longer relevant.

On any party's case, the EN must change.

THE REQUIREMENT TO REMOVE THE FACILITY MUST BE DELETED

The variations proposed by the Council do not go far enough and would still result in the Appellant suffering injustice.

It is clear from the 2023 OR and its covering letter that the Council intends for: (1) the alleged breach of planning control to be updated to reflect a breach of condition under s.171A(1)(b) of the 1990 Act, and (2) an additional requirement to be inserted into the EN to bring the onsite facility into line with the 2015 Permission.

The Appellant agrees with these two proposals in principle but those amendments alone are inconsistent with each other. If the breach is (correctly) recast as an alleged breach of planning condition of an extant planning permission, it cannot be necessary or expedient to retain a requirement for the removal of the entire facility and the restoration of the land to its pre-construction

condition. These requirements must be deleted in their entirety otherwise the Appellant will continue to suffer injustice.

THE COUNCIL'S POWERS

The Council has effectively conceded that the EN is wrong and its requirements are excessive based on the current facts. The Council has also accepted that leaving the EN as issued would be unreasonable and leave it exposed for costs.

The EN originates with the Council. It was the Council's Planning Committee that resolved to issue the EN on its current terms in September 2021 and the same committee has now decided that the EN needs to be varied. The correct course of action is for the Council to use its own powers to withdraw or vary its EN. These powers are available under s.173A of the 1990 Act and can be used at any time. In the event of a withdrawal, the Council could issue a new EN albeit the Appellant doubts this would be expedient in light of the pending planning applications.

The case for withdrawal is made out not only within the 2023 OR but also through the Preliminary Statement of Common Ground, the Council's receipt of "regularising" planning applications supported by an Environmental Statement and the lack of planning or environmental objections to the onsite facility from the Council or statutory consultees.

Given the existence of the applications and the absence of any development control concerns expressed by the Council in the appeal proceedings, it would be appropriate to withdraw the proceedings now: it cannot any longer be expedient to continue with them.

If the EN is not withdrawn, the Council should in the alternative use its powers to give effect to the variations that it has itself proposed (together with additional amendments sought by the Appellant above).

The Inspector should invite the Council to withdraw or vary the EN. This would secure an immediate and upfront change to the EN to reflect the current circumstances. This would in turn recast the appeal proceedings (particularly ground (a)) and avoid wasted costs: either the proceedings are withdrawn entirely or they are narrowed enabling revised statements of case and proportionate evidence to be prepared with certainty.

Reliance on the exercise of equivalent powers by the Welsh Ministers is less effective and is unnecessary in light of the foregoing. Given that the appeal has been recovered, there would need to be a Pre-Inquiry Meeting to agree inquiry procedure and approach to evidence; certainty would only be achieved in the final decision of Ministers following the inquiry and their consideration of the Inspector's report and recommendations. This is the wrong way round.

THE WELSH MINISTERS' POWERS

If the Council is not prepared to withdraw or vary its EN then the Welsh Ministers have alternative powers available under s.176 of the 1990 Act. The Inspector would be able to recommend their use in his report.

Under s.176(1), the Welsh Ministers can affect the variations proposed by the Council in the 2023 OR. The Appellant would continue to suffer injustice unless those variations also secure the deletion of the requirement to remove the onsite facility and restore the land to its pre-construction state.

Alternatively under s.176(2), the Welsh Ministers may quash the EN where they allow the appeal (whether the EN has been varied or not).

If the EN is not varied, there is an inevitable and overwhelming case for the EN to be quashed because it is legally defective as well as requiring more to be done than is necessary to remedy the identified discrepancies.

THE ENFORCEMENT PROCEEDINGS SHOULD BE ADJOURNED FOR A SHORT PERIOD

The planning applications before the Council should be capable of being determined in line with statutory timetables and well before any EN appeal inquiry. In its letter dated 31 March, the Council indicated that they may be reported to the Planning Committee on either 22 June or 20 July 2023.

The timely and positive determination of the current planning applications would render the entire EN proceedings otiose. In these circumstances, continuing to pursue the EN would represent a waste of time and would almost certainly result in abortive costs being incurred by the Appellant and other stakeholders. Indeed, it would be unjust for the Appellant to be required to simultaneously progress the planning applications as well as the appeal proceedings because this is unnecessary duplication.

