

APPEAL REF: APP/D1265/W/23/3327692

NOTES OF CASE MANAGEMENT CONFERENCE

Held at: 1030 hours, Tuesday 17 October 2023

Appeal brought by Powerfuel Portland Ltd

Portland Port, Castletown, Portland, Dorset DT5 1PP

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

Appearances for the Main Parties at the Inquiry

David Elvin KC and **Luke Wilcox, Counsel** will appear for the appellants and call 7 witnesses (Luke Wilcox appeared at the CMC);

Simon Bird KC and **Merrow Golden, Counsel** appeared at the CMC and will appear for the County Council calling 5 witnesses; and

Barney McCay, Counsel will appear for the Rule 6(6) Parties and call 2 witnesses (dealing with heritage and landscape issues) (**Ricardo Gama** appeared at the CMC).

The Inquiry

This is programmed to open at 1000 on 5 December 2023 and is scheduled to close on 22 December 2023 after 12 sitting days.

It was felt that 12 sitting days ought to be sufficient to complete proceedings.

The Venue

This will be at the Osprey Quay School site on the Island of Portland which is relatively close to the appeal site.

The main room is of ample size and there will be provision for breakout areas and a retiring room for the Inspector.

The Council will ensure that WiFi is in place for the Inquiry and will investigate the potential for remote participation and live-streaming.

Nomenclature

The Inspector is keen to ensure that all parties are consistent in referring to the proposal as an Energy Recovery Facility (ERF).

The Inspector accepts that acronyms will crop up in the evidence but asks that these be kept to a minimum and explained.

Changes to the Proposal at Appeal

There are three changes proposed relating to the nature of the cladding to the building; the inclusion of a footpath (and fencing) to provide access to a nearby designated heritage asset; and the precise details of the input fuel to the ERF.

While not making a formal ruling on these matters at this stage, the Inspector is content (as things stand) that no-one would be prejudiced if the appeal proceeded on the basis of these changes.

The cladding issue will be subject to condition in any event, and the off-site nature of the path and fencing will need to be dealt with through a planning obligation. There are aspects of the change to the precise details of the input fuel that cross over to the permitting regime (which is the responsibility of the Environment Agency). However, it will need to be confirmed that this change will not have any effect on the content of the Environmental Statement (ES).

The Main Issues

These come under five headings:

First there is the 'waste issue' which can be expressed along the lines of whether the proposal would comply with the relevant policies of the Bournemouth, Christchurch, Poole, and Dorset Waste Plan (2019) and represent a sustainable form of waste management.

On the subject of 'need', to Council is to confirm its position in relation to this matter within 7 days.

Also, the appellant intends to submit an 'Updated Carbon Assessment' for the proposal. This is to be submitted as soon as practicable in order to allow others to take it into account in the preparation of their evidence.

Second, there is the 'heritage issue' which can be expressed as the effect of the proposal on the setting and thereby the significance of a range of designated and non-designated heritage assets, including listed buildings, scheduled ancient monuments, and the World Heritage Site (WHS).

Third, there is the 'landscape issue' which is the effect of the proposal on the character and appearance of the area including any effect on the setting of the WHS and/or the Dorset AONB.

Fourth, there is a range of 'other matters' to consider notably living conditions, socio-economic issues; traffic; biodiversity impacts and anything else (recognising that the Inquiry will not be straying into areas that are properly the ambit of the permitting regime).

Fifth, there is the 'planning balance' to carry out, pitting any adverse effects (explored in the issues above) against any benefits. Those benefits will need to be detailed in evidence.

Inquiry Format and the Presentation of Evidence

There is merit in dealing with the heritage and landscape issues on a 'topic basis', while the rest of the evidence is dealt with in the traditional order – Council, R6(6), followed by the appellant.

All evidence will be dealt with formally – there will be no 'round table' sessions as things stand.

