

## Strategic and Technical Planning Committee – 24/03/2023

### Update Sheet

**Application Ref: WP/20/00692/DCC – Portland Port, Castletown**

**Proposal:** 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.

**1. Letter received from applicant's agent on 20<sup>th</sup> March (addressed to the Council's solicitor):** this letter asked for a deferral of the application until the May meeting on the following grounds (summarised):

- The process of how the application has been dealt with is unsatisfactory and the report is flawed;
- The power of the committee in reaching a decision has been materially circumscribed by the report as there is no opportunity for the committee to resolve to approve the application, should it be minded to do so, that would be lawful, and so the only definitive decision that could lawfully be taken is a refusal. The two main areas of concern relate to the omission of any conditions or s106 heads of terms which are material considerations in mitigating the effects of the development, while the appropriate assessment cannot be concluded as the AA is conducting an AA on that part of the scheme expressly for permitting purposes.
- It would be beneficial for members to see the draft report of the previous case officer who had worked extensively upon the planning application;
- The report contains significant omissions, misrepresentations, inaccuracies and errors and, whilst it is very clear on the weight that the officer team should be given to the identified negative effects, it does not provide any detail at all on the weight that is allocated to the (incomplete) list of scheme benefits.

#### **Response:**

The Council's solicitor responded to the applicant's agent (letter dated 21<sup>st</sup> March) to confirm that, in the Council's opinion, there is no legal impediment to the report being considered by committee on 24<sup>th</sup> March. The reply stated that:

- It is perfectly usual not to include draft conditions or draft s106 heads of terms in an officer report where the recommendation is for refusal. If the committee is minded to approve, officers can advise on the way forward in relation to agreeing the conditions/heads of terms;
- the report is clear on the benefits of the scheme and the weight to be attributed to them, including where those can be properly secured by section 106 obligation;
- it is not appropriate to publish the draft report of the previous (consultant) case officer, not least because it was incomplete;
- on the matter of appropriate assessment, if the Committee were minded to grant permission, any resolution would be subject to consideration of the EA's AA by the Council. If the EA's AA concludes that the scheme would not adversely affect the integrity of a European site providing appropriate mitigation is in place, then any resolution to grant would be subject to securing that mitigation. It may be that any necessary conditions and/or s106 obligations need to be considered by members at a subsequent Committee meeting

before planning permission is issued. Therefore, the solicitor does not agree that a resolution to grant consent could be considered to be a consent or other authorisation under the Habitat Regulations.

**Further officer response to letter dated 20<sup>th</sup> March 2023:**

Officers consider that, in the light of the concerns expressed that the officer’s report is incomplete in listing the benefits of the scheme and in attributing appropriate weight, it would be helpful to members of the committee to summarise the position for any avoidance of doubt. Table 1 below lists the benefits, as summarised by the applicant in a submission to the Council dated February 2023 (and on the public file), with officer comments and a view on the weight that is given to these matters.

**Table 1:**

<b>Benefits of Portland ERF as stated by applicant</b>	<b>Officer Comment</b>	<b>Officer view on weight to be given</b>
<p>1. The Portland ERF will provide the only potential near-term (pre-2036) viable source of electricity to enable Portland Port to provide shore power to visiting cruise ships, to guarantee and ensure the continued growth of the cruise business that generated £8m for the Dorset economy in 2022. The benefit of shore power also extends to stationed Royal Fleet Auxiliary vessels and any other equipped commercial vessels, leading to substantial environmental and economic benefits for the Ministry of Defence and other marine businesses. The ERF shore power will protect the future of the port and help to create the conditions in which Portland Port can expand and adapt by removing a major barrier to investment (lack of suitable and secure power supply). Without shore power the Port risks losing the cruise business it has worked hard to attract to competitor ports who can provide it. According to the British Ports Association this would be the first shore power facility provided without public subsidy in Europe iii, deliverable as it is a positive co-benefit of a high-quality waste solution for Dorset. In line with NPPF 81 given the support provided by this application for economic growth this benefit should be afforded <b>very substantial positive weight</b>.</p>	<p>Accepted that shore power is a significant benefit and the applicant has provided evidence that this is both capable of delivery and take-up. It is also accepted that there will be benefits for the local economy from visiting cruise ships.</p>	<p>Full positive weight to the delivery of shore power in the planning balance is appropriate</p>

