
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 13/11/17

**gan Clive Nield BSc(Hon), CEng,
MICE, MCIWEM, C.WEM**

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 19/12/17

Appeal Decision

Site visit made on 13/11/17

**by Clive Nield BSc(Hon), CEng, MICE,
MCIWEM, C.WEM**

an Inspector appointed by the Welsh Ministers

Date: 19/12/17

Appeal Ref: ENV/3181724

Site address: Land at Baglan Energy Park, Baglan, Port Talbot, SA12 7AX

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under Section 31 and Schedule 6 of the Environmental Permitting (England and Wales) Regulations 2016 against a refusal to grant a Bespoke Permit for a waste operation.
 - The appeal is made by South Wales Wood Recycling limited against the decision of Natural Resources Wales (NRW).
 - The application Ref PAN-000440, dated 1 June 2016 (and duly registered by NRW on 6 July 2016), was refused by notice dated 8 February 2017.
 - The waste operation proposed is the storage and treatment of waste wood for the purposes of recovery.
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Decision

1. The appeal is dismissed.

Main Issues

2. Natural Resources Wales (NRW) refused the application because it was not satisfied that appropriate management systems would be in place, it did not have confidence in the operator's competence to manage the site, and it did not consider the applicant would operate the site in accordance with the conditions of the permit, including the proposed management plans. Consequently, it considered there would be an unacceptably high risk of fire from the proposed facility leading to considerable environmental impacts.
3. On the basis of these I consider the main issues in this case to be: whether the operator would be competent to manage the proposed site; whether the site would be likely to be operated in accordance with appropriate conditions of the permit; and whether there would be likely to be a risk of fire at the facility.
4. Extensive information has been provided about discussions and correspondence between the parties both before and during the application process, and the Appellant has criticised the way NRW dealt with the application, the information it took into account and its timetable for determining the application. These matters are outside the scope of the current appeal and are not relevant to my considerations. In determining the appeal I have concentrated on the factual information provided on the merits of the proposal.

Reasons

Operator Competence

5. Operator competence is an important factor to be assessed in determining applications for an environmental permit. NRW's guidance for the assessment of operator competence, Regulatory Guidance Series No. RGN 5, identifies the areas to be assessed as: management systems; technical competence; relevant convictions; and financial competence. NRW takes no issue on the Company's technical and financial competences, and so my assessment concentrates on the other 2 matters.
6. The Appellant already operates 2 other sites for the storage and treatment of waste wood: at Newport Docks; and at Locks Yard, Heol y Cyw. Major fires have occurred at both sites in recent years. At the Newport site the fire started in mid-November 2015 and burned for about 6 weeks throughout December. The Fire and Rescue Service (FRS) finally signed it off in mid-January 2016.
7. Management of the fire involved considerable public resources and had a significant impact on the local environment over a lengthy period of time. Investigations by the FRS identified the reason for the fire as self-combustion of the stored wood, much of which was stored in chipped form. The risk of fire is known to increase in such a material if stored for more than some 3 months. The Appellant argues that the fire should be considered to be an accident. However, I agree with NRW that it is far more likely it was caused by failure to manage the waste properly and to implement an appropriate management system for the site.
8. During 2015 the site was subject to a number of Category 3 or 4 Compliance Assessment Reports (CARs), most of which were in connection with the storage and treatment of the waste wood and the management and operating procedures being employed. NRW identified the storage of excessive quantities of material, the lack of fire breaks and the height of the stockpile as key issues, and these led to inspection of the site by the FRS and the identification of measures needed to minimise the risk of fire occurring. Although the Appellant disputes some of these matters, there can be no doubt that adequate measures were not taken and that a serious fire then occurred. NRW then issued 3 Category 2 CARs in respect of the fire itself and the associated air pollution. This sequence of events leaves me in no doubt that the Appellant failed to manage the waste operations in a safe and proper manner despite shortcomings having been identified.
9. Turning to the Heol y Cyw site, operations are carried out under 2 permits: a standard rules permit covering about 20% of the operations, and a larger bespoke permit. A fire occurred on this site in September 2016 and, although much shorter-lived than that at the Newport Docks site, it is reported that it had serious implications for the local environment (due to the escape of large quantities of fire-fighting water) and people living nearby. The FRS investigated the fire but was unable to confirm what caused it. The Appellant claims it was due to arson. However, despite the use of CCTV installations and on-site personnel, there is no evidence to support this, and the cause remains unknown.
10. Over the 15 months before the fire NRW issued several Category 3 CARs for the waste operations on the site, including 2 for inadequate fire breaks. NRW also says that large quantities of waste were stored on the site and that these poor management practices made it difficult for the FRS to fight the fire. The Appellant disputes this. However, the FRS itself carried out a safety audit of the site shortly after the fire and its conclusions included that stack sizes were excessive, separation between stacks was inadequate,

there were no management procedures for stock rotation, and the fire prevention plan was inadequate. This supports NRW's own evidence. Although not as serious an incident as that at the Newport site, the fire at Heol y Cyw highlighted serious deficiencies in the management of that site and reinforces my conclusions for the Newport site that the Appellant has shown serious shortcomings in its management practices and its ability to manage a waste site in a safe and proper manner.

