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Our Ref: MB/2003/88101435/1

Dear Sir/Madam

APPLICATION REFERENCE: WP/20/00692/DCC
CONSTRUCTION OF AN ENERGY RECOVERY FACILITY WITH ANCILLARY BUILDINGS AND WORKS INCLUDING ADMINISTRATIVE FACILITIES, GATEHOUSE AND WEIGHBRIDGE, PARKING AND CIRCULATION AREAS, CABLE ROUTES TO SHIP BERTHS AND EXISTING OFF-SITE ELECTRICAL SUB-STATION, WITH SITE ACCESS THROUGH PORTLAND PORT FROM CASTLETOWN.
PORTLAND PORT CASTLETOWN, PORTLAND DT5 1PP

We are instructed on behalf of our client, the Portland Association to OBJECT to the above planning application. This letter sets out our client's objections to the planning application primarily from the perspective of the 'principle of development' but also draws broadly on some of the conclusions of the Environmental Impact Assessment.

In addition we will, on behalf of the Portland Association, be submitting a legal review of the submitted Shadow Habitats Regulations Assessment. This will follow this initial objection letter in due course and will be submitted at the earliest opportunity.

Background

The application seeks full planning permission for an Energy Recovery Facility ("ERF") at land within Portland Port, Castletown, Portland ("the site"). The site has a total area of 6.29ha and comprises of two elements, a 2.14 site for the ERF building and a further 4.15ha of land for cables routes to the electricity sub-station off Lerret Road and to the berths at Queens Pier and Coaling Pier. The application is made by Powerfuel Portland Ltd ("the Applicant").

The ERF proposes to treat approximately 183,000 tonnes of refuse derived fuel per annum and has been designed with what is termed a circa 10% tolerance to treat up to 202,000 tonnes per annum. The Applicant confirms that the Environmental Impact Assessment ("EIA") that accompanies the application has been prepared on the basis of a maximum throughput of 202,000 tonnes per year. In addition to the EIA the application is accompanied with a large volume of supporting documents.

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Of particular note, and of significant reference in this objection is the Planning Statement (“PS”) and a document entitled ‘Comparative assessment against waste local plan allocated sites’ (“CA document”)

Development Plan

The development plan comprises:

- The Bournemouth, Christchurch, Poole and Dorset Waste Plan (“the Waste Plan”). This was adopted on 31 December 2019.
- The West Dorset, Weymouth and Portland Local (2011-2031) (“the Local Plan”). This was adopted in October 2015
- The Bournemouth, Dorset and Poole Minerals Strategy (“the Minerals Strategy”) adopted 2014

In addition to the above the Portland Neighbourhood Plan (“PNP”) is at a very advanced stage and has been examined. However, given the Coronavirus restrictions it is understood that it will not be subject to a referendum until at least May 2021. It is not therefore yet part of the development plan but its policies are capable of significant weight.

Principle of Development

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 require planning applications to be determined in accordance with the development plan, unless material considerations indicate otherwise.

The Waste Plan is the key document in determining the planning application and provides the policy framework for determining planning applications for waste management facilities up to 2033. This is a recently adopted plan, less than a year old (December 2019). The site is not allocated for development in the Waste Plan.

Table 7 (P55) of the Waste Plan confirms that there is an anticipated shortfall of capacity for non-hazardous residual waste of 234,000 by 2033. However, paragraph 7.76 states:

“The Waste Plan allocates three specific sites for the provision of new facilities for the management of residual waste, plus additional capacity at the existing MBT facility at Canford Magna (Insets 7 to 10). Total potential capacity within the four Allocated Sites amounts to some 385,000 tpa, exceeding the identified needs of the Plan area (our emphasis). However, this approach ensures that the Plan remains flexible in the event that one or more of the allocations does not come forward for the treatment of residual waste. The site allocations are existing waste management facilities providing potential for redevelopment or intensification. This provides the flexibility to accommodate a range of management methods that can respond to changes that may occur during the Plan period. It will be essential to monitor capacity and contracts for managing residual waste to ensure that appropriate facilities are brought forward.”