<b>Benefits of Portland ERF as stated by applicant</b>	<b>Officer Comment</b>	<b>Officer view on weight to be given</b>
<p>2. Use of residual waste as fuel to generate energy and assist in the diversion of waste from landfill to deliver more sustainable waste management at a higher level in the waste hierarchy is a further significant benefit and is fully in accordance with national policy. This benefit should be afforded <b>significant positive weight</b>.</p>	<p>Energy recovery from the incineration of waste would assist in moving waste up the waste hierarchy and is preferable to disposal by landfill. This is complemented by the fact that the proposal would have the potential to deliver combined heat and power (CHP).</p>	<p>This makes the proposal compliant with the energy recovery aspirations of the local plan and can be given full positive weight in this regard.</p>
<p>3. The Portland ERF provides new waste management capacity that will contribute to Dorset meeting its identified residual waste management need in line with the principles of self-sufficiency and the proximity principle (enshrined within the Dorset Waste Plan) and reduce the existing reliance upon the export of residual waste to waste management facilities outside of Dorset, without prejudicing other Dorset Waste Plan sites from coming forward. This benefit should be afforded <b>significant positive weight</b>.</p>	<p>It is accepted that the proposal will provide additional capacity for residual waste treatment and that there is no evidence to suggest it will prejudice other sites in coming forward. However, it has not been demonstrated that the site would have advantages, when taken as a whole, over the allocated sites in the plan which are potentially capable of meeting Dorset's needs and are considered by officers to score better in relation to co-location and the proximity principle. Therefore, it is deemed to be less favourable in meeting Dorset's needs</p>	<p>Limited weight is given to the contribution this site could make in terms of providing competition for waste management (helping to drive down prices), but officers also consider that the allocated sites are more advantageous overall in supporting self-sufficiency and the proximity principle. Therefore, officers do not agree with the applicant's view on the weight that could be given to the provision of additional waste management capacity as, in spite of the additional capacity, it also does not comply with the Waste Plan for reasons set out in the report.</p>
<p>4. Reduction in the cost of managing Dorset's residual waste, as a result of reduced costs associated with transporting waste to other facilities outside of Dorset, and the avoidance of landfill related</p>	<p>Whilst it might assist with reducing costs, there is no certainty that the proposal could secure contracts for managing Dorset's waste and officers are confident that the allocated sites provide sufficient capacity in locations</p>	<p>Whilst additional competition for managing Dorset's residual waste may lead to reduced costs, this</p>

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charges. <b>This benefit should be afforded moderate positive weight.</b>	that are better placed to handle Dorset's waste without recourse to landfill.	considered to have only very limited positive weight in the planning balance due to uncertainty over its ability to secure contracts given the preferable locational benefits of the allocated sites.
5. The site's location within a commercial port provides potential opportunities for residual materials arising from the process to be transported sustainably by sea to appropriate existing recycling plants (for the production of recycled aggregate building products), reducing local traffic impacts, an advantage that no other allocated site in Dorset could achieve. This should be afforded <b>moderate positive weight.</b>	It is accepted that the port location would facilitate transportation of IBA by sea. Whilst there is no certainty that this will come forward (and so IBA may end up being transported by road), there is a testimony from a prospective customer that indicates the port route is realistic and achievable.	Agreed that moderate positive weight should be attributed to the port's location for handling IBA.
6. Provision of a new significant source of non-intermittent, dependable baseload energy generation that increases energy security for Dorset and provides energy generation on Portland that will facilitate the growth of local business and industry. This benefit should be afforded <b>moderate positive weight.</b>	It is accepted that National Grid constraints limit the opportunity to increase power supply to Portland and that Powerfuel would be capable of delivering additional generation capacity and resilience	Agreed that moderate positive weight should be attributed to energy provision that will improve energy resilience and local capacity.
7. Reduction in climate change impacts associated with the management of Dorset's waste as a result of lower landfill volumes (direct and/or indirect) and lower transport carbon costs. This benefit should be afforded <b>moderate positive weight.</b>	Landfill reduction has been considered as part of the waste plan's strategy for managing residual waste, with the allocation of four strategic sites in locations that are better positioned to support the proximity principle in relation to Dorset's waste. The reduction of transportation costs is therefore not proven as this would depend upon competing for future contracts and importation of RDF via the port could potentially be transported from beyond Dorset.	This issue is only given neutral weight in the planning balance.

