



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

DNS Pre-application Advice

3204667: Coed Darcy STOR

24 August 2018

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This advice should be read in conjunction with the Planning Inspectorate's procedural guidance on Developments of National Significance (DNS). Advice is provided on the basis of the information submitted to the Planning Inspectorate on 3 August 2018 and without the benefit of a site visit. The advice is not binding and does not prejudice any recommendation made by an Inspector or any decision made by the Welsh Ministers in relation to a development of this nature on this site.

The questions and issues raised in the request for advice are addressed in order below.

1. Pre-Application Consultation

Based on the information provided, it is considered that the following consultees would be required to be consulted under Article 9 of the [Developments of National Significance \(Procedure\) \(Wales\) Order 2016](#) (the Order). Although the site is located in the vicinity of a Scheduled Ancient Monument (SAM), Cadw has confirmed that the development is unlikely to affect that SAM or its setting. As such, Cadw does not fall to be consulted under Article 9. It should be noted that the Applicant is required to satisfy themselves that they have met the relevant legislative requirements. The fact that the application would be partially retrospective does not alter these requirements.

Specialist consultees

Natural Resources Wales

Relevant persons

The requirement to consult 'relevant persons' only applies to applications that include prescribed secondary consents; see below for advice relating to secondary consents.

Scope of pre-application consultation

The requirement for statutory pre-application consultation arises from Section 61Z of the Town & Country Planning Act 1990 (as amended), which was inserted by the [Planning Wales Act 2015](#). We encourage open and constructive dialogue with relevant consultees, particularly where there are issues of a technical nature that are within the consultee's area of responsibility. This approach is recommended to the applicant in this case.

However, given the scale and location of the development and the planning history of the site, it is acknowledged that that Applicant may wish to limit other consultation to the level required by legislation. The minimum statutory requirements for pre-application consultation are set out at Article 9 of the Order and can be summarised as follows:

- For specialist consultees, provide written 'requisite notice' in the form set out at Schedule 2 to the Order and allow the 42 days from that notice for a response, as required by Article 10(1).

Our [Guidance](#) provides further explanation regarding Pre-App Consultation in paragraphs 2.8 to 2.13.

It should be noted that there are also requirements for more general publicising of the proposed application set out at Article 8 of the Order and those requirements must also be satisfied. Pre-application consultation and publicity under Articles 8 and 9 must result in the production of the Pre-application Consultation Report required by Article 11 of the Order, which also provides details of the content that must be included in that report.

2. Procedural Matters

Does the application qualify as a Development of National Significance and can it be considered under S73A of the 1990 Act, including additional proposed development?

The status of the development as a DNS can only be formally confirmed via the 'notification of proposed development' process set out at Article 5 of the Order. However, for the purposes of this advice, it is considered that the proposal does fall within the thresholds for generating stations set out in the [Developments of National Significance \(Specified Criteria and Prescribed Secondary Consents\) \(Wales\) Regulations 2016](#).

The Applicant's interpretation of the legislative position is noted. Based on the information provided it appears that, as the Applicant states, the proposed application would, at least partially, fall under S73A of the 1990 Act. S73A(1) as applied with modifications by article 3(1)(l) of the [Developments of National Significance \(Application of Enactments\) \(Wales\) Order 2016](#), provides that on an application to the Welsh Ministers the planning permission which may be granted includes planning permission for development carried out before the application. The application may only fall partially within that section, as it is proposed to include further additions to the existing scheme.

These are ultimately matters of legal interpretation and it would be for the Welsh Ministers to satisfy themselves of the correct legislative position when considering the Applicant's notification under Article 5 of the Order. Though not legal opinion, the Planning Inspectorate's view for the purposes of this advice is that the application would fall to be considered as a DNS; our consideration leads us to conclude that there is nothing to prevent the Welsh Ministers dealing with an application that is part-retrospective under S73A as a DNS, or that would prevent them considering new additions to the scheme at the same time.

3. Form and Content of the Application (if EIA not required)

The following advice is provided with the intention of assisting the Applicant to shape their application, but it does not preclude an appointed Inspector or the Welsh Ministers from seeking further information to aid determination.