The Appellant considers that the appeal proceedings should be adjourned for a short period to allow for the prompt determination of the applications by the Council.

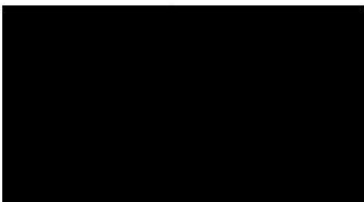
CONCLUSION

The Council's EN is incorrectly drawn and its terms are no longer relevant. On any party's case, the EN must change. The correct course of action is for the Council to use its own powers to either withdraw or vary its EN. The Inspector should invite the Council to do so because this would be fairer and more procedurally efficient. Any variations must include the deletion of the requirement to remove the onsite facility and restore the land to avoid causing injustice to the Appellant.

If the Council declines to use its powers, the Welsh Ministers have alternative powers to give effect to the variations. The Inspector can recommend the use of such powers within his report. If the EN is not corrected, it should be quashed.


In any event, the appeal proceedings should be paused for a short period to afford the Council the opportunity to determine the "regularising" planning applications submitted by the Appellant in January. Prompt and positive determination of these applications would render the current proceedings unnecessary.

Yours sincerely,



Enc.

Copy to:  - Vale of Glamorgan Council

 - Vale of Glamorgan Council

From: [Sparey, Robert \(ESNR - PEDW\)](#)
To: [Thickett, Tony \(ESNR-PEDW\)](#); [Nethell, Isabel \(ESNR - PEDW\)](#)
Subject: RE: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation
Date: 07 April 2022 15:14:14
Attachments: [image001.png](#)
[image002.png](#)

Thanks Tony,

As discussed I'll also add in something about the publicity that will be undertaken under the EIA Regs and the fact that parties will have the opportunity to comment on the appeal if it is accepted as valid.

Rob

From: Thickett, Tony (ESNR-PEDW) <[REDACTED]>
Sent: 07 April 2022 15:07
To: Sparey, Robert (ESNR - PEDW) <Robert.Sparey@gov.wales>; Nethell, Isabel (ESNR - PEDW) <Isabel.Nethell@gov.wales>
Subject: RE: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Shwmae Is,

Just spoken to Rob about adding that our decision to invite an ES should not be taken as implying that we think the application was invalid.

Tony

Dirprwy Brif Arolygydd Cynllunio/Deputy Chief Planning Inspector
Penderfyniadau Cynllunio ac Amgylchedd Cymru/ Planning and Environment Decisions Wales.
Llywodraeth Cymru / Welsh Government
Ffôn / Tel: 03000250247
E-bost / E-mail: PEDW.CPI@llyw.cymru/PEDW.CPI@gov.wales



From: Sparey, Robert (ESNR - PEDW) <Robert.Sparey@gov.wales>
Sent: 07 April 2022 14:34
To: Nethell, Isabel (ESNR - PEDW) <Isabel.Nethell@gov.wales>; Thickett, Tony (ESNR-PEDW) <[REDACTED]>
Subject: RE: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Hi Is,

Just realised this is the first I've seen of this. Why did we need it translated? Are you happy for me to respond to [REDACTED]? See proposed response below.

Rob

Dear [REDACTED],

Thank you for your e-mail.

It is not for me to comment on the Vale of Glamorgan Council's handling of applications within their purview.

While the Ground(a) enforcement appeal would constitute a deemed planning application, this does not mean that the validation requirements requirements for planning applications would apply to the enforcement appeal. PEDW's position is that there is no requirement for the appellant to undertake pre-application consultation in relation to this enforcement appeal.

The appellant's agents asked PEDW if it would be possible to apply for a Scoping Direction to inform the scope of the ES for the enforcement appeal. PEDW responded to confirm that, whilst there was no formal provision for Scoping in Part 10 of the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (as amended) [the EIA Regulations], we considered that it would be in the interests of the effective operation of the planning system to undertake Scoping, and that if we did so, we would follow the process set out by Regulation 33 of the EIA Regulations, consulting the parties specified in Schedule 5 of the Developments of National Significance (Procedure) (Wales) Order 2016 (as amended) prior to confirming the Scope of the ES.

The appellants were invited to submit a Scoping Report on that basis. However, subsequently the appellant's agent confirmed that the appellant would not submit a Scoping Report, and would instead proceed to prepare the ES.