<b>Benefits of Portland ERF as stated by applicant</b>	<b>Officer Comment</b>	<b>Officer view on weight to be given</b>
<p>8. The Portland ERF, applying conservative shore power usage assumptions, will result in an improvement in air quality across the majority of the local area as a result of the shore power provision (due to the removal of existing unabated diesel emissions from vessels in port) 1. This benefit should be afforded <b>moderate positive weight</b>.</p>	<p>It is accepted that reduction in diesel emissions from vessels is a positive benefit, although this should be set against emissions from the waste plant together with localised impacts from HGVs delivering feedstock.</p>	<p>Agreed that reducing ship-based emissions should be afforded moderate positive weight, but this cannot be considered in isolation from the power plant's own emissions or those of HGV movements, which will offset some of the positive benefits.</p>
<p>9. Provision of a heritage mitigation programme that will ensure managed public access to currently inaccessible heritage assets and funding to restore these assets, which will result in the removal of a Scheduled Monument from Historic England's "at risk" register. This mitigation outweighs the "<i>less than substantial harm</i>" to the nearby asset settings creating a net heritage benefit that should be afforded <b>moderate positive weight</b>.</p>	<p>The Heritage Mitigation Strategy includes vegetation clearance and repairs to East Weare Battery E which would remove it from the 'At Risk' Register and would facilitate controlled public access as well as the provision of interpretation boards at accessible viewing points. These are heritage benefits, but they do not address the substantive effects of the development of the ERF and stack on adjacent heritage assets, nor do they offset the less than substantial harm (which, in the view of officers, would be considerable and at the upper end of 'less than substantial') to a large group of nationally significant heritage assets.</p>	<p>Officers consider that the heritage mitigation offered can only be given slight weight in that it does not address the substantive heritage impacts of the proposal.</p>
<p>10. Provision of a permissive path that will provide public access through currently inaccessible parts of the Portland Port estate that will complete the "round the island" footpath. This will benefit local leisure activities and can enhance the experience of users of this part of the South West Coast Path and the England Coast Path. This benefit should be afforded <b>moderate positive weight</b>.</p>	<p>Officers considered that, whilst the permissive path would be a positive benefit if it could be achieved in an acceptable form (bearing in mind some concerns from Historic England and Natural England about the impact of the security fence), it was not possible to conclude that the proposal had sufficient certainty or associated heritage mitigation benefits to be given more than slight weight. The applicant has since confirmed that the permissive path will not form part of the mitigation strategy.</p>	<p>This is no longer relevant to the scheme as the applicant has since confirmed that the permissive path will not form part of the heritage mitigation strategy.</p>

<b>Benefits of Portland ERF as stated by applicant</b>	<b>Officer Comment</b>	<b>Officer view on weight to be given</b>
<p>11. Socioeconomic benefits including a £150m private sector investment that will provide 300 construction jobs, 35 full time permanent jobs and 60 indirect jobs in a key employment zone. This benefit should be afforded <b>moderate positive weight</b>.</p>	<p>It is accepted that socio-economic benefits would arise from the scheme.</p>	<p>Agreed that this should be afforded moderate positive weight</p>
<p>12. The Portland ERF provides an identified and credible opportunity to provide district heating to two local prison facilities that will result in further improvements in air quality, reductions in carbon emissions and cost savings for the Ministry of Justice. The form of legal heads of terms of agreement with the Ministry of Justice has been agreed, a viable commercial case has been presented and the route from the Portland ERF to the offtakers has been analysed to demonstrate there is limited/no planning risk associated with this proposal. The benefits of supplying the prisons (effectively UK Government credit risk) provides investor confidence to fund the upfront cost of the district heating network. This will then create an opportunity to extend this cornerstone heat network to other parts of Portland where heat produced by the ERF (that otherwise will not be used) could be priced to target fuel poverty alleviation. Given the analysis provided this benefit must reasonably be seen as being deliverable and should be afforded <b>moderate positive weight</b></p>	<p>It is considered that the applicant has taken all reasonable steps to ensure the proposal will be CHP-ready (combined heat and power, whereby it is able to generate heat from the production of electricity, which is then fed into district heating systems). The applicant has provided supporting information which confirms that there is a reasonable prospect of this being taken up by the Ministry of Justice at the Verne, and all steps necessary within the site to facilitate this will be taken. Whilst there may be a need for subsequent planning permissions to facilitate links outside of the application site, it is agreed that the applicant has gone to considerable lengths to ensure the proposal can deliver district heating. Future uptake by the Portland community is less certain at this stage, but the fact that the potential exists can be considered to be a positive benefit for Portland.</p>	<p>Agreed that this should be afforded moderate positive weight</p>

