

FLINTSHIRE COUNTY COUNCIL

REPORT TO: **PLANNING AND DEVELOPMENT CONTROL COMMITTEE**

DATE: **WEDNESDAY, 16 JANUARY 2013**

REPORT BY: **HEAD OF PLANNING**

SUBJECT: **METAL RECYCLING PLANT FOR END OF LIFE VEHICLES, FERROUS AND NON FERROUS METALS, REDUNDANT AND SCRAP CARAVANS AND ROOF WALL PANELS AT POINT OF AYR, FFYNNONGROYW**

APPLICATION NUMBER: **045069**

APPLICANT: **DELYN METALS LIMITED**

SITE: **FORMER COLLIERY SITE, POINT OF AYR FFYNNONGROYW**

APPLICATION VALID DATE: **19/05/2008**

LOCAL MEMBERS: **COUNCILLOR G BANKS**

TOWN/COMMUNITY COUNCIL: **LLANASA COMMUNITY COUNCIL**

REASON FOR COMMITTEE: **RETURNING TO COMMITTEE AS THE APPLICANT HAS FAILED TO ENTER INTO A LEGAL AGREEMENT AS REQUIRED BY PREVIOUS COMMITTEE RESOLUTION**

SITE VISIT: **NOT REQUIRED**

1.00 SUMMARY

1.01 On 22 July 2009, the Planning and Development Control Committee resolved to grant planning permission for the development described above. This resolution was subject to conditions and also subject to the applicant, Delyn Metals Limited (DML) entering into a legal agreement under the terms of the Wildlife & Countryside Act 1981 (as amended) Section 39 and a legal agreement under the terms of the Town & Country Planning Act 1990 (as amended) Section 106. Details are contained in the appended Committee Report.

1.02 A considerable length of time has now passed since Members

endorsed the recommendation to grant permission and the applicant has failed to enter into these legal agreements and obligations which were a prerequisite of granting planning permission.

- 1.03 Since 2009, the Planning Department has been working with DML to try to resolve the outstanding matters to enable the grant of permission. An alternative access route has been proposed by the applicant where vehicles would enter the site from the roundabout on the A548, over the BHP Billiton Petroleum Limited (BHP) railway overpass bridge, and access the application site (the former colliery site) over BHP land in an easterly direction, instead of accessing the site from the A548 and under a low railway bridge, as was originally proposed. However, DML has failed to provide the correct certificates required to validate this proposed change to the application. Therefore, the recommendation within this report is based on the original access route as shown on the attached plan.

2.00 RECOMMENDATION: TO REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASONS

- 2.01 Failure to enter into a legal agreement under the terms of the Wildlife & Countryside Act 1981 (as amended) Section 39 and a legal agreement under the terms of the Town & Country Planning Act 1990 (as amended) Section 106 to provide wildlife mitigation, protection and management of European and nationally designated wildlife sites, and protection of a low railway bridge at the site access and to provide access controls.
- 2.02 Without the required legal agreements and the mitigation that they would afford, it is considered that the proposal would have a significant detrimental and negative effect on the adjacent Dee Estuary Site of Special Scientific Interest, Ramsar Site, Special Area of Conservation and Special Protection Area and adjacent Gronant Dunes and Talacre Warren SSSI and as such contrary to Policies STR1f), STR7c), STR7e), GEN1c), SR8, WB2, WB3, EWP8a) and EWP8e) of the Flintshire Unitary Development Plan. Furthermore, without railway protection barriers, the main North Wales Coast railway line, which lies over the access road, cannot be safeguarded from damage.

3.00 CONSULTATIONS

- 3.01 Refer to Committee Report of 22 July 2009.

4.00 PUBLICITY

- 4.01 Refer to Committee Report of 22 July 2009.

5.00 SITE HISTORY

5.01 Refer to Committee Report of 22 July 2009.

6.00 PLANNING POLICIES

6.01 Flintshire Unitary Development Plan

Policy STR1 – Policies for New Development

Policy STR7 – Natural Environment

Policy STR10 – Resources

Policy STR11 – Sport, Leisure and Recreation

Policy GEN1 – General requirements for development

Policy GEN3 – Development in the Open Countryside

Policy GEN5 – Environmental Assessment.

Policy L6 – The Undeveloped Coast.

Policy SR8 – The Dee Estuary Corridor.

Policy WB2 – Site of International Importance.

Policy WB3 – Statutory Sites of National Importance.

Policy AC2 – Pedestrian Provision and Public Rights of Way

Policy AC13 – Access and Traffic Impact

Policy EWP6 – Areas of search for new waste management facilities.

Policy EW 7 – Managing Waste Sustainably.

Policy EWP8 - Control of waste development and operations

Policy EWP12 – Pollution.

Policy EWP13 – Nuisance.

Policy EWP14 – Derelict and Contaminated Land.

Policy EWP16 – Water Resources.

Policy EWP17 – Flood Risk.

6.02 National And Regional Policy

TAN 5 - Nature Conservation and Planning

TAN 15 – Flood Risk.