The appellants have asked us to extend the period within which the ES must be submitted, in order for them to finalise matters relating to the Voluntary Environmental Statement. We have therefore agreed to extend the date by three months, i.e. the ES must be submitted by Wednesday 13 July 2022.

Yours sincerely,

From: [REDACTED] > On Behalf Of PEDW –
Gwasanaethau Canolog / Central Services
Sent: 07 April 2022 12:23
To: Nethell, Isabel (ESNR - PEDW) <Isabel.Nethell@gov.wales>; Sparey, Robert (ESNR - PEDW) <Robert.Sparey@gov.wales>
Subject: FW: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Hi both,

Email translation back from Trosol,

[REDACTED]

From: [REDACTED]
Sent: 06 April 2022 16:36
To: [REDACTED] PEDW – Gwasanaethau
Canolog / Central Services <PEDW.CentralServices@gov.wales>
Subject: FW: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application
consultation

H [REDACTED],

Please find the translation attached as requested. The Welsh wordcount is 391.

Many thanks,

[REDACTED]

[REDACTED]
Uwch-gyfieithydd / Golygydd
Senior Translator / Editor



Cysylltwch â naill ai cyfieithu@trosol.co.uk neu translation@trosol.co.uk i drafod eich anghenion cyfieithu, terfynau amser a phrisiau.

Please contact either translation@trosol.co.uk or cyfieithu@trosol.co.uk to discuss your translation needs, timescales and costs.

Telephone/Ffôn: 02920 750760

Website/Gwefan: www.trosol.co.uk

Address/Cyfeiriad:

Trosol
Sophia House
28 Cathedral Road/Heol y Gadeirlan
Caerdydd
CF11 9LJ

From: [REDACTED] **On Behalf Of**
PEDW.CentralServices@gov.wales
Sent: 05 April 2022 09:26
To: Translation Trosol <translation@trosol.co.uk>
Subject: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Good morning,

Could the email highlighted yellow below be translated please?

Many thanks,

[REDACTED]

From: Nethell, Isabel (ESNR - PEDW) <Isabel.Nethell@gov.wales> **On Behalf Of** PEDW – Gwaith Achos / Casework

Sent: 04 April 2022 13:55

To: PEDW – Gwasanaethau Canolog / Central Services <PEDW.CentralServices@gov.wales>

Subject: For Trosol FW: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Can we translate the below e-mail please.

Ta.

Is

From: BarryVale FOE <[REDACTED]>

Sent: 03 April 2022 18:50

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED]

Subject: Barry Biomass appeal CAS-01341-N2Q5B8: requirement for pre-application consultation

Mr Robert Sparey, PEDW

Planning and Environment Manager

Barry Biomass appeal against VoG Enforcement ENF/2020/0230/M

We note that your letter of 13 January notified the company you have determined that the development is EIA development such that under EIA Regulation 49 their appeal must be accompanied by an Environmental Statement (ES).

This marks the first time the development has been considered a major (Schedule 1) project under the EIA Regs. Your determination implies previous applications though accepted by the VoG Council were not validly lodged.

Once Barry Biomass lodge their ES with PEDW it would become a fresh planning application. However, under the *Planning (Wales) Act 2015 [citations below]*, it's compulsory for developers to consult with local communities before applying for larger or 'major developments'. In the Barry Biomass case, despite the lengthy history, the developers have repeatedly failed to consult the community on their plans, via public meetings or otherwise.

Barry Biomass will also have to include a statement with their application that they have carried out such pre-app consultation.

Let us emphasise that pre-application consultation is the route whereby the public get a say on issues that the ES needs to address. Barry Biomass did ask PEDW for discussions with you on the scope, outside the Regs. You appear to have no case-file yet available, so could you confirm that such discussions did not take place?

Would you finally confirm that PEDW will be unable to accept the application as valid, until Barry Bipomass have complied with the 2015 Act's requirement for pre-

application consultation under the 2021 good practice guidance (ref. below)?

[REDACTED]
Friends of the Earth Barry&Vale

[REDACTED]
<https://gov.wales/planning-permission-pre-application-discussions>

<https://gov.wales/planning-major-developments-guidance-pre-application-consultation>

1.2 Introducing statutory pre-application consultation into the planning process

... The public is an essential stakeholder in the planning process. It is important that public views are seen as integral to the process.