The key policy for the determination of the principle of development is Policy 4 – ‘Applications for waste management facilities not allocated in the Waste Plan’. Given its significance it is worth setting out the policy in full. It states:

“Proposals for waste management facilities on unallocated sites will only be permitted where it is demonstrated that they meet all of the following criteria:

- a. there is no available site allocated for serving the waste management need that the proposal is designed to address or the non-allocated site provides advantages over the allocated site;*
- b. the proposal would not sterilise, or prejudice the delivery of, an allocated site that would otherwise be capable of meeting waste needs, by reason of cumulative or other adverse impacts;*
- c. the proposal supports the delivery of the Spatial Strategy, in particular contributing to meeting the needs identified in this Plan, moving waste up the waste hierarchy and adhering to the proximity principle; and*
- d. the proposal complies with the relevant policies of this Plan. Proposals should be located:*
- e. within allocated or permitted employment land which allows for Class B1, B2 and/or B8 uses; or*
- f. within or adjacent to other waste management and/or complementary facilities where the proposed use is compatible with existing and planned development in the locality; or*
- g. on previously developed land suitable for employment or industrial purposes.*

Waste management facilities may be suitable within an agricultural setting where the proposed use and scale is compatible with the setting, provides opportunities to utilise outputs from the process in the locality and provides advantages over the locations specified in criteria e - g.

Other locations will only be permitted if the Waste Planning Authority is satisfied that no suitable site meeting the above criteria is available.

Sites will only be permitted where it has been demonstrated that possible effects (including those related to proximity, species and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects.”

Criterion 'A'

The Waste Plan was only adopted in December 2019 and the Applicant does not advance a case that there is no available site allocated for serving the waste management need of the proposed development. The Applicant instead concentrates on undertaking a comparison of the site against other allocated sites, identified under Policy 3 of the Waste Plan, concluding at paragraph 6.94 of the PS that none of the allocated sites perform as well as the site against what they describe as '*a set of defined operational, planning and environmental criteria.*' The bulk of this assessment is undertaken in the CA document.

The CA document undertakes a detailed appraisal of the 12 sites allocated in the Waste Plan, plus the application site. There are four sites which are allocated for a similar purpose to the proposed development and these are:

- 7 - Eco Sustainable Solutions, Chapel Lane, Parley
- 8 – Land at Canford Magna, Magna Road, Poole
- 9 – Land at Mannings Heath Industrial Estate, Poole
- 10 – Binnegar Environmental Park, East Stoke

The CA document applies 17 criteria for comparing allocated sites within the Waste Plan and the application site. However, there are a number of flaws with the comparison process which fatally undermines the assessment. Individually and collectively these flaws amount to an artificial shaping of the assessment which has led to an eye catching conclusion that the proposed site has the 'highest score' but this is purely on the basis of a contrived and manipulated exercise.

Absence of 'weighting' of Criterion

The CA document explains that the methodology is to appraise the sites against each of the criteria on an equal basis and no weighting will be applied to any of the criteria. This is suggested by the Applicant that it makes the assessment more objective and robust and removes subjectivity. We strongly disagree. On the contrary it dilutes the credibility of the assessment in that all criteria are treated as equal when in reality this is evidently not the case. As an example, criteria 11 'Proximity to designated ecologically sensitive areas', which includes impacts on integrity of European sites for which there is a legal requirement to ensure that development does not adversely affect should have substantial weight in any decision making process. By comparison this is likely to be significantly more important than if a site is 3km or 5km from a primary road network (criterion 3 relates to proximity to primary road network). Whilst the CA claims that a non-weighting system reduces subjectivity, the reality is that the exercise is already highly subjective through a range of assumptions on how the parameters are set in respect of whether an impact falls within the 'Meets criterion', 'Partially meets criterion' or 'Does not meet criterion' categories.

Proximity Principle

There is no category which analyses the proximity of the sites to the sources of waste. The principle of proximity means that waste should be recovered or disposed of, as close as possible to where it is produced. This is a key policy factor in decision making and forms part of the wider consideration of assessment under Policy 4 of the Waste Plan. It is central to the sustainability argument and therefore its absence from any comparison assessment is a significant omission.

Site Size Limit

The CA document advises that the site size has been chosen on the basis that a minimum of 2ha is required to accommodate a ERF building, circulation and car parking. Herein lies a fundamental misinterpretation of the tests of the policy. This is not an exercise to see whether any sites could accommodate the exact scheme proposed by the application. It is a comparison of advantages of the proposed development over allocated sites to meet the requirements of managing the non-hazardous waste. If therefore the proposed development site is larger and potentially may generate a higher output, then that may in theory be an advantage, but it should not automatically rule out a comparison to a smaller site. An example of this is that Site 9 – Land at Mannings Heath Industrial Estate, Poole, which has been excluded from the second sift of analysis on the basis that it is under 2ha. However, it is an allocated site within the Waste Plan that has been tested at examination. Although we have concerns about the Applicant's methodology it is noteworthy that it scores second in their 'league table' of sites. To dismiss this site on the basis of it being under 2ha, again undermines the comparison assessment.