Main issues and considerations likely to be relevant to the application and the scope of assessment required

It is noted that the Applicant means to provide a Compliance Report intended to demonstrate that the conditions applied to the original planning permission were adhered to during construction and that the issues those conditions related to were therefore addressed. This is considered a pragmatic approach as issues of drainage (including the storage of fuels, oils, etc), highway safety and land contamination will likely form part of the decision maker's consideration. That report should take full account of the scheme as now proposed, including any additional infrastructure, provide a clear assessment of

existing and future potential effects in relation to those issues and outline any necessary proposals for ongoing management, where appropriate.

It is suggested that the Applicant also considers producing a Planning Statement which covers those issues that are unlikely to constitute main issues and do not require standalone reports, but will nonetheless form part of the Inspector's consideration. A Planning Statement should also include the Applicant's assessment of the planning merits of the scheme, its compliance with national and local policy and the Applicant's suggested conditions, particularly where they have been able to achieve agreement with the Local Planning Authority (LPA) on such matters. The Applicant may also want to consider expressing how they consider a grant of planning permission for this proposal would comply with the Well-being Goals set out in the [Well-being of Future Generations \(Wales\) Act 2015](#).

In all cases, the assessments produced to support the application should provide a clear outline of the basis on which the scheme has been assessed and for which consent is sought. I.e. how many hours running time per annum, type of fuel, etc.

Based on the information provided, the following likely main issues and levels of assessment are identified / agreed:

Landscape Impact / Character and Appearance

An updated landscape appraisal that takes full account of the scheme proposed, including any additions to the existing scheme and any landscaping and mitigation already in place, is considered necessary and appropriate. The Applicant should satisfy themselves that they have fully considered the direct landscape impacts arising from the existing and proposed development. Assessment should be undertaken in accordance with professional guidance; the methodology applied to the assessment should be clearly set out in the assessment, including any departures from standard guidance where applicable.

Air Quality

An updated Air Quality Assessment that takes account of the proposed additional infrastructure is considered necessary and appropriate given the time that has passed since the original application and the likelihood of new receptors now being present. Assessment should be undertaken in accordance with professional guidance; the methodology applied to the assessment should be clearly set out in the assessment, including any departures from standard guidance where applicable.

It should be noted that as part of the Environmental Impact Assessment (EIA) Screening process, NRW has commented that the air quality model used in the Applicant's 2011 report is now outdated and that newer versions of the modelling software are available. NRW recommends the model be updated to the most current version and that as the development is operational, real time emission data, as well as modelled data, could be used in the various emission scenarios to ascertain the potential risks to the designated sites.

NRW also does not consider the use of Rhoose meteorological station data to be appropriate for the location of development and suggests that the Applicant give consideration to using data from either the Mumbles Head meteorological station or more accurate Met Office High Resolution (1.5km) UN NWP meteorological data, whichever is more appropriate. It is recommended that this advice is factored into the Applicant's Air Quality Assessment and that appropriate methods for assessment are discussed and agreed with NRW. It is noted that work is ongoing on this issue and that the Applicant has already sought contact with NRW in relation to the application; they may also wish to seek

advice from Neath Port Talbot County Borough Council (NPTCBC) on this issue.

Noise

An updated noise assessment that assesses current and future noise levels and takes account of the proposed additional infrastructure is considered necessary and appropriate. Again, it is likely that there are new receptors that were not considered by previous assessment. Noise assessment should be undertaken in accordance with professional guidance, most likely that contained within relevant British Standards. The methodology applied to the assessment should be clearly set out in the assessment, including any departures from standard guidance where applicable. It is noted that monitoring locations have been agreed with NPTCBC and this approach is recommended and agreed. As above, the Applicant may also wish to seek advice from NRW on this issue.

Ecology

It is accepted that due to the nature of the site and the existing development, the likelihood of ecological impacts on the site itself is low. However, the potential impacts on the natural environment and ecological receptors in the locality and the wider area, including the identified areas of woodland and protected sites, should be given due consideration and form part of the other assessments outlined. If EIA is not required, it will be for the Applicant to consider whether to produce a standalone Ecological Assessment or whether this topic could be included within, for example, a Planning Statement. The appointed Inspector will need sufficient information to draw an informed conclusion on this issue.