When done well engagement frontloads the planning process, increases community buy-in, improves the quality of the built environment and creates efficiency and certainty of the planning process for all. To ensure this frontloading and involvement takes place, the Act introduced the need for developers to carry out pre-application consultation on major developments.

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Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From: [Thompson, Phil \(COOG - Planning & Environment Decisions Wales\)](#)
To: [Sweet, Chris \(COOG - Planning & Environment Decisions Wales\)](#)
Subject: FW: Is the Inspector's decision on the Enforcement Notice "invalid"?
Date: 21 August 2023 08:03:54
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.png](#)

FYI

Kind Regards,

Phil Thompson

Arweinydd Gwaith Achos | Casework Lead

Penderfyniadau Cynllunio ac Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Llinell Uniongyrchol | Direct Line: 03000 252129

PCAC Ymholiadau Cyffredinol Ffôn / PEDW General Enquiries Tel: 0300 123 1590



<https://llyw.cymru/penderfyniadau-cynllunio-ac-amgylchedd-cymru> |

<https://gov.wales/planning-and-environment-decisions-wales>

From: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Sent: Monday, August 21, 2023 6:47 AM

To: Thompson, Phil (COOG - Planning & Environment Decisions Wales)
<Phil.Thompson@gov.wales>

Subject: FW: Is the Inspector's decision on the Enforcement Notice 'invalid'?

Hi Phil

Are you aware of which case this is regarding? Would you like me to send it to Complaints?

Thanks




[Penderfyniadau Cynllunio a'r Amgylchedd](#) / Planning & Environment Decisions Wales

[Llywodraeth Cymru](#) / Welsh Government

[CP2, Parc Cathays, Caerdydd, CF10 3NQ](#) / CP2, Cathays Park, Cardiff, CF10 3NQ

[Ffôn](#) / Phone: 

[E-bost](#) / E-mail: 



[Seen Network gov.uk](#)

[Penderfyniadau Cynllunio ac Amgylchedd Cymru | LLYW.CYMRU](#) / [Planning and Environment Decisions Wales | GOV.WALES](#)

Sganiwyd y neges hon am bob feirws hysbys wrth iddi adael Llywodraeth Cymru. Mae Llywodraeth Cymru yn cymryd o ddifrif yr angen i ddiogelu eich data. Os cysylltwch â Llywodraeth Cymru, mae ein [hysbysiad preifatrwydd](#) yn esbonio sut rydym yn defnyddio eich gwybodaeth a sut rydym yn diogelu eich preifatrwydd. Rydym yn croesawu gohebiaeth yn Gymraeg. Byddwn yn anfon ateb yn Gymraeg i ohebiaeth a dderbynnir yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi. On leaving the Welsh Government this email was scanned for all known viruses. The Welsh Government takes the protection of your data seriously. If you contact the Welsh Government then our [Privacy Notice](#) explains how we use your information and the ways in which we protect your privacy. We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

From: BarryVale FOE [REDACTED] >
Sent: Friday, August 18, 2023 8:22 PM
To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>
Cc: [REDACTED]
Subject: Is the Inspector's decision on the Enforcement Notice 'invalid'?

Phil Thompson, Casework Lead PEDW

Dear Mr Thompson,

We wrote to you on 15th August putting on record FoE's disagreement with the arguments and conclusion in your 17th July letter.

In view of the Minister's Direction of 15 Dec.2022 under TCPA Schedule 6: 3(1) that the inspector has to report for her decision, could you advise if the Inspector's decision on the EN and to therefore abandon the Inquiry is itself "invalid"?

Further on this point, could you please disclose your phone/email/video contacts with the Minister since June over the Inspector's decision?

[REDACTED]
Friends of the Earth Barry&Vale
[REDACTED]

From: [PEDW – Gwaith Achos / Casework](#)
To: [BarryVale FOE](#)
Subject: RE: Barry Biomass: FoE deny the VoG Enforcement Notice is invalid
Date: 29 August 2023 13:26:00
Attachments: [image001.jpg](#)
[2023-08-22 - CAS-01341-N2Q5B8 - Appeal Decision .pdf](#)

Dear [REDACTED]

Thank you for your email below and the follow up dated Friday 18th August, addressed to my colleague.

The Inspector's reasons for quashing the Enforcement Notice (EN) are set out in his decision dated 22 August 2023, I understand you have been sent a copy. I attach it again here for ease of reference.