Potential to contribute to meeting Portland's Electricity Needs

This criterion for a comparative exercise of sites across the Dorset planning authority area is outright bizarre. The proposed development site is the only site in Portland and therefore evidently it has an unfair advantage over other sites. Clearly, if a 'meeting electricity needs' criterion is justified it should be based on a sites ability to contribute to Dorset's electricity needs to allow fair assessment.

In summary the comparative assessment exercise is flawed and the Applicant has not met the requirements of criterion 'A'.

Criterion 'B'

The key component of this test is whether the proposed development would prejudice the delivery of allocated sites that are otherwise capable of meeting waste needs. The Applicant provides no evidence for meeting this part of the criterion. After concluding that the scheme would not sterilise an allocated site they simply remark "*Neither would the proposed ERF prejudice the existing activities taking place at any of the four sites identified as being suitable for the management of non-hazardous wastes or preclude the development of future management activities.*"

It is important to remember that the Waste Plan is recently adopted and is less than a year old. The sites allocated in the Waste Plan have been done so to meet an identified need. The shortfall identified is 232,000 tpa. Total potential capacity within the four Allocated Sites amounts to 385,000 tpa, exceeding the identified needs of the Plan area.

If you compare the potential residual waste capacity for each of the four sites allocated for the management of non-hazardous waste to the proposed development, it is clear that there is significant potential for the proposed development to prejudice the delivery of one or more allocated sites.

- 7 - Eco Sustainable Solutions, Chapel Lane, Parley: 160,000 tpa
- 8 – Land at Canford Magna, Magna Road, Poole: 25,000 tpa
- 9 – Land at Mannings Heath Industrial Estate, Poole: 100,000 tpa
- 10 – Binnegar Environmental Park, East Stoke: 100,000 tpa

- Proposed Development at Portland: 202,000 tpa

The proposed development has the capacity to meet 86% of the total identified shortfall and amounts to 52% of the capacity that could be derived from allocated sites. It is far larger than 3 of the 4 allocated sites and if permitted will clearly have a prejudicial impact on some or all of the allocated sites coming forward, as a significant proportion of need will be met by the proposed development.

The proposed development is contrary to criterion B.

Criterion 'C'

This criterion requires proposals to support the delivery of the spatial strategy, in particular contributing to meeting the needs identified in the Waste Plan, moving waste up the waste hierarchy and adhering to the proximity principle.

The spatial strategy states in respect of 'Residual waste management' – *“Landfill capacity in the Plan area is diminishing and existing treatment capacity for residual waste is insufficient to meet our projected needs. At the end of the Plan period it is estimated that there will be a shortfall of approximately 232,000tpa of capacity for managing non-hazardous waste.*

Appropriate facilities are needed to manage this waste, whilst ensuring that value is obtained through the recovery of energy wherever practicable. Provision will be made for residual waste treatment facility(s) to manage waste derived throughout the Plan area. The need for strategic residual waste treatment facilities will primarily be addressed through new capacity in south east Dorset (our emphasis). However, additional capacity may also be appropriate elsewhere to ensure the capacity gap is adequately addressed and when it will result in a good spatial distribution of facilities providing benefits such as a reduction in waste miles. Four existing waste management sites are allocated to address this need through the intensification or re-development of existing operations (Inset 7, 8, 9 and 10).”

Paragraph 24 of the Inspector's Report into the Local Plan states *“Because the population is concentrated in the south-east of the plan area, within Bournemouth, Poole and Christchurch, strategic provision is required close to those urban areas. The plan has identified strategic requirements for residual waste management and recycling and allocates sites to meet those requirements, which are well related to the sources of waste. This approach is consistent with achieving self-sufficiency and proximity.”*

It is evident that the site's location does not support the spatial strategy of the Waste Plan. Its location is far removed from the area where strategic provision should be concentrated and the scale of the proposed development fundamentally undermines the strategy. The proposed development is of a size that should have been considered as part of the development plan process.

To approve a development with a capacity of managing residual waste accounting for approximately 86% the size of the need for the Waste Plan area up to 2033, in a location at odds with the spatial strategy within a year of adoption of the Waste Plan, would unarguably undermine both the spatial strategy itself and any public confidence in the Plan led system.