## 2. Officer Update on the ‘fallback’ position

Section 6 of the officer’s report summarises the relevant planning history. Paragraph 6.7 confirms that planning permission was granted for the construction of an energy plant adjoining Balaclava Bay in January 2010. A subsequent variation of condition application was approved in April 2013 (see para. 6.11 of the report) to allow for the use of rubber crumb (recycled rubber from tyres) in addition to vegetable oil in its power oil production and power generation plant. Permission was subsequently granted for a certificate of lawful use or development (19th October 2019) for the demolition of buildings on the site, with the decision notice confirming that, in accordance with s.56 of the Town and Country Planning Act 1990 and the evidence submitted, planning permission 09/00646/FULE is considered to have been lawfully implemented.

In order for a fallback to be considered in the planning balance, it must be able to lawfully proceed and there must be a likelihood or real prospect of the fallback development proceeding. As the energy plant has been lawfully implemented, it can lawfully proceed. The permission was implemented in 2013, by the demolition of a building, and no further work has since taken place. As a result, officers have real doubts over whether it is likely or that there is a real prospect that the energy plant development would proceed.

Notwithstanding this, the fallback position was significantly smaller in height and massing (including its stack height) and, in response to a previously refused scheme, included a package of heritage mitigation measures, significantly in excess of what is proposed with this application, to address identified impacts upon heritage assets.

Therefore, and for the avoidance of doubt, officers can confirm that the previously approved energy plan has been implemented and would be lawfully capable of coming forward, and thus has been taken into account as a fallback position.

In considering this, officers are of the view that the Powerfuel proposal has greater impacts upon landscaping and heritage in that:

- the previous implemented consent was considered by the landscape officer to have only a low or very low impact upon landscape and that the nature of significance of visual impact would generally be minor or neutral, bearing in mind that storage tanks on the site were a maximum of 10 metres in height and the stack would be under 35 metres in height;
- the previous implemented scheme had incorporated a number of changes from an earlier refusal to mitigate harm to heritage assets, including a revised layout to improve the setting of the breakwater and commemorative stone and relocation of storage tanks some considerable distance away from the Dockyard office, with improved boundary treatments.

On the other hand, the Powerfuel proposal demonstrates it would be capable of delivering shore power and is CHP-ready. It would also provide capacity to manage residual waste (in the form of refuse-derived fuel), which assists in moving waste up the waste hierarchy. Having said this, it is not unreasonable to assume that, if the implemented energy plant were to come forward, the opportunity would exist to provide shore power (given that it is within the port estate) and to explore the possibility of district heating. It is also the case that the implemented scheme was deemed to perform better than fossil fuels when considered at the planning application stage, by making use of vegetable oil and rubber crumb which is recycled from tyres.

Therefore, whilst the Powerfuel development offers some known benefits over the implemented scheme, officers consider that it has far greater impacts upon heritage and landscape, as detailed in the proposed reasons for refusal. As a result, even if the energy plant represents a fallback which is doubtful, officers do not consider that this application has sufficient benefits over the energy plant to justify granting planning permission.

**3. Portland Community Partnership:** would like the committee to understand that their original comment (as in the report) was put as an objection, but they are clarifying that this was neutral (a comment) but they are now adding that they are particularly concerned about levels of Co2 that would be emitted from the facility.

**4. The Portland Association:** have written to clarify to the committee that TPA is not a single issue objector group (like SPWI) but is a constituted community group, formed to become involved with various issues on the island in respect of environment, ecology and heritage with the aims of

preserving and enhancing the best of Portland's character and fostering good Planning and Conservation to safeguard the unique environment. They will continue exist and work on other objectives after this application is resolved.

**5. Update on numbers:**

- Objections: 3,419 (up 3 -SPWI and 2 others)
- Supporters : 35 ( down 1) and
- Neutral comments 39