I note your views regarding potential corrections to the EN. However, as it has now been quashed and the only way to overturn the Inspector's decision would be a challenge via the High Court, there is no further scope for amendments to the EN at this time. As the appeal against the EN has been determined on the basis set out in the Inspector's decision, it will not proceed to an Inquiry.

I am sorry that you feel hampered and disadvantaged, but I am unclear which information you think should have been made available more promptly. Correspondence between PEDW and the LPA and Appellant regarding the issues which ultimately informed the Inspector's decision was published on our portal as soon as possible after being sent or received, wherever possible on the same day. PEDW has undertaken all required publicity under the EIA Regulations (or where appropriate, asked the LPA to do so) for the appeal up to this point.

The term 'main party' is not set out in legislation, but is long established through custom and practice in appeals casework. It denotes parties who are required to take part in the appeal process, without whom there would be no appeal before PEDW for consideration, rather than those who choose to participate in the process due to their having an interest in the case. It is not used by PEDW to indicate or imply that other parties who choose to be involved with a case are considered of less importance, which I understand has been a concern for some interested parties in this case.

In your follow up email you ask about the Inspector's ability to issue a decision, given the direction issued in December 2022. As you are likely now aware, a further direction was issued on 21 August 2023 which passed responsibility for determining the appeal back to the Inspector, in advance of the decision being issued. That direction provided the necessary legal footing for the Inspector to issue a decision on the appeal.

Finally, you ask for PEDW to disclose '*..phone/email/video contacts with the Minister since June over the Inspector's decision*'. I can confirm that there have been no such communications with the Minister. As such, there is no information to disclose in this respect.

Kind regards

Chris Sweet

Chris Sweet

[fe | he / him]

Swyddog Cynllunio a Rheolwr Gwaith Achos Dros Dro | Planning Officer and Interim Casework Manager

Penderfyniadau Cynllunio a'r Amgylchedd Cymru | Planning and Environment Decisions Wales

Llywodraeth Cymru | Welsh Government

Llinell Uniongyrchol | Direct Line: 0300 025 3382

Ffôn | Tel: 0300 123 1590



From: BarryVale FOE [REDACTED]

Sent: Tuesday, August 15, 2023 7:53 PM

To: PEDW – Gwaith Achos / Casework <PEDW.Casework@gov.wales>

Cc: [REDACTED] >

Subject: Barry Biomass: FoE deny the VoG Enforcement Notice is invalid

Phil Thompson, Casework Lead PEDW

Dear Mr Thompson.

The Inspector's decision in your 17 July letter that the *"EN is invalid and incapable of correction"* is wholly unacceptable. It shows misunderstanding and mishandling of the case. The Inspector acceptance of the SoCG is called into question by recent correspondence from NRW.

We agree with the VoG rejecting the decision in their reply of 28th July and add supportive material. The 17 July letter does not raise fundamental concern with the reality of a breach of the 2015 planning permission and this breach can be remedied by the action originally specified.

We agree with the Inspector that the VoG's attempts to amend that action are deficient for reasons of clarity etc. Also that the LPA is *"not in a position to amend the allegation"* of the breach and that the Inspector needs to report to the Minister on the original EN and any suggested corrections.

One correction should cover the EIA which the 2015 permission required to be lawful. The requirement on the Minister to remedy the lack of EIA has led to protracted processes outside planning law, which have proved abortive. The Inspector has to report if the current EIA overcomes the 2015 deficit and whether it comes up with environmental impacts of operating the as-built plant that are incapable of mitigation.

A second correction has to cover the finding (now confirmed by NRW) that the site is subject to

such extreme floodrisk that Welsh planning law excludes its use by this waste incinerator, in the absence of additional (un-built) flood-prevention structures.

The Inquiry processes went wrong for reasons given in previous correspondence with PEDW. We have to say we feel hampered and disadvantaged by PEDW's failure to notify all interested parties and even to post up promptly on the website such important material and proposals. We understand that PEDW has responsibility for meeting the EIA requirements on publicity; also that PEDW's division of interested parties into "main parties" and others has no basis in the Welsh Inquiry Regulations.

As way forward, we seek that the Inquiry is based on the unamended EN with the SoCG withdrawn and any replacement awaiting on the EIA processes to identify key issues, on which the Inquiry can focus.

Yours sincerely,

-- [Redacted]

Friends of the Earth Barry&Vale

[Redacted]