It is noted that the PS in assessing compliance with criterion 'c states "*Planning Inspectors have placed importance on the ability of EfW proposals to contribute to the underlying objectives of national and local waste policy and plans as a part of a balance. Less importance is placed on whether proposals accords precisely with a prescribed or envisaged spatial strategy.*"

Firstly, we would suggest that this statement is contradictory as an underlying objective of local waste policy would be compliance with a spatial strategy. A spatial strategy is the bedrock on which a development plan is based and the development plan is the first consideration of any development proposal. Secondly, it is clear from this statement that the Applicant recognises that the proposed development does not accord with the Waste Plan's spatial strategy. Finally, the suggestion of Planning Inspector's placing weight on certain factors is a completely generic statement with no reference to appeal decisions demonstrating any evidence to support this contention.

Paragraph of 3.16 of the Waste Local Plan states "*The principle of proximity means that wastes should be recovered or disposed of, as close as possible to where it is produced (our emphasis) and has been another important driver for the Waste Plan.*"

It is apparent from the geography of the site and its relationship with the wider district that the scheme fails the principle of proximity. This is perhaps best illustrated by the application of a 3 hour HGV drive time catchment area, in which the Applicant base their Need Assessment (Figure 6.1). This includes a number of large urban areas, including the Bournemouth, Christchurch and Poole conurbation, Weymouth and Portland, Exeter, Taunton, Yeovil, Salisbury, Southampton, Winchester, Eastleigh and Havant. The Need Assessment comments "*there is a pressing need for Dorset to reduce its reliance on the export of residual waste, become more self-sufficient and treat more of its residual waste in Dorset closer to where it arises, in accordance with the proximity principle.*" However, the need argument is based on a much wider catchment and further the site's coastal location and distance from the main urban areas of the district mean that it is ill placed to deal with the waste derived from Dorset.

The application seeks to give weight to addressing issues of waste management wider than the Dorset authority area. It sets out that the split of waste management is "*likely to be around 75% by road and 25% (around 50,000 tonnes) by sea. This would equate to around 20 ships a year and these ships would most likely be traveling from Northern Ireland, Republic of Ireland, and other UK ports.*" In short the application presents a clear contradiction. On the one hand it professes to adhere to the proximity principle by resolving outsourcing of Dorset's waste, despite it being poorly located to the principal urban areas of the District, but it is also reliant on a catchment area for need that covers 50% of the area of Devon, Somerset, Wiltshire and Hampshire.

It is clear that the above strategy does not adhere to the proximity principle and the application seeks to address deficiencies in compliance with the Waste Plan by purporting to contributing to addressing wider issues of waste management on a more regional or national scale.

Conclusion on Policy 4

Policy 4 requires compliance with each criteria. It is evident that the scheme fails against each of criteria a-c of the policy. The proposed development would substantially harm the spatial strategy of the development plan and would prejudice the ability of other recently allocated sites to come forward to meet a waste need. The comparison exercise between allocated sites and the proposed

development has not been undertaken in a fair and rational manner and there are significant flaws in the methodology and hence the conclusions of that exercise.

Other Matters

Whilst our instruction is primarily in relation to addressing the principle of development in respect of the development plan, we note a number of conclusions within the Environmental Statement (“ES”) which suggest harm that will need to be considered in the planning balance.

Paragraph NTS.37 of the Non-Technical Summary of the ES states *“If the degree of effect is moderate or above (including slight to moderate effects), then the effect is considered to be significant. Slight or negligible effects are not considered to be significant.”* This is a standard and generally accepted approach. However the ES does identify a number of moderate significant adverse effects. These include:

- Paragraph NTS.68 concludes ‘moderate significant adverse effect’ in respect of the closest listed buildings by virtue of harm to their setting.
- Paragraph NTS.75 confirms ‘moderate significant adverse cumulative effect’ in respect of cultural heritage impacts when taken with the Project Inner Breakwater and Camber Area alterations.
- Paragraph NTS.91 in respect of ‘Landscape, seascape and visual effects’ concludes moderate significant adverse effect’ on views from Portland Port, marina and harbour, public rights of way along the cliffs to the south and south west of the site, and Sandsfoot Castle, park and garden.
- Paragraph NTS.121 advises overall there will be a small change to the Outstanding Universal Value (“OUV”) of part of the setting of the WHS which is predicted to lead to a ‘moderate, significant adverse effect’.

Conclusion

The proposed application is contrary to the Waste Plan. It is an unallocated site proposing development that causes substantial harm to the spatial strategy of a recently adopted plan. It prejudices the delivery of allocated sites for managing residual waste by virtue of its scale, size and that it is proposed less than a year from the adoption of the development plan. The scheme does not adhere to the proximity principle.

The application does not meet the required tests of Policy 4 that would permit an unallocated site being granted planning permission. The proposal is contrary to the development plan and there are no material considerations presented that would justify an approval.

Yours faithfully

Mark Bassett
Principal Manager