Other Assessments

Due to the application site's proximity to a European Protected Site (the Crumlyn Bog SAC/SSSI/Ramsar site), it will be necessary for the appointed Inspector to make a recommendation to the Welsh Ministers, as the competent authority, on the issue of screening and appropriate assessment (AA) under the Conservation of Habitats and Species Regulations 2017. It is noted that at the time of the original application, the LPA took the view that the scheme could be 'screened out' and that no AA was required. However, the Ministers will have to come to their own conclusion and it would therefore be beneficial to the DNS application process if the Applicant were to prepare a shadow screening report setting out their view of whether the proposal requires an AA, based on up-to-date information. If the Applicant's view is that AA is required, they should produce a shadow AA to inform the Inspector's recommendation. Doing so will ensure that the Inspector has the required information on hand and help to avoid unnecessary delay.

Documents required for the application to be valid

The statutory requirements for a valid application are set out at Article 12 of the Order.

The Welsh Ministers have the power to specify whether any additional information should be provided (normally the LPA under S62(3) of the 1990 Act, but for DNS applications, that power belongs to the Welsh Ministers, as indicated by Article 12(1)(vii) of the Order).

This provision allows non-standard information to be specified as a validation requirement for a development if the Welsh Ministers publish it as such on their website. However, based on the information provided, it is not considered likely that information over and above that set out at Article 12 would be required for the purposes of validation in this instance. Further information and advice on the format of submissions and the validation

process can be obtained from the Planning Inspectorate's Casework Team and does not attract a charge. A copy of the Planning Inspectorate's internal checklist for validation, which is based on Article 12, is attached as an aid to the Applicant.

Can technical information from the 2012 application be relied upon for a DNS submission?

This will depend on the nature of the information and the potential for it to be considered out of date, such that it does not provide an accurate and reliable basis for the purposes of assessment and determination at the point of application. The Applicant will need to satisfy themselves that any information they provide fulfils that purpose. Where information is missing or inaccurate, it will be for the appointed Inspector or the Welsh Ministers to determine whether further information should be provided and whether time should be allowed for such work to be undertaken. Where the work required to produce further information is likely to be substantial, consideration would have to be given to either suspending the DNS process whilst that work is carried out or proceeding to a determination based on the information available.

Based on the information provided, it is assumed that information such as the technical specification for the installed generators, storage tanks, etc will not have changed and could therefore be utilised for a DNS application. Given the time that has elapsed and the potential for change in the surrounding environment, any documents that required assessment of existing and future environmental conditions would need to be updated to ensure their reliability, take account of the additional proposed equipment and utilise up-to-date assessment methodologies (for example, see NRW comments on Air Quality above). Similarly, the Design and Access Statement required by Article 12 would need to be refreshed, so that it is clearly based on the current situation and takes full account of the development now proposed.

4. Outline of the Relevant Policy Framework

As discussed with the Applicant previously, the local policy framework is covered by the LPA's statutory pre-application advice duties under Regulation 7 of the Developments of National Significance (Wales) Regulations 2016. The Applicant may therefore also wish to seek advice from the LPA on this aspect, as it will likely be able to provide a more comprehensive view of the relevant local policies. The policies outlined below are considered potentially relevant to the development as described, dependant on the final form of the application submission. The relevance of individual policies to the overall planning balance will vary based on the appointed Inspector's final identification of the main issues.

This advice is based on the versions of documents that are current at the time of writing. The Applicant should be aware that changes in policy may occur prior to the determination of any subsequent application. In particular, the Welsh Government recently consulted on its proposed Edition 10 of Planning Policy Wales, the outcome of which is not yet known.

Relevant National Planning Policy

Planning Policy Wales – Edition 9

Chapter 3 - Development Management

Chapter 4 – Planning for Sustainability

Chapter 12 – Infrastructure and Services

Chapter 13 – Minimising and Managing Environmental Risks and Pollution

Technical Advice Notes

TAN 5: Nature Conservation and Planning

TAN 11: Noise

TAN 12: Design

TAN 18: Transport

Relevant Local Planning Policy

Neath Port Talbot Local Development Plan 2011 - 2026

SP1 – Climate Change

SP2 - Health

SRA1 – Coed Darcy Strategic Regeneration Area

EC3 – Employment Area Uses

SP15 - Biodiversity and Geodiversity

EN6 – Important Biodiversity and Geodiversity Sites

EN7 – Important Natural Features

SP16 – Environmental Protection

EN8 - Pollution and Land Stability

SP18 – Renewable and Low Carbon Energy

RE1 – Criteria for the Assessment of Renewable and Low Carbon Energy Development

SP20 – Transport Network

TR2 - Design and Access of New Development

BE1 - Design

Supplementary Planning Guidance

Biodiversity and Geodiversity SPG (May 2018)