Third Parties

It was agreed that setting some time aside for third parties to be heard together would be beneficial, as would an evening session. To that end, the 3P session will start at 1400 hours on 14 December and will run into the evening.

Facilities will be put in place by the Council to allow those 3Ps who want to contribute remotely to be able to do so.

Timetable

On the basis of what was discussed at the CMC the programme might look like this:

Day 1 (05/12/23): Inspector's introductory comments; Openings; and Council's heritage evidence

Day 2 (06/12/23): R6 heritage evidence; and appellant's heritage evidence

Day 3 (07/12/23): Council's landscape evidence; R6 landscape evidence

Day 4 (08/12/23 to 1300 hours): Appellant's landscape evidence

Day 5 (12/12/23): (Rest of) Council's Case

Day 6(13/12/23): (Rest of) Council's case continued

Day 7 (14/12/23): (Rest of) Appellant's Case; 3Ps

Day 8 (15/12/23 to 1300 hours): (Rest of) Appellant's Case

Day 9 (19/12/23): Conditions and Obligations (and possibly site visit)

Day 10 (20/12/23): (Rest of Appellant's Case)

Day 11 (21/12/23): Closings

Day 12 (22/12/23 to 1300 hours): Reserve

This draft programme can be revisited after the exchange of evidence.

Proceedings will finish by 1300 on each Friday to allow for travelling.

Statements of Common Ground

Two are planned, the first between the appellant and the Council and the second between the appellant and the R6(6) parties.

These should be provided before the exchange of evidence, if possible, but the Inspector is content to allow the process to continue after the date of exchange if it assists.

Conditions and Planning Obligations

A list of draft conditions should be prepared for discussion at the Inquiry – this can be a part of the SoCG or a separate document. The Inspector is happy for discussions on conditions to continue up to and during the Inquiry, if necessary but it would assist if a final version could be made available by 18/12/23 at the latest.

Obligations will also be discussed, and a draft of the UU or Agreement should be made available for that. A CIL Compliance Schedule should be prepared by the Council assessing the various obligations against the relevant tests.

Core Documents and Inquiry Documents

The appellant will take charge of the list of Core Documents, and these will be housed, alongside the various proofs of evidence and appendices and application documents on the Council's website.

These documents are to be freely accessible (no password) and 'unlocked' so that they can be searched and/or copied from.

Inquiry documents can be added to the relevant page of the website as and when they are submitted.

The website should also house a copy of the Inquiry Programme when it is in a more refined form and should give an indication that the 3P session will be as set out above.

The Inspector will access material at the Inquiry in electronic form and will not require hard copies of the Core Documents or the various proofs of evidence and appendices.

Inquiry Documents should however be handed up in hard copy.

The Inspector will also require a hard copy (at A3) of the application drawings and the visuals from the LVIA and/or HIA.

Timetable for Submissions

Exchange of evidence will be on 7 November 2023.

The Council's response to the appellant's Updated Carbon Assessment can be submitted on 14 November 2023, if necessary.

Rebuttals, if required, should be submitted by 28 November 2023.

Site Visits

The Inspector would prefer to carry out an Accompanied Site Visit (ASV) to the site and its surroundings, taking in the various heritage assets and important viewpoints, before the Inquiry opens.

The Inspector would like to do this in w/c 20 November 2023 or the early part of w/c 27 November 2023.

There will be another ASV after the evidence has been heard which might be possible during the Inquiry but may need to take place after it has closed. The date and scope can be agreed at the Inquiry.

Numbers at the site visit will need to be controlled and it was confirmed that 2 from each party would be the maximum. Names will be needed in advance and Photo ID will be required to gain access to the port.

A boat trip has been suggested but this does not appear to be necessary at this stage. The question can be revisited at the Inquiry.

Any Other Matters

Nothing at present other than to say that the Inspector is happy to maintain lines of communication, as required, in the lead up to the Inquiry. The Case Officer, **Helen Skinner**, will be the point of contact.

Paul Griffiths

INSPECTOR

19/10/23