11. NRW has also brought several prosecutions against the Appellant Company. 2 of these were in connection with the fire at the Newport site: failing to comply with/contravene the requirements of an environmental permit condition; and keeping controlled special waste in a manner likely to cause pollution or harm to human health. A third prosecution was also brought for depositing waste on a non-permitted site in the Llynfi Valley, albeit one not owned or operated by the Appellant. It is reported that the Appellant pleaded guilty and was fined on all 3 counts. As is normal practice, the Appellant has subsequently submitted a Post-Conviction Plan to NRW, which includes the measures proposed by the Company to prevent recurrences of the offences.
12. Each year NRW assesses the performances of waste sites in Wales and attributes an Operational Risk Appraisal (OPRA) rating to each one, largely based on the previous year's compliance assessments. That for the Newport site fell to "F" for 2016 (based on the 2015 CARs) but has been "B" for 2017 (based on the 2016 CARs), indicating an improvement in performance. The Heol y Cyw site was rated "B" in 2016 but fell to "D" for 2017 following the fire and poor assessments in 2016 (for the bespoke permit). The standard rules permit was rated "A" in both 2016 and 2017. The Appellant submits that the bespoke permit will be much better rated for 2018, following improved performance in 2017. Whilst there seem to be indications of improved performance in the management of both sites, I consider the periods of time to be too short to provide confidence that the Appellant's poor performance in the past has been turned around.
13. Taking all of these factors into account, I am unable to conclude that the Appellant would be competent to manage and operate the proposed new waste site at Baglan Energy Park. The Company's management systems have been deficient at its 2 existing waste sites, and it is too early to determine whether its Post-Conviction Plan has been successful in preventing the recurrence of unacceptable operational performance over a reasonable period of time.

Compliant Operation of the Site

14. Turning to the second issue, whether the site would be likely to be operated in accordance with appropriate permit conditions, I note that the application was accompanied by an Environmental Management Plan and a Fire Prevention and Mitigation Plan and that, during the course of NRW's consideration of the application, these were subject to several amendments in response to comments by NRW and the FRS. In particular, the proposed pile sizes and separations have been considerably improved. However, it is noteworthy that the proposed piles would still be much bigger than the sizes recommended in NRW's guidance.
15. NRW argues that it has taken several iterations of the proposed plans to persuade the Appellant to reduce the proposed pile sizes to those now put forward and that, due to business pressures, the Appellant would be unlikely to adhere to the reduced sizes. Whilst the Appellant says the site would be used to relieve pressures on the 2 existing waste sites, it also says it has aspirations to supply waste wood to biomass energy plants in South Wales. However, these are not yet operational and contracts to supply them are clearly not yet assured. In view of this uncertainty and the current poor

market for waste wood, NRW considers the Appellant would be under pressure to accept more waste without the certainty of a market for it.

16. There can be no certainty over how the site would be used. Even the evidence put forward is conflicting. On the one hand the Appellant has said wood would be stored there for up to 24 months; on the other an undertaking to rotate it every 6 months has been put forward. Clearly, there is no evidence of secured end users for the waste wood, and operations at the proposed site are to some extent speculative. Notwithstanding the Appellant's submission that the new Fire Prevention and Mitigation Guidance, issued in May 2016, would be complied with, confidence in that must be judged on the basis of the Appellant's past performance on such matters.
17. As detailed above, that performance has shown serious shortcomings at the Appellant's 2 existing sites where, although some of NRW's assertions have been disputed, there is no doubt that waste material has been stored in piles that have been too large, too high and with inadequate separation between them. Operations at the 2 sites have been poorly managed with inadequate regard to good practice in management plans and fire prevention and mitigation methods. I have no reason to believe that business pressures would be significantly different for the proposed new site than for the existing ones. Consequently, I consider it likely that permit conditions applied to ensure operations on the site were carried out in a safe and proper manner would be likely to be contravened.
18. I have no reason to doubt the Appellant's sincerity in its stated intention to operate the proposed site in accordance with the latest good practice. However, without further evidence of its ability to operate in that way at its existing waste sites, I must conclude that it would not be likely to operate the proposed new site in accordance with conditions that would be appropriately applied to any permit.

Risk of Fire

19. Finally, I consider the third main issue, whether there would be likely to be a risk of fire at the facility. The submitted Fire Prevention and Mitigation Plan has been assessed by both NRW and the FRS and, if complied with, would be generally acceptable. However, in view of my conclusion above, compliance with the Plan cannot be relied upon. The FRS has advised that there would be potential for significant disruption to local infrastructure if a fire were to occur on the proposed site, bearing in mind its location on a business park and close to the M4 motorway, a main railway line and a power station.
20. The Appellant advises that the waste material would be stored in its original, unchipped form, and so the risk of self-combustion would be considerably less than if it were stored as chipped wood. That is not in dispute. However, the risk of fire would still exist, particularly if the site was not operated in accordance with its permit.

Overall Conclusion

21. The Appellant has complained about the late submission of the Appendices to NRW's Statement, particularly Appendices 2A and 2B which contain information relied upon by NRW to respond to part of the Appellant's grounds of appeal. However, the Appellant has had the opportunity to respond to those submissions and submitted lengthy and detailed final comments on NRW's evidence. I do not consider the Appellant has been disadvantaged by NRW's tardiness.

22. My conclusions above are that: I cannot be satisfied that the Appellant would be competent to manage and operate the proposed new waste site: the Appellant would not be likely to operate the proposed new site in accordance with conditions that would be appropriately applied to any permit; and the risk of fire, with significant implications for local infrastructure, cannot be discounted. My overall conclusion is that a permit should not be granted and that the appeal should be dismissed.
23. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in compliance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.

Clive Nield

Inspector