Pollution SPG (October 2016)

Design SPG (July 2017)

5. Overall assessment of the proposal and a view of its merits

Based on the information provided, it is considered that there is no obvious policy objection to the principle of the development proposed at this location; policy SRA1 of the LDP places the site within the Coed Darcy Strategic Regeneration Area (SRA), which includes B1

business and other commercial uses. It is considered that the nature, scale and location of the development do not conflict with the aims of the SRA.

The acceptability of the proposal will therefore rest on the potential harm that could arise from the scheme and its compatibility with other relevant planning policy. As described above, there are a number of issues that would need to be addressed and satisfactorily resolved, in particular Character and Appearance, Noise, Air Quality and Ecology. These issues will ultimately turn on more detailed site specific information.

Nonetheless, from the documents submitted for the purposes of this request, the site does not appear to be particularly sensitive; there is nothing in the information currently available that suggests that the issues described above could not be satisfactorily addressed through appropriate consultation, survey work, mitigation measures (if and where appropriate) and the imposition of appropriate planning conditions. There is some potential benefit from the scheme in terms of its ability to support the wider delivery of renewable energy by providing additional capacity to the National Grid at times of peak demand. Provided the Applicant is able to show through evidence that there would be no unacceptable harm, it is considered that the scheme as proposed could be recommended for a grant of planning permission.

6. Requirement for secondary consents

The Applicant will need to satisfy themselves that they have obtained the necessary consents. However, from the information provided, it does not appear that any of the secondary consents set out in the Schedule to the Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016 would be required for the development proposed.

Although not a prescribed secondary consent and therefore not part of the DNS application process, the Applicant's attention is drawn to the forthcoming requirement for Sustainable Drainage (SuDS) Consent. Our understanding is that the requirement will be limited to schemes that include construction works, so it will be for the applicant to consider the extent of the proposed additions to the scheme as built and whether they will fall within that requirement. Further information on this issue can be found in the Planning Inspectorate's letter sent to the Applicant on 20 July 2018.

ANNEX – Planning Inspectorate Validation Checklist

Examination Acceptance Checklist

General Requirements

- Has the application been made on the correct form (or a form substantially to the like effect)?
- Has the application been submitted within 12 months of the notice of acceptance of a proposed application?
- Has the applicant submitted a copy of the notice of acceptance letter?
- Has the applicant submitted a site location plan?
- Has the applicant submitted any other plans?
- Are the plans drawn to a scale and in the direction of north?
- Has the applicant served notice on any land owners?
- If yes to above, has the applicant provided a copy of the certificate(s) serving notice on other owners?
- Has the applicant submitted an Environmental Statement?
- If yes to the above, has the ES been assessed and meets the minimum requirements of the EIA regulations?
- Has the applicant submitted a written statement about any secondary consents connected with the application?
- Has the applicant served a copy of the application on the Local Planning Authority?
- Has the applicant paid the **CORRECT** fee?

Design & Access Statement

- Has a Design and Access Statement been submitted?
- Does the DAS explain the design principles and concepts that have been applied to the development?
- Does the DAS demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account?
- Does the DAS explain the policy or approach adopted as to access, and how policies relating to access in the development plan have been taken into account?
- Does the DAS explain how any specific issues which might affect access to the development have been addressed?

Crown Land

- Does the application involve Crown Land?
- If yes has the applicant submitted a statement in respect of Crown Land?
provided?

Publicity & Consultation

- Has the applicant submitted a pre-application consultation report?
- Has the applicant displayed a notice in at least 1 place on or near the site for not less than 42 days?

Has the applicant written to any owners/occupiers of any land adjoining the site?
Has the applicant issued a notice in a local newspaper?
Has the applicant published the application, and supporting documents on a website maintained by them, for a period of not less than 42 days?
Has the applicant consulted with any community consultees?
Has the applicant consulted with any specialist consultees?
Has the applicant consulted relevant persons - relevant person is the person/body who would have been responsible for the Secondary Consent application had it not been part of the DNS?
Have those consulted been given a minimum 42 days to respond?