TAN 21 – Waste

North Wales Regional Waste Plan First Review (2009)

National Waste Strategy; 'Towards Zero Waste' (2010)

The Waste Hierarchy

Dee Estuary Strategy

7.00 PLANNING APPRAISAL

Introduction

7.01 In July 2009, members resolved to grant planning permission subject to the applicants, Delyn Metal Limited (DML), entering into a Section 106 (Town & Country Planning Act 1990) and a Section 39 (Wildlife & Countryside Act 1981) legal agreement.

7.02 However, since then, the applicant has failed to enter into these required legal agreements, and therefore planning permission could not be granted. The applicant has been operating the site with the benefit of an Environmental Permit but with no planning permission.

7.03 Since the Committee resolution in 2009, the planning department has

been trying to resolve the issues associated with the outstanding legal agreements with DML to no avail. An alternative access, as described above was proposed by the applicant to try to provide an improved access solution rather than accessing the site under the low railway bridge which required protection. This alternative access was also consulted upon. However, additional certificates of ownership are required in order to validate the application and despite repeated requests, the applicant has not provided these required documents. As such, the Council cannot make a decision on this application with an alternative access as it is not valid. Therefore, this report is considering the development as originally proposed with access to the site under the low railway bridge.

Ecological mitigation through legal agreement

- 7.04 Members resolved to grant planning permission subject to the applicants entering into a Section 39 agreement (Wildlife & Countryside Act 1981) to provide wildlife protection, mitigation and management to protect the adjacent Gronant Dunes and Talacre Warren SSSI, and the Dee Estuary Ramsar, SPA, SAC and SSSI from the proposed development.
- 7.05 The Appropriate Assessment undertaken by the County Council's Ecologist concluded that the proposal would be unlikely to have a significant effect 'alone or in combination' on the adjacent European site, provided the mitigation provisions, as detailed within the environmental statement that accompanied the planning application are undertaken and implemented via a legal agreement.
- 7.06 The Environment Agency Wales' Biodiversity Team has raised concerns with regards to the existing operations on site. The obligations required by the Section 106 agreement have not been carried out in relation to screen planting to mitigate against any wind blown litter on to the SPA, Ramsar Site, SAC and SSSI. Other issues which cause concern relate to disturbance to species on the designated site, wind blown debris which includes metal sheets, insulation boarding, and on one occasion a whole caravan. Burning of material on site is also a concern. Also, insulation material found in caravans is easily wind blown onto the designated sites and could cause harm to wildlife as it contains highly irritant properties.
- 7.07 The implementation of mitigation and protection on land outside of the applicant's control would require the landowner's consent, and the land owner entering into a legal agreement. Much of the land surrounding the site is owned by BHP who has confirmed that they would not be willing to enter into any legal agreements with the applicant. Therefore, should members be minded to grant planning permission, any decision notice would remain incapable of being issued with the grant of planning permission.

8.00 CONCLUSION

- 8.01 For the proposal to be acceptable in terms of mitigation to ensure that there would be no significant effects on the ecological sites of importance, and to facilitate the construction of railway protection barriers, the applicant would be required to enter into a legal agreement under the terms of the Wildlife & Countryside Act 1981 (as amended) Section 39 and a Legal Agreement under the terms of the Town & Country Planning Act 1990 (as amended) Section 106 with the land owners BHP, Network Rail and the Environment Agency Wales (EAW).
- 8.02 Whilst EAW are happy to enter into a legal agreement, BHP has confirmed that they would not be willing to do so. As such, should Members resolve to grant planning permission, as proposed, the decision would not be capable of being issued, as the prerequisite legal agreements would be incapable of being completed.
- 8.03 Sufficient time has been provided to the applicant by the Planning Authority to resolve these outstanding and essential matters and reach agreement with third parties to enter into the required legal agreements. Without the required legal agreements and the mitigation that they would afford, it is considered that the proposal would have a significant detrimental and negative effect on the adjacent Dee Estuary Site of Special Scientific Interest, Ramsar Site, Special Area of Conservation and Special Protection Area and adjacent Gronant Dunes and Talacre Warren SSSI and as such contrary to Policies STR1f), STR7c), STR7e), GEN1c), SR8, WB2, WB3, EWP8a) and EWP8e) of the Flintshire Unitary Development Plan. Furthermore, without railway protection barriers, the main North Wales Coast railway line, which lies over the access road, cannot be safeguarded from damage. This is a very low bridge and it has been reported that bridge strike has already occurred with the use of large vehicles.
- 8.04 Without mitigation, protection and management that the required legal agreements would afford, it is considered that the development would be unacceptable and it is therefore recommended that planning permission should be refused.
- 8.05 In considering this planning application the Council has acted in accordance with the Human Rights Act 1998 including Article 8 of the Convention and in a manner which is necessary in a democratic society in furtherance of the legitimate aims of the Act and the Convention.

Contact Officer: Hannah Parish
Telephone: 01352 703253
Email: hannah.parish@flintshire